

Newport Planning Board Minutes
December 30, 2020
6:00 PM
Via Zoom

Members present: J. Carsley, D. Ferrell, F. Harding, G. Phelps, D. Seamans

1. Call to Order

a. Pledge of allegiance-

2. Approval of minutes from November 11, 2020

Motion on the floor to table the minutes from the November 11th, 2020 meeting until the next meeting. Moved by D. Ferrell, seconded by Frank Harding, no discussion, all in favor, unanimous.

3. Old Business

a. Review of LOC's for the following two Solar Farm Proposals:

Manager explained that the town's attorney has been working with both entities to make certain all legal issues and compliance with our ordinance. Edmond Bearor, Attorney for the Town of Newport then explained that his office had set up an escrow account with TPE in the amount of \$244,120.00. This money will be released when TPE conveys the property, the new owner will then provide a new letter of credit to the Town. Failure to do can result in the revocations of all permits.

1. GL Investment Solar Farm

The Board finds that the application dated, September 1, 2020 and supporting materials and testimony provided by the applicant meet the applicable standards for a Large-Scale Ground Mounted Solar Energy System, as set forth in Section V, Land Use Standards of the Newport Land Use Ordinance.

This approval is conditioned upon the applicant adhering to the decommissioning plan presented to the Board and made a part of this application approval and further conditioned upon the applicant maintaining a letter of credit substantially like the one submitted to the town manager and reviewed and approved by the town attorney bearing an effective date of December 15, 2020. Any lapse in a letter of credit during the project's lifetime and until decommissioning is complete shall be a violation of this approval for which the town may initiate a land use enforcement action against the permit holder.

GL Investment Solar Farm--Motion on the floor was read by F. Harding, seconded by G. Phelps, no discussion, All in favor, unanimous.

2. TPE ME NE05, LLC

The Board finds that the application dated, September 28, 2020 and supporting materials and testimony provided by the applicant meet the applicable standards for a Large-Scale Ground Mounted Solar Energy System, as set forth in Section V, Land Use Standards of the Newport Land Use Ordinance.

This approval is conditioned upon the applicant adhering to the decommissioning plan presented to the Board and made a part of this application approval and further conditioned upon the funding of an Escrow Agreement dated December 28, 2020 and submitted to the board, said escrow agreement having been reviewed and approved by the town attorney along with the letter of credit which, at applicant's request may be employed to replace the Escrow Agreement and the funds contained therein. Any lapse in a letter of credit during the project's lifetime and until decommissioning is complete shall be a violation of this approval for which the town may initiate a land use enforcement action against the permit holder.

TPE- Motion on the floor was read by F. Harding, seconded by D. Ferrell, some discussion, All in favor, unanimous.

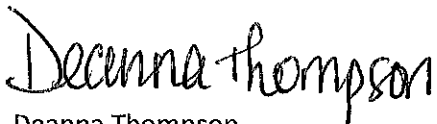
4. New Business: None

5. Adjourn

Meeting was adjourned at 6:10 pm, Moved by F. Harding, seconded by D. Ferrell, all in favor, unanimous.

Copy of LOC with GL Investments, Escrow Agreement with TPE, and a draft of the Standby Letter of Credit from MUFG Bank obo TPE, shall be attached to these minutes.

Respectfully Submitted,



Deanna Thompson
Treasurer

IRREVOCABLE STANDBY LETTER OF CREDIT

Applicant:

Greg Lovley and
GL Investment, LLC
114 Park Avenue
Newport, ME 04953

Beneficiary:

Town of Newport
23 Water Street
Newport, ME 04953

Applicant's Financial Institution:

Sebasticook Valley FCU
505 Somerset Avenue
Pittsfield, ME 04967
(207) 487-5576

To Who It May Concern:

We hereby establish our Irrevocable Standby Letter of Credit in favor of the Town of Newport at the request of and for the account of GL Investment, LLC for an amount or amounts not to exceed Two Hundred Thousand Dollars 00/100 (\$200,000).

