

[Type here]

Town of Gaines
March Town Board Meeting Minutes
March 10, 2025

The Regular Meeting of the Town of Gaines, County of Orleans, State of New York was called to order by Supervisor Tyler James Allport at 7:00 P.M. on the 10th day of March, 2025.

The following town officials were present:

Tyler Allport	Supervisor
James Kirby	Deputy Supervisor
Ron Mannella	Councilperson
Janet Cheverie	Town Clerk
Mark Radzinski	Highway Superintendent
Douglas Heath	Attorney for the Town

The following town officials were absent:

Rick Ebbs (Excused listening on the phone)	Councilperson
Ken Rush (Excused)	Councilperson
Charles Prentice	Town Justice

The following individuals were present during the meeting: Town Bookkeeper, Cassidy Albone

The Supervisor opened the meeting with the Pledge to the Flag.

RESOLUTION NO. 26-0325
APPROVAL OF MINUTES OF FEBRUARY 10th, 2025 REGULAR MEETING

Moved by Councilman Mannella and seconded by Supervisor Allport to approve the February 10th, 2025 Regular Meeting Minutes.

Discussion

Ayes 3; Nays 0; Absent 2

RESOLUTION NO. 27-035
PRESENTATION AND ACCEPTANCE OF TOWN CLERK'S REPORT

Moved by Councilman Kirby and seconded by Councilman Mannella to accept the monthly report of the Town Clerk.

[Type here]

Discussion: Clerk Cheverie requested permission to attend the Annual Town Clerk Conference in Syracuse on April 27-April 30, 2025 at a budgeted cost of \$984.00.

Ayes 3; Nays 0; Absent 2

RESOLUTION NO. 28-0325

PERMISSION FOR THE TOWN CLERK TO ATTEND THE ANNUAL TOWN CLERK CONFERENCE IN SYRACUSE ON APRIL 27-APRIL 30, 2025 AT A BUDGETED COST OF \$984.00

Moved by Councilman Kirby and seconded by Councilman Mannella to approve the attendance requested.

Discussion: None

Ayes 3; Nays 0; Absent 2

RESOLUTION NO. 29-0325

PRESENTATION AND ACCEPTANCE OF THE SUPERVISOR'S REPORT

Moved by Councilman Mannella and seconded by Councilman Kirby to accept the monthly report of the Town Supervisor.

Discussion: Cassidy is looking into getting an audit done. Cassidy reported that after attending 2 days of state training last week, she is looking into having an audit done for 2022, 2023 & 2024.

Ayes 3; Nays 0; Absent 2

RESOLUTION NO. 30-0325

HIGHWAY SUPERINTENDENT'S REPORT

Moved by Councilman Kirby and seconded by Councilman Mannella to accept the report of the Highway Superintendent.

Discussion: The Town has used 1673 gallons of diesel and 173 gallons of gasoline this month. The water meter for Intergrow will arrive tomorrow. They didn't have the one that we ordered so they upgraded it to a stainless-steel meter for \$1000.00, no extra cost to the town. Tuesday and Wednesday. Highway Superintendent Radzinski went to Albany for advocacy day, along with other highway superintendents. The Governor put \$800 Million back in the state budget for the State Highway. The County or Town is trying to get \$250 Million. The new truck is in service, but the PTO is "kicking out". The old truck was only \$498.00 to fix so that is being done.

Ayes 3; Nays 0; Absent 2

[Type here]

**RESOLUTION NO. 31-0325
APPROVAL OF ABSTRACTS**

Moved by Councilman Mannella and seconded by Councilman Kirby to approve the abstracts, as follows:

General	\$675,338.80
Highway	\$ 21,609.00
Water	\$ 29,214.91

Discussion: None

Ayes 3; Nays 0; Absent 2

**RESOLUTION NO. 32-0325
CORRECTION TO TOWN OF GAINES COURT CLERK HOURLY RATE OF PAY**

Moved by Councilman Kirby and seconded by Councilman Mannella to correct the Town of Gaines Court Clerk Hourly Rate of Pay from \$18.16 per hour to \$18.33 per hour retroactive to January 1, 2025.

Discussion: Supervisor Allport incorrectly calculated the pay amount for the minutes in January, 2025 and therefore, it needed to be corrected to match the budgeted amount. The Court Clerk has received the correct amount of pay.

Ayes 3; Nays 0; Absent 2

**RESOLUTION NO. 33-0325
APPROVAL TO RELEASE BID FOR MOWING SERVICES FOR THE YEAR 2025**

Moved by Councilman Kirby and seconded by Councilman Mannella to release a bid package for lawn mowing services for the 2025 mowing season, with the intention to award the bid at the April meeting. Further authorizes the Town Clerk to advertise for said bids.

Discussion: It was suggested that the Clerk contact the current provider to be sure he is aware that the bidding process has begun. The bids will be due by Monday, April 14, 2025 @ 12:00 noon to the Town Clerk.

Ayes 3; Nays 0; Absent 2

**RESOLUTION NO. 34-0325
COMPLETION OF THE TOWN AUDITS**

Moved by Councilman Mannella and seconded by Councilman Kirby to declare all books for the year 2024 have been reviewed and audited by said Town Board.

[Type here]

The Criminal and Civil Dockets of the Town Justice for 2024 having been duly examined with the monthly cash summary being viewed and the fine and fees have been turned over to the proper officials;

and the records of the Town Clerk/Tax Collector for 2024 have been duly examined and found all fees have been turned over to the proper officials.

