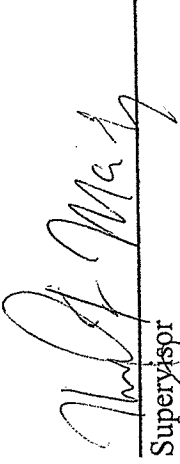


Town of Malone
Special Meeting
November 14, 2016

SPECIAL MEETING

We, the Undersigned, Town Board of the Town of Malone, do hereby Waive a Special Meeting, Monday, November 14, 2016 at 2:00 p.m., to approve signing of the Intermunicipal Agreement between the Town, Village and County regarding the Solar Array Project.

PRESENT:



Supervisor



Councilor



Councilor

Councilor

Councilor

ALSO PRESENT:
Deborah Hutchins, Town Clerk
Lillian Duffy-Anderson, Town Attorney
EJ Conzola, Malone Telegram

Supervisor Maneely called the meeting to order at 2:07 p.m. Proper notice was given. Supervisor Maneely stated the purpose of this meeting is to approve the signing of the Inter-municipal Agreement between the Town, Village and County for the Solar Landfill Project. Supervisor Maneely explained that Lillian Anderson-Duffy has been in contact with Patrick Cain-DEC and the reason for this agreement is to put the liability for any damages or inadequate maintenance on to the responsible parties – which should be either the solar company (HESP) or the County and Village together – not the Town.

Lillian Anderson-Duffy then spoke about the agreement and the parties involved and posed a question about Green Powers also needing to be part of the agreement. At this time some phone calls were made and it was determined that Green Powers would be included in some provision of the agreement as they are the Developer. Lillian Anderson-Duffy then reviewed all areas of the proposed agreement with noted changes as written below.

AGREEMENT

THIS AGREEMENT, made the _____ day of _____, 2016, by and between the Town of Malone, a municipal corporation with its principal place of business at 27 Airport Road, Malone, New York 12953 (hereinafter "Town"), the Village of Malone, a municipal corporation with its principal place of business at 12 Elm Street, Malone, New York 12953 (hereinafter "Village"), the County of Franklin, a municipal corporation with its principal place of business at 355 West Main Street, Malone, New York 12953 (hereinafter "County") and HESP SOLAR LLC, a New York domestic limited liability company with its principal place of business at 400 Boulevard, Suite 160, Suffern, New York 10901;

WITNESSETH

WHEREAS the Village and the Town entered into an Agreement on January 10, 1977 whereby the Town assumed full operational control and responsibility of the Village sanitary landfill located on the Cady Road, now known as the Brand Road in the Town of Malone, effective January 1, 1978; and
WHEREAS, effective January 1, 1978 and thereafter, the Town operated and maintained the sanitary landfill at its own cost and expense; and

WHEREAS, pursuant to an Agreement between the Village and the Town dated November 22, 1991, the Town continued to operate the landfill and both the Town and the Village agreed to provide for closure of the landfill, at the time of the closure order by New York State or other proper authority; and

WHEREAS, thereafter the New York State Department of Environmental Conservation (hereinafter "DEC") and the Town and the Village, regarding the operation of the said sanitary landfill, entered into an Order on Consent File No. R-5-0395-86-2 in 1987 which was modified by an Order on Consent Modification File No. R5-0395-86-2 in August of 1991, which required that the Village and the Town close the landfill by May 1, 1992 in accordance with an approved closure plan; and

WHEREAS, pursuant to a February 1996 Landfill Post-Closure Plan of Monitoring and Maintenance Operations, prepared by the Town's engineers, Stearns and Wheler, LLC, and filed with the DEC, the Town has assumed the responsibility for all of the post closure duties including but not limited to the inspection and proper maintenance of the site and the impermeable layer, the cap, as well as monitoring of explosive gas, groundwater, surface water and leachate samples; and

WHEREAS, Green Power Developers, LLC, (hereinafter referred to as "Green Power") of 1869 Lanes Mills Road, Lakewood, New Jersey 08701, on behalf of the Village of Malone, submitted in 2015 a proposal to the Malone Planning Board and the Malone Code Officer requesting site plan approval for an approximate 1.6 MW above-grade ballast-mounted photovoltaic system with raised racking system (hereinafter referred to as a "solar farm") to be installed at the former Malone Landfill, a 62.4 acre site; and

WHEREAS, subsequently, on February 25, 2016, Franklin County and the Village of Malone

entered into an Inter-Municipal Agreement whereby the Village of Malone granted to the County an interest in 5 acres, more or less, at the Landfill, for a term of 50 years, to run with the land, for the rental charge of \$1.00, for the purpose of solar energy conversion and for the transmission of electrical power and incidental operations and activities and a nonexclusive easement for access and use of the Premises; and

