

**Town Board Monthly Meeting**

**April 8, 2021            7:30 p.m.  
VIA ZOOM**

**SALUTE TO THE FLAG**

**APPROVAL OF MINUTES**

- Monthly Town Board Meeting – March 4, 2021

**COMMITTEE REPORTS**

- 1) Conservation Board            2) Recreation   3) The Philipstown Hub            4) Planning Board  
5) Zoning            6) Highway            7) Building & Land Acquisition            8) Cemetery Committee  
9) Putnam County Legislator

**AGENDA**

- 1. Resolution approving the continuation of the Community Choice Aggregation program by continuing to offer Electricity Supply and Incorporating Opt-Out Community distributed Generation.**
- 2. Resolution Approving GHG Emission Reduction Targets and Climate Action Plan.**
- 3. Resolution authorizing Supervisor Shea to sign the Real Property contract with Putnam County.**
- 4. Resolution authorizing Supervisor Shea to sign the Outreach Worker Services Contract between the Town of Philipstown & Putnam County Office for Senior Resources**
- 5. Resolution adopting the revised PVAC contract and authorizing Supervisor Shea to sign said contract. (Roll Call Vote)**
- 6. Resolution approving SEQRA EAF and Adopting a Negative Declaration in regard to the Solar PPA Proposal. (Roll Call Vote)**
- 7. Resolution approving the Solar PPA Proposal from SunPower and authorizing Supervisor Shea to sign the PPA. (Roll Call Vote)**
- 8. Aman Raju to comment on the Garrison Post Office discussion.**

**9. Sheila Rauch/Lynda Ewen to give a brief introduction on a new group in town, Philipstown Aging at Home.**

**10. Schedule Workshops/Meetings.**

- **Workshop - Hudson Highlands Land Trust's Green Corridors – 4/21/21 or 4/28/21**
- **Regular Monthly Meeting – May 6, 2021**

**11. Code Enforcement Monthly Report**

**12. Any other business that may come before the Town Board.**

**AUDIENCE**

**VACANCIES – Board of Assessment Review (1)**

**APPROVAL OF VOUCHERS**

General      Highway      CVPD      CVWD

**ADJOURNMENT**

The Town Board held their Monthly Meeting on the above date at 7:30 p.m., via ZOOM.

<b>PRESENT:</b>	Richard Shea	Supervisor
	John Van Tassel	Councilman
	Michael Leonard	Councilman
	Robert Flaherty	Councilman
	Judith Farrell	Councilwoman

Supervisor Shea opened the meeting with the Salute to the Flag.

**APPROVAL OF MINUTES**

Minutes of the Town Board Workshop meeting of January 20, 2021.

Councilman Van Tassel made a motion, seconded by Councilwoman Farrell, that the Minutes of the Town Board Workshop meeting are hereby approved as presented.

Minutes of the Town Board Workshop meeting of January 22, 2021.

Councilman Leonard made a motion, seconded by Councilman Flaherty, that the Minutes of the Town Board Workshop meeting are hereby approved as presented.

Minutes of the Monthly Town Board meeting of February 4, 2021.

Councilwoman Farrell made a motion, seconded by Councilman Flaherty, that the Minutes of the Monthly Town Board meeting are hereby approved as presented.

**COMMITTEE REPORTS**

**CONSERVATION BOARD** – Councilman Leonard reported that they met on February 9, 2021 with the following items on the agenda:

- Riverview
- 9 Winston Lane
- Hudson River Lane
- Route 301

The next meeting is scheduled for March 9, 2021.

**(PHILIPSTOWN DEPOT THEATER MEETING)**

**RECREATION** – Councilwoman Farrell reported that the commission met on February 23 via Zoom. She reported the theater program will be putting on some outdoor performances. She stated the vaccination program that the Putnam County Health Department is running at the Rec Center has been a great success. The County helped to make repairs to the walkway along with the

Philipstown Highway Department. There is now Wi-Fi throughout the building as well. Councilwoman Farrell reported that the Community Garden is moving ahead.

**PHILIPSTOWN HUB** – Councilwoman Farrell reported that the Hub will be meeting on April 14<sup>th</sup> at 3:00 pm via Zoom.

**PLANNING BOARD** - Councilman Flaherty reported that the board met on February 18 via Zoom with following items on the agenda:

- Public Hearing:
  - Desmond Fish Library – 472 Route 403
- Old Business:
  - Mark Conn – 242 Route 403
  - 3622 Route 9 LLC
  - Garrison Golf Club PPD/HVSF – 2015 Route 9

The next meeting of the Planning Board is scheduled for March 18<sup>th</sup>, 2021 via Zoom.

**ZONING BOARD** – Councilman Van Tassel reported that they met on February 8<sup>th</sup> via Zoom with the following items on the agenda:

- Ricci – 3315 Route 9 – Public Hearing
- Flagg – 699 Old Albany Post Road – Public Hearing
- McCann – 14 Oak Road
- Haddad – 15 Lake Celeste

The next meeting Zoning Board meeting is scheduled for March 8<sup>th</sup>, 2021.

**HIGHWAY** – Councilman Van Tassel read the report submitted by Carl Frisenda, Highway Superintendent which is on file in the Town Clerks Office.

**BUILDING & LAND ACQUISITION** – Supervisor Shea reported that the Town Hall project is moving forward. He stated the move-in date would be April 1, 2021.

**CEMETERY COMMITTEE** – Councilman Leonard reported they are going to be doing some work in the Mountain Ave location. They have a new member but the committee is still in need of volunteers.

**PC LEGISLATOR** – Legislator Montgomery stated that she was proud of her efforts to bring vaccinations to this side of the County. She stated that Drug World is now holding vaccination clinics at the North Highlands Fire Department & thanked all the volunteers who have helped out. She reported that the vaccination clinics being held at the Recreation Center are PCHD run clinics only. The Legislator reported that there will be a special meeting on March 9<sup>th</sup> regarding the policy review for the Putnam County Sheriff's Department.

**TOWN OF PHILIPSTOWN  
MONTHLY REPORT OF TOWN SUPERVISOR  
MONIES RECEIVED AS OF \_\_\_\_\_, 2021**

**GENERAL & PART-TOWN FUNDS**

Bldg. Fees  
Justice Fees  
  
NYS Grant Justice Fees  
Rec Fees  
TC Fees  
TC Fees  
Bldg. Fees  
Expressway Auto Scrap Metal  
PC Cemetery  
Justice Fees  
Justice Bail

**HIGHWAY**

PC Gas

**CONTINENTAL VILLAGE WATER DISTRICT**

Water Collection

**CONTINENTAL VILLAGE PARK DISTRICT**

## AGENDA

- 1. Resolution authorizing Carl Frisenda, Highway Superintendent to purchase 2 New 2021 Dodge Ram 5500 Trucks from the Onondaga Statewide Bid ONGOV-106-19 at a total of \$162,902.60, as budgeted for in the 2021 budget.**

### **RESOLUTION # -2021**

The following Resolution was presented by Councilwoman Farrell, seconded by Councilman Flaherty and unanimously carried;

**RESOLVED**, that the Town Board hereby authorizes Carl Frisenda, Highway Superintendent to purchase 2 New 2021 Dodge Ram 5500 Trucks from the Onondaga Statewide Bid ONGOV-106-19 at a total of \$162,902.60, as budgeted for in the 2021 budget.

- 2. Resolution approving the following change order for the Town Hall Renovation project in the amount of \$14,275.00:**
  - Copper Gutters and Leaders – PVS Construction**

### **RESOLUTION # -2021**

The following Resolution was presented by Councilman Van Tassel, seconded by Councilman Flaherty and unanimously carried;

**RESOLVED**, that the Town Board hereby approves the following one (1) proposed change orders for the Town Hall renovations in the total amount of \$14,275.00:

- Copper Gutters and Leaders – PVS Construction - \$14275.00**
- 3. Resolution approving the following change order for the Town Hall Renovation project in the amount of \$15,362.00:**
    - Interior Mouldings – PVS Construction**

### **RESOLUTION # -2021**

The following Resolution was presented by Councilman Leonard, seconded by Councilwoman Farrell and unanimously carried;

**RESOLVED**, that the Town Board hereby approves the following one (1) proposed change orders for the Town Hall renovations in the total amount of \$15,362.00:

- Interior Mouldings – PVS Construction - \$15362.00**
- 4. Resolution approving the following change order for the Town Hall Renovation project in the amount of \$15,999.00:**
    - Rebuild Existing Chimney – PVS Construction**

**RESOLUTION # -2021**

The following Resolution was presented by Councilwoman Farrell, seconded by Councilman Van Tassel and unanimously carried;

**RESOLVED**, that the Town Board hereby approves the following one (1) proposed change orders for the Town Hall renovations in the total amount of \$15,999.00:

- **Rebuild Existing Chimney – PVS Construction - \$15999.00**

5. **Resolution authorizing Supervisor Shea to sign the Inter-Municipal Agreement regarding shared equipment with the Town of Cortlandt, Village of Croton-on-Hudson, Village of Buchanan and City of Peekskill for 2021.**

**RESOLUTION # - 2021**

The following Resolution was presented by Councilman Flaherty, seconded by Councilman Leonard and unanimously carried;

**RESOLVED**, that the Town Board hereby authorizes Supervisor Shea to sign the Intermunicipal Agreement for shared equipment with the Town of Cortlandt, Village of Croton-on-Hudson, Village of Buchanan, and the City of Peekskill for 2021.

6. **Resolution approving the Garrison Volunteer Ambulance Corps 2020 Sponsor Approval Form for the Length of Service Award Program.**

**RESOLUTION # -2021**

The following Resolution was presented by Councilwoman Farrell, seconded by Councilman Flaherty and unanimously carried;

**RESOLVED**, that the Town Board hereby approves the Garrison Volunteer Ambulance Corps 2020 Sponsor Approval Form for the Length of Service Award Program.

7. **Resolution accepting the proposal from Gerard Associates for Electrical Engineering support for supply power for the new PBS Fueling Facilities for the New Highway Garage. (NUNC PRO TUNC).**

**RESOLUTION # - 2021**

The following Resolution was presented by Councilwoman Farrell, seconded by Councilman Leonard and unanimously carried;

**RESOLVED**, that the Town Board hereby accepts the proposal from Gerard Associates for Electrical Engineering support for supply power for the new PBS Fueling Facilities for the New Highway Garage.

### **8. Discussion regarding the Garrison Post Office.**

Supervisor Shea stated this is more of an update on a couple of continuing issues that have arisen since the post office moved a lot of the handling services to Garrison. It has become a much busier place. The Supervisor stated he has reached out to the representative, Mr. Shapiro, many times. Letters have been written to state representatives regarding the issue but it is very difficult when dealing with a federally run facility.

The Supervisor stated there is also a neighbor issue going on as well. There has been some tension between owners. He suggested a sit down amongst the neighbors to discuss moving towards resolving these issues. He offered to be a part of the discussion and act as a mediator.

Legislator Montgomery stated there is a lot of frustration in regard to this issue and is not an easy issue to solve. Supervisor Shea explained that the Post Office has immunity when it comes to local zoning but he will be following up with the facility manager.

Councilman Van Tassel noted that the facility is in an industrialized zone and noted that no one knows who could come in there if the Post Office were to leave.

Resident Jeff Grocott thanked the board for having this discussion. He stated this goes back to 2014 when the Cold Spring routes moved into the Garrison facility. Mr. Grocott noted that Amazon seems to be a large part of the problem; their trucks will come in with their lights glaring and hitting the gates, etc. He questioned the zoning of the area and whether it was actually industrial or hamlet mixed-use. The noise starts as early as 4:30 am. When confronted, the Amazon drivers have not been pleasant.

Supervisor Shea suggested they would try to reach out to the regional director for Amazon and explain their local ordinances. He apologized for not being able to be more effective but noted it is not because of lack of effort.

Mr. Grocott questioned what the residents can do in order to help get this resolved. Supervisor Shea stated he would reach out to the Town Attorney to see what, if anything, can be done. Mr. Grocott thanked the Board for their time.

Regarding the neighbor issue, Mr. Grocott stated there has been a lot of corner cutting by the landlord. The Supervisor stated he would follow up with him on this issue.

### **9. Schedule Workshops/Meetings.**

- **Workshop – CCA Program Update with Jeff Domanski – March 10, 2021 (via Zoom)**
- **Workshop – Solar RFP's – March 24, 2021 (via Zoom)**



- **Regular Monthly Meeting – April 8, 2021 (via Zoom)**

#### **10. Code Enforcement Monthly Report**

The Town Clerk read report, which is on file in the Town Clerks office.

#### **11. Any other business that may come before the Town Board.**

Councilman Flaherty reported that the snow had been removed at the tower site on Vineyard Road.

Councilman Flaherty reported he met with the Highway Superintendent Carl Frisenda on Indian Brook Road to discuss signage.

