

**TOWN OF HORSEHEADS  
TOWN BOARD  
APRIL 10, 2019  
7:30 P.M.**

The regular monthly meeting of the Town Board of the Town of Horseheads was held on the above date at 7:30 P.M. at the Town Hall, 150 Wygant Road, Horseheads, New York.

Members Present: Michael W. Edwards, Supervisor; Donald J. Fischer, Gary H. Riopko, Carl R. Lewis, Sr. and Stephen E. Wilber, Councilmen.

Others Present: John P. Mustico, Town Attorney; Nancy Rohde, Town Clerk, Ray and Lorie Cass, Boy Scout Troop 87: Zachary Harpster, Liam Paddock, Noah McCauley, Tobias Mis, Daniel E. McCauley, Barry Paddock, Valerie Mis, Ryan Anderson, Nathan German, Jake Bennett, Robert Harpster, Ian Torrey and Renee Torrey.

Supervisor Edwards called the meeting to order at 7:30 p.m.  
After welcoming everyone he asked Boy Scout Noah McCauley to lead the pledge of allegiance.

On a motion by Mr. Fischer, and seconded by Mr. Wilber, it was moved that the reading of the minutes of the March 13, and 27, 2019 meeting of the Town Board of the Town of Horseheads be dispensed with and the same stand approved as entered by the Clerk.

Ayes: Fischer, Riopko, Lewis, Wilber and Edwards. Nays: None.

Resolution #70 of 2019

**RESOLUTION AUTHORIZING PAYMENT OF CLAIMS**

Resolution by Mr. Fischer, seconded by Mr. Riopko,

BE IT RESOLVED, that the Supervisor is hereby authorized and directed to pay the audited claims in the Following Funds:

General Fund A, B, SF2	#134-181	\$ 55,792.65
Highway Fund DB	#75-100	<u>\$113,874.11</u>
Total		\$169,666.76

Ayes: Curren, Fischer, Riopko, Lewis and Edwards. Nays: None.

Resolution #71 of 2019

**REPORTS OF TOWN OFFICERS**

On a motion by Mr. Lewis, and seconded by Mr. Wilber, it was moved that the March, 2017 reports of the Supervisor in the General and Highway Funds, reports of the Town Justices, reports of the Code Enforcement Office, Highway Superintendent, Town Clerk, Assessor, and Youth Bureau be received and placed on file.

Ayes: Fischer, Riopko, Lewis, Wilber and Edwards. Nays: None.

Correspondence:

- Charter Communications – Upcoming Changes (03/20/2019).
- Hunt Engineers – Re: Newtown Creek Facility
- Charter Communications re: Franchise Agreement renewal.
- Elmira Heights Historical Society – Thank you for financial support (03/22/2019).
- Environmental Emergency Services – Thank you for financial support (03/4/2019).

On a motion by Mr. Lewis and seconded by Mr. Wilber, it was moved that the correspondence be received and placed on file.

Ayes: Fischer, Riopko, Lewis, Wilber and Edwards. Nays: None.

No one came forward during the audience participation portion of the meeting.

The discussion and possible action regarding dedication of the drainage basin located at Gardner Road and St. Andrews Drive was tabled at this time.

Resolution #72 of 2019

**PROCLAMATION – NATIONAL NURSES WEEK  
MAY 6-12, 2019**

**WHEREAS**, Nurses today are positioned as never before to play a prominent role in the health arena, it is an honor to recognize the contributions that they bring forth, and

**WHEREAS**, professional nurses carry great patience, helping others who are suffering from physical discomfort while instilling in them confidence that they are being cared for in the best possible manor, and

**WHEREAS**, nurses are leading advocates of overall public health whose scope of work encompasses specialized areas ranging from neonatal care to gerontology, and

04/10/2019 T.B.

**WHEREAS**, when recognizing nurses, let us remember to also thank the C.N.A's who work tirelessly beside them.

**WHEREAS**, nurses must not only listen to the feelings of patients and care for their needs; they must also learn prevailing and new technologies and scientific medical advances and incorporate them to update their knowledge, and

**WHEREAS**, a nurse is the one who opens the eyes of a new born & gently closes the eyes of a dying man, it is indeed a blessing they share to be first and last to witness the beginning and end of life, and

**WHEREAS**, the safe and quality health care services provided by registered nurses and licensed practical nurses will be an increasingly important component of the U.S. healthcare system in the future,

**NOW, THEREFORE**, we, the **Town Board of the Town of Horseheads, NY**, do hereby proclaim the week of **May 6 – 12, 2019** as National Nurses Week and ask all residents of this community to join us in recognizing the crucial role that professional nurses play in the health and well-being of others.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and caused the seal of the Town of Horseheads to be affixed this 10th day of April, 2019.