Discussion: None

Ayes 3; Nays 0; Absent 2

RESOLUTION NO. 35-0325

RESOLUTION CONSENTING TO ORLEANS COUNTY ACTING AS LEAD AGENCY FOR THE CONNECTALL BROADBAND MIP

WHEREAS, the Orleans County ConnectALL Broadband MIP project is a broadband expansion initiative aimed at improving internet accessibility for unserved and underserved locations within Orleans County. The project will leverage both existing and new infrastructure to enhance connectivity across the region. Key components of the project include: 1. Co-location on Existing Towers – The County will lease space on fifteen (15) existing towers (communication, water, or grain elevator) for the installation of broadcast equipment to support Wireless Internet Services (WIS). 2. New Site Construction – Five (5) new communication towers will be constructed on vacant land to extend broadband coverage to 1,351 currently unserved and underserved addresses. Additionally, an existing grain elevator site will be utilized for new equipment (the “Action”); and

WHEREAS, pursuant to the State Environmental Quality Review Act (SEQR) 6 NYCRR 617.6(b)(3)(i) Orleans County intends to establish itself as Lead Agency for the purposes of fulfilling the SEQR requirements relative to the Action; and

WHEREAS, a copy of the Notice to Involved Agencies dated February 17, 2025 is attached hereto as Exhibit A;

WHEREAS, as part of the Action, Orleans County proposes to lease space on two existing towers in the Town of Gaines located at 99 Lydun Drive and 15043 Ridge Road and as such the Town of Gaines Town Board is an interested agency for purposes of SEQRA review.

NOW, THEREFORE, BE IT RESOLVED that the Supervisor is directed to sign and return the consent for Orleans County Lead Agency Declaration to Orleans County Director of Planning and Development on behalf of the Town of Gaines.

[Type here]

Exhibit A

1 | Page

ORLEANS COUNTY

PLANNING AND DEVELOPMENT DEPARTMENT

14016 Route 31 West, Albion, New York 14411 Phone: (585) 589-3197

Corey.Winters@orleanscountyny.gov www.orleanscountyny.com

Corey Winters

Director

February 17, 2025

To: Involved/ Interested Agencies **Notice of Intent to Establish Lead Agency: Orleans County**

Re: ConnectALL Broadband Municipal Infrastructure Program

To Whom it May Concern:

Pursuant to the State Environmental Quality Review Act (SEQR) and 6 NYCRR 617.6(b)(3)(i), please be advised that the Orleans County intends to establish itself as Lead Agency for the purposes of fulfilling the SEQR requirements relative to the Orleans County ConnectALL Broadband Municipal Infrastructure Program (MIP). The Orleans County ConnectALL Broadband MIP project is a broadband expansion initiative aimed at improving internet accessibility for unserved and underserved locations within Orleans County. The project will leverage both existing and new infrastructure to enhance connectivity across the region.

Key components of the project include:

1. **Co-location on Existing Towers** – The County will lease space on fifteen (15) existing towers (communication, water, or grain elevator) for the installation of broadcast equipment to support Wireless Internet Services (WIS).
2. **New Site Construction** – Five (5) new communication towers will be constructed on vacant land to extend broadband coverage to 1,351 currently unserved and underserved addresses. Additionally, an existing grain elevator site will be utilized for new equipment.

This project is being implemented through funding from Empire State Development (ESD) under the ConnectALL MIP, with an anticipated grant request of \$11,561,698. Upon completion, the project will establish 21 wireless hubs and provide broadband access to approximately 9,857 locations across Orleans County. Given Orleans County's rural nature, with a population density of 103 people per square mile, this wireless broadband solution presents a cost-effective alternative to traditional fiber networks. Additionally, the project aligns with New York State's digital equity goals by promoting workforce development and expanding internet accessibility for all residents.

Orleans County recognizes this is SEQR Type I project pursuant to 6 NYCRR 617.4(b)(7-8), since the project includes structures exceeding 100-feet and a non-agricultural use occurring within an agricultural district. All 21 installation sites are being reviewed under a single SEQR application to Upgrade to Wireless Internet Service for Entire County of Orleans, NY NYS ConnectALL Broadband MIP – Orleans County

2 | Page

ensure a comprehensive assessment of potential environmental impacts across the entire project. A single Full Environmental Assessment Form (FEAF) Part 1 has been completed to cover all sites collectively, providing a unified evaluation of project characteristics and relevant environmental considerations.

[Type here]

Enclosed for your review, as required pursuant to 6 NYCRR 617.6(b)(3)(i), is Part 1 of a completed Full Environmental Assessment Form (FEAF), that describes the proposed action in more detail, and conceptual design plans detailing the project location and proposed improvements. The FEAF is complete with all information available at this time. If you are a representative of a state or local agency, your agency has been determined to meet the definition of an Interested or Involved Agency, as these terms are defined in 6 NYCRR Part 617.2. Additional supporting information, including detailed environmental review findings, site-specific considerations, and any necessary impact mitigation measures, is included in Section F of the FEAF Part 1.

In accordance with 6 NYCRR 617 .6(b)(3), the intent of this letter is to initiate the coordinated review process. Involved Agencies must agree upon Lead Agency designation by March 17, 2025 (30 days from the date of this mailing). For your convenience, a Lead Agency consent form is provided at the end of this letter. Please return this form as soon as possible. In the event that you disagree with the proposed designation of Orleans County to serve as Lead Agency for this project, or would otherwise like to provide comment, please send notice of said disagreement and/or comments to Corey Winters, Orleans County Director of Planning and Development corey.winters@orleanscountyny.gov.