Councilman Flaherty reported he has reached out to 2 separate E-Waste vendors to get some information about electronic recycling as it has been some time since the Town stopped accepting it at the Recycling Center.

Councilman Flaherty stated the copier lease is up and he is in the process of getting quotes.

Councilwoman Farrell reported the Putnam County Solid Waste Management focus group met a few weeks ago and the next meeting is next week. A big topic of discussion is county wide e-waste and also the possibility of a county wide composting site.

Supervisor Shea announced that we have raised almost \$600,000.00 towards food assistance which has come all from Philipstown residents. People in this community really step up to help their neighbors. The money is not only helping Philipstown residents but also some of our neighboring municipalities such as Putnam Valley, Beacon, Newburgh & Peekskill.

Councilman Leonard stated the Stormwater Management program annual report is coming up on March 9<sup>th</sup> and will get the report to Tara for April to go up on the website. He requested a public hearing be scheduled on the report for May.

Councilman Leonard congratulated the Climate Smart committee on receiving Bronze status.

#### **AUDIENCE**

#### **VACANCIES – Board of Assessment Review (1)**

#### **APPROVAL OF VOUCHERS**

Councilman Flaherty made a motion, seconded by Councilman Van Tassel and unanimously carried that the General Vouchers in the amount of \$ \_\_\_\_\_ are hereby approved as set forth in Abstract & \_\_\_\_\_.

Councilman Van Tassel made a motion, seconded by Councilman Flaherty and unanimously carried that the Highway Vouchers in the amount of \$ \_\_\_\_\_ are hereby approved as set forth in Abstract \_\_\_\_\_ & \_\_\_\_\_.

Councilman Leonard made a motion, seconded by Councilwoman Farrell and unanimously carried that the CVPD Vouchers in the amount of \$ \_\_\_\_\_ are hereby approved as set forth in Abstract \_\_\_\_\_.

Councilman Leonard made a motion, seconded by Councilman Flaherty and unanimously carried that the CVWD Vouchers in the amount of \$ \_\_\_\_\_ are hereby approved as set forth in Abstract \_\_\_\_\_.

## ADJOURNMENT

There being no further business to discuss, Councilman Van Tassel made a motion, seconded by Councilman Flaherty, to close the monthly meeting at 8:46 p.m.

Respectfully submitted by,

Tara K. Percacciolo  
Town Clerk

RESOLUTION #\_\_\_-2021

INTENT TO CONTINUE THE **Town of Philipstown's** COMMUNITY CHOICE AGGREGATION (CCA) PROGRAM BY CONTINUING TO OFFER ELECTRICITY SUPPLY AND INCORPORATING OPT-OUT COMMUNITY DISTRIBUTED GENERATION

WHEREAS, the **Town of Philipstown ("Municipality")** wishes to maintain control of sourcing their electricity supply, reduce electricity costs, access 100% renewable sources of electricity and catalyze the development of renewable power plants in New York;

WHEREAS, on February 17, 2017 the Municipality enacted Local No. 1 of 2017, "Community Choice Aggregation Program", enabling a Community Choice Aggregation Program;

WHEREAS, in March 2017, Municipality engaged the services of Joule Assets, Inc. ("**Joule**") as CCA Program Administrator for the Municipal Program;

WHEREAS, Municipality entered into an Electricity Supply Agreement to provide 100% renewable electricity supply to eligible residents and small businesses who did not opt-out from July 1, 2019 through June 30, 2021;

WHEREAS, Municipality intends to continue the CCA Program and access additional benefits for eligible residents and small businesses by continuing to offer electricity supply and in addition incorporating an Opt-out Community Distributed Generation ("**Opt-out CDG**") offering;

WHEREAS, Opt-out CDG offers guaranteed savings on electricity bills and supports the local development of solar projects through an agreement with a CDG project developer/owner ("**CDG Sponsor**");

WHEREAS, a CCA Program incorporating electricity supply and Opt-out CDG will maximize the financial and environmental benefits to participating residents and small businesses;

WHEREAS, the Municipality seeks to obtain competitive bids from electricity suppliers (each a "**Supplier**") pursuant to a request for proposal (the "**Supply RFP**"), that is intended to result in a three-party Electricity Supply Agreement between the selected Supplier, the Municipality and Joule that, among other things, will govern the terms of provision of the electricity supply by Supplier for the Municipal Program;

WHEREAS, the Electricity Supply Agreement (in the form attached hereto), has been reviewed and approved for form by the Municipality Counsel, and has been deemed to provide benefits, adequate protections, and minimize risk to the Municipality.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board authorizes Joule to issue a Supply RFP consistent with the provisions of this Resolution, with bids to be evaluated based upon compliance with the specifications of the Supply RFP including, without limitation, price and term parameters, and Supplier's acceptance of all material terms of the Electricity Supply Agreement;

BE IT FURTHER RESOLVED, that the Town Board approves the Electricity Supply Agreement in

substantially the form attached to this Resolution as Exhibit A, such form to be included in the Supply RFP;

BE IT FURTHER RESOLVED, that Joule in its role as Administrator for the CCA Program shall, among other things, manage the energy procurement process, prepare and issue the Supply RFP, and make recommendations for award to the Municipality; provided however, that the Municipality will, through the Supervisor, make the final award decision;

BE IT FURTHER RESOLVED, that subject to the conditions that the awarded Supplier has been prequalified as required by Joule and that the awarded bid meets the specifications established in the Supply RFP, the Supervisor is authorized to execute an Electricity Supply Agreement on behalf of the Municipality in substantially the form attached hereto with the awarded Supplier and Joule in a timely fashion; provided, however, that the Municipality is under no obligation to award the Supply RFP for any bid that fails to meet the specifications established in the Supply RFP. In addition, the Municipality is under no obligation to award the Supply RFP if any of the conditions of the CCA Administration Agreement shall not be met.

BE IT FURTHER RESOLVED, that the Municipality authorizes Joule to prepare or include the Municipality in an Opt-out CDG Implementation Plan for submission to and approval from the New York State Department of Public Service;

BE IT FURTHER RESOLVED, that the Municipality authorizes Joule to enter into negotiations on Municipality's behalf, with Utility and CDG Sponsor(s) for incorporation of Opt-out CDG into existing CCA Program; and

BE IT FURTHER RESOLVED, that the Supervisor is authorized to enter into any agreements on behalf of the Municipality in relations to Opt-out CDG consistent with this resolution in the Supervisor's reasonable discretion.

**Electricity Supply Agreement**  
**between Supplier, Joule Assets, Inc. and [NAME OF**  
**MUNICIPALITY]**

[Remainder of this page is left intentionally  
blank]

**TABLE OF CONTENTS**

PREAMBLE ..... 6

RECITALS ..... 6

ELECTRICITY SUPPLY AGREEMENT ..... 8

ARTICLE 1 DEFINITIONS..... 8

ARTICLE 2 RIGHTS GRANTED ..... 13

    2.1 GENERAL DESCRIPTION AND LIMITATIONS ..... 13

    2.2 NO THIRD PARTY BENEFICIARIES ..... 14

    2.3 COMPLIANCE WITH LAWS..... 14

    2.4 CONDITIONS PRECEDENT ..... 14

    2.5 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA ..... 14

    2.6 ENVIRONMENTAL DISCLOSURE PROGRAM ..... 15

ARTICLE 3 CONSUMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT..... 16

    3.1 CONSUMER CHOICE ..... 16

    3.2 NOTIFICATION TO NEW CONSUMERS OF OPT-OUT RIGHTS..... 16

    3.3 CONSUMER AWARENESS..... 17

    3.4 ENROLLMENT ..... 17

ARTICLE 4 TERM OF CONTRACT AND TERMINATION ..... 18

    4.1 TERM ..... 18

    4.2 TERMINATION..... 18

    4.3 OBLIGATIONS UPON TERMINATION ..... 19

    4.4 EXTENSION..... 19

ARTICLE 5 CONTINUING COVENANTS ..... 19

    5.1 STANDARDS OF MANAGEMENT AND OPERATIONS ..... 19

    5.2 CUSTOMER SERVICE ACCESS ..... 20

    5.3 RESPONDING TO REQUESTS FOR INFORMATION..... 20

    5.4 ARRANGING FOR FIRM FULL-REQUIREMENTS POWER SUPPLY ..... 20

    5.5 NON-DISCRIMINATORY PROVISION OF SERVICE..... 21

    5.6 APPROVAL OF GENERAL COMMUNICATIONS..... 22

    5.7 COMMUNICATION OF INSERTS AND MESSAGES..... 22

    5.8 PARTICIPATING CONSUMER LISTS ..... 23

5.9	COMPLIANCE WITH LAWS.....	23
5.10	CONSENT .....	23
5.11	CREDITWORTHINESS .....	23
5.12	COMPLIANCE WITH RFP .....	23
	ARTICLE 6 ROLE OF THE MUNICIPALITY .....	24
	ARTICLE 7 ROLE OF PROGRAM ADMINISTRATOR.....	24
7.1	PROGRAM ADMINISTRATOR RIGHTS AND DUTIES .....	24
7.2	PROGRAM ADMINISTRATOR FEE .....	25
7.3	PAYMENT OF FEE.....	25
7.4	INDEPENDENT CONTRACTOR.....	25
	ARTICLE 8 PRICES AND SERVICES; BILLING .....	26
8.1	SCHEDULE OF PRICES AND TERMS.....	26
8.2	OBLIGATION TO SERVE.....	26
8.3	METERING.....	26
	ARTICLE 9 ADDITIONAL COMPLIANCE BY COMPETITIVE SUPPLIER.....	27
	ARTICLE 10 SERVICE PROTECTIONS FOR CONSUMERS.....	28
10.1	UNIFORM BUSINESS PRACTICES COMPLIANCE.....	28
10.2	DESCRIPTION OF SUPPLIER’S PROCEDURES AND SERVICES .....	28
10.3	DISPUTE RESOLUTION.....	28
	ARTICLE 11 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT.....	29
	ARTICLE 12 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION.....	29
12.1	POWER SUPPLY INFORMATION.....	29
12.2	POWER SUPPLY REPORT .....	29
12.3	BOOKS AND RECORDS.....	30
12.4	COPIES OF REGULATORY REPORTS AND FILINGS .....	30
	ARTICLE 13 RESOLUTION OF DISPUTES; CHOICE OF LAW AND FORUM.....	30
13.1	CHOICE OF LAW AND FORUM.....	30
13.2	DISPUTE RESOLUTION.....	30
	ARTICLE 14 INDEMNIFICATION.....	31
14.1	INDEMNIFICATION BY THE COMPETITIVE SUPPLIER.....	31
14.2	NOTICE OF INDEMNIFICATION CLAIMS.....	31

- 14.3 SURVIVAL ..... 31
- 14.4 DUTY TO MITIGATE..... 31
- ARTICLE 15 REPRESENTATIONS AND WARRANTIES..... 32
  - 15.1 BY THE COMPETITIVE SUPPLIER..... 32
  - 15.2 BY THE MUNICIPALITY ..... 32
  - 15.3 BY THE PROGRAM ADMINISTRATOR ..... 33
- ARTICLE 16 INSURANCE..... 33
- ARTICLE 17 REGULATORY EVENT/NEW TAXES ..... 34
  - 17.1 REGULATORY EVENT ..... 34
  - 17.2 QUALIFYING REGULATORY EVENT..... 34
  - 17.3 NEW TAXES..... 34
- ARTICLE 18 MISCELLANEOUS ..... 34
  - 18.1 OPTION FOR ALTERNATIVE SUPPLY OF POWER ..... 34
  - 18.2 NO ASSIGNMENT WITHOUT PERMISSION..... 34
  - 18.3 DIRECT MARKETING ..... 35
  - 18.4 NOTICES..... 35
  - 18.5 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS..... 36
  - 18.6 ENTIRE AGREEMENT; AMENDMENTS ..... 36
  - 18.7 FORCE MAJEURE ..... 36
  - 18.8 EXPENSES..... 37
  - 18.9 NO JOINT VENTURE ..... 37
  - 18.10 NO RULE OF STRICT CONSTRUCTION..... 37
  - 18.11 COUNTERPARTS ..... 37
  - 18.12 DIGITAL SIGNATURES ..... 37
  - 18.13 WAIVER..... 37
  - 18.14 ADVERTISING LIMITATIONS ..... 37
  - 18.15 PRESS RELEASES ..... 38
  - 18.16 HEADINGS AND CAPTIONS..... 38
  - 18.17 SURVIVAL OF OBLIGATION..... 38
- ARTICLE 19 REMEDIES..... 38
  - 19.1 GENERAL..... 38



19.2 LIMITATIONS..... 38

19.3. DISCLAIMER .....39

EXHIBIT A - PART 1 PRICES AND TERMS ..... 41

EXHIBIT A - PART 2 PRICES AND TERMS (continued)..... 43

EXHIBIT B - CONTACT, NOTICE AND PAYMENT INFORMATION ..... 45

EXHIBIT C - OPTION FOR ALTERNATIVE SUPPLY OF POWER..... 46

## PREAMBLE

This Community Choice Aggregation Electricity Supply Agreement (“**ESA**” or “**Agreement**”) is made as of [DATE] (the “**Execution Date**”) between:

The [NAME OF MUNICIPALITY], a [NAME OF ENTITY] in the State of New York, with a principal place of business at [MUNICIPALITY ADDRESS] (the “**Municipality**”);

[NAME OF SUPPLIER], a [TYPE OF ENTITY] [organized/incorporated] in the State of [STATE OF ORGANIZATION/INCORPORATION] duly authorized to do business in the State of New York with a principal place of business at [SUPPLIER ADDRESS] (“**Competitive Supplier**” or “**Supplier**”); and

Joule Assets, Inc., a corporation incorporated in the State of Delaware duly authorized to do business in the State of New York, with a principal place of business at 22 Edgemont Road, Katonah, New York 10536 (“**Joule**” or “**Program Administrator**”).

