

**Town of North East  
Town Board  
Regular Meeting  
December 14, 2023, 7PM**

**Call to Order, Pledge of Allegiance**

**Roll call**

<b>SUPERVISOR KENNAN</b>	<b>HERE</b>
<b>COUNCILWOMAN MORRISON</b>	<b>HERE</b>
<b>COUNCILMAN FEDELE</b>	<b>HERE</b>
<b>COUNCILMAN MIDWOOD</b>	<b>HERE</b>
<b>COUNCILWOMAN WINKLER</b>	<b>HERE</b>

**Acceptance of Agenda**

Two amendments to the Agenda- Table discussion of #13 the Bike/Walk plan, and add an executive session at the end of the meeting to discuss a matter related to promotion or demotion of an employee.

Motion made by Councilwoman Morrison and seconded by Councilwoman Winkler to accept the amended agenda.

Ayes- 5 (Kennan, Morrison, Fedele, Midwood, Winkler)

Nays- 0

Agenda as amended was accepted.

**Supervisor Comments**

Welcome to the last Town Board meeting of the year. A lot has happened, including the nearly finished new Highway Garage, the purchase of a new Town Hall building, and the start of a major wastewater infrastructure project!

Election recap highlight: Sue Serino, Greg Pulver, Chris Drago, Town Clerk Elizabeth Strauss, Councilwoman Lana Morrison and Councilwoman Meg Winkler. Congratulations to all. We now have a vacancy for a two year term on the Town Board and will make an appointment at the first regular meeting of the new year. If you are interested please reach out to the Town Clerk or the Supervisor beforehand.

Thanks to John Midwood for his full two terms, totaling 8 years in office. He has contributed to the cause of making the Town Government more transparent with implementation of recording devices, uploading meeting videos to YouTube, and streamlining the Town website.

**Department and Committee Reports**

**Highway (Bob Stevens)-** no report

**Town Clerk: Planning, Zoning, & Building Department-** reports sent to the Town Board ahead of the meeting

**Town Board Committee Activity**

**Personnel:** Councilwoman Morrison and Councilman Fedele interviewed Peter Cody, a candidate for the open position on the BAR.

**Housing:** Councilwoman Winkler and Supervisor Kennan have been learning about surrounding communities zoning initiatives and helping the ZRC fill out certain uses. The goal is to get specific terms for the Boulevard District. Amenia has an inspirational housing project happening with Hudson River Housing on 16 acres near Fresh Town Marketplace. It looks like it will be seven duplexes, owner occupied, and seven apartments managed by HRH, all with a shared septic. The NECC gave an update at the Tri-Town Coalition for Housing meeting. They are working on disseminating information about tenant rights to community members. A copy of those may soon be posted to our website.

**Buildings and Grounds:** We are working with the architect and engineers at the New Town hall. George Lind and the Highway crew installed a base for a flagpole. Two poles have been purchased- one for the new Town Hall and one for the Highway garage. At the new Highway garage the wash bay is almost complete. The office space is usable. There is still site work such as re-grading the entranceway and paving to be done in the spring. We will work out of the old garage this winter to preserve the concrete aprons.

**Zoning Review: (Edie Greenwood)** Formed in June 2020, the North East Zoning Review Committee is near the end of its review of the draft additions and amendments to the Town’s commercial districts zoning sections. Next week the committee will be reviewing the last three segments of our draft code. They will continue to meet to resolve a few open issues, but can now develop a timetable. The next step is to pull together all the parts of our non-residential draft code and then send the draft package to our attorney for legal review. After input from the attorney, they will present the commercial districts draft code to the Town Board, ideally by the end of the first quarter of 2024. The Town Board will then begin their process of review, which will include a public hearing. The Supervisor

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commented that the amount of work over the last 3 ½ years reflects the fact of real perseverance and he thanked all the members of the committee.

**Public Comment on Agenda items only**

**Kathy Chow**, Town resident and Chair of the Climate Smart Task Force, applauds the work being done on addressing the landfill. She brought up methane emissions, bio filters, and a solar array with the potential to generate money that can be put back into mitigating Climate change.