If your agency has no objection to the designation of the Orleans County as Lead Agency, please sign and return this letter along with any comments on the project to corey.winters@orleanscountyny.gov and emt@coreenv.com.

Sincerely,

Corey Winters

Orleans County Director of Planning and Development

Agency Consent for Orleans County Lead Agency Declaration

Agency: _____

Name and Title: _____

Signature: _____

Date: _____

Upgrade to Wireless Internet Service for Entire County of Orleans, NY NYS ConnectALL Broadband MIP – Orleans County

3 | Page

Involved/Interested Agencies

Local

Town of Shelby Planning & Zoning Board

4062 Salt Works Rd., Medina, NY 14103

Kirk Myhill, Planning Board Chair

kmyhill@townofshelbyny.org

Town of Carlton Planning Board

14341 Waterport-Carlton Rd., Albion, NY 14411

Brenda Mufford, Zoning Board Secretary

bmufford@townofcarlton.org

Town of Lyndonville Planning Board

2 S Main St., Lyndonville, NY 14098

Teri Buffin

villageoflyndonville@villageoflyndonville.com

Town of Albion

[Type here]

Planning and Zoning Board
35 East Bank Street, Albion, NY 14411
Kevin Sheehan, Chairperson
planningboard@townofalbion.com

Town of Kendall Planning Board
1873 Kendall Rd., Kendall, NY 14476
Bruce Newell, Chairperson
planning@townofkendall.com

Town of Barre Planning Board
14317 W Barre Rd., Albion, NY 14411
Lee Preston, Planning and Zoning Clerk
lpreston@townofbarreny.com

Town of Ridgeway Planning Board
Upgrade to Wireless Internet Service for Entire County of Orleans, NY NYS ConnectALL Broadband MIP – Orleans County

4 | Page

410 West Avenue, Medina, NY 14103
Joelle Brown, Planning Board Clerk
jbrown@townridgeway.org

Town of Gaines Planning Board
14087 Ridge Road West, Albion, NY 14411
Christopher Watt, Planning Board Chairman
pbchair@townofgaines.org

Town of Medina
Planning and Zoning Board
119 Park Avenue, Medina, NY 14103 Daniel Gardner, Planning and Zoning Clerk
dgardner@villagemedina.org

Town of Sweden Planning Department
18 State Street, Brockport, NY 14420
Phyllis Brudz, Planning, Building, and Zoning Coordinator
phyllisb@townofsweden.org

Town of Murray Planning Board
3840 Francher Rd., Holley, NY 14470 Dorothy Morgan, Planning Board Chairperson
morgandorothy164@gmail.com

Town of Yates Planning Board
8 South Main Street, Lyndonville, NY 14098
Richard Kurz, Planning Board Chariman
Mbatesonkurz@lyndonville.nyric.org

County

Orleans County
Planning and Development Department 14016 Route 31 West, Albion, New York 14411 Corey Winters,
Director
Corey.Winters@orleanscountyny.gov

[Type here]

Upgrade to Wireless Internet Service for Entire County of Orleans, NY NYS ConnectALL Broadband MIP – Orleans County

5 | Page

Orleans County

Department of Public Works, Highway

John Papponetti, Commissioner of Public Works

John.Papponetti@orleanscountyny.gov

225 West Academy Street, Albion, New York 14411-1591

State

Empire State Development Planning and Environmental Review Nicole J. Francis, Director

655 Third Avenue, New York, NY 10017

Nicole.Francis@esd.ny.gov

Empire State Development ConnectALL

Saleena Gulmohamad, Program Manager 625 Broadway, Albany, NY 12245

Saleena.Gulmohamad@esd.ny.gov

New York State Department of Transportation, Region 4

1530 Jefferson Road Rochester, NY 14623

dot.sm.r04.SEQR@dot.ny.gov

New York State Department of State Coastal Management Program

99 Washington Avenue

Albany, NY 12231-0001

doscstlcr@dos.ny.gov

New York State Department of Environmental Conservation, Region 8 Division of Environmental Permits

6274 East Avon-Lima Rd., Avon, NY 14414-9519

dep.r8@dec.ny.gov

New York State Historic Preservation Office (consultation completed online)

1 Delaware Avenue North, Cohoes, NY 12047

Upgrade to Wireless Internet Service for Entire County of Orleans, NY NYS ConnectALL Broadband MIP – Orleans County

6 | Page

Federal

U.S. Fish and Wildlife Service

Information Planning and Consultation (IPaC) (consultation completed online)

1849 C Street, NW, Washington, DC 20240

Moved by Councilman Kirby and seconded by Councilman Mannella to authorize the Town of Gaines Supervisor to sign and consent to designate Orleans County, NY as Lead Agency in SEQR Review in the Orleans County ConnectALL Broadband Municipal Infrastructure Program (MIP). This is a project aimed at expanding internet access across the county to unserved and underserved residents.