**Michael W. Edwards**  
**Town Supervisor**

Resolution #74 of 2018

**RESOLUTION AUTHORIZING EQUIPMENT AGREEMENT WITH  
CHEMUNG COUNTY SOIL & WATER DISTRICT**

Resolution by Mr. Fischer, seconded by Mr. Lewis.

**WHEREAS**, the Town Highway Superintendent and the Director of the Chemung County Soil & Water Conservation District have agreed to use by Town of Horseheads of a Steiner Commercial Lawn Mower, and

**WHEREAS**, the Attorney for the Town has drafted an agreement, which has been reviewed and approved by the Town Highway Superintendent and the Director, and

**WHEREAS**, the Town Board has duly considered the same.

**NOW, THEREFORE, BE IT RESOLVED** the Town Board hereby authorizes the Town Supervisor to execute an agreement with the Chemung County Soil & Water Conservation District, substantially as follows:

AGREEMENT made as of April 1, 2019, between, CHEMUNG COUNTY SOIL & WATER CONSERVATION DISTRICT, with offices at 851 Chemung St., Horseheads, NY 14845, hereinafter called the Chemung and TOWN OF HORSEHEADS, with offices at 150 Wygant Rd., Horseheads, NY 14845, hereinafter called the Horseheads.

WHEREAS, the Chemung has turned over to the Horseheads at its location, one Steiner Commercial Lawn Mower, hereinafter called the "Equipment," to be used by the Horseheads, according to the terms and conditions of this agreement.

It is therefore agreed:

1. Equipment. Subject to the terms and conditions set forth below, the Chemung transfers possession to the Horseheads and the Horseheads acknowledges receipt from the Chemung the Equipment for a month-to-month term commencing April 1, 2019.

2. Cost. The Horseheads shall pay to the Chemung for the use of the Equipment, \$0.00 per month.

3. Ownership and Use and Acceptance of Equipment.

(a) The Equipment shall at all times be the sole and exclusive property of the Chemung. The Horseheads shall have no rights or property interest therein, except for the right to use same in its normal operations.

(b) The Horseheads shall keep the Equipment at all times free and clear from all claims, levies, liens, encumbrances and process.

(c) The Horseheads shall cause the Equipment to be operated, in accordance with the applicable vendor's or manufacturer's manual of instructions, by competent and qualified personnel.

(d) The Horseheads has determined that all agreementd equipment is suitable for the use intended, and the Horseheads has inspected the same and accepts the same as delivered. The Chemung has made no representations or warranties, oral or written, express or implied, in connection with the Equipment.

4. Repairs and Replacements. The Horseheads shall keep the Equipment in good condition and, at its own cost and expense, make all repairs and replacements necessary for its preservation. All such replacements shall immediately become the property of the Chemung. The Horseheads shall not make any material alterations to or replacements of the Equipment without Chemung's prior written consent, which consent shall not be unreasonably withheld.

5. Insurance. The Horseheads 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 operating the Equipment. The Horseheads shall furnish the Chemung with satisfactory proof of carriage of the insurance required, also naming the Chemung as an additional named insured in said policy.

6. Indemnity. The Horseheads assumes liability for and shall indemnify, protect, save and keep harmless the Chemung, its agents and servants from and against all losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including legal expenses of whatsoever kind and nature imposed upon, incurred by or asserted against the Chemung in any way relating to or arising out of the use of the Equipment, by the Town of Horseheads. The indemnities contained in this Section shall continue in full force and effect, notwithstanding the termination of this agreement.

7. Inspection. The agents of the Chemung may, at any time, enter the Horseheads' premises for the purpose of inspecting the Equipment and the manner in which it is being used.

8. Liability for Damage. The Horseheads shall be responsible for any damage to the Equipment while in its possession, and shall pay to the Chemung the value of so much of the Equipment, or any part thereof, as may be damaged or destroyed.