## RECITALS

WHEREAS, Joule Assets sought approval of a community choice energy aggregation (“**Community Choice Aggregation**” or “**CCA**”) program through the Public Service Commission of the State of New York (“**PSC**”), that would allow local governments to participate in a program managed by Joule to procure energy supply from an Energy Services Company for the Eligible Consumers of participating municipalities;

WHEREAS, by Order effective March 16, 2018 (Case 14-M-0224: <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=14-m-0224>), the PSC approved and authorized Joule to implement its CCA program;

WHEREAS, the Joule CCA program is intended to include Eligible Consumers, and to permit the aggregation of electric purchases within the communities that elect to participate;

WHEREAS, the Municipality has adopted a Local Law to participate in the Joule Community Choice Aggregation Program (the “**Program**”) to aggregate consumers located within the Municipality and to negotiate competitive rates for the supply of electricity for such consumers;

WHEREAS, the Program allows Municipality to solicit competitive bids for the supply of electricity individually or as part of a buying group with other municipal aggregations;

WHEREAS, the Municipality has indicated that it desires to offer a 100% renewable supply option to Participating Consumers as a “default” option (the “CCA Renewable Electricity Product” as defined below) with the potential for Participating Consumers to have the ability to change to an alternate product option consisting of the alternative standard product described in EXHIBIT A - Part 2 (the “CCA Conventional Electricity Product” as defined below);

WHEREAS, Joule and Municipality have entered into a Community Choice Aggregation Agreement (the "CCA Agreement") pursuant to which Joule and Municipality agreed, among other things, that Joule would provide certain energy services to Municipality in relation to a CCA Program including acting as Program Administrator.

WHEREAS, Municipality desires to implement a CCA Program with Joule serving as Program Administrator;

WHEREAS, the Municipality has resolved, among other things: (a) to authorize Joule to issue an electricity supply RFP to suppliers to provide electricity to Participating Consumers (as defined below); (b) to authorize Joule to award an electricity supply contracts in accordance with such RFP; (c) to approve the form of this ESA; and (d) to authorize execution of an ESA with the awarded supplier provided that the bid met the specifications set forth in the RFP;

WHEREAS, Competitive Supplier desires to provide Full-Requirements Power Supply to Eligible Consumers located within the Municipality, pursuant to the terms and conditions of the Program and this ESA;

WHEREAS, the Municipality desires that the Competitive Supplier provide Firm Full-Requirements Power Supply and Consolidated Billing as an alternative to Basic Utility Supply Service for consumers within the Municipality;

WHEREAS, Competitive Supplier has submitted an offer to provide the following: (1) a CCA Renewable Electricity Product and Price, if included and attached as EXHIBIT A Part 1; and/or (2) a CCA Conventional Electricity Product and price if included and attached as EXHIBIT A Part 2;

WHEREAS, Competitive Supplier agrees to pay a fee to Program Administrator;

WHEREAS, Municipality desires Competitive Supplier to collect and remit the fees due the Program Administrator; and

NOW THEREFORE, IT IS AGREED THAT, Municipality, Program Administrator, and the Competitive Supplier hereby enter into this ESA subject to the terms and conditions below.

## ELECTRICITY SUPPLY AGREEMENT

### ARTICLE 1 -- DEFINITIONS

Capitalized terms that are used but not defined in the body of this ESA, including the exhibits hereto, shall be defined as set forth in this ARTICLE 1. Words defined in this ARTICLE 1 that are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

1.0 **Associated Entities** – Any and all of the employees, officers, agents, representatives, and independent contractors and subcontractors of the Competitive Supplier or of any of its corporate parents or subsidiaries, which provide goods or services to, or in any way assist, the Competitive Supplier in meeting its obligations under the ESA, but specifically excluding the Distribution Utility.

1.1 **Bankruptcy** - With respect to a Party, (i) such Party ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any corporate action to authorize or that is in contemplation of the actions set forth in this clause (i); or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule and such proceeding is not dismissed within ninety (90) days after the commencement, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal or otherwise within ninety (90) days after the appointment, or, within ninety (90) days after the expiration of any such stay, has not been vacated, provided that, notwithstanding the foregoing, the exercise of rights to take over operation of a Party's assets, or to foreclose on any of a Party's assets, by a secured creditor of such Party (including the appointment of a receiver or other representative in connection with the exercise of such rights) shall not constitute a Bankruptcy.

1.2 **Basic Utility Supply Service**— Electricity supply service provided by the Distribution Utility to consumers who do not receive service from a Competitive Supplier or from the CCA Program. Eligible Consumers within the Municipality who receive Basic Utility Supply Service, and do not opt out, will be enrolled in the Program as of the Effective Date.

1.3 **Clean Energy Standard** - the clean energy standard for electric power for load serving entities established by New York State (including without limitation those mandated by the 2015 New York State Energy Plan, and the Order of the New York State Public Service Commission Adopting a Clean Energy Standard (Case 15-E-0302) (Issued August 1, 2016).

1.4 **Commercially Reasonable** - Any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations, as defined in the Uniform Business Practices or without limitation in additional applicable law and regulations, provided that in no event shall increased costs or economic hardship be an excuse for not performing a Party's obligations under this ESA.

1.5 **Community Choice Aggregation or CCA** – Municipal electricity procurement program, purchasing supply for the aggregated demand for all Participating Consumers within the Municipality.

1.6 **CCA Renewable Electricity Product** – 100% renewable energy supply product offered to Participating Consumers that consists of (a) 100% renewable energy supply that is composed of solar, hydro and/or wind power and that is bundled with voluntary Tier II Renewable Energy Certificates that, together with the minimum Clean Energy Standard requirements provide Renewable Energy Certificates for 100% of the energy consumed by Participating Consumers; and/or (b) energy supply that meets the minimum Clean Energy Standard sold together with voluntary Tier II Renewable Energy Certificates that, together, provide Renewable Energy Certificates for 100% of the energy consumed by Participating Consumers from solar, hydro and/or wind energy generating facilities, as further described and defined in Exhibit A (Prices and Terms).

1.7 **CCA Conventional Electricity Product** – electricity generation mix offered to Participating Consumers that meets the minimum Clean Energy Standard for electric power established by New York State, as further described and defined in EXHIBIT A – Part 2 (Prices and Terms) if applicable.

1.8 **Competitive Supplier or Energy Services Company or ESCO**– A load serving entity duly authorized to (a) serve Eligible Consumers within the service territory of the Distribution Utility and (b) conduct business in the State of New York as an Energy Services Company. With regard to this Agreement, Competitive Supplier is identified in the preamble above.

1.9 **Consolidated Billing** - A billing option that provides Participating Consumers with a single bill issued by the Distribution Utility combining delivery and supply charges from the Distribution Utility and Competitive Supplier respectively.

1.10 **Delivery Term** - The period of time for which prices for Firm Full-Requirements Power Supply have been established, as set forth in EXHIBIT A.

1.11 **Distribution Utility** - Owner or controller of the means of distribution of electricity that is regulated by the Public Service Commission in the Participating Municipality.

1.12 **Electronic Data Interchange or EDI** - The exchange of business data in a standardized format between business computer systems.

1.13 **Effective Date** - The day after the Execution Date that is immediately following the final day of the rescission period, which immediately follows the opt-out period, which occurs after notifications have been sent to Eligible Consumers.

1.14 **Eligible Consumer** – a consumer who:

- (a) is a part of an opt-out eligible service class and rate class in accordance with the Framework Order and all other applicable Orders of the PSC and Governmental Rules; and
- (b) who receives Basic Utility Supply Service from the Distribution Utility as of the Effective Date, or is a New Consumer (as defined below) at one or more locations within the geographic boundaries of the Municipality; but
- (c) excluding consumers who receive Basic Utility Supply Service and have requested not to have their account information shared by the Distribution Utility.

For the avoidance of doubt, an Eligible Consumer must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality, as such boundaries exist on the Execution Date of this ESA.

1.15 **ESA** - This Electricity Supply Agreement.

1.16 **Environmental Disclosure Program** -- The current and future rules and requirements applicable in New York State to the labelling and disclosures of electric supply. Competitive Supplier agrees to comply with any current and/or future rules and regulations related to Environmental Disclosure Labels in the State of New York, and the rules relating the New York Generation Attribute Tracking System (NYGATS).

1.17 **Federal Energy Regulatory Commission or FERC** -The United States federal agency with jurisdiction over interstate electricity sales, wholesale electric rates, hydroelectric licensing, natural gas pricing, and oil pipeline rates.

1.18 **Firm Full-Requirements Power Supply** - The service under which the Competitive Supplier provides all of the electrical energy, capacity, reserves, and ancillary services, transmission services, transmission and distribution losses, congestion management, and other such services or products necessary to provide firm power supply at a fixed contract price including all those components regardless of changes in kWh usage or customer grouping during this contract term to Participating Consumers at the Point of Sale.

1.19 **Force Majeure** - Any cause not within the reasonable control of the affected Party which precludes that party from carrying out, in whole or in part, its obligations under this ESA, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; landslides; earthquakes; floods; other natural catastrophes; strikes, lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the Municipality may not be asserted as an event of Force Majeure by the Municipality; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil or industrial disturbances or explosions. Nothing in this provision is intended to excuse any Party

from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of any Party shall not constitute an event of Force Majeure.

1.20 **Framework Order** -- The PSC Order establishing the framework for municipal CCA programs (Case 14-M-0224, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (issued April 21, 2016)), as may be amended from time to time.

1.21 **General Communications** - The type of communications described and defined in ARTICLE 5.7 herein.

1.22 **Governmental Authority** - Any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, including without limitation the New York Public Service Commission and the New York Department of Public Service excluding the Municipality.

1.23 **Governmental Rule** - Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, or similar form of decision of any Governmental Authority having the effect and force of law including without limitation the Joule Order, the Framework Order and all other Orders of the PSC, all as may be amended from time to time.

1.24 **Joule Order** – the PSC Order approving the Joule CCA Program (Case 14-M-0224, Order Approving Joule Assets' Community Choice Aggregation Program with Modifications" (issued March 16, 2018)), all as may be amended from time to time.

1.25 **kWh, kW** - Kilowatt-hour and kilowatt, respectively.

1.26 **Local Law** – A local law or ordinance, adopted by Municipality according to General Municipal Law, which authorizes Municipality to join the Joule Community Choice program.

1.27 **New Consumer** – An Eligible Consumer as of or after the Effective Date, including one that opts in to the Program or moves into Municipality.

1.28 **New Taxes** - Any taxes not in effect as of the Effective Date enacted by a Governmental Authority or the Municipality, to be effective after the Effective Date with respect to Firm Full-Requirements Power Supply, or any Governmental Rule enacted and effective after the Effective Date resulting in application of any existing tax for the first time to Participating Consumers.

- 1.29 **NYISO** - The New York Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New York and the bulk transmission of electricity throughout the New York power grid.
- 1.30 **Participating Consumer** – an Eligible Consumer who is enrolled in the Program, either because consumer receives Basic Utility Supply Service from the Distribution Utility as of the Effective Date and has not opted out, or is a New Consumer.
- 1.31 **Parties** - The Municipality, the Program Administrator, and the Competitive Supplier, as the context requires. In the singular, "Party" shall refer to any one of the preceding.
- 1.32 **Point of Delivery** - The boundary of the Distribution Utility's electricity franchise, or the point at which the Competitive Supplier delivers the power to the Distribution Utility.
- 1.33 **Point of Sale** - The electric meter for each Participating Consumer's account, as designated by the Distribution Utility, such that all line loss costs are included in Competitive Supplier price to bring power to the meter.
- 1.34 **Program** - Joule Community Choice Aggregation Program.
- 1.35 **Program Administrator** – Joule, authorized by PSC to put out for bid the total amount of electricity being purchased by Participating Consumers.
- 1.36 **PSC or DPS** -- The New York State Public Service Commission or the New York State Department of Public Service acting as Staff on behalf of the PSC, or any successor state agency.
- 1.37 **Qualifying Regulatory Event** — A Regulatory Event that impacts or provides opportunity for substantially all consumers in the same rate class, but not including a Regulatory Event that applies uniquely to Competitive Supplier.
- 1.38 **Regulatory Event** -- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation.
- 1.39 **Renewable Energy Certificate** –A renewable energy certificate registered in, and fully compliant with, the New York (State) Generation Attribute Tracking System ("NYGATS") operating rules, dated May 18, 2018, as may be amended from time to time.
- 1.40 **Retail Price** - As set forth in EXHIBIT A.