Discussion

Ayes 3; Nays 0; Absent 2

[Type here]

**RESOLUTION NO. 36-0325
DG GAINES, LLC, SETTLEMENT AGREEMENT AND RELEASE**

**TOWN BOARD OF THE TOWN OF GAINES
RESOLUTION APPROVING A SETTLEMENT AGREEMENT WITH DG GAINES ON BEHALF OF THE
MUNICIPAL RESPONDENTS**

WHEREAS, through their respective attorneys, the Town of Gaines, the Town of Gaines Zoning Board of Appeals, Code Enforcement Officer Jeffrey Gifaldi, Town Clerk Javet Cheverie, and Town Supervisor Tyler J. Allport (the “Municipal Respondents”) and DG Gaines, LLC (collectively, the “Parties”) have reached tentative agreement that would resolve all pending matters between them arising in the hybrid proceeding and action entitled *DG Gaines, LLC v Town Of Gaines, et al.*, Index No.: CV24-00153 (Sup. Ct. Orleans County, filed Nov. 19, 2024) concerning the Gaines Solar Project to be located at 2436 Gaines Waterport Road (the “Agreement”); and

WHEREAS, the Town Supervisor and the Town Board have determined that entering into the Agreement with the Parties on behalf of all of the Municipal Respondents will serve and be in the best interest of the Town of Gaines; and

WHEREAS, a copy of the Agreement is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED that the Supervisor and Special Counsel to the Town of Gaines are directed to execute the Agreement on behalf of the Municipal Respondents; and

BE IT FURTHER RESOLVED that within 14 days of the Effective Date of the Agreement, the Town of Gaines Planning Board Chair and Town Engineer shall sign and stamp DG Gaines, LLC’s approved site plans dated March 4, 2024 (the “Site Plans”); and

BE IT FURTHER RESOLVED that within 14 days of the Effective Date of the Agreement, the Town of Gaines Building Inspector shall issue a building permit in accordance with the Site Plans with the conditions as outlined in paragraph 3 of the Agreement; and

BE IT FURTHER RESOLVED that within 30 days of the Effective Date of the Agreement, the Town of Gaines Town Clerk shall transmit to DG Gaines, LLC an account of all Town expenses charged against the Project escrow, and provide all invoices, statements or bills for professional services (planning, engineering, legal) supporting such expenses charged to DG Gaines, LLC’s escrow.

EXHIBIT A

For Execution

1

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT (“**Agreement**”) by and between Petitioner-Plaintiff DG GAINES, LLC (“Petitioner” or “Developer”), and Respondents-Defendants TOWN OF GAINES, Town ZONING BOARD OF APPEALS, Town Code Enforcement Officer JEFFREY GIFALDI, Town Clerk and Records Access Officer JANET CHEVERIE, Town Supervisor TYLER J. ALLPORT, and the TOWN OF GAINES TOWN BOARD (collectively “Respondents” or “Town”). Petitioner and Respondents shall also each be defined as a “**Party**” and, collectively, “**Parties**” hereunder.

RECITALS

WHEREAS, the Petitioner commenced a hybrid proceeding and action entitled *DG Gaines, LLC v Town Of Gaines, et al.*, Index No.: CV24-00153 (Sup. Ct. Orleans County, filed Nov. 19, 2024) (the “Action”) seeking relief under the Civil Practice Law and Rules (“CPLR”) § 7801 *et seq.*, CPLR § 3001, and Public Officers Law Article 6 regarding Petitioner’s application for a building permit to construct the Gaines Solar Project (“Project”) located at 2436 Gaines Waterport Road, in the Town of Gaines, and Petitioner’s October 14, 2024 request under the New York Public Officer’s Law (“POL”) Article 6 - Freedom of Information Law (POL § 84 *et seq.*) (“FOIL”);

WHEREAS, the Parties mutually agreed to extend the time for Respondents to answer in order to discuss settlement of Petitioner’s claims;

WHEREAS, the Parties now wish to settle the Action, without admission of liability, and resolve the dispute as more fully provided for in this Agreement and subject to the terms of this Agreement.

NOW THEREFORE, intending to be legally bound, in consideration of and in reliance upon the covenants, promises and other obligations provided for in this Agreement, the legal sufficiency of which is hereby acknowledged, the Parties do hereby covenant and agree as follows:

1. Site Plan. Within fourteen (14) days after the Effective Date of this Agreement, the Town of Gaines Planning Board Chairman and Town Engineer shall sign and stamp Petitioner’s approved site plans dated March 4, 2024 and last submitted to the Town of Gaines Building Department on May 29, 2024. Town of Gaines Building Inspector shall provide Petitioner a copy of the signed and stamped site plans upon Petitioner’s request.

2. Building Permit. Within fourteen (14) days after the Effective Date of this Agreement, the Town of Gaines Building Inspector shall issue a building permit for the Project, subject to the conditions in paragraph 3 of this Agreement.

3. Building Permit Conditions. The Parties Agree that the building permit shall contain the following conditions:

2

a. That the Project access road shall be subject to the terms and representations set forth in Petitioner’s Engineer of Record letter December 16, 2024 regarding road cap and pre-construction/post-construction testing, a copy of which is attached hereto as **Schedule A**; and

b. That upon completion of construction and final inspection by the Town

[Type here]

Building Inspector or designee, the Town Building Department shall issue a Certificate of Occupancy / Certificate of Completion and the project shall be authorized to energize subject to the terms and representations set forth in **Schedule B** regarding landscaping, planting, and final site stabilization; and c. That the Building Permit shall include the additional conditions set forth in **Schedule C**.