This Letter of Credit is subject to the following terms and conditions:

1. Effective Date – 12/15/2020
Expiration Date – 12/14/2022
2. This Letter of Credit is available by sight draft(s) drawn on us and marked "Drawn under Sebasticook Valley FCU, 505 Somerset Avenue, Pittsfield, ME 04967. Letter of Credit GL Investment, LLC.
3. This Letter of Credit must be continuously renewed until the decommissioning of the site is complete. Any lapse in the Letter of Credit will be deemed a violation of the permit and subject to legal action by the town, including per day penalties as described by law. The town will have no, under any conditions, the responsibility to perform any work at the site.
4. Except as stated above, no modifications or revocations may be made by the undersigned to the Letter of Credit without the express written approval of the Applicant and the Beneficiary. This letter of credit is neither, negotiable or assignable.
5. Partial drawings are permitted.
6. We hereby agree drafts drawn hereunder and in compliance with the terms of this Letter of Credit will be duly honored on presentation and delivery of documents, which may be done by first class mail, facsimile, in-person, or by any other reasonable business practice, prior to the expiration of this Letter of Credit.
7. Any sight drafts are to be accompanied by a signed statement from the Town of Newport, Newport, ME certifying that (a) GL Investment has failed to remediate the site to the satisfaction of the Town of Newport and any pertinent laws, rules or regulations pertaining thereto, (b) GL

Investment, LLC's failure to remediate necessitates the Town of Newport to undertake the cost of remediation and (c) an outline, accompanied by an invoice documenting the exact cost incurred by Town of Newport to be paid pursuant to the Letter of Credit.

- B. This letter shall be governed by and construed in accordance with the laws of the State of Maine. Except as otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce Publications No. 500.

By: 

James R. Lemieux
President
Sebasticook Valley FCU

ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is made this 28th day of December, 2020 ("Effective Date"), by and between RUDMAN & WINCHELL, LLC, a Maine limited liability company (the "Escrow Agent"), TPE ME NE05, LLC, a Delaware limited liability company (the "Permittee"), and the TOWN OF NEWPORT, MAINE (the "Town") to establish a cash escrow in accordance with the financial assurance requirements of a Planning Board Permit regarding a Large-Scale Solar Energy System to be installed by Permittee as issued on or about the date hereof by the Planning Board of the Town (the "Permit").

RECITALS

WHEREAS, the Town has indicated that it will issue Permittee the Permit to construct and operate a solar farm on certain property described in the Permit.

WHEREAS, the Permit requires the Permittee to provide and maintain financial assurance to ensure proper decommissioning of the solar farm.

WHEREAS, this Agreement documents that Permittee shall deposit cash with the Escrow Agent to be held in an escrow account to fulfill the financial assurance obligations of the Permit and specifies the conditions and procedures under which the Town or Permittee may draw on the escrow account.

AGREEMENT

1. Permittee shall deposit cash in the amount of \$244,120.00 with the Escrow Agent (the "Cash").
2. The Escrow Agent shall not release the Cash to the Permittee until this Agreement has been terminated; *provided however*, notwithstanding any other provision of this Agreement, if the Town does not issue the Permit to Permittee by January 4, 2021, the Escrow Agent shall return all Cash received from Permittee by wire transfer in accordance with Permittee's instructions by January 5, 2021, and this Escrow Agreement shall then terminate.
3. Upon request from the Permittee that the Escrow Agent terminate this Agreement, the Escrow Agent shall promptly notify the Town that this Agreement will terminate on a date that is thirty (30) days following the date of notice delivered to the Town. Such termination of this Agreement shall occur only upon (1) substitution of the Cash with a satisfactory letter of credit or (2) fulfillment of the decommissioning obligations of the Permittee under the Permit.
4. If the Town finds a violation of decommissioning provisions of the Permit, the Cash may be drawn upon by the Town in accordance with this Agreement and become the sole property of the Town upon notice delivered to the Escrow Agent, requesting in writing that a specific dollar amount be released to it. The Town may draw upon the Cash to fulfill the decommissioning obligations of the Permittee under the Permit.
5. Permittee will indemnify and defend Escrow Agent and its officers, directors, employees and agents, from and against any and all claims, losses and liabilities, including the

reasonable costs of its counsel, resulting from this Agreement, but excluding any such claims, losses or liabilities resulting from the gross negligence or willful misconduct or unlawful acts of Escrow Agent or any of its officers, directors, employees and agents. The obligation of the Permittee to provide such indemnification shall survive the termination of this Agreement.

6. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, documents and proposals, oral or written, between the parties with respect thereto. Any amendment or modification to this Agreement shall not be valid unless made in writing and signed by authorized representatives of each of the parties.
7. Any notices required or permitted to be given under this Agreement: (i) shall be in writing signed by or on behalf of the party making the same; (ii) shall be deemed given or delivered (a) if delivered personally, when received, or (b) if sent from within the United States by certified mail, postage prepaid, return receipt requested, on the third business day after mailing; and (iii) shall be addressed to each party as set forth below, or at such other address designated in writing by personal delivery, certified mail, or overnight courier service:

To the Town:	To the Escrow Agent:	To the Permittee:
Town of Newport Attn: Town Manager 23 Water Street Newport, ME 04953	Edmond J. Bearor Rudman & Winchell, LLC PO BOX 1401 Bangor, ME 04402	TPE ME NE05, LLC c/o TPE Development, LLC Attn: Jared Schoch, President 747 S. Corona Street, Suite 100 Denver, CO 80209

8. This Agreement shall be governed by the laws of the State of Maine, without regard to its conflict of laws rules. For the purpose of resolving conflicts related to or arising out of this Agreement, the parties expressly agree that venue shall be exclusively in the State of Maine, County of Penobscot. The parties hereby expressly consent to the exclusive personal jurisdiction of the federal and state courts located in the State of Maine, regardless of the citizenship or residency of either party at the time of the commencement of any legal proceeding. Each party shall be responsible for its own attorney fees, costs, and disbursements if any are incurred that are related to this Agreement.
9. The provisions of this Agreement shall be binding upon the Permittee and its assigns or successors in interest.
10. In the event that any portion of this Agreement shall be held to be invalid, such invalidity shall not affect the validity of the remainder of this Agreement
11. This Assignment may be executed and delivered (including by electronically mailed .pdf transmission) in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that the parties need not sign the same counterpart. Signatures of the parties transmitted by electronic mail shall be deemed to be their original signatures for all purposes.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement to be effective as of the Effective Date set forth above.

ESCROW AGENT:

RUDMAN & WINCHELL, LLC

By: Edmond Beun

Title: Member

Date: 12-28-20

TOWN:

TOWN OF NEWPORT, MAINE

By: Thomas A. Ricketts

Title: Town Manager

Date: 12-28-2020

PERMITEE:

TPE ME NE05, LLC

By: Jared Schock

Title: Authorized Representative

Date: 12/28/2020

EXHIBIT FOR STANDBY LETTER OF CREDIT APPLICATION
THIS EXHIBIT, IN THIS FINAL FORM, IS AN INTEGRAL PART OF AND MUST BE ATTACHED TO
MUGB BANK, LTD. APPLICATION AND AGREEMENT FOR
IRREVOCABLE STANDBY LETTER OF CREDIT
APPLICANT: NEXAMP AMOUNT: USD 42,550.00
DRAFT DATE: DECEMBER 15, 2020 NT

MUGB BANK, LTD., LOS ANGELES BRANCH

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____
DATE: _____

BENEFICIARY:
[INSERT PHYSICAL ADDRESS]

ok, ejs

APPLICANT:
NEXAMP, INC. ON BEHALF OF
TPE ME NEOS, LLC
[INSERT LLC ADDRESS]

ATTN: OFFICE OF THE PRESIDENT
AMOUNT: TWO HUNDRED FORTY-FOUR THOUSAND ONE HUNDRED TWENTY - AND 00/100 UNITED STATES DOLLARS (US\$ 244,120.00)

EXPIRY DATE: ONE YEAR FROM ISSUANCE DATE.

WE, MUGB BANK, LTD., LOS ANGELES BRANCH, HAVE ESTABLISHED THIS IRREVOCABLE LETTER OF CREDIT NO. _____ IN YOUR FAVOR FOR THE ACCOUNT OF NEXAMP, INC. ON BEHALF OF SPARROW BUSH NY 2, LLC IN THE AMOUNT OF US\$ 244,120.00, EFFECTIVE IMMEDIATELY AND EXPIRING UPON ONE YEAR FROM ISSUANCE DATE.

~~WE HAVE BEEN INFORMED BY THE APPLICANT, THAT THIS LETTER OF CREDIT IS BEING ISSUED TO COVER THE APPLICANT'S OBLIGATIONS UNDER SOLAR ENERGY SYSTEM DECOMMISSIONING AGREEMENT DATED APRIL 1, 2019 MADE BETWEEN TOWN OF NEWPORT, BEING A MUNICIPAL CORPORATION IN THE STATE OF MAINE, PENOBSCOT COUNTY AND NEXAMP, INC. ON BEHALF OF TPE ME NEOS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR THE REMOVAL OF THAT CERTAIN SOLAR ENERGY SYSTEM LOCATED AT [RIDGE ROAD], IF THE SOLAR ENERGY SYSTEM IS NOT ACTIVE AND IN CONTINUOUS USE FOR A PERIOD OF 12 CONSECUTIVE MONTHS.~~