9. Assignment. The Horseheads shall use the Equipment solely in the conduct of its business, and in a careful and proper manner, and shall not part with possession of or enter into any sub-agreement with respect to the Equipment or any part thereof nor assign this agreement or its rights hereunder nor delegate the performance of its duties under this agreement without the prior written consent of the Chemung.

10. Termination. Either party may at any time and upon 10 days' notice to the other, terminate this agreement.

11. Breach. Upon a breach of any condition of this agreement to be performed or observed by the Horseheads not cured by the Horseheads within 30 days of receipt of written notice thereof from the Chemung, the Chemung shall have the right, without demand or legal process, to enter into the premises where the Equipment may be found and take possession of and remove the same, whereupon all rights of the Horseheads in Equipment shall terminate.

12. Notices. All notices shall be in writing and delivered in person to an officer of the party to which such notice is being given, by personal delivery or mailed by certified mail return receipt requested to such party at the address first above written, or to such other address as may be hereafter specified by like notice by either party to the other.

13. Entire Agreement. This agreement contains the entire agreement between the parties. There are no other understandings or agreements between them.

14. Governing Law. This agreement shall be construed in accordance with and governed by the laws of the State of New York.

15. Non-waiver. No delay or failure by either party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

16. Headings. Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.

17. Counterparts. This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

18. Binding Effect. This agreement shall be binding upon the Chemung and the Horseheads and their respective legal representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CHEMUNG COUNTY SOIL & WATER  
CONSERVATION DISTRICT

TOWN OF HORSEHEADS

By: \_\_\_\_\_  
Mark Watts, Director

By: \_\_\_\_\_  
Michael W. Edwards

Ayes: Fischer, Riopko, Lewis, Wilber and Edwards. Nays: None.

Resolution #75 of 2019

**RESOLUTION AUTHORIZING SUPERVISOR TO SIGN  
DECOMMISSION AGREEMENT WITH DELARWARE SOLAR**

Resolution by Mr. Lewis, seconded by Mr. Wilber

**WHEREAS**, the site plan review of the project of Delaware Solar located on Hickory Grove Rd., has been approved by the Town Planning Board, and

**WHEREAS**, as part of the project requirements the Town of Horseheads and the project developer, Delaware Solar, must agree upon a decommissioning plan for the project to be issued a building permit, and

**WHEREAS**, Delaware Solar has offered a decommissioning plan to be approved and executed by the Town of Horseheads, and

**WHEREAS**, the Town Board has duly considered the same.

**NOW, THEREFORE, BE IT RESOLVED** the Town Board hereby authorizes the Town Supervisor to execute such decommissioning plans as may be required, subject to the approval of the Attorney for the Town, in substantially the form as follows:

**[DRAFT] DECOMMISSIONING AGREEMENT**

This DECOMMISSIONING AGREEMENT (this “Agreement”) dated (the “Effective Date”) is made by and among the Town of Horseheads (the “Town”) and [Delaware River Solar, LLC] (“Owner”, together with the Town, the “Parties”).

WHEREAS, Owner intends to build a solar energy generation project on 198 Hickory Grove Road in the Town (the “Project”);

WHEREAS, the Parties wish to enter into this Agreement to set forth terms and conditions of having funds available to pay for the costs of any decommissioning of the Project; and

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Prior to the commencement of construction of the Project, Owner agrees to deposit [sixty-thousand dollars (\$60,000)] in a special purpose account designated in writing by the Town (the “Decommissioning Account”). At the end of each anniversary year of operation of the Project (the “Anniversary Date”), Owner agrees to deposit an additional 2.5% of the then existing amount in the Decommissioning Account on the Anniversary Date, as described in greater detail on Schedule I attached hereto. The Parties agree that the amount in the Decommissioning Account shall be used solely to pay for any decommissioning costs of the Project. Provided Owner complies with its obligations to deposit funds into the Decommissioning Account in accordance with this Agreement, Owner shall have no further payment obligations in connection with funding the Decommissioning Account during the operation of the Project; provided, however, in the event the actual decommissioning costs exceed the amount in the Decommissioning Account, Owner shall be responsible for any such excess costs, provided such excess costs are not as a result of the Town using any amount in the Decommissioning Account for any reason other than to pay for decommissioning costs of the Project in accordance with this Agreement. In the event the Town uses any amount in the Decommissioning Account for any reason other than to pay for decommissioning costs in accordance with this Agreement, the Town shall be responsible to pay for such amount used and shall indemnify and hold harmless Owner and the landowner of the Project, if different from Owner, from any claim, loss, damage, liability or costs (including any reasonable attorney costs) arising from such use of funds for reasons other than to pay for decommissioning costs in accordance with this Agreement.