1.41 **Service Commencement Date** - The date of a Participating Consumers' first meter read date after the Effective Date, or as soon as necessary arrangements can be made with the Distribution Utility thereafter.

1.42 **Term** - As defined in ARTICLE 4.1.

1.43 **Uniform Business Practices** – Regulations governing the business practices of utilities and Energy Services Companies with regards to service, billing, marketing, data, and customer rights, issued by the New York State Public Service Commission (Case 98-M-1343).

## **ARTICLE 2 -- RIGHTS GRANTED**

### 2.1 GENERAL DESCRIPTION AND LIMITATIONS

Competitive Supplier is hereby granted the exclusive right to be the default provider of Firm Full-Requirements Power Supply to Participating Consumers pursuant to the terms of this ESA. For the avoidance of doubt, Competitive Supplier shall be authorized to supply Firm Full- Requirements Power Supply only to Participating Consumers enrolled in the plan or plans managed by the Program Administrator, and the Distribution Utility will continue to have the right and obligation to supply electricity to Eligible Consumers who opt-out of the Program and remain on, or return to, Basic Utility Supply Service, until changes in law, regulation or policy may allow otherwise.

In accordance with ARTICLE 3 below, all Eligible Consumers shall be automatically enrolled in the Program unless they choose to opt-out. In the event the geographic boundaries of the Municipality change during the term of this ESA, Competitive Supplier shall only be obligated to supply Firm Full-Requirements Service to those Participating Consumers located within the Municipality as such boundaries existed on the Effective Date of this ESA. As between the Parties, the Competitive Supplier has the sole obligation of making appropriate arrangements with the Distribution Utility, and any arrangements which may be necessary with the NYISO so that Participating Consumers receive the electricity supplies to be delivered pursuant to this ESA.

The Municipality specifically authorizes the Distribution Utility to provide, and Competitive Supplier the right to obtain and utilize as required, all billing and energy consumption information for Participating Consumers as is reasonably available from the Distribution Utility. Competitive Supplier shall request consumption data for individual Participating Consumers from the Distribution Utility via EDI or via other adopted standards such as secure ftp. If further action is required by the Distribution Utility to authorize Competitive Supplier to receive such consumption and billing data, the Program Administrator, on behalf of the Municipality agrees to use Commercially Reasonable efforts, at Competitive Supplier's cost, to assist Competitive Supplier, if so requested by it, in obtaining such information for Participating Consumers, including, without limitation, assisting Competitive Supplier in obtaining permission from such Eligible Consumers and/or the PSC, where necessary as a prerequisite to the provision of such information. Competitive Supplier shall not be responsible for any errors that Competitive Supplier or any of

its Associated Entities makes in the provision of Firm Full-Requirements Power Supply only to the extent both that: 1) such errors are caused by errors or omissions in the information provided to it by the Distribution Utility; and 2) it was reasonable for the Competitive Supplier to rely upon that provided information. The Municipality shall not be responsible for any such errors by the Competitive Supplier in any event.

## 2.2 NO THIRD PARTY BENEFICIARIES

Except as specifically provided in ARTICLE 18.12, this ESA does not and is not intended to confer any rights or remedies upon any person other than the Parties. This ESA facilitates rights under the Joule Order and Local Law for Eligible Consumers to purchase electricity from the Competitive Supplier in accordance with this ESA. The Municipality, or Program Administrator in support of the Municipality, has the right, but not the obligation, to advocate on behalf of the Eligible Consumers interested in contracting for electric supply and on behalf of all Participating Consumers, unless otherwise prevented by law.

## 2.3 COMPLIANCE WITH LAWS

The Municipality represents and covenants that the Local Law has been duly adopted.

## 2.4 CONDITIONS PRECEDENT

The Municipality's obligations under this ESA shall be conditioned upon the Competitive Supplier fulfilling the following requirements:

- (d) maintain Competitive Supplier's license from PSC (as such term is defined in the Local Distribution Utility's Terms and Conditions for Competitive Suppliers);
- (e) execute any appropriate NYISO applications and agreements;
- (f) obtain authorization from the FERC to sell power at market-based rates;
- (g) complete data (e.g. EDI, secure ftp) testing with Distribution Utility;
- (h) provide all other documentation required by the Distribution Utility; and
- (i) satisfying all insurance requirements set forth in ARTICLE 16 or elsewhere in this ESA.

If Competitive Supplier has not fulfilled all such requirements by the Service Commencement Date, then the Municipality may terminate this ESA without any liability from Municipality to the Competitive Supplier.

## 2.5 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA

Competitive Supplier acknowledges that: 1) all Eligible Consumer data (including addresses, telephone numbers or other identifying information) made available to Competitive Supplier on behalf of Municipality for such data must be protected by the Competitive Supplier and its Associated Entities to the fullest extent possible under the law and all PSC Orders; 2) the Competitive Supplier does not hold any permanent right, title or interest in this data; and 3) this

data is to be obtained, retained and used by the Competitive Supplier and its Associated Entities solely to provide Firm Full-Requirements Power Supply to Participating Consumers and to render other services expressly required or permitted under this ESA. Any other use of Eligible Consumer data other than for purposes directly related to this ESA is not permitted without the prior written consent of the Municipality. Competitive Supplier may share such Eligible Consumer data with third-party vendors as reasonably necessary to accommodate Competitive Supplier's provision of Firm Full-Requirements Power Supply or other performance pursuant to this ESA (including, without limitation, collection of receivables), provided that Competitive Supplier will take reasonable measures to secure the confidential nature of such data and the restrictions set forth in this ARTICLE 2.5 and elsewhere in this ESA, and that any vendor or subcontractor is also bound by the terms and conditions of this ESA, especially those regarding data confidentiality and prohibition on non-permitted uses of data through a signed non-disclosure agreement, a copy of which will be provided to the Municipality. Except as expressly provided in this ESA, and as otherwise permitted by law, Competitive Supplier and its Associated Entities shall not disclose any Eligible Consumer data to any third-party and Competitive Supplier and its Associated Entities shall take all Commercially Reasonable measures to protect Eligible Consumer data from access by, or beneficial use for, any third-party. To the extent that the provision of Firm Full-Requirements Power Supply or other services under this ESA requires that Competitive Supplier and its Associated Entities have access to or make use of any Eligible Consumer data, Competitive Supplier and its Associated Entities shall treat such Eligible Consumer data as confidential information. Competitive Supplier may use Eligible Consumer data to engage in direct marketing only during the term of this ESA and subject to the terms set forth in ARTICLE 18.3. A violation of this ARTICLE 2.5 shall be grounds for termination under ARTICLE 4.2((a)). Competitive Supplier agrees violation of this ARTICLE 2.5 shall constitute irreparable harm.

Without limiting the foregoing, Competitive Supplier agrees to comply with all data security requirements of, including without limitation the terms of any data security agreement required by, the PSC, the DPS and any Distribution Utility in relation to the CCA and any confidential utility information disclosed to Competitive Supplier in performance of this Agreement. Competitive Supplier further agrees to execute any agreement in relation thereto as required by the PSC, the DPS and any Distribution Utility.

Additionally, Competitive Supplier agrees that it shall be fully and solely responsible for payment of all fees (including reimbursement of any such fees paid for by Program Administrator) in connection with acquisition of customer data from the applicable Distribution Utility in relation to the performance of this ESA; provided, however, that this provision shall not apply to the acquisition of aggregated data by Program Administrator or Municipality prior to the execution of this Agreement,

## 2.6 ENVIRONMENTAL DISCLOSURE PROGRAM

Competitive Supplier agrees to comply with any current and/or future rules and regulations related to Environmental Disclosure Program in the State of New York including without limitation all rules and regulations concerning labelling.

**ARTICLE 3 -- CONSUMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT****3.1 CONSUMER CHOICE**

The Parties acknowledge and agree that all Participating Consumers have the right, pursuant to Joule Order, Local Law, and the Program, to change their source of electricity supply, as set forth in ARTICLE 2.1. The Parties represent, warrant and covenant to each other that they shall not interfere with the right of Participating Consumers to opt-out of the Program, and shall comply with any rules, regulations or policies of PSC, the Distribution Utility and/or other lawful Governmental Authority regarding the procedures for opting out or of switching from one source of electric supply to another. Not inconsistent with the above, however, the Parties may take Commercially Reasonable measures to encourage Participating Consumers to affirmatively agree to remain in the Program, consistent with any Governmental Rules.

**3.2 NOTIFICATION TO NEW CONSUMERS OF OPT-OUT RIGHTS**

Consistent with the requirements of any applicable Governmental Rules, and within a reasonable time after the Distribution Utility notifies Competitive Supplier of the existence of a New Consumer and has provided to Competitive Supplier such New Consumer's account number, service and billing address, and other pertinent contact information, Competitive Supplier shall notify such New Consumer (i) of the date on which such New Consumer will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing Firm Full-Requirements Power Supply to such New Consumer as of the same date, subject to the opt-out provisions of the Joule Order, Local Law, and the Program ("**Opt-Out Notice**"). The Opt-Out Notice shall be mailed to each such New Consumer prior to the date of automatic enrollment and shall: (i) prominently state all charges to be assessed by the Competitive Supplier; (ii) at a minimum, provide a summary of the prices and terms included in EXHIBIT A as well as fully disclose the prices and terms then being offered for Basic Utility Supply Service by the Distribution Utility; (iii) state how such New Consumer may opt-out of the Program prior to enrollment and remain on Basic Utility Supply Service from the Distribution Utility; and (iv) state how all Participating Consumers, subsequent to enrollment, will also have the right to opt-out at any time and return to Basic Utility Supply Service or choose a new Competitive Supplier without paying a fee or penalty to Competitive Supplier. All forms of such notices must be approved in advance by the Municipality.

In providing the notifications set forth in this ARTICLE 3.2, and in otherwise conducting the activities in ARTICLE 3.4 below, the Competitive Supplier must rely upon information provided to it by the Distribution Utility for the purpose of performing its obligations. Competitive Supplier will not be responsible for any errors in connection with notification of Eligible Consumers only to the extent both that: 1) such errors are caused by errors or omissions in the information provided to it by the Distribution Utility; and 2) it was reasonable for the Competitive Supplier to rely upon that provided information. The Municipality shall not be responsible for any such errors by the Competitive Supplier in any event.

### 3.3 CONSUMER AWARENESS

Upon mutual agreement concerning the content and method, either the Competitive Supplier, Municipality, or Program Administrator may conduct consumer awareness efforts at its sole expense.

### 3.4 ENROLLMENT

#### 3.4.1 Participating Consumers

All Eligible Consumers as of the Effective Date will be enrolled in the Program, thus becoming Participating Consumers, under the terms of this ESA unless they opt-out during the 33-day period following initial communication through the opt-out letter. Participating Consumers may disenroll from the Program at any time thereafter with no fee or penalty. The Municipality shall authorize the Distribution Utility to provide to Competitive Supplier or to an alternative designee of the Program Administrator who has agreed in writing to a non-disclosure agreement, a copy of which will be provided to the Municipality, a list of Participating Consumers as of the Effective Date, as well as such Participating Consumer's service and billing addresses, and any other information necessary for Competitive Supplier to commence Firm Full-Requirements Power Supply to such Participating Consumers as of the Service Commencement Date.

#### 3.4.2 New Consumers

If New Consumers elect not to opt-out of the Program as provided in ARTICLE 3.2, such New Consumers will be automatically enrolled by Competitive Supplier in the Program. These New Consumers electing not to opt out of the Program as provided in ARTICLE 3.2 shall be enrolled in the Program at the rates reflected in EXHIBIT A. Competitive Supplier shall enroll such New Consumers in accordance with applicable PSC and Distribution Utility rules.

#### 3.4.3 Eligible Consumers Opting Out

At any time during the Term of this ESA, Eligible Consumers who have previously opted out of the Program may request that they be enrolled or re-enrolled in the Program. Competitive Supplier shall provide Firm Full-Requirements Power Supply to such Eligible Consumers at a price determined by the then-prevailing market conditions, as defined in EXHIBIT A. Following mutually agreed upon procedures, the Competitive Supplier is responsible for accurately and promptly transmitting information regarding Eligible Consumers, to the Distribution Utility. The Competitive Supplier shall be responsible for enrolling all Participating Consumers through data (e.g. EDI or secure ftp) transactions submitted to the Distribution Utility for initial enrollment in the aggregation and all enrollments thereafter.