4. FOIL Request. Within thirty (30) calendar days of the Effective Date of this Agreement, the Town Clerk shall transmit to Petitioner an account of all Town expenses charged against the Project escrow, and provide all invoices, statements or bills for professional services (planning, engineering, legal) supporting such expenses charged to Petitioner's escrow. Except as set forth in this paragraph, Petitioner agrees that its October 14, 2024 FOIL request shall be deemed withdrawn. The Parties further agree that Petitioner shall notify the Town, in writing, of any objections to expenses charged against the Project escrow within thirty (30) calendar days of the Town Clerk's transmittal of the account and supporting documents. Failure to raise any such objections within this timeframe shall constitute acceptance and a waiver of all claims regarding the charges. Any objections raised shall be resolved in accordance with the Town's routine procedures regarding such matters.

5. Stipulation of Discontinuance. Within five (5) business days after the terms in paragraphs 1 and 2 of this Agreement are satisfied, the Parties shall file a stipulation dismissing the Action with prejudice in the form attached hereto as **Schedule D**, provided that the court agrees to retain jurisdiction for purposes of enforcing this Agreement for a period of up to twelve months, unless one Party requests an extension for additional time from the court. Notwithstanding the foregoing, the Parties agree to discuss and attempt to resolve any disputes arising from the performance of the obligations in this Agreement before seeking judicial intervention.

6. Expenses. Each Party shall bear their own fees, expenses and costs related to the disputes predating this Agreement, and the negotiation of and compliance with this Agreement.

7. Reciprocal Releases. Subject to the Parties' compliance with all of the terms and conditions set forth herein, the Parties hereby release and forever discharge each other, including each Party's respective successors, assigns, trustees, heirs, representatives, insurers, attorneys, agents, administrators, service providers and fiduciaries, from any and all demands, claims, counterclaims, causes of action, obligations, expenses, fees, lawsuits and liabilities, including without limitation claims for recovery of any damages, whether general, special, direct, consequential, punitive or statutory, all penalties, attorneys' fees, costs and equitable relief, arising from the beginning of time through the Effective Date of this Agreement, whether known or

3

unknown, matured or not matured, relating to the Action. The foregoing releases also do not limit any Party's ability to enforce another Party's obligations under this Agreement, and nothing herein shall release, discharge or waive in any respect any obligations the Parties have under this Agreement. The provisions of this Section shall survive any termination of this Agreement.

8. Default and Cure. In the event either Party violates the terms of this Agreement, the other party shall have the right, but not the obligation, upon giving the offending party fifteen (15) days written notice and a reasonable opportunity to cure, to cure such violation on behalf of such offending party. In the event that a violation of the terms of the Agreement is established and the offending party must cure the violation, all amounts expended by the complaining party

[Type here]

in such cure, except for attorney's fees, shall be reimbursed to the complaining party upon demand.

9. Governing Law and Venue. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of New York. The Parties hereby irrevocably consent to the exclusive jurisdiction and venue of the New York State Supreme Court, Orleans County, in any action, suit or proceeding to enforce any rights, duties, or obligations under this Agreement, under the Court's retained jurisdiction for purposes of enforcing this Agreement as set forth in paragraph 5, above. The provisions of this Section shall survive any termination of this Agreement.

10. No Waiver. No waiver of any right under this Agreement shall be effective for any purpose unless it is in writing and is signed by the Party hereto possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Agreement.

11. Successors and Assigns. The Parties agree that this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and/or assigns. The provisions of this Section shall survive any termination of this Agreement.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

13. the Modifications. This Agreement may only be amended or modified in writing by Parties.

14. Survivability. Except those paragraphs expressly deemed to survive, this Agreement and all obligations hereunder shall terminate upon the performance of the obligations set forth in paragraph 10 of this Agreement.

15. Merger. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersede all prior agreements, contracts, and negotiations, which are of no further force or effect.

16. Authorization. The Parties each agree and represent that their respective signatories are duly authorized to execute this Agreement on behalf of such Party.

4

For: RESPONDENTS-DEFENDANTS

Dated: March __, 2025

TOWN OF GAINES

_____ By: Tyler J. Allport

Title: Town Supervisor

HEATH & O'TOOLE PLLC

By:

Bridget O'Toole, Esq.

7 East Steuben Street

PO Box 200

Holley, New York 14470 botoole@heathotoole.com

B r i d g e t O ' T o o l e , E s

For: PETITIONER-PLAINTIFF

Dated: March __, 2025

DG GAINES, LLC

_____ By: Ryan Coakley

Title: Executive Director of Distributed Generation

HARRIS BEACH MURTHA PLLC

[Type here]

By: _____ Javid Afzali, Esq.

677 Broadway, Suite 1101

Albany, New York 12207

Email: jafzali@harrisbeach.com

17. Effective Date. This Agreement is effective upon the date of Petitioner and Respondent's signature, whichever is last.

IN WITNESS WHEREOF, the Parties have executed this Agreement and agree to be bound by the terms hereof.

7

DG Gaines, LLC v Town Of Gaines, et al., Index No.: CV24-00153 Settlement Agreement Schedules

SCHEDULE A

September 4, 2024

Revised: December 16, 2024

Sherman Gittens MRB Group

Town of Gaines Engineer 14087 Ridge Road W, Albion, NY 14411

RE DG Gaines, LLC – Gaines Waterport Road Solar Project Response to email

: dated 8/23/2024 between Sherman Gittens and Billy Chan

Mr. Gittens:

On behalf of our client, NextEra Energy, we are responding to the following comment from the email conversation dated 8/23/2024 for the above-referenced project:

“Regarding the access road, please provide a detail of the cap to utilized. Please also provide a separate written proposed plan for the testing pre- and post- construction of the site. I have no issue with the process you identified, and I believe it is in line with the protocol I sent on August 5, 2024 in response to Bob Steehler.”