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU UPON PRESENTATION TO US YOUR SIGHT DRAFT(S) DRAWN ON MUGB BANK, LTD., LOS ANGELES BRANCH REFERENCING OUR LETTER OF CREDIT NO. _____ ACCOMPANIED BY THE FOLLOWING REQUIRED DOCUMENTS:

1. YOUR DATED STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED SIGNER OF THE BENEFICIARY STATING THE FOLLOWING:

"I, [_____], TOWN OF NEWPORT SUPERVISOR, HEREBY CERTIFY THAT I AM AN OFFICER OF THE TOWN OF NEWPORT, AUTHORIZED TO EXECUTE THIS STATEMENT AND DEMAND PAYMENT OF TWO

EXHIBIT TO APPLICATION

APPLICANT'S SIGNATURE _____

APPLICANT'S SIGNATURE _____

DATE OF APPLICATION _____

DATE OF APPLICATION _____

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DRAFT DATE: DECEMBER 15, 2020 NT

HUNDRED FORTY-FOUR THOUSAND ONE HUNDRED TWENTY - AND 00/100 UNITED STATES DOLLARS - (US\$ 244,120.00) UNDER MUFG, LTD., LOS ANGELES BRANCH STANDBY LETTER OF CREDIT NO. _____ . I FURTHER CERTIFY THAT THE AMOUNT OF OUR DEMAND REPRESENTS THE AMOUNT DUE TO US BECAUSE NEXAMP, INC. ON BEHALF OF TPE ME NE05, LLC IS IN BREACH AND/OR DEFAULT UNDER THE AGREEMENT AS A RESULT OF THE FAILURE OF NEXAMP, INC. ON BEHALF OF TPE ME NE05, LLC TO REMOVE THAT CERTAIN SOLAR ENERGY SYSTEM LOCATED AT [INSERT PROJECT ADDRESS] WITHIN 90 DAYS AFTER THE SOLAR ENERGY SYSTEM HAS NOT BEEN ACTIVE AND IN CONTINUOUS USE FOR A PERIOD OF 12 CONSECUTIVE MONTHS."

2. ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS, IF ANY.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT THE EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE (1) YEAR FROM THE EXPIRATION DATE HEREOF OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO SUCH EXPIRATION DATE WE SEND NOTICE TO YOU BY CERTIFIED MAIL OR BY COURIER SERVICE, THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR ANY SUCH ADDITIONAL PERIOD. SAID NOTICE WILL BE SENT TO THE ADDRESS INDICATED ABOVE, UNLESS A CHANGE OF ADDRESS IS OTHERWISE NOTIFIED BY YOU TO US IN WRITING BY RECEIPTED MAIL OR COURIER.

EXCEPT AS STATED HEREIN, THIS UNDERTAKING IS NOT SUBJECT TO ANY CONDITION OR QUALIFICATION. OUR OBLIGATION UNDER THIS LETTER OF CREDIT SHALL BE OUR INDIVIDUAL OBLIGATION, IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO.

ALL DRAFTS MUST BE MARKED: "DRAWN UNDER MUFG BANK, LTD., LOS ANGELES BRANCH LETTER OF CREDIT NO. _____ DATED _____ .

WE HEREBY ENGAGE WITH YOU THAT ALL REQUIRED DRAWING DOCUMENTS PRESENTED IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED BY US UPON PRESENTATION AT OUR OFFICE LOCATED AT MUFG BANK, LTD., LOS ANGELES BRANCH, C/O OPERATIONAL DIVISION FOR THE AMERICAS, HARBORSIDE 3, 210 HUDSON STREET, SUITE 500, JERSEY CITY, NJ 07311 USA ON OR PRIOR TO OUR CLOSE OF BUSINESS (5 P.M. NEW YORK CITY TIME) ON OR BEFORE THE EXPIRY DATE.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600 (THE "UCP"). THIS LETTER OF CREDIT SHALL BE DEEMED TO HAVE BEEN MADE UNDER THE LAWS OF THE STATE OF NEW YORK AND SHALL, AS TO MATTER NOT GOVERNED BY UCP, BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF SAID STATE.

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DATE OF APPLICATION _____

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DRAFT DATE: DECEMBER 15, 2020 NT

VERY TRULY YOURS,

MUFG BANK, LTD., LOS ANGELES BRANCH

AUTHORIZED SIGNATORY

EXHIBIT TO APPLICATION

APPLICANT'S SIGNATURE _____

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DATE OF APPLICATION _____

DATE OF APPLICATION _____