#### 3.4.4 Consumers Served by Third-Parties

Consumers being served under other competitive supply programs offered by third-parties will not be automatically enrolled as Participating Consumers under this ESA when such program terminates or is otherwise completed. Competitive Supplier agrees that consumers under such third-party competitive supply programs may affirmatively opt-in at any time and receive Firm Full-Requirements Power Supply, thereby becoming Participating Consumers. New Consumers who opt-in as provided in this ARTICLE 3.4.4 shall be enrolled in the Program at the rates reflected in EXHIBIT A.

#### 3.4.5 Termination Fees

There shall be no termination fees for any Participating Consumers to disenroll from the Program.

### **ARTICLE 4 -- TERM OF CONTRACT AND TERMINATION**

#### 4.1 TERM

This ESA shall commence on the Execution Date, provided, however, that Competitive Supplier's obligation to provide Firm Full-Requirements Power Supply shall commence on the Service Commencement Date, and shall terminate with the Participating Consumers' "Final Meter Read Date" determined by the Parties and set forth in EXHIBIT A Parts 1 and 2, as applicable, in the paragraphs with the heading "Term", unless terminated earlier under ARTICLE 4.2 below.

#### 4.2 TERMINATION

This ESA may be terminated at any time upon written notice:

- (a) by the Municipality, or the Competitive Supplier, if the other Party fails to remedy or cure any breach of any material provision or condition of this ESA (including, but not limited to, ARTICLE 2.5 and ARTICLE 9), but excluding the failure to provide or arrange for Firm Full-Requirements Power Supply, which is addressed in ARTICLE 4.2(f), within sixty (60) days following written notice to do so by the non-breaching party; or
- (b) by the Municipality, or the Competitive Supplier, if any material provision or condition of this ESA be finally adjudged invalid by any court of competent jurisdiction, or if PSC exercises any lawful jurisdiction so as to invalidate or disapprove this ESA in whole or in significant part; or
- (c) by the Municipality, if a Regulatory Event that is not a Qualifying Regulatory Event affects the Competitive Supplier and Competitive Supplier incurs costs and chooses to allocate and collect excess costs from Participating Consumers; or
- (d) by the Municipality, if a court, PSC or other lawful authority makes an adjudication that nullifies or materially alters any of the provisions of ARTICLE 6; or
- (e) by the Municipality, i) if an order is entered against the Competitive Supplier approving a petition for an arrangement, liquidation, dissolution or similar relief relating to Bankruptcy or insolvency and such order remains unvacated for thirty (30) days; or (ii) immediately if

- the Competitive Supplier shall file a voluntary petition in Bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to Bankruptcy, insolvency or other relief for debtors or shall seek, consent to, or acquiesce in appointment of any trustee, receiver, or liquidation of any of Competitive Supplier's property; or
- (f) notwithstanding the foregoing, the failure of Competitive Supplier to provide or arrange for Firm Full-Requirements Power Supply to Participating Consumers, in the absence of Force Majeure or the Municipality's failure to perform, shall constitute an act of default, and the Municipality may terminate this ESA upon giving written notice and without a cure period. In the event the Competitive Supplier has performed its obligations hereunder and its failure to arrange for or provide Firm Full-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Distribution Utility, or the NYISO, the Competitive Supplier's failure shall not be deemed to be an act of immediate default and would be subject to remedy or cure as provided in ARTICLE 4.2((a)).

#### 4.3 OBLIGATIONS UPON TERMINATION

Following termination of this ESA, the Parties shall each discharge by performance all obligations due to any other Party that arose up to the date of termination of the ESA and Competitive Supplier shall continue to have the right to collect all monies due for services rendered to that date.

Upon termination, Competitive Supplier shall have all Participating Consumers switched back to obtaining supply from the Distribution Utility, or support the Distribution Utility as reasonably possible to switch to another supplier selected by Municipality, by submitting all consumer drops via EDI or alternative data protocol to the Distribution Utility, or such other supplier, in a form acceptable to the Distribution Utility, or such other supplier.

#### 4.4 EXTENSION

The ESA may be extended beyond the termination date established in ARTICLE 4.1 by mutual written agreement of the Parties. Any new pricing terms shall be added to and replace EXHIBIT A as EXHIBIT A Extension. Upon any such extension, this ESA shall continue to be in effect, and all provisions of the ESA shall retain the same force and effect as before the extension, unless it is terminated by any Party pursuant to the provisions of ARTICLE 4.2 or until the date stated in such extension.

### ARTICLE 5 -- CONTINUING COVENANTS

The Competitive Supplier agrees and covenants to perform each of the following obligations during the term of this ESA.

#### 5.1 STANDARDS OF MANAGEMENT AND OPERATIONS

In performing its obligations hereunder, during the term of this ESA, the Competitive Supplier shall exercise reasonable care to assure that its facilities are prudently and efficiently managed; that it employs an adequate number of competently trained and experienced personnel to carry out

its responsibilities; that it delivers or arranges to deliver an uninterrupted supply of such amounts of electricity to the Point of Delivery as are required under this ESA; that it complies with all relevant industry standards and practices for the supply of electricity to Participating Consumers; and that, at all times with respect to Participating Consumers, it exercises good practice for a Competitive Supplier and employs all Commercially Reasonable skills, systems and methods available.

## 5.2 CUSTOMER SERVICE ACCESS

The Competitive Supplier agrees to provide, or cause to be provided, certain customer services to Participating Consumers. Such services shall be reasonably accessible to all Participating Consumers, shall be available during normal working hours, shall allow Participating Consumers to transact business they may have with the Competitive Supplier, and shall serve as a communications liaison among the Competitive Supplier, the Municipality, and the Distribution Utility. A toll-free telephone number will be established by Competitive Supplier and be available for Participating Consumers to contact Competitive Supplier during normal business hours (9:00 A.M.- 6:00 P.M. Eastern Time, Monday through Friday), as well as 9:00am-1:00pm on Saturday, to resolve concerns, answer questions and transact business with respect to the service received from Competitive Supplier. To the extent practicable, the Municipality will post program-related information on the Municipality's website which will be available to Participating Consumers for general information, comparative pricing, product, and service information, and other purposes.

## 5.3 RESPONDING TO REQUESTS FOR INFORMATION

To the extent authorized by the Participating Consumer(s) and to the extent such individual permission is required by law, the Competitive Supplier shall, during normal business hours (as set forth above), respond promptly and without charge therefore to reasonable requests of the Municipality for information or explanation regarding the matters covered by this ESA and the supply of electricity to Participating Consumers. Competitive Supplier agrees to designate a service representative or representatives (the "**Service Contacts**") who shall be available for these purposes, and shall identify the office address and telephone number of such representative(s).

Whenever necessary to comply with this ARTICLE 5.3, the Service Contacts shall call upon other employees or agents of the Competitive Supplier to obtain such information or explanation as may be reasonably requested. Nothing in this ARTICLE 5.3 shall be interpreted as limiting the obligation of the Competitive Supplier to respond to complaints or inquiries from Participating Consumers, or to comply with any regulation of PSC regarding customer service.

## 5.4 ARRANGING FOR FIRM FULL-REQUIREMENTS POWER SUPPLY

Competitive Supplier shall participate in or make appropriate arrangements with NYISO, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of Firm Full-Requirements Power Supply to the Distribution Utility for delivery to Participating Consumers, and exercise all Commercially Reasonable efforts to



cooperate with NYISO or any other entity to ensure a source of back-up power in the event that Competitive Supplier is unable to deliver Firm Full-Requirements Power Supply to the Point of Delivery. In the event the Competitive Supplier is unable to deliver sufficient electricity to the grid to serve Participating Consumers, the Competitive Supplier shall utilize such arrangements and exercise all Commercially Reasonable efforts as may be necessary to continue to serve Participating Consumers under the terms of this ESA, and shall bear any costs it may incur in carrying out these efforts and obligations. Competitive Supplier shall not be responsible to the Municipality or any Participating Consumers in the event that, through no fault of the Competitive Supplier or its Associated Entities, the Distribution Utility disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by NYISO).

#### 5.5 NON-DISCRIMINATORY PROVISION OF SERVICE

Competitive Supplier shall supply electric energy to the Point of Delivery to all Participating Consumers on a non-discriminatory basis; provided, however, that those prices and other terms may vary in accordance with reasonably established rate classifications (e.g., residential and small commercial as defined by the Distribution Utility) or by such other categories as appear in EXHIBIT A. To the extent applicable, Competitive Supplier's prices, terms and conditions shall be in accordance with the New York General Laws, the regulations of PSC, and other applicable provision of law. To the extent required by law and/or the conditions of any PSC approval of this ESA, the Competitive Supplier may not deny service to an Eligible or Participating Consumer for failure to pay the bills of any other electric company (whether engaged in the distribution, transmission, or generation of electricity) or of any other aggregator, marketer or broker of electricity, but may reasonably deny or condition new service, or terminate existing service, based upon any Participating Consumer's failure to pay bills from the Competitive Supplier, subject to any provisions of law or applicable PSC orders or regulations. Provision of electric energy supply shall be subject to reasonable credit policy, to the extent permitted by law, as described in EXHIBIT A.

In any event, should either Program Administrator or Municipality actively achieve and document (e.g. to the satisfaction of the New York State Public Service Commission and the Distribution Utility) reduction in capacity tag buying obligations, Competitive Supplier will pay or distribute benefits from these tag reductions to Participating Consumers at the NYISO strip clearing price for the appropriate zone (i.e., Zones A through K in New York State), in which the capacity tag reduction is certified by appropriate party. Program Administrator agrees it does not intend to pursue any actions that would increase the capacity tag obligation to Competitive Supplier.

Should either Program Administrator or Municipality actively achieve reduction in buying requirements for other mandated purchases, Competitive Supplier will liquidate resources it has purchased to serve this contract, through the NYISO platform and pay or distribute benefits to Participating Consumers, from this reduction in buying requirements that Competitive Supplier receives when Supplier liquidates these purchased resources.

## 5.6 APPROVAL OF GENERAL COMMUNICATIONS

Competitive Supplier shall cooperate with the Municipality in the drafting and sending of messages and information to Eligible or Participating Consumers concerning the Program or any matter arising under or related to this ESA. Competitive Supplier shall, prior to sending, whether directly or through its Associated Entities, any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "**General Communications**") to Eligible or Participating Consumers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual consumer), provide a copy of such General Communication to the Municipality and to Program Administrator for its review to determine whether it is consistent with the purposes and goals of the Municipality and Program Administrator. The Municipality or Program Administrator shall have the right to disapprove such General Communications and suggest revisions within seven (7) calendar days (not including weekends and holidays) of receiving a copy thereof if it finds the communication inconsistent with the purposes and goals of the Municipality, factually inaccurate or likely to mislead; provided, however that there shall be no such right of disapprove for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; or (b) in the nature of routine monthly or periodic bills, or collection notices, except that, with regard to any bill insert or message included at the bottom of such bill not within the scope of (a) above, Municipality or Program Administrator shall have such right of disapproval. If the Municipality objects to any General Communication on the grounds it is inconsistent with the purposes and goals of the Municipality, the Competitive Supplier, after consultation as provided in this ARTICLE 5.6, may nevertheless elect to send such General Communication provided that it: (i) clearly indicates on such communication that it has not been endorsed by the Municipality, and (ii) has previously provided all Participating Consumers a meaningful chance to opt not to receive such General Communications. The Municipality may reject or exclude any proposed General Communication that, in its reasonable judgment, is contrary to the interests and objectives of the Program or the Municipality, provided, however, any such right of rejection or exclusion shall not apply to Competitive Supplier's notice to exercise or enforce its rights under the ESA or any agreement with customer, including but not limited to any notice of Force Majeure or change in law.

## 5.7 COMMUNICATION OF INSERTS AND MESSAGES

Competitive Supplier agrees that if it communicates with Participating Consumers directly (or if it is provided a certain number of characters on the regular bill for discretionary communication), and unless prevented for regulatory or other such reasons from doing so, it shall allow the Municipality or Program Administrator to include no less than three (3) inserts per year into such communications, provided that the Program Administrator or Municipality, where appropriate pays the cost of printing and reproducing such insert and any incremental postage or handling costs the Competitive Supplier may incur as a result of including such insert. Competitive Supplier shall have the right to disapprove such General Communications (other than those pertaining to the Municipality's demand-side management, energy efficiency programs and technology, and renewable energy programs, if applicable) and suggest revisions within seven (7) calendar days

after receipt (not including weekends and holidays) if it finds the communication inconsistent with its business interests, factually inaccurate or likely to mislead; provided, however that there shall be no such right of disapproval for any communication which has been ordered by PSC or any other Governmental Authority to be so communicated.