Engineer's Response:

The “PERVIOUS GRAVEL DRIVEWAY – CAP SECTION” detail is provided as detail 2 on C703, “CONSTRUCTION DETAILS”, dated March 4th, 2024. This detail is to be used in conjecture with the “LIMITED USE PERVIOUS ACCESS ROAD – 0% TO 10% SLOPES” as a means to keep the pervious access road section free from sediment.

Our proposed testing plan is as follows:

1. Pre-construction Testing:

a) The Contractor is to perform one (1) compaction test using a penetrometer along the proposed access road every one-hundred (100) feet. These values will be recorded by testing agency and submitted to engineer of record.

2. Post-construction Testing:

a) The Contractor is to perform one (1) compaction test using a penetrometer along the installed access road every one-hundred (100) feet. These values will be recorded by testing agency and submitted to engineer of record.

b) Engineer of record to review pre and post compaction values with the NYSDEC to determine which results are acceptable (passing) and which results are not acceptable (failing).

i. Should the post development results pass, no action is required.

Settlement Agreement Schedule A

2

ii. Should the post development values fail, the Contractor may perform additional post construction testing as needed to pinpoint the failure locations.

Once complete, contractor is to remove the access road in its entirety to the nearest passing test location. Following removal of access road, the Contractor is to then decompact the underlying soil

[Type here]

as per NYSDEC's guidance titled "DeepRipping and Decompaction" (dated April 2008 or any subsequent revision) and provide compaction testing outlining conformance with passing value determined by the NYSDEC. Once all areas pass, the Contractor is to re-install access road as per the Construction Drawings.

We trust this will address your final concerns for the project. If you have any questions, please contact me at 585-295-6696 or at bsteehler@labellapc.com.

Respectfully submitted, LaBella Associates

Robert J Steehler

Vice President / Senior Civil Engineer

Settlement Agreement Schedule A

DG Gaines, LLC v Town Of Gaines, et al., Index No.: CV24-00153 Settlement Agreement Schedules

SCHEDULE B

Settlement Agreement Schedule B

Pursuant to paragraph 3(b) of the Settlement Agreement, upon notice by Developer to the Town Building Department that Project construction is complete, the Town Building Inspector or designee shall conduct a final inspection and issue a Certificate of Occupancy / Certificate of Completion authorizing Developer to energize the Project even if Developer has not filed its State Pollutant Discharge Elimination System (SPDES) Notice of Termination with the New York State Department of Environment Conservation (NYSDEC). In such a case, however, Developer agrees to the following terms and obligations regarding landscaping, planting, and final site stabilization, which shall continue until Developer files the SPDES Notice of Termination:

A. Initial Landscaping and Stabilization Efforts:

The Developer commits to completing initial landscaping, seeding, and stabilization efforts on all disturbed areas of the site during construction in 2025 to promote as much as vegetation growth as possible.

B. Ongoing Monitoring and Re-Seeding Commitment:

If construction is complete on or before November 30, 2025 and Notice of Termination has not been filed with NYSDEC, the Developer commits to completing landscaping and reseeded on or before November, 30 2025 but does not guarantee vegetative growth.

The Developer, however, commits to returning to the site on or before April 30th, 2026 to further maintain site stabilization which includes landscaping, planting, and reseeded as needed to address any areas that did not establish vegetation over the winter, and further commits to monitoring the site, and to re-seed and address any areas (if necessary) that did not establish vegetative growth, in accordance with NYSDEC SPDES permit requirements for final site stabilization.

If construction is not completed in 2025 but is complete on or before July 31, 2026 and Notice of Termination has not been filed with NYSDEC, the Developer commits to completing landscaping, planting and seeding as needed on or before October 15th, 2026 but does not guarantee vegetative growth. The Developer, however, further commits to monitoring the site, and if necessary, to re-seed and address any areas that did not establish vegetative growth, in accordance with NYSDEC SPDES permit requirements for final site stabilization until the Notice of Termination has been filed with NYSDEC.

If Notice of Termination has not been filed with NYSDEC by November 30th, 2026, the Developer continues to commit to monitoring the site and maintaining site stabilization, and if

[Type here]

necessary, completing landscaping, planting, and reseeded as needed during the next growing seasons to accomplish Notice of Termination as quickly as possible.

C. Commitment to the use of Hydro-seeding to Promote Site Stabilization:

Settlement Agreement Schedule B

Although it is not required by NYSDEC, the Developer will commit to the use of costlier but more effective methods of Hydroseeding with the goal to achieve site stabilization as quickly as possible.

DG Gaines, LLC v Town Of Gaines, et al., Index No.: CV24-00153 Settlement Agreement Schedules

SCHEDULE C

Settlement Agreement Schedule C

Page 1

Pursuant to paragraph 3(c) of the Settlement Agreement, the Building Permit shall include the following additional conditions:

A. Approvals/ Agreements:

1. The Town CEO may make regular site visits upon reasonable notice during construction of all buildings, structures or other facilities to ensure compliance with the Town's Zoning Local Law and the specific conditions of the approved permit, and to assess the progress of the projects.
2. NYSDEC Erosion and Sediment Control Training Certification Cards for the identified individual(s) who will be onsite at all times are to be provided to the Town CEO before construction activities begin.
3. If not already submitted, an updated PDF of the full SWPPP containing all of the above information is to be provided to the Town CEO with all required certification forms and cards.