WHEREAS, on April 27, 2015 the Village entered into an Agreement with HESP authorizing HESP, on behalf of the Village, to install and operate a solar project on the aforesaid landfill; and on February 29, 2016 the County entered into a similar Agreement with HESP, each solar project occupying a separate subdivided parcel on the landfill, totaling 62.4 acres for both projects. A legal description of the landfill property encompassing the total solar farm project for both the Village and the County is attached hereto as EXHIBIT "A"; and

WHEREAS, in accordance with Agreements between HESP and the Village and the County, HESP, on behalf of the Village and the County, shall design, build, install, maintain and operate a 3.55 MW solar panel farm, to be constructed on the aforesaid 62.4 acres at the former Malone Landfill; and

WHEREAS, the Town of Malone Town Board, for the requisite SEQRA review, by Resolution assumed lead agency status, made an initial determination that the proposed action was an Unlisted Action, and identified the involved agencies to include the DEC; and

WHEREAS, at the direction of the Malone Town Board, on behalf of the County and the Village, HESP, as Applicant Sponsor, by its engineer, North Woods Engineering PLLC, submitted to the DEC, a Full Environmental Assessment form, an Operation and Maintenance Report, Engineering Report, and an updated and revised Landfill Post-Closure Plan of Monitoring and Maintenance Operations for the Malone Municipal Landfill dated August 15, 2016 and originally prepared by the Town's engineers, Stearns and Wheler in February of 1996 and a Stormwater Pollution Prevention Plan; and

WHEREAS, HESP shall design, build, install, maintain and operate a solar panel farm, to wit: a 3.55 MW above-grade ballast-mounted photovoltaic system with raised racking system, surface mounted foundation ballast to be cast-in-place concrete electrical connection to existing power grid via above grade wires mounted on ballast-mounted cable trays with new riser and meter power poles (hereinafter referred to as a "System") to be installed on 62.4 acres at the former Malone Landfill; and

WHEREAS, by letter dated October 27, 2016 the DEC, Material Management Division, Patrick Kane, Environmental Engineer I approved of the proposed action, but mandated that HESP assume responsibility for post-closure maintenance of the site for the duration of the solar project, but that the Town will be responsible if HESP fails to adequately maintain the site; and

WHEREAS, pursuant to the Operation and Maintenance Report , Landfill Post-Closure Plan of Monitoring and Maintenance Operations for the Malone Municipal Landfill, originally prepared on February 1996 by Stearns & Wheeler and revised on August 15, 2016 by North Woods Engineering, PLLC.(hereinafter referred to as the “Plan”} and approved by the DEC, a chain link fence with locked gates, will surround the System; the Town of Malone will be provided keys to the said gates; HESP will be responsible for mowing and vegetative maintenance as well as solar repair and the Town shall continue to be responsible for all sampling, monitoring and inspection of the Landfill including that acreage encompassing the System.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto mutually agree as follows:

1. The Town of Malone, its engineers, agents and assigns shall have the right to enter the premises encompassed by the System, for purposes of inspection, sampling, monitoring, maintenance and/or testing and for the performance of any other duties in connection with the landfill post-closure monitoring and maintenance operations and to that end HESP, its agents, successors and/or assigns, the Village, its agents and/or assigns and/or the County, its agents and/or assigns shall provide keys to the Town of Malone for all gates and fences located at the System site at the Landfill.

2. HESP, its agents, successors and/or assigns, the Village, its agents and/or assigns and the County, its agents and/or assigns shall ensure that the construction, operation, maintenance and repair of the System shall not in any way impair, damage or affect the integrity of the landfill final cover system or cap, the gas venting system and the groundwater monitoring wells at the Malone Landfill.

3. HESP, its agents, successors and/or assigns, the Village, its agents and/or assigns

and the County, its agents and/or assigns shall comply with the provisions of the Plan, that was approved by the DEC, by letter dated October 27, 2016 by Patrick M. Kane, Environmental Engineer, including but not limited to the following:

- 1) There shall be annual maintenance and inspection checks on the racking system and the foundation tube; and
- 2) Access control of the facility shall be maintained and a chain link fence shall be installed surrounding the solar array; and
- 3) Keys to the fences shall to be given to the Town of Malone; and
- 4) HESP, its agents, successors and assigns shall do the mowing and vegetative maintenance as well as solar repair; and
- 5) HESP, its agents, successors and assigns shall do the mowing twice a year in early Spring and early Fall using the equipment as specified in the Plan; and
- 6) HESP, its agents, successors and assigns shall revegetate areas as needed as set forth in the Plan;
- 7) HESP, its agents, successors and assigns shall repair eroded areas by adding soil and topsoil and then reseed as more particularly described in the Plan.