**Rich Stalzer**, Town resident and Chair of the Conservation Advisory Committee, said the CAC had looked at the proposal of a solar array on the landfill and written a memo in support of it for both economic and environmental reasons. He is glad the Board is considering the proposal.

**Approval of Peter Cody for appointment to Board of Assessment Review**

**RESOLUTION #832023**  
**Appoint Peter Cody to Board of Assessment Review**

Motion made by Councilman Fedele and seconded by Councilwoman Morrison to approve the appointment to the BAR.

Ayes- 5 (Kennan, Morrison, Fedele, Midwood, Winkler)

Nays- 0

RESOLVED, to appoint Peter Cody to the BAR for an unfinished term that ends 9-30-2026.

**Old chairs from Town Board Room**

Supervisor Kennan said that with purchase of the new Town Hall we acquired 200 new chairs. We will be looking for an appropriate non-profit to donate some of our current chairs.

**Water Connection for 86 Stateline Road**

**RESOLUTION #842023**  
**Water Service Request for 86 Stateline Road, parcel # 7271-00-770442-000, to the North East Water District**

The Town has received a request from Jackson Wandres and Nera Cruz to connect parcel #7271-00-770442-000 into the Village's Water District.

On a motion by Councilman Midwood, seconded by Councilwoman Winkler the following was

ADOPTED- AYES- 5 (Kennan, Morrison, Fedele, Midwood, Winkler)

NAYS- 0

RESOLVED, to accept the water service request for parcel #7271-00-770442-000, and to send a letter to the Village Water Department regarding this hook up.

**Resolution of approval of preliminary contract with AC Power for a mutual evaluation of a potential Solar Array on Town Landfill on Reagan Road**

Supervisor Kennan gave a history back to 2015 with former Supervisor John Merwin looking into the possibility of a solar array installation on the Town landfill. Two years ago we initiated conversations with three different Solar Installation companies. It's a piece of land that the Town owns that can't be used for housing, livestock or crops. It has no tax benefit for the Town, but can become a revenue generator. Currently the revenue potential for the Town, as well as the increase in renewable energy benefits through NYS incentives, makes this fairly attractive. AC Power, a NY based, woman owned business, gave a presentation at a special meeting November 20<sup>th</sup>. They have developed other sites in NY State and were clear and accessible as a company. They will take this time to investigate the real possibility of a viable installation and be in charge of all permitting and NYS required approvals.

The Town does not bear any expenses and AC Power will pay a fee, \$1250/ per quarter to the Town during this investigatory phase.

Attorney Replansky explained that at the end of this Agreement, a two-year exclusive granting of time for due diligence, the Town is under no obligation to move forward. There are all kinds of protections for the Town in the Agreement. Discussion followed.

Councilman Fedele had questions for the Attorney. Councilwoman Morrison and Councilman Midwood each expressed approval and the fact that it seemed a no risk situation. Councilman Fedele reiterated approval of the increase in revenue and the local Town resident's 10% discount rate once we start generating electricity. Councilwoman Winkler liked the presentation made by AC Power. The Town Board thinks this provides local residents a win/win situation.

RESOLUTION#852023

RESOLUTION AUTHORIZING THE SUPERVISOR TO EXECUTE AN  
AGREEMENT AUTHORIZING DUE DILIGENCE INVESTIGATION OF THE TOWN  
OF NORTH EAST LANDFILL WITH AC POWER DEVELOPMENT COMPANY, LLC

**WHEREAS**, the Town of North East is the owner of the North East Landfill located at 41 Reagan Road, in the Town of North East, parcel number: 7269-00-212501-0000; and

**WHEREAS**, DEC had approved a remedy to eliminate or mitigate all significant threats to the environment presented by the contamination at the landfill pursuant to DEC rules and regulations; and

**WHEREAS**, the property is subject to a Declaration of Covenants and Restrictions, dated June 3, 2013 imposed by DEC; and

**WHEREAS**, AC Power Development Company, LLC (hereinafter “AC Power”) has approached the Town and indicated its interest in siting an approximate 5.6 MW-DC solar facility on the landfill pursuant to the terms of a Lease Agreement being negotiated, and agreed upon, between the Town and AC Power in the future; and