B. Project Schedule:

1. The applicant will notify the Town CEO when the structure is ready for final inspection. The CEO will then make a final inspection.
2. Contractor working hours to be between 6:30 AM – 7:00 PM (Weekdays) and 7:00 AM – 6:00 PM on Saturdays. This includes vehicle and equipment start-ups.
3. No work is permitted on Sundays or Federal Holidays (New Year's Day, Birthday of Martin Luther King Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day, and Christmas Day).
4. Anticipated starting date: within six weeks of permit issuance, depending on weather conditions.
5. A project schedule is to be forwarded to the Town CEO within six weeks from issuance of the building permit.

C. Utilities / Stake Out:

1. UFPO stakeouts are the responsibility of the contractor. Developer will provide a minimum of 48 hours in advance for stakeout.
2. If any material changes regarding utility stake outs are required, they are to be coordinated with the Town CEO.
3. Contractor to confirm location of service connections with utility providers prior to the start of construction.
4. All correspondences with the utility companies during the construction phase related to the Project which would be subject to a change order pursuant to section

[Type here]

Settlement Agreement Schedule C

Page 2

D(1) below, requiring Town review and approval are to be forwarded to the Town CEO.

D. Change Orders:

1. All site modifications and/or changes that require additional Town approval are to be in the form of a change order. Project modifications and/or changes that require additional Town approval include changes that materially deviate from the approved site plans and construction drawings, this includes but is not limited to relocation of equipment pads and racking, revisions to the fence line, and change in the interconnection point from the approved contract drawings. If there is a question if the Town needs to be contacted for a change it may be best practice to contact the Town prior to implementing the change.
2. All change orders are to be formally requested (letter and/or email) supported with a plan to the Town Clerk and CEO.
3. The Change Order will be reviewed by Town Staff and either approved or denied within 10 days of submittal or forwarded to the appropriate municipal board if necessary.
4. Approval of the Change Order by the Town of Gaines is required before work being completed. For Change Orders requiring only CEO approval, if no action is taken within 14 days of submittal, the Change Order shall be deemed to be approved.

E. Erosion Control / SWPPP:

1. Contractor is to adhere to the plans & SWPPP for erosion control measures. The Town Construction Inspector and Town CEO are to be notified / contacted if there is any deviation from the plans & SWPPP which requires NYSDEC review or approval.
2. General Site contractor is responsible for installation of the erosion & sediment control measures as well as maintaining and removing measures when appropriate as outlined on the approved plans and associated sequencing.
3. All temporary erosion and sediment control measures (i.e. silt fencing) are to remain installed in accordance with the Project SWPPP and SPDES Permit.
4. The approved project SWPPP is to be located onsite in a marked mailbox. This is to be accessible at all times.
5. Contractor shall identify the individual(s) who will be performing the SWPPP inspections as required under the NYSDEC GP-0-20-001 and provide this information to the Town CEO and MRB prior to ground disturbance.

Settlement Agreement Schedule C

Page 3

6. SWPPP inspections will be completed once per week (7-days) for as long as the project remains under 5 acres of disturbance.
7. If the project exceeds 5-acres of disturbance with a waiver from NYSDEC then SWPPP inspections are to be conducted twice a week.
8. Inspection reports are to be submitted to the CEO and MRB Group. A copy is also to be kept onsite within the project SWPPP.
9. Dust control shall be monitored and maintained throughout construction.
10. The stabilized construction entrance and staging area are to be maintained at all

[Type here]

times.

F. Safety:

1. Construction site safety is the sole responsibility of the contractor and shall adhere to all applicable OSHA Requirements.
2. There is to be no loading or unloading in the County Right of Way without prior County approval.

G. Project Observation:

1. Three (3) day notice prior to installation or construction observation request. All requests shall be made to the Building & Codes Department.
2. Onsite Town representative will be provided by the Town of Gaines upon request.

H. Testing / Certification:

1. Contractor shall provide the Town CEO three (3) day notice prior to testing. The Town CEO shall provide a list of tests that are subject to this condition. The Town does not need to be present for all testing but may choose to be present if there is concern regarding a specific test or aspect of the project.
2. All test results for specific tests requested by the Town as referenced under Section (H)(1) above are to be put into a binder and provided to the Town CEO, and digitally to MRB at the completion of the project.
3. Third party inspections to be completed for electrical work and forwarded to the Town CEO.
4. The proposed access road locations should test the subsoil compaction in accordance with Schedule A of the Settlement Agreement prior to any construction activity on site. This testing is to be witnessed by the Town CEO.

I. Cleanup:

Settlement Agreement Schedule C

Page 4

1. The site, perimeter areas, and roadways to be kept clean of debris and sediment at all times.

J. Closeout:

1. Prior to starting operations (operations encompass the solar operations of the facility, including the collection of solar energy and transmission of electricity to the grid and all activities related to the foregoing), the following will be required to be completed:
 - a. Final Walk-through: a final walk-through of the project with the contractor is to be performed with the Town of Gaines to ensure compliance with the approved plans, O&M Plan, and SUP approvals.
 - b. The access road will need to be installed to the standards identified in the plans and to meet the pre-development subsoil compaction standards. This will have to be witnessed by the Town CEO.
 - c. A Final Instrument Survey of the property and elevations is provided to the Town CEO for review and approval.