2. The Parties agree that the decommissioning process of the Project may commence (and the funds to pay for the cost of any such decommissioning from the Decommissioning Account may be used) for the following reasons: (a) Owner provides written notice to the Town of its intent to retire or decommission the Project (the "Owner Decommissioning Notice"), (b) construction of the Project has not started within eighteen (18) months of site plan being approved by the Town, or (c) the Project ceases to be operational for more than twelve (12) consecutive months. The Town shall provide Owner thirty (30) days written notice (the "Town Decommissioning Notice") prior to the commencement of any decommissioning of the Project by the Town. In event the Owner fails to decommission the Project within ninety (90) days after providing Owner Decommissioning Notice or fails to respond with a reasonable explanation for the delay in the construction or cessation of operation of the Project within 30 days of the Town Decommissioning Notice, the Town may commence the decommissioning of the Project. For the purposes of this Agreement, "ceases to be operational" shall mean no generation of electricity, other than due to repairs to the Project or causes beyond the reasonable control of Owner. Upon removal of the infrastructure and disposal of any component of the Project from the site on which the Project is built, or in the event the Town becomes owner of the Project, any and all amount remaining in the Decommissioning Account shall be returned to Owner.

3. This Agreement may not be amended or modified except by written instrument signed and delivered by the Parties. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and assigns. Owner may assign this Agreement to any subsidiary, or purchaser or transferee of the Project. The Parties agree to execute and deliver any additional document or take any further action as reasonably requested by the other party to effectuate the purpose of this Agreement. The Parties agree that Owner shall have the option to replace the funds in the Decommissioning Account with a commercially reasonable decommissioning bond.

4. The Parties agree that this Agreement shall be construed and enforced in accordance with and governed by the laws of New York.

5. This Agreement may be executed through separate signature pages or in any number of counterparts, and each of such counterparts shall, for all purposes, constitute one agreement binding on all parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused their names to be signed hereto by their respective representatives thereunto duly authorized as of the date first above written.

**TOWN OF HORSEHEADS**

By:

Name:

Title:



**[DELAWARE RIVER SOLAR, LLC]**

By:

Name:

Title:

**SCHEDULE I**

Decommissioning Fund (Deposits)		
Timeframe	Amount	Cumulative
Construction	60,000	60,000
Year 1	1,500	61,500
Year 2	1,538	63,038
Year 3	1,576	64,613
Year 4	1,615	66,229
Year 5	1,656	67,884
Year 6	1,697	69,582
Year 7	1,740	71,321
Year 8	1,783	73,104
Year 9	1,828	74,932
Year 10	1,873	76,805
Year 11	1,920	78,725
Year 12	1,968	80,693
Year 13	2,017	82,711
Year 14	2,068	84,778
Year 15	2,119	86,898
Year 16	2,172	89,070
Year 17	2,227	91,297
Year 18	2,282	93,580
Year 19	2,339	95,919
Year 20	2,398	98,317
Year 21	2,458	100,775
Year 22	2,519	103,294
Year 23	2,582	105,877
Year 24	2,647	108,524
Year 25	2,713	111,237
Year 26	2,781	114,018
Year 27	2,850	116,868
Year 28	2,922	119,790
Year 29	2,995	122,784
Year 30	3,070	125,854

Resolution #76 of 2019

**RESOLUTION AUTHORIZING MEMORIAL DAY DONATIONS**

Resolution by Mr. Fischer, seconded by Mr. Riopko

BE IT RESOLVED, that the Horseheads American Legion and Elmira Heights American Legion receive a donation for their Memorial Day Observances of \$800.00 each.

Ayes: Fischer, Riopko, Lewis, Wilber and Edwards. Nays: None.

As there was no further business to come before the Board, on a motion by Mr. Lewis, and seconded by Mr. Fischer, it was moved that the meeting be adjourned at 8:01 P.M.

Ayes: Fischer, Riopko, Lewis, Wilber and Edwards. Nays: None.

Respectfully Submitted,

Nancy C. Rohde, Town Clerk