**WHEREAS**, AC Power requires a period of time to conduct due diligence and other activities to determine if the landfill will be a suitable site for such a facility; and

**WHEREAS**, AC Power has proposed an Agreement with the Town, which provides AC Power with a two (2) year exclusive opportunity to conduct such due diligence and, in return, AC Power has proposed to pay the Town the sum of \$1,250 in equal installments during the due diligence period; and

**WHEREAS**, the Attorney to the Town has reviewed the proposed Agreement and has amended the same and has provided a copy of the proposed amended Agreement to the Town Board for its review and approval; and

**WHEREAS**, a copy of the said amended Agreement is annexed hereto; and

**WHEREAS**, the Town Board has determined that this is a Type II action under SEQRA, which does not require environmental review; and

**WHEREAS**, the Town Board has determined that the execution of this Agreement will be in the best interest of the Town of North East and its citizens.

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the Town Board hereby authorizes the Town Supervisor to execute the Agreement authorizing the due diligence investigation of the Town of North East landfill by AC Power in the same, or substantially similar, form as annexed hereto.

This motion was offered by Town Board member Ralph Fedele and was seconded by Town Board member Lana Morrison.

MOTION: Councilman Fedele

SECOND: Councilwoman Morrison

SUPERVISOR KENNAN	Voted AYE
COUNCILMAN FEDELE	Voted AYE
COUNCILMAN MIDWOOD	Voted AYE
COUNCILWOMAN MORRISON	Voted AYE
COUNCILWOMAN WINKLER	Voted AYE

The Resolution was carried by a 5-0 vote of the Town Board members on December 14, 2023.

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**Motion to approve Town Supervisor to sign contract with Town of Pine Plains Highway Department for dog kennel.**

**RESOLUTION #862023**  
**Approve contact with Town of Pine Plains Highway Department for dog kennel.**

Motion made by Councilwoman Winkler and seconded by Councilman Midwood to approve the Supervisor signing the new contract.

Ayes- 5 (Kennan, Morrison, Fedele, Midwood, Winkler)  
Nays- 0

**Approval of changes in dog kennel Fee Schedule as of 1-1-24**

Motion made by Councilman Fedele and seconded by Councilwoman Morrison to approve the changes to the Town Clerk (dog kennel) fees

Ayes- 5 (Kennan, Morrison, Fedele, Midwood, Winkler)  
Nays- 0

The fee changes were approved for 2024.

**Approval of changes to Town Building Department fee schedule, effective 01-01-2024**  
Motion made by Councilwoman Morrison and seconded by Councilman Midwood to approve the changes to the Town Building Department fees

Ayes- 5 (Kennan, Morrison, Fedele, Midwood, Winkler)  
Nays- 0

The fee changes were approved for 2024.

**RESOLUTION #872023**  
**Setting date for Town Board Re-Organization meeting as Tuesday January 2, 2024, at 5:00pm at the Town Hall**

Motion made by Councilwoman Winkler and seconded by Councilman Fedele to approve the date and time of the 2024 Town Organizational meeting. With an inclement weather date option set for the next day, January 3<sup>rd</sup> at 5pm.

Ayes- 5 (Kennan, Morrison, Fedele, Midwood, Winkler)  
Nays- 0

The date has been approved and the Town Clerk will post such information.

**Public Comments**

Rich Stalzer wanted to acknowledge the guidance of Steve Fahmie in regards to help with solar developers.

Steve Fahmie, Town resident, said that AC Power is a great firm and it was the right choice for the Board to take.

**Supervisor’s Report**

**RESOLUTION #882023**  
**Budget Adjustment #10 of 2023**  
**A Fund:** we had an expense increase of \$18,463.00, less an expense decrease of \$8,984.00 plus a revenue increase of \$9,479.00 for a net change of \$0.  
**B Fund:** we had an expense increase of \$2,878.00, less an expense decrease of \$2878.00 for a net change of \$0.

RESOLVED, to accept the Budget Adjustment #10 of 2023. A motion was made by Councilman Fedele and seconded by Councilwoman Morrison to accept the Budget Adjustment. Votes Taken.