#### 5.8 PARTICIPATING CONSUMER LISTS

To the extent not prohibited by any Governmental Rule or expressly prohibited by any Participating Consumer(s), the Competitive Supplier shall, upon request of the Municipality or of Program Administrator, provide aggregate consumption information as the Municipality or Program Administrator may request to the extent such information is available to Competitive Supplier.

Competitive Supplier shall provide Participating Consumer lists in an electronic format reasonably acceptable to both Parties and with no more frequency than once a month, subject to non-disclosure agreement for consumers who have not requested that their personal information be denied to Program Administrator or to Municipality.

#### 5.9 COMPLIANCE WITH LAWS

The Parties shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this ESA.

#### 5.10 CONSENT

Whenever performance of an obligation of any Party hereto requires the consent or approval of any Governmental Authority, such Party shall make Commercially Reasonable efforts to obtain such consent or approval. In the event the Competitive Supplier requests the Municipality's assistance in obtaining such consent or approval and the Municipality anticipates that it will incur costs in fulfilling the Competitive Supplier's request, it shall give the Competitive Supplier an estimate of such costs. Upon receiving the estimate, Competitive Supplier shall determine whether it will continue to request the Municipality's assistance, and if so, the Competitive Supplier shall reimburse the Municipality for all costs, up to the estimated dollar amount, reasonably incurred by the Municipality in connection with such efforts.

#### 5.11 CREDITWORTHINESS

Competitive Supplier represents, warrants and covenants that it is, and shall be, for the Term of this ESA, in compliance with all credit policies and requirements of the New York Independent System Operator.

#### 5.12 COMPLIANCE WITH RFP

Competitive Supplier (i) represents and warrants that all representations and statements of fact made as part of its RFP bid response are true and accurate as of the Effective Date; (ii) covenants that it shall perform all obligations of Competitive Supplier made as part of its RFP bid response; and (iii) to its knowledge, as of the Effective Date, is compliant with the terms and conditions set forth in the RFP.

Under this ESA, the Municipality shall not actually receive, take title to, or be liable for the supply or delivery of Firm Full-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the Municipality is established under the Joule Order and Local Law and may include negotiating the terms and conditions under which Firm Full- Requirements Power Supply will be provided by the Competitive Supplier under this ESA. It is the sole obligation of the Competitive Supplier to arrange for delivery of Firm Full- Requirements Power Supply to Participating Consumers. The Parties agree that, with regards to electricity, Municipality is not a “public utility company” or providing any “public utility service” within the meaning of GML 360 and ARTICLE 4 of Public Service Law as a result of this ESA. Should a court, PSC, or other lawful authority adjudicate to the contrary, the provisions of ARTICLE 4.2 (a) shall apply. However, the Municipality may be considered to be operating a municipal load aggregation plan pursuant to Joule Order and Local Law. The Competitive Supplier hereby agrees that it will take no action, whether directly or through its Associated Entities, that would make the Municipality liable to any Participating Consumer due to any act or failure to act on the part of the Competitive Supplier or its Associated Entities relating to the delivery or supply of Firm Full-Requirements Power Supply.

Municipality shall conduct outreach to the community in addition to the initial program notification letter as required by the Public Service Commission, which will be delivered at the Competitive Supplier’s expense, with a Business Reply Mail insert to allow Eligible Consumers to opt out without postage expense. As required by the Public Service Commission, Municipality will report on their endeavors to Program Administrator to inform residents on the Program and “non-demand charge” commercial businesses. In case of any doubt, Municipality shall retain final control of content related to all communications.

## **ARTICLE 7 -- ROLE OF PROGRAM ADMINISTRATOR**

### **7.1 PROGRAM ADMINISTRATOR RIGHTS AND DUTIES**

Program Administrator is responsible for Program organization, administration, procurement, and communications, unless otherwise specified herein or agreed in writing.

Program Administrator, agrees to:

- (a) Provide the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, requested information about and documentation of the actions undertaken by the Municipality in furtherance of enabling participation in the Program;
- (b) Prepare, or cause to be prepared, and provide the Municipality with requested and non-confidential information that the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, provide to the Program Administrator in furtherance of establishing the Program;

- (c) Upon execution hereof, initiate all the necessary steps to secure the needed information to fulfill the customer notification requirements of the Joule Order, including but not limited to the following: file final versions of customer opt-out letters, after the supply procurement is finalized, that provide details on Program contracts.
- (d) File any request for proposals or similar solicitation seeking electricity supply or other energy services and any draft correspondence on such services with DPS Staff for review.
- (e) Provide the Municipality with timely communications content to effect customer notification requirements for approval, such approval not to be unreasonably withheld, given the projected schedule of Program's implementation; and
- (f) Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program; and
- (g) Fulfill any other responsibilities as set forth in this agreement herein.

## 7.2 PROGRAM ADMINISTRATOR FEE

Competitive Supplier shall pay Program Administrator \$0.0008 for each kWh delivered, invoiced and paid for by Participating Consumers during the Term (“**Program Administrator Fee**” or “**Fee**”). The Parties agree that Competitive Supplier will remit the Program Administrator Fee to the Program Administrator, pursuant to the terms of this ESA. Competitive Supplier shall pass through such payments to Program Administrator for the duration of this ESA. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties.

## 7.3 PAYMENT OF FEE

Payment to Program Administrator will be made monthly by Automated Clearing House (“ACH”) (an electronic network for financial transactions) to the account set forth in EXHIBIT B hereto or as otherwise provide by Program Administrator, provided that Competitive Supplier has received payment with respect to the electricity used by the Participating Consumers. The Program Administrator Fee shall be paid by the last business day of the month based on revenue collected by Competitive Supplier with respect to each Participating Consumer during the calendar month two months prior. For example, full payments received in January will be paid by the end of March. If Competitive Supplier has paid a past Fee in error (or the payment was based on information subsequently determined invalid), it may deduct from or add to future payments due under this ESA and provide explanation of the error in sufficient detail.

Program Administrator shall provide the Municipality with a reasonably detailed accounting not less than annually of the program impact (e.g., rates paid vs utility rate), financial and other, including revenues received and expenses incurred on communication, administration and legal expenses.

## 7.4 INDEPENDENT CONTRACTOR

The Parties agree that Program Administrator is not an agent or employee of Competitive Supplier for any purpose. All expenses which are incurred by Program Administrator in connection with this ESA shall be borne wholly and completely by Program Administrator, except as otherwise agreed herein or in writing. Program Administrator shall be responsible for all state, federal, and local taxes, including estimated taxes and social security and employment reporting for Program Administrator or any employees or agents of Program Administrator.

**ARTICLE 8 -- PRICES AND SERVICES: BILLING****8.1 SCHEDULE OF PRICES AND TERMS**

Competitive Supplier agrees to provide Firm Full-Requirements Power Supply and other related services as expressly set forth herein in accordance with the prices and terms included in EXHIBIT A to this ESA, which exhibit is hereby incorporated by reference into this ESA.

**8.2 OBLIGATION TO SERVE**

As between the Parties, Competitive Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide Firm Full-Requirements Power Supply for all of the Participating Consumers under the Program. Competitive Supplier, except as explicitly limited by the terms included in EXHIBIT A, shall be obligated to accept all Participating Consumers, regardless of their location or energy needs provided such Participating Consumers are eligible under the applicable regulations and tariffs of the Distribution Utility.

**8.3 METERING**

The Parties understand and acknowledge that the Distribution Utility will be responsible for any metering which may be required to bill Participating Consumers in accordance with the rules governing the supply of electricity in the service territory of the Distribution Utility.

**8.3.1 Title**

Title to Firm Full-Requirements Power Supply will transfer from Competitive Supplier to Participating Consumers at the Point of Sale. In accordance with the rules governing the supply of electricity in the service territory of the Distribution Utility, Competitive Supplier will be responsible for any and all losses incurred on the local network transmission systems and distribution systems, as determined by the Distribution Utility.

**8.3.2 Billing and Payment**

Unless otherwise specified in an exhibit to this ESA, all billing under this ESA shall be based on the meter readings of each Participating Consumer's meter(s) performed by the Distribution Utility. Competitive Supplier shall cause the Distribution Utility to prepare and mail bills to Participating Consumers monthly. The Competitive Supplier shall adopt the billing and payment terms offered by the Distribution Utility to its Eligible Consumers on Basic Utility Supply Service. If actual meter date is unavailable, the Competitive Supplier may cause the Distribution Utility to

bill based on its good faith estimates of usage. Any over-charge or under-charge will be accounted for in the next billing period for which actual meter data is available.

### 8.3.3 Regional and Local Transmission

The prices quoted in EXHIBIT A do not include current and future charges for distribution service costs collected by the Distribution Utility under its distribution service tariff or local transmission costs as may be imposed by NYISO or individual electric utilities that have FERC transmission tariffs. The Competitive Supplier understands that these costs will be collected by the Distribution Utility. If, in the future, Competitive Supplier becomes responsible for such distribution or transmission costs, Competitive Supplier shall be entitled to collect such costs from Participating Consumers to the extent permitted by any Governmental Rules. These costs are "pass through" costs as determined by the appropriate regulatory agencies.

### 8.3.4 Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of Firm Full-Requirements Power Supply required to be collected by the Competitive Supplier shall be included on the Participating Consumer's bill and shall be remitted to the appropriate taxing authority by Competitive Supplier. For avoidance of doubt, it is understood that the Competitive Supplier shall include gross receipts tax in its preparation of Participating Consumers' bills. Participating Consumers shall be responsible for all taxes that are customarily imposed upon a purchaser of electricity and are associated with electricity consumption under the ESA. The Parties acknowledge and agree that Participating Consumers shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Competitive Supplier. For avoidance of doubt, Competitive Supplier shall be responsible for all taxes imposed upon it as a supplier of electricity, including taxes on Competitive Supplier's income.

## **ARTICLE 9 -- ADDITIONAL COMPLIANCE BY COMPETITIVE SUPPLIER**

Competitive Supplier agrees that it, and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier's obligations under the ESA, will comply with the applicable provisions of the Joule Order and any regulations, orders or policies adopted pursuant thereto.

In addition, Competitive Supplier specifically represents, warrants and agrees that it that it has reviewed and has fully complied and will fully comply with, all relevant regulations, requirements, and orders of the FERC, NYISO, and PSC.

Competitive Supplier shall comply with all requirements of the Request for Proposal issued in relation to this ESA, and to the extent such requirements conflict with the terms of this ESA than the terms of this ESA shall govern.

**ARTICLE 10 -- SERVICE PROTECTIONS FOR CONSUMERS****10.1 UNIFORM BUSINESS PRACTICES COMPLIANCE**

Competitive Supplier agrees that it and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier's obligations under the ESA shall comply with the provisions of the Uniform Business Practices, as applicable to Competitive Suppliers, and any amendments thereto, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program. In addition, the Competitive Supplier and its Associated Entities agrees to comply with any code of conduct or policies the PSC may adopt in accordance with the Joule Order and to all related Orders of Case 14-M-0224 to which the Program Administrator is required to adhere, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program.

**10.2 DESCRIPTION OF SUPPLIER'S PROCEDURES AND SERVICES**

The Competitive Supplier shall, on or before the Effective Date, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Municipality (which approval shall not be unreasonably withheld). Such written description shall also include the Competitive Supplier's plans for protecting the rights and protections of Participating Consumers under the Home Energy Fair Practices Act which requires that all utility customers be treated fairly with regard to application for service, customer billing, and complaint procedures. If the Participating Consumer(s) so permit(s) or to the extent such permission is required by law or the terms of any PSC order with respect to this ESA, the Competitive Supplier agrees to provide notice to the Municipality of any consumer complaints received from a Participating Consumer, and the Municipality shall have the right, but not the obligation, to participate (directly or through the Program Administrator) in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by PSC regulations and other applicable law. The failure to timely submit such written description, or the submission of practices and procedures which materially fail to comply with PSC regulations and policies, shall be deemed grounds for termination of this ESA, at the discretion of the Municipality after providing written notice by the Municipality or the Program Administrator, of such failure to the Competitive Supplier and allowing the Competitive Supplier sixty (60) days to cure such failure.

**10.3 DISPUTE RESOLUTION**

In accordance with the Uniform Business Practices, in the event of a dispute regarding an invoice or Competitive Supplier's service, whether directly or through its Associated Entities, under this ESA, a Participating Consumer may initiate a formal dispute resolution process by providing written notice to the PSC. The PSC will assist the Parties in reaching a mutually acceptable resolution. If no such resolution is reached within 40 calendar days of receipt of the formal written notice, any Party may request an initial decision from PSC. Parties may appeal this decision.