4. HESP, its agents, successors and/or assigns, the Village, its agents and/or assigns

and/or the County, its agents and/or assigns shall notify the Town Supervisor’s Office immediately or as soon as reasonably possible of any defect, damage, issue and/or problems occurring or arising at the System site relating to the cap, the gas venting system, the groundwater monitoring wells or any other related matter.

5. HESP , the Village, and the County, jointly and severally, shall defend, indemnify and hold harmless the Town, its agents and assigns from and against any and all liabilities, damages, claims, demands, judgments, losses, costs expenses, suits, actions or proceedings, and all reasonable attorneys’ fees incurred in connection therewith, arising from or out of any acts, omissions or other conduct of HESP, the Village and/or the County, their agents, officers, employees, contractors, sub- contractors, successors and assigns, in connection with {i)any breach of HESP’s, Village’s and/or County’s contractual obligations hereunder or any other action or omission, (ii) property damage or personal injury to the extent such act, omission or other conduct arises out of the negligence or willful misconduct of HESP, The Village and/or County, their agents, successors and/ or assigns or (iii)any claim by third parties that HESP, the Village and/or the County, their agents, successors and /or assigns have infringed ownership rights in intellectual property. HESP, the Village, and/or the County, shall not be required to

reimburse or indemnify the Town for any loss or claim, but only to the extent such loss or claim is due in whole to the negligence or willful misconduct of the Town, its agents and/or assigns.

6. HESP shall name the Town of Malone as an additional named insured on its Commercial General Liability Insurance Policy and excess Umbrella Policy with no less than A-rated insurers, with the coverages and at liability limits as required by the Contracts between HESP and the Village and the County. HESP shall provide a Certificate of Insurance to the Town evincing that the insurance required under this Section is being maintained prior to entry upon the site and on an annual basis, at the inception of each policy term thereafter.

7. The Village and the County shall name the Town of Malone as an additional named insured on their respective Comprehensive General Liability Policies with respect to the Landfill Solar System, its construction and operation thereafter.

8. New York law shall apply to this Agreement and all of its provisions.

9. No party to this Agreement shall have the right to assign any of its rights, duties or

obligations under this Agreement without the prior written consent of the other parties, and said consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have set their respective hands and seals as of the day and year first above written.
TOWN OF MALONE

BY: Howard F. Maneely, Town Supervisor
COUNTY OF FRANKLIN

By: Donna Kissane, County Manager
VILLAGE OF MALONE

By: Joseph Riccio, Village Mayor
HESP SOLAR, LLC.

By: Susan Brodie, Executive Vice-President, Business Development

STATE OF NEW YORK)
COUNTY OF FRANKLIN) SS.:
TOWN OF MALONE)

On this ___ day of _____, in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared HOWARD MANEELY, Supervisor for this Town of Malone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF FRANKLIN) SS.:
TOWN OF MALONE)

On this ___ day of _____, in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared DONNA KISSANE personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF FRANKLIN) SS.:
TOWN OF MALONE)

On this ___ day of _____, in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared JOSEPH RICCIO personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF FRANKLIN) SS.:
TOWN OF MALONE)

On this ___ day of _____, in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared SUSAN BRODIE personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

RESOLUTION 285-2016

On a motion of Deputy Supervisor Sullivan, seconded by Councilor Scharf, the following resolution was

ADOPTED Ayes 3
Nays 0

Resolved for approval for the Supervisor to sign the agreement with all changes as presented.

At this time Supervisor Maneely referred to the recent resolution which was passed to establish lunch period times. He stated that he would like to change the times from 11:00 to 1:00 to now read 11:00 to 2:00.

RESOLUTION 286-2016

On a motion of Councilor Scharf, seconded by Deputy Supervisor Sullivan, the following resolution was

ADOPTED Ayes 3
Nays 0

Resolved to amend Resolution #278-2016 to change the lunch period times from 11:00 to 1:00 to 11:00 to 2:00.

RESOLUTION 287-2016

With no further business to be brought before the Board and on a motion by Councilor Scharf, seconded by Deputy Supervisor Sullivan, the meeting was adjourned at 2:51 PM.

RESPECTFULLY SUBMITTED,

DEBORAH A. HUTCHINS, TOWN CLERK