Ayes- 5 (Kennan, Morrison, Fedele, Midwood, Winkler)  
Nays- 0

Budget adjustment is accepted

**RESOLUTION #892023**  
**Special Abstract dated November 28, 2023**

A Special Abstract dated November 28, 2023, totaling \$12,610.29 broken down as follows:

**A Fund:** \$2,926.19  
**DB Fund:** \$9,684.10

Motion made by Councilwoman Winkler and seconded by Councilman Midwood to accept the Special Abstract. Votes Taken.

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Ayes- 5 (Kennan, Morrison, Fedele, Midwood, Winkler)

Nays- 0

The Special Abstract is accepted

**RESOLUTION #902023**  
**Special Abstract dated December 1, 2023**

A Special Abstract dated December 1, 2023, totaling \$53,516.00 broken down as follows:

**A Fund:** \$25,152.52

**B Fund:** \$ 5,886.76

**DB Fund:** \$22,476.72

Motion made by Councilwoman Morrison and seconded by Councilman Midwood to accept the Special Abstract. Votes Taken.

Ayes- 5 (Kennan, Morrison, Fedele, Midwood, Winkler)

Nays- 0

The Special Abstract is accepted

**RESOLUTION #912023**  
**Monthly Abstract dated December 14, 2023**

An Abstract dated December 14, 2023 totaling \$405,817.21 broken down as follows:

**A Fund:** \$ 63,720.55

**B Fund:** \$ 10,049.40

**DB Fund:** \$ 89,324.63

**Capital Projects H1:** \$241,993.90

**T&A2 Escrow:** \$ 472.50

**Payroll T&A** \$ 256.23

Motion made by Councilman Fedele and seconded by Councilman Winkler to accept the Abstract

Ayes- 5 (Kennan, Morrison, Fedele, Midwood, Winkler)

Nays- 0

The Abstract is accepted.

**Voucher Committee for January 2024: Fedele & Winkler**

**Approval of Minutes from Town Board Meeting of 11-09-2023**

Motion made by Councilman Midwood and seconded by Councilwoman Winkler to approve the Minutes of the November 9<sup>th</sup>. Votes taken.

Ayes- 5 (Kennan, Morrison, Fedele, Midwood, Winkler)

Nays- 0

The minutes are approved

**Approval of Minutes from Town Board Meeting of 11-20-2023**

Motion made by Councilman Fedele and seconded by Councilwoman Morrison to approve the Minutes of the November 9<sup>th</sup> and November 20<sup>th</sup> meetings. Votes taken.

Ayes- 5 (Kennan, Morrison, Fedele, Midwood, Winkler)

Nays- 0

The minutes are approved

**Meeting with Counsel, if needed.**

The Supervisor called for an Executive session without council in order to discuss a matter relating to promotion or demotion of a particular employee.

Motion made by Councilman Fedele and seconded by Councilwoman Winkler to enter executive session without council. Votes taken.

Ayes- 5 (Kennan, Morrison, Fedele, Midwood, Winkler)

Nays- 0

Motion made by Councilman Midwood and seconded by Councilwoman Winkler to exit executive session without council. Votes taken.

Ayes- 4 (Kennan, Fedele, Midwood, Winkler)

Nays- 0

**Adjournment**

Motion made by Councilman Midwood and seconded by Councilwoman Winkler to adjourn meeting

Ayes- 4 (Kennan, Fedele, Midwood, Winkler)

Nays- 0

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The meeting was adjourned at 8:20PM.

Submitted by  
/s/: Elizabeth Strauss, Town Clerk  
Draft: 1/4/2024  
Approved: 1/11/2024

+++++

Attachment A

AGREEMENT  
AUTHORIZING DUE  
DILIGENCE  
INVESTIGATION OF  
TOWN OF NORTH EAST  
LANDFILL

**THIS** Agreement (the "Agreement"), effective as of \_\_\_\_\_, (the “Effective Date”), by and between the Town of North East ("TOWN"), a Town in the State of New York, whose workplace is at 19 North Maple Avenue, Millerton, New York 12546 and AC Power Development Company, LLC, a New York State limited liability corporation whose workplace is at 915 Broadway Suite 801, New York, NY 10010 (“AC POWER”). The TOWN and AC POWER together are the "Parties".