**ARTICLE 11 -- NON-DISCRIMINATION IN HIRING AND EMPLOYMENT**

Competitive Supplier agrees that it shall conduct its operations and activities under this ESA in accordance with all applicable state and federal laws regarding non-discrimination in hiring and employment of employees, and will require all Associated Entities to do the same.

**ARTICLE 12 -- POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION****12.1 POWER SUPPLY INFORMATION****12.1.1 Monthly Report of Sales**

Competitive Supplier shall provide the Program Administrator with a monthly report of sales which will contain at a minimum: (i) the actual aggregate kWh sales, rate and commission due to Program Administrator for each meter read of the reporting period (with billing "from and to" date); (ii) account status (e.g., active or cancelled); (iii) the number of Participating Consumer accounts active in each meter read of the reporting period; and (iv) other information reasonably requested. In addition, the aggregate kWh sales and number of Participating Consumer accounts shall be listed in the report both by Service Class and rate. The monthly report will be due to the Program Administrator within thirty (30) days following the close of each month. This information shall be provided in electronic format, satisfactory to the Program Administrator.

**12.1.2 Consumer-Related Data**

On and after the Service Commencement Date, Competitive Supplier will maintain consumer-related data in electronic form including utility account number, billing name, billing address, service address historical usage, demand, and ICAP (Installed Capacity) data. A violation of this ARTICLE 12.1.2 shall be grounds for termination under ARTICLE 4.2(a) unless such violation is due to a system or reasonable administrative error and the Competitive Supplier demonstrates to the Municipality's satisfaction that such system or administrative error exists and that the Competitive Supplier is acting in good faith to resolve such issue.

**12.1.3 Standard of Care**

Competitive Supplier and its Associated Entities shall use all Commercially Reasonable efforts in preparing and providing any information or data required under the ESA. To the extent that Competitive Supplier determines that any information or data provided hereunder is in error, it shall provide such information or data to the Municipality or its agent within a Commercially Reasonable time.

**12.2 POWER SUPPLY REPORT**

Unless the Environmental Disclosure Program labeling requirement is waived by PSC, Competitive Supplier shall present a copy of the current Environmental Disclosure Program label as and when required by PSC of all Competitive Suppliers to be disclosed to their Participating Consumers, which includes information pertaining to Competitive Supplier's power supply and a

reasonably detailed description of the sources of Competitive Supplier's power supply used to serve Participating Consumers pursuant to this ESA, except to the extent such disclosure would violate any confidentiality obligations of Competitive Supplier.

### 12.3 BOOKS AND RECORDS

Competitive Supplier shall keep its books and records in accordance with any applicable regulations or guidelines of PSC, FERC, and any other Governmental Authority and accounting standards. The Municipality will have electronic access to any reports mandated by the Securities and Exchange Commission which are available on the Internet "EDGAR" system. Upon reasonable request by the Municipality and at the Municipality's reasonable expense, Competitive Supplier or its Associated Entities shall provide reasonable back up for any charge under this ESA questioned by the Municipality.

### 12.4 COPIES OF REGULATORY REPORTS AND FILINGS

Upon reasonable request, Competitive Supplier shall provide to the Municipality a copy of each public periodic or incident-related report or record relating to this ESA which it files with any New York or federal agency regulating rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements, unless the Competitive Supplier is required by law or regulation to keep such reports confidential. Competitive Supplier shall be reimbursed its reasonable costs of providing such copies, if only available in hard copy.

## **ARTICLE 13 -- RESOLUTION OF DISPUTES: CHOICE OF LAW AND FORUM**

### 13.1 CHOICE OF LAW AND FORUM

This ESA and the rights of the Parties shall be interpreted and determined in accordance with the laws of the State of New York without respect to conflicts-of-laws principles. Any litigation arising hereunder shall be brought solely in the appropriate federal court in New York or appropriate state court sitting in the New York county in which the Municipality is located, to whose jurisdiction the Parties hereby assent, waiving all objections to venue or forum.

### 13.2 DISPUTE RESOLUTION

Unless otherwise provided for in this ESA, the dispute resolution procedures of this ARTICLE 13.2 shall be the exclusive mechanism to resolve disputes arising under this ESA. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this ESA. Any dispute that arises under or with respect to this ESA that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party(ies) involved in the dispute a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time is modified by written agreement of the Parties involved in the dispute. In the event that the Parties involved in the dispute cannot resolve a dispute by informal negotiations, the Parties may seek judicial relief or enforcement subject to the provisions of this ESA. Notwithstanding the foregoing, injunctive relief may be immediately sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this ESA.

## **ARTICLE 14 -- INDEMNIFICATION**

### **14.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER**

In addition to any other remedies available to the Municipality at law or equity, and notwithstanding any other provision contained herein, the Competitive Supplier shall indemnify, defend and hold harmless the Municipality and the Program Administrator ("**Indemnified Parties**") and the Indemnified Parties' elected officials, officers, owners, directors, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising directly from or in connection with (i) any material breach by Competitive Supplier or its Associated Entities of its obligations, covenants, representations or warranties contained in this ESA and not resulting from the actions (or omissions where there is a duty to act) of the NYISO, Distribution Utility, the Municipality, the Program Administrator or any of their elected officials, officers, owners, directors, employees, representatives, independent contractors or agents, if any or (ii) any action or omission taken or made by the Competitive Supplier or its Associated Entities in connection with Competitive Supplier's performance of this ESA.

### **14.2 NOTICE OF INDEMNIFICATION CLAIMS**

If the Municipality or Program Administrator seeks indemnification pursuant to this ARTICLE 14, it shall notify Competitive Supplier of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim.

### **14.3 SURVIVAL**

Notwithstanding any provision contained herein, the provisions of this ARTICLE 14 shall survive the termination of this ESA for a period of two (2) years with respect to (i) any claims which occurred or arose prior to such termination and (ii) any losses occurring as a result of the termination.

### **14.4 DUTY TO MITIGATE**

Each Party agrees that they have a duty to mitigate damages and covenant that they will use Commercially Reasonable efforts to minimize any damages they may incur as a result of the other Party's performance or non-performance of this ESA.

**ARTICLE 15 -- REPRESENTATIONS AND WARRANTIES****15.1 BY THE COMPETITIVE SUPPLIER**

As a material inducement to entering into this ESA, the Competitive Supplier hereby represents and warrants to the Municipality as of the Execution Date of this ESA as follows:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this ESA;
- (b) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- (c) the execution, delivery and performance of this ESA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;
- (d) subject to the conditions set forth in ARTICLE 2.4, this ESA constitutes a legal, valid and binding obligation of the Competitive Supplier enforceable against it in accordance with its terms, and the Competitive Supplier has all rights such that it can and will perform its obligations to the Municipality in conformance with the terms and conditions of this ESA, subject to Bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;
- (e) no Bankruptcy is pending against it or to its knowledge threatened against it;
- (f) none of the documents or other written information furnished by or on behalf of Competitive Supplier to or for the benefit of the Municipality pursuant to this ESA, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and
- (g) all information furnished by Competitive Supplier in response to the Request for Proposals for competitive electric supply services is true and accurate.

**15.2 BY THE MUNICIPALITY**

As a material inducement to entering into this ESA, the Municipality hereby represents and warrants to Competitive Supplier as of the Execution Date of this ESA as follows:

- (a) this ESA constitutes the legal, valid and binding contract of the Municipality enforceable in accordance with its terms, subject to applicable law;
- (b) the execution, delivery and performance of this ESA are within the Municipality's powers, have been or will be duly authorized by all necessary action;
- (c) Municipality has all authorizations from local Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and
- (d) no Bankruptcy is pending or threatened against the Municipality;

As a material inducement to entering into this ESA, the Program Administrator hereby represents and warrants to Competitive Supplier and Municipality as of the Execution Date of this ESA as follows:

- (a) this ESA constitutes the legal, valid and binding contract of Program Administrator enforceable in accordance with its terms, subject to applicable law
- (b) the execution, delivery and performance of this ESA are within Program Administrator's powers, have been or will be duly authorized by all necessary action;
- (c) Program Administrator has all authorizations from any local or state Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and
- (d) no Bankruptcy is pending or threatened against Program Administrator.

#### **ARTICLE 16 -- INSURANCE**

16.1 In order to help support the indemnifications provided in ARTICLE 14, and its other promises and covenants stated herein, Competitive Supplier shall secure and maintain, at its own expense, before the Effective Date and throughout the term of this ESA, unless otherwise specified, commercial general liability insurance of at least \$1,000,000 combined single limit and excess liability coverage of at least \$5,000,000 with insurers licensed to do business in the State of New York. Each of the required insurance policies shall be with insurers qualified to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition. In the event the Competitive Supplier's insurance carrier is downgraded to a rating of lower than Best's A-, Competitive Supplier shall have ninety (90) days to obtain coverage from a carrier with a rating of at least Best's A-. Proof acceptable to the Municipality that each such insurance coverage is in force and effect, and listing the Municipality as an additional insured on all policies, shall be submitted on or before the Effective Date and thereafter whenever renewed or requested by the Municipality. All insurers must be notified that the insurance policies must provide that a copy of any notice of cancellation or non-renewal will be sent to the Municipality.

16.2 With respect to any of the insurance policies provided by the Competitive Supplier pursuant to these requirements which are "claims made" policies, in the event at any time such policies are canceled or not renewed, the Competitive Supplier shall provide a substitute insurance policy with terms and conditions and in amounts which comply with these requirements and which provides for retroactive coverage to the date of the cancellation or non-renewal of the prior "claims-made" policy. With respect to all "claims made" policies which have been renewed, the Competitive Supplier shall provide coverage retroactive to the Effective Date under this ESA. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for not less than three (3) years after the date of the termination of the ESA.

16.3 Competitive Supplier, to the extent required by law, must provide worker's compensation insurance meeting all applicable state and federal requirements.

**ARTICLE 17 -- REGULATORY EVENT/NEW TAXES****17.1 REGULATORY EVENT**

If a Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If despite such best efforts, a Regulatory Event affects Competitive Supplier, and both Program Administrator and Municipality agree that Competitive Supplier is incurring excess costs as a result thereof and agrees that Competitive Supplier may recover such costs, such amount shall be allocated to and collected from Participating Consumers on a per kWh basis through applicable monthly invoice(s).

**17.2 QUALIFYING REGULATORY EVENT**

If a Qualifying Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If a Qualifying Regulatory Event affects Competitive Supplier and Competitive Supplier incurs materially excess or materially reduced costs as a result thereof, such amount shall be allocated to and collected from, or credited to, Participating Consumers on a per kWh basis through applicable monthly invoice(s).

**17.3 NEW TAXES**

If any New Taxes are imposed for which Competitive Supplier is responsible, the amount of such New Taxes shall be allocated to and collected from Participating Consumers through applicable monthly invoice(s).

**ARTICLE 18 -- MISCELLANEOUS****18.1 OPTION FOR ALTERNATIVE SUPPLY OF POWER**

The Parties agree that the terms of EXHIBIT C, if included shall provide an option for the provision of an additional Renewable Power Product to the Program.

**18.2 NO ASSIGNMENT WITHOUT PERMISSION**

Except in the event of the sale of all or substantially all of its retail electricity business to an entity with credit and service ability to deliver on all facets of this ESA reasonably acceptable to Municipality, Competitive Supplier or Program Administrator shall not directly or indirectly assign this ESA or any of its rights, obligations and privileges under this ESA without the prior written approval of the Municipality. Such approval may be denied at the reasonable discretion of the Municipality, including if the proposed assignee does not have the experience and financial ability to fulfill all obligations of the Competitive Supplier or Program Administrator in the ESA. Notwithstanding the above, any assignment of this ESA by the Competitive Supplier, whether as the result of the sale of all or substantially all of the Competitive Supplier's business related to this ESA or otherwise, shall be subject to the following requirements: (i) Competitive Supplier shall provide the Municipality with notice of the proposed assignment at least ninety (90) days prior to such assignment; (ii) Competitive Supplier's assignee shall agree in writing to be bound by the terms and conditions of this ESA; and (iii) Competitive Supplier and such assignee shall, at least ninety (90) days in advance of any assignment, reasonably demonstrate to Municipality that

assignee has the experience and financial ability to fulfill all obligations of the Competitive Supplier in the ESA. The Municipality or Program Administrator may assign this ESA without the prior consent of Competitive Supplier provided that the proposed assignee has at least the same financial ability as the Municipality or Program Administrator and such assignment would not materially impair the rights and interests of Competitive Supplier under this ESA. The rights and obligations created by this ESA shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

### 18.3 DIRECT MARKETING

Prior to the introduction of any new product or service which Competitive Supplier may wish to make available to Participating Consumers or other Eligible Consumers located within the Municipality, Competitive Supplier agrees to (i) give the Municipality written notice of such new product or service and (ii) subject to the entry into reasonable confidentiality terms to the extent permitted by law and mutually acceptable to the Parties, discuss with the Municipality the possible inclusion of such new product or service in this or another aggregation program undertaken by the Municipality.