K. Miscellaneous:

1. No contractor's trailer, or vehicles, are to remain within the travel lane of a highway during construction.
2. No building materials are to be stored on either a site under construction or an adjacent vacant site that would result in the materials being placed too close to a

[Type here]

travel lane.

DG Gaines, LLC v Town Of Gaines, et al., Index No.: CV24-00153 Settlement Agreement Schedules

SCHEDULE D

1

STIPULATION OF DISCONTINUANCE WITH PREJUDICE

Index No.: CV24-00153

Hon. Frank Caruso, J.S.C.

SUPREME COURT STATE OF NEW YORK

COUNTY OF ORLEANS -----X

In the Matter of:

DG GAINES, LLC,

Petitioner-Plaintiff,

-against TOWN OF GAINES, ZONING BOARD OF APPEALS OF THE TOWN OF GAINES, JEFFREY GIFALDI, in his official capacity as the Town Code Enforcement Officer, JANET CHEVERIE, in her official capacity as the Town Clerk and Town Records Access Officer, TYLER J. ALLPORT, in his official capacity as the Town Supervisor, and TOWN OF GAINES TOWN BOARD,

Respondents-Defendants.

For An Order and Judgment Pursuant to CPLR 3001, 7801 *et seq.*, and Public Officers Law Article 6. -----X

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys/parties of record for Petitioner-Plaintiff and Respondents-Defendants appearing in the above-entitled hybrid proceeding and action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of this action, that all claims that were raised or could have been raised by and between the parties, be and the same are, hereby discontinued with prejudice and without costs to any party. This stipulation may be executed in counterparts, and a copy hereof shall be fully enforceable as an original. This stipulation may be filed without further notice with the Clerk of the Court. This Court reserves jurisdiction to enforce the terms of a certain Settlement Agreement dated March __, 2025, and entered into between the parties, including the entry of Judgment against either party in the event of any default under the Settlement Agreement.

2

Dated: March __, 2025 Albany, NY **HARRIS BEACH MURTHA PLLC**

Javid Afzali, Esq.

Attorneys for Petitioner-Plaintiff

677 Broadway, Suite 1101

Albany, NY 12207 Telephone: (518) 701-2775

jafzali@harrisbeach.com

Dated: March __, 2025 Holley, NY **HEATH & O'TOOLE PLLC**

Bridget O'Toole, Esq.

Attorneys for Respondents-Defendants

7 East Steuben Street

[Type here]

PO Box 200

Holley, New York 14470 Telephone: (585) 638-6331 botoole@heathotoole.com

Dated: March __, 2025

SO ORDERED: _____ Hon. Frank Caruso, J.S.C.

ENTER:

Moved by Councilman Mannella and seconded by Councilman Kirby to authorize the Town of Gaines Supervisor to execute the DG Gaines, LLC Settlement Agreement and Release as presented to the Board.

Discussion: None

Ayes 3; Nays 0; Absent 2

RESOLUTION NO. 37-0325

APPOINTING PLANNING BOARD CHAIRMAN

Moved by Councilman Mannella and seconded by Councilman Kirby to appoint Justin Kirby as the Chairman of the Planning Board.

Discussion: Clerk Cheverie received confirmation from Justin Kirby that he is willing to accept the appointment.

Ayes 3; Nays 0; Absent 2

ADJOURN MEETING TO ENTER EXECUTIVE SESSION TO DISCUSS MATTERS RELATING TO A PERSONNEL ISSUE

Moved by Councilman Kirby and seconded by Councilman Mannella to enter into an executive session at 7:21 PM to discuss matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person.

Discussion: None

Ayes 3; Nays 0; Absent 2

EXIT EXECUTIVE SESSION TO REJOIN REGULAR MEETING

Moved by Councilman Kirby and seconded by Councilman Mannella to exit Executive Session at 7:34 PM.

Discussion: None

Ayes 3; Nays 0; Absent 2

[Type here]

SUPERVISOR'S COMMENTS:

The Town received a letter dated February 27, 2025 from the Village of Albion Attorney, John Gavenda, advising that the Village of Albion presently fluoridates all waters generated from its Pure Water Facility. The Village is considering eliminating fluoridation of the water it produces. There will be a Public Hearing at 35-37 East Bank Street, Albion, NY 14411 on Wednesday March 26, 2025 at 6:00 PM to address the possible removal of fluoride produced at their facility. The Village of Albion Board of Trustees is inviting all interested parties and residents to attend and voice their support or opposition to the proposed action being considered.

The Town has been notified that James Theodorakos's term on the Board of Assessment review is up for renewal.

RESOLUTION NO. 38-0325

REAPPOINTING JAMES THEODORAKOS TO THE TOWN OF GAINES BOARD OF ASSESSMENT REVIEW

Moved by Councilman Kirby and seconded by Councilman Mannella to reappoint James Theodorakos to the Town of Gaines Board of Assessment Review for a 5-year term expiring December 31, 2030.

Discussion: None

Ayes 3; Nays 0; Absent 2

OTHER NEW BUSINESS FROM THE TOWN BOARD: None

PRIVILEGE OF THE FLOOR: None

ADJOURNMENT

Moved by Councilman Mannella and seconded by Councilman Kirby to adjourn the meeting at 4:38PM.

Ayes 3; Nays 0; Absent 2

Respectfully Submitted,

Janet K. Cheverie
Gaines Town Clerk