**WHEREAS**, the TOWN owns certain real property defined as the Town of North East Landfill located at 41 Reagan Road, North East, NY 1254; Tax Parcel: 7269-00-212501-0000 (hereinafter referred to as the “Premises”);

**WHEREAS**, AC POWER desires at a subsequent date to lease from the TOWN that certain portion of Real Property identified below for purposes of installing and operating a solar PV facility at said site;

**WHEREAS**, the Parties desire to enter into a definitive Solar Site Lease Agreement after certain conditions are mutually agreed upon between the Parties;

**WHEREAS**, AC POWER requires a period of time in order to conduct due diligence and other activities for the purpose of obtaining a viable interconnection agreement ("IA") with Central Hudson Gas & Electric Corp, obtain local non-ministerial permits pursuant to Chapter 180, Article VIII of the Town Zoning Code and other applicable provisions of the Code, and eligibility under the Community Solar Program and/or other solar incentives;

**WHEREAS**, AC POWER has been informed that the Town Code contains in Chapter 155, Article V, which sets forth the requirement of a solar farm PILOT agreement;

**WHEREAS**, AC POWER may make certain applications for designations and/or permits on behalf of the TOWN in order to assess the feasibility of installing the solar facility, and TOWN hereby consents to such activities.

**NOW, THEREFORE**, The TOWN and AC POWER hereby agree as follows:

- 1. **Grant of Right to Conduct Due Diligence.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual promises set forth herein, the TOWN hereby gives and grants unto AC POWER, an exclusive right to conduct a due diligence investigation in anticipation of entering into a Solar Site Lease Agreement at a future date for a portion of the Premises (the "Leased Premises") for the purposes of installing



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and operating an approximate 5.6 MW-dc solar facility ("Facility") on the Leased Premises subject to the terms of a Lease Agreement to be negotiated, and agreed to, by the parties hereinafter.

2. **Due Diligence Term.** The term of this Agreement shall be for twenty-four(24) months from the Effective Date (the "Due Diligence Term"), unless otherwise extended upon mutual agreement of the Parties or terminated in accordance with this Agreement. The Term will expire automatically on the earlier of (i) the failure of AC POWER to pay any of the payments as set forth in Section 4 when due; (ii) the end of the Agreement; or (iii) upon the execution of a Solar Site Lease Agreement (as defined below). Either party may terminate this Agreement prior to the expiration of the Agreement by providing the other party with thirty (30) days' written notice thereof and thereafter this Agreement shall be null and void and of no further force and effect and no Party shall have any further liability hereunder.
3. **Payment.** On the signing of this Agreement, AC POWER shall pay the TOWN \$1,250 in eight equal payments and shall then pay such amounts on a quarterly basis there after until either party terminates this Agreement, or this Agreement expires.
4. **Solar Site Lease Agreement.** During the Term, the AC POWER and the TOWN shall use best efforts to execute a solar site lease agreement (the "Solar Site Lease Agreement") for the Leased Premises, provided that the AC POWER: (i) obtains an acceptable interconnection study (in AC POWER's sole determination) and an acceptable interconnection agreement from Dominion Energy with respect to the interconnection of the Facility(s); (ii) determined that the Facility is technically and economically feasible on the Leased Premises (in AC POWER's sole determination); (iii) has obtained non-ministerial permits from the local, county and state authorities, and (iv) obtains an allocation of incentives for the Facility. It is anticipated that the lease terms will consist of the following terms, however, the final lease terms will be further negotiated by the Parties during the Term: 1) the term of the Solar Site Lease Agreement will commence on the date such lease is executed (anticipated to be the construction commencement date of the Facility) (the "Commencement Date"); and, 2) terminate twenty-five (25) years after the commercial operation date of the Facility, provided however, the 25 year term is automatically renewed for up to two (2) additional terms of five (5) years each (together, the "Lease Term"), unless AC POWER notifies the TOWN of its intention not to renew sixty (60) days prior to commencement of the succeeding renewal term.

The rent during the Lease Term shall be \$8,000 per MW-dc installed (calculated using installed Nameplate Capacity) per annum with an annual escalator of 1.5%. The Nameplate Capacity is defined as the installed capacity as approved by Central Hudson Gas & Electric Corp. If the Nameplate Capacity increases during the Lease Term the rent payment will increase accordingly.
5. **Indemnification.** During the term of this Agreement AC POWER, AC POWER shall indemnify, and hold the TOWN and the TOWN's affiliates and/or their respective employees, officers and directors harmless from all costs and expenses, liabilities, obligations, damages (exclusive of consequential or punitive damages), penalties, claims, or actions, (including reasonable attorneys' fees), arising from: (i) loss of life, personal injury or damage to property, occurring in, on or about the Premises to extent resulting from the acts or omissions of AC POWER or AC POWER's affiliates, officers, employees, guests, agents, contractors, consultants and/or invitees, and (ii) violations of or noncompliance with any applicable laws or governmental requirements pertaining to the conduct of AC POWER or its affiliates, agents or contractors.
6. **Inspections and Investigations.** The TOWN hereby grants to AC POWER, its officers, agents, employees and independent contractors the right and privilege

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to enter upon the Premises after the date of this Agreement, to perform or cause to be performed on the Premises any tests, inspections, studies or surveys that may be required in association with the permitting and design of the Facility. All testing and investigation shall be conducted in conjunction with the rules, regulations and requirements of New York State Department of Environmental Conservation ("DEC") and in accordance with the Declaration of Covenants and Restrictions encumbering the said property dated June 3, 2013, a copy of which is annexed hereto. No intrusive testing shall be conducted without the TOWN's prior consent and the prior consent of DEC. The TOWN shall cooperate in facilitating AC POWER's access to the Premises as needed, and AC POWER shall not unreasonably interfere with the TOWN's use of the Premises or the TOWN's responsibility pursuant to the Declaration of Covenants and Restrictions and all rules and regulations relating to a closed hazardous landfill in conducting these activities.

7. **Insurance.** AC POWER and its contractors and/or consultants shall maintain customary general liability insurance while on the Premises during the Period of this Agreement as follows:

(a) **Workers' Compensation Insurance:** AC POWER shall take out and maintain during the life of this Contract Workers' Compensation Insurance for its employees to be assigned to the work herein.

(b) **General Liability and Property Damage Insurance:** AC POWER shall take out and maintain during the life of this Agreement such general liability and property damage insurance as shall protect it from claims for damages for personal injury, including accidental death, as well as from claims for property damage which may arise from operations under this Agreement. The amounts of such insurance shall be as follows:

General liability insurance in an amount not less than \$1,000,000 for injuries including wrongful death to any one person and subject to the same limit for such person, in an amount not less than \$5,000,000 on account of any one occurrence.

Property damage insurance in an amount not less than \$1,000,000 for damage on account of all occurrences.

AC POWER shall furnish the above insurances to the Town and shall also name the Town as an additional named insured on said policies.

(c) **Contingent Liability:** The above policies for public liability and property damage must be written to include contingent liability and contingent property damage insurance to protect AC POWER and the TOWN against claims arising from operations of subcontractors.

(d) **Insurance Covering Special Hazards:** The following special hazards shall be covered by rider(s) to the public liability and/or property damage insurance policy or policies herein elsewhere required to be furnished by AC POWER or by separate policies of insurance in amounts as follows: For automobiles and automobile trucks, limits shall be the same as required under public liability and property damage as herein before specified.

(e) **Defense of Action or Suits:** Neither the TOWN nor any of its officers or agents shall in any manner be answerable or responsible for any loss or damages that may happen to the work, or to any part or parts thereof, or to any materials, equipment or other property that may be used therein, or place upon the ground, during the progress of the work. Neither the TOWN nor any of its officers or agents shall be in any manner answerable or responsible for any injury done, or damages or compensation required to



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be paid under any present or future law, to any person or persons whatever, whether employees of AC POWER or otherwise, or for damages to any property, whether belonging to the employees of AC POWER or otherwise, or for damages to any property, whether belonging to the Town or others, occurring during or resulting from the work. AC POWER shall properly guard against all injuries and damages. AC POWER shall indemnify and save harmless the TOWN, its officers, and agents against all such injuries, damages and compensation arising or resulting from causes other than the TOWN's negligence. AC POWER shall, from the commencement of work until completion and acceptance thereof, maintain public liability insurance and property damage liability insurance in the amounts herein before stated for the protection of AC POWER and the TOWN, and shall furnish duplicate of the policies to the TOWN, stamped by the insurer "Premium Paid". These policies shall be written by an insurance company or companies approved by the TOWN.

(f) AC POWER shall furnish the TOWN with satisfactory proof of all insurance required in the form of a Certificate of Liability Insurance upon signing of this Agreement.

8. **Confidentiality.** The TOWN agrees not to disclose or permit to be disclosed any documentation or information provided by AC POWER ("Confidential Information"), without the prior written approval of AC POWER. Neither Party shall disclose or use any Confidential Information of the other for any purpose. Each Party will be responsible for any unauthorized use or disclosure by any of its employees, representatives, agents or consultants to whom it has disclosed Confidential Information. Each Party will promptly notify the other upon discovery of any unauthorized use or disclosure of the Confidential Information. Upon the expiration or termination of this Agreement, the TOWN shall return to AC POWER or destroy all Confidential Information of AC POWER, and in all circumstances, the TOWN shall be required to keep AC POWER Confidential Information confidential for as long as it remains in the TOWN's possession, even after the termination of this Agreement.
9. **Marketing.** During the term of this Agreement, the TOWN shall not market and shall neither solicit nor accept any additional offers to lease, sale of or grant an easement over the Premises for any purpose.
10. **Governing Law.** This Agreement shall be governed by the laws of the State of New York without regard to its conflicts of law principles. Both Parties submit to personal jurisdiction in New York and further agree that any controversy, claim or cause of action arising under, relating to, incidental to or in connection with this Agreement shall be brought in a Federal or State Court in New York. The Parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement, or the transactions contemplated hereby, in the courts of the State of New York or the United States of America, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.
11. **Counterparts.** This Agreement may be executed in one or more counterparts, including facsimile counterparts, each of which shall be deemed an original, but all of which will be deemed one instrument. Signatures may be given via facsimile and/or email and any such facsimile and/or email signatures shall be treated in the same fashion as original signatures and shall be binding on the Parties.
12. **Representations and Warranties.** Both the TOWN and AC POWER hereby represent and warrant to the other that this Agreement: (a) has been validly executed and delivered by it, (b) has been duly authorized, and (c) with respect to the matters set forth herein. Any and all information exchanged between the Parties is provided "AS IS."
13. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties relating to the transactions contemplated hereby and supersedes all prior discussions, negotiations or agreements with respect to these matters, whether oral or written.
14. **Waiver.** No waiver by either party of any default or breach of any of the terms or conditions of this Agreement shall constitute a waiver of any prior or subsequent default or breach hereunder.
15. **Notices.** All notices, requests, or consents provided for or permitted to be given under this Agreement must be in writing and are effective on actual receipt by the intended recipient or by delivery by facsimile or e-mail.

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The Parties do not, by reason of entering into this Agreement, in any way whatsoever or for any purpose become partners of each other, agents, joint-ventures or members of a joint enterprise. The matters set forth in this Agreement do not constitute a binding agreement for lease of the Property between the TOWN and AC POWER. Any such Solar Site Lease Agreement shall only arise as a result of the negotiation, execution and delivery of a written definitive agreement as contemplated herein and having terms and conditions satisfactory to the TOWN and AC POWER. Neither party hereto may bring any claim or action against the other party as a result of a failure to agree on or enter into any definitive Solar Site Lease Agreement.

**IN WITNESS WHEREOF**, the TOWN and AC POWER have executed this Agreement as of the date affixed to their signatures below.

**TOWN:** Town of North East 19 North Maple Avenue Millerton, NY 12546

<b><u>By:</u></b>	<b><u>Name:</u></b> <u>CHRISTOPHER KENNAN</u>
<b><u>Title:</u></b> <u>Supervisor</u>	<b><u>Date:</u></b>

**AC POWER:** AC Power Development Company, LLC20 West 22<sup>nd</sup> Street, Suite 1501  
New York, NY, 10010

<b><u>By:</u></b>	<b><u>Name:</u></b>
<b><u>Title:</u></b>	<b><u>Date:</u></b>