Competitive Supplier also agrees not to engage, whether directly or through any of its Associated Entities, in any direct marketing to any Participating Consumer that relies upon Competitive Supplier's unique knowledge of, or access to, Participating Consumers gained as a result of this ESA. For the purposes of this provision, "direct marketing" shall include any telephone call, mailing, electronic mail, or other contact between the Competitive Supplier and the Consumer.

Programs of the Competitive Supplier that do not rely on unique knowledge or access gained through this ESA will not constitute such "direct marketing."

### 18.4 NOTICES

All notices, demands, requests, consents or other communications required or permitted to be given or made under this ESA shall be in writing and addressed to the Parties as designated in EXHIBIT B.

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this ESA; (ii) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this ESA; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this ESA. Any party may change its address and contact person for the purposes of this ARTICLE 18.3 by giving notice thereof in the manner required herein.

## 18.5 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

In the event that the name or telephone number of any emergency or service contact for the Competitive Supplier changes, Competitive Supplier shall give prompt notice to the Municipality and the Program Administrator in the manner set forth in ARTICLE 18.4. In the event that the name or telephone number of any such contact person for the Municipality changes, prompt notice shall be given to the Competitive Supplier and the Program Administrator in the manner set forth in ARTICLE 18.4. In the event that the name or telephone number of any such contact person for the Program Administrator changes, prompt notice shall be given to the Competitive Supplier and the Municipality in the manner set forth in ARTICLE 18.4.

## 18.6 ENTIRE AGREEMENT; AMENDMENTS

This ESA constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This ESA may only be amended or modified by a written instrument signed by all Parties hereto, duly authorized to sign such instrument.

## 18.7 FORCE MAJEURE

If by reason of Force Majeure any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the Force Majeure, gives the other Party hereto written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If (i) an event of Force Majeure caused by any strikes, lockouts or other industrial disturbances involving Competitive Supplier or its Associated Entities continues for a period of thirty (30) days or longer, or (ii) an event of Force Majeure arising from any other cause continues for a period of one hundred eighty (180) days or longer, any Party may terminate this ESA by sending the other Party a written notice as set forth in ARTICLE 4.2; provided, however, that the same shall not constitute a default under this ESA and shall not give rise to any damages. Additionally, Competitive Supplier shall submit all consumer drops via EDI to the Distribution Utility in accordance with the rules and regulations set forth by the PSC in Case 98-M-0667.



## 18.8 EXPENSES

Each Party hereto shall pay all expenses incurred by it in connection with its entering into this ESA, including without limitation, all of its attorney's fees and expenses.

## 18.9 NO JOINT VENTURE

Each Party will perform all obligations under this ESA as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Municipality and the Competitive Supplier hereunder are individual and neither collective nor joint in nature.

## 18.10 NO RULE OF STRICT CONSTRUCTION

The language contained herein shall be deemed to be that approved by all Parties hereto and no rules of strict construction shall be applied against any Party hereto.

## 18.11 COUNTERPARTS

This ESA may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

## 18.12 DIGITAL SIGNATURES

This ESA may be executed by facsimile or other digital signature (or by using a digital signature service such as DocuSign), and such signature shall have the same force and effect as a manual signature.

## 18.13 WAIVER

No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this ESA shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party(ies) so failing. A waiver of any of the provisions of this ESA shall only be effective with respect to an obligation to the waiving Party and shall only be effective if made in writing and signed by the Party who is making such waiver.

## 18.14 ADVERTISING LIMITATIONS

Competitive Supplier and Municipality agree not to use, whether directly or through any of its Associated Entities, the name of the other Party, or make any reference to the other Party in any advertising or other information to be distributed publicly for marketing purposes, unless such other Party expressly agrees to such usage. The Municipality acknowledges that the Competitive Supplier's corporate affiliates own the exclusive right to the trademarked logo and trade name used by Competitive Supplier. No right, license or interest in this trademark and/or trade name is granted

to the Municipality hereunder, and the Municipality agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

#### 18.15 PRESS RELEASES

The Parties agree to joint review and approval prior to issuance of all media press releases regarding this Agreement. Approval of press releases will not be unreasonably withheld. The Parties agree to cooperate in good faith prior to the issuance of any formal press release with respect to this ESA, such cooperation to include agreement as to the form, substance and timing of such formal press release.

#### 18.16 HEADINGS AND CAPTIONS

The headings and captions appearing in this ESA are intended for reference only, and are not to be considered in construing this ESA.

#### 18.17 SURVIVAL OF OBLIGATION

Termination of this ESA for any reason shall not relieve the Parties of any obligation accrued or accruing prior to such termination.

### **ARTICLE 19 -- REMEDIES**

#### 19.1 GENERAL

Subject to the limitations set forth in ARTICLE 19.2 below and ARTICLE 4, the Parties reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party hereto under this ESA.

#### 19.2 LIMITATIONS OF LIABILITY

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BY STATUTE, ARE BASED UPON BREACH OF WARRANTY, TORT, CONTRACT OR OPERATION OF LAW.

Notwithstanding the foregoing, each Party acknowledges that the preceding sentence shall not limit the other Party's rights to seek direct damages or, under ARTICLE 14.1, to seek indemnification from Competitive Supplier for consequential, punitive, or incidental damages described in the preceding sentence or other such losses claimed by third- parties.

19.3 DISCLAIMER

EXCEPT AS EXPRESSLY PROVIDED HEREIN, COMPETITIVE SUPPLIER MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, OF THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

*[SIGNATURE PAGE TO FOLLOW]*

IN WITNESS WHEREOF, the Parties have caused this ESA to be executed by their duly authorized representatives, as required by the applicable laws of the city, town or municipality and the laws, rules and regulations of the State of New York, as of the respective dates set forth below.

COMPETITIVE SUPPLIER

By: \_\_\_\_\_  
Name:  
Title:  
Email:  
Address:

Dated: \_\_\_\_\_

MUNICIPALITY

By: \_\_\_\_\_  
Name:  
Title:  
Email:  
Address:

Dated: \_\_\_\_\_

PROGRAM ADMINISTRATOR

By: \_\_\_\_\_  
Name: Michael Gordon  
Title: Chief Executive Officer; Joule Assets, Inc.  
Email: mgordon@jouleassets.com  
Address: 22 Edgemont Road, Katonah, NY 10536

Dated: \_\_\_\_\_

[SIGNATURE PAGE TO ELECTRICITY SUPPLY AGREEMENT]

**EXHIBIT A - PART 1**  
**PRICES AND TERMS**

**JOULE ASSETS COMMUNITY CHOICE AGGREGATION PROGRAM CCA RENEWABLE ELECTRICITY AS DEFAULT PRODUCT**

This shall be the default product offered to Participating Consumers.

Firm Full-Requirements Price by Rate Classification for all Participating Consumers located in the Distribution Utility (to wit, [name of the utility]) territory commencing service on the first consumer meter-read date after [date] (“**First Meter Read Date**”).

Table 1:

Rate Class	Fixed Price per kWh	
Residential	[ ] cents	
Small Commercial	[ ] cents	

**Terms for System Supply Service**

Term: The Price and Terms stated on this EXHIBIT A – Part 1 will commence on the First Meter Read Date and continue until the first consumer meter read date after [date] (“**Final Meter Read Date**”), unless this ESA is sooner terminated in accordance with ARTICLE 4.2 of this ESA.

The period of delivery of Firm Full-Requirements Power Supply shall be consistent with the provisions of ARTICLE 4 and EXHIBIT A – Part 1 of this ESA.

Start-Up Service Date: Firm Full-Requirements Power Supply will commence at the prices stated above as of Participating Consumer’s First Meter Read Date.

Renewable Energy in System Supply: 100% of electricity supply shall be CCA Renewable Electricity Product as defined in the Agreement.

**Renewable Energy Certificates (“RECs”) Purchase:** Competitive Supplier shall identify the technology and location of the renewable generators that are the sources of the RECs for the default product. All such RECs shall be created and recorded in the New York Generation Attribute Tracking System (“NYGATS”) or be certified by a third party satisfactory to the Municipality.

**NY Class II Voluntary RECs Purchase.** This Agreement includes a purchase of RECs, sourced from NY Class II Voluntary Renewable Resources in an amount equal to **100%** of Participating Consumers electricity usage as of the Effective Date of this Agreement. For clarification purposes, the 100% RECs purchase consists of any then-current New York renewable energy standard requirements applicable to alternative retail electric suppliers in New York plus additional NY Class II Voluntary RECs in an amount equal to 100% of the customer’s usage. Competitive Supplier shall notify Municipality in writing regarding the source of your NY Class II Renewable Resource(s). Each REC represents the environmental attributes associated with one MWh of electricity generated by a NY Class II Renewable Resource, but does not include any tax credits, depreciation allowances or third party subsidies of any kind. For purposes of this Agreement:

**“NY Class II Renewable Resource”** means any electric power generator satisfying the Climate Leadership and Community Protection Act and meeting the eligibility criteria of a New York renewable energy generating source as further defined in NY DPU Case 15-M-0127, et al. and the regulations promulgated thereunder, as applicable, as of the Effective Date of this Agreement. Competitive Supplier does not represent or warrant that the RECs purchased hereunder can be used as offsets or otherwise for compliance with any emission reduction or similar program. RECs will be retired for all participants collectively at the Program level.

**Eligible Consumer Opt-Out:** Participating Consumers are free to opt-out of the Program utilizing established utility data drop protocols. Participating Consumers are to provide five (5) business days’ notice to the Competitive Supplier of such termination and Competitive Supplier will notify Distribution Utility to resume service as soon as possible after such notification. There are no fees or charges for Participating Consumers to opt-out or terminate service.

**Credit policy:** The Competitive Supplier will not require a credit review for any consumer participating in the Program, nor will Competitive Supplier require any consumer to post any security deposit as a condition for participation in the Program. The Competitive Supplier may terminate service to a Participating Consumer and return such consumer to default utility service in the event that the consumer fails to pay to Competitive Supplier amounts past due greater than sixty (60) days.

**EXHIBIT A - PART 2**  
**PRICES AND TERMS (continued)**

JOULE ASSETS COMMUNITY CHOICE AGGREGATION PROGRAM CCA  
 CONVENTIONAL ELECTRICITY ALTERNATIVE STANDARD PRODUCT

This product shall be offered to Participating Consumers who choose to participate in the Program and seek an alternative product to the default product described in EXHIBIT A – Part 1.

Firm Full-Requirements Price for Power Supply by Rate Classification for all Participating Consumers located in Distribution Utility (to wit, [name of the utility]) service territory commencing service on the First Meter Read Date.

Table 3:

Rate Class	Fixed Price per kWh	
Residential	[        ] cents	
Small Commercial	[        ] cents	

**Terms for System Supply Service**

Term: The Price and Terms stated on this EXHIBIT A Part 2 will commence on the First Meter Read Date and continue until the Final Meter Read Date, unless this ESA is sooner terminated in accordance with ARTICLE 4.2 of this ESA.

The period of delivery of Firm Full-Requirements Power Supply shall be consistent with the provisions of ARTICLE 4 and EXHIBIT A of this ESA.

Start-Up Service Date: Firm Full-Requirements Power Supply will commence at the prices stated above as of Participating Consumer’s First Meter Read Date.

Renewable Energy in System Supply: The Competitive Supplier shall include Renewable Energy and Renewable Energy Certificates in the Firm Full-Requirements Power Supply mix in an amount equal to the CCA Conventional Electricity Product as defined in the Agreement.

Eligible Consumer Opt-Out: Participating Consumers are free to opt-out of the Program utilizing established EDI drop protocols. Participating Consumers are to provide five (5) business days’ notice to the Competitive Supplier of such termination and Competitive Supplier will notify Distribution Utility to resume service as soon as possible after such notification. There are no fees or charges for Participating Consumers to opt-out or terminate service.

Credit policy: The Competitive Supplier will not require a credit review for any consumer participating in the Program, nor will Competitive Supplier require any consumer to post any

security deposit as a condition for participation in the Program. The Competitive Supplier may terminate service to a Participating Consumer and return such consumer to default utility service in the event that the consumer fails to pay to Competitive Supplier amounts past due greater than sixty (60) days.



**EXHIBIT B -  
CONTACT, NOTICE AND PAYMENT INFORMATION**

<b><u>PROGRAM ADMINISTRATOR GENERAL</u></b>	<b><u>MUNICIPALITY GENERAL INFORMATION</u></b>	<b><u>SUPPLIER GENERAL INFORMATION</u></b>
Joule Assets Inc Contact Name: Glenn	[Name of Supplier] Contact Name: [ ]	[Name of Supplier] Contact Name: [ ]
Address: 22 Edgemont Road Katonah, New York 10536 914 - 977 - 3444	Address: [ ] Telephone Number: [ ]	Address: [ ] Telephone Number: [ ]
E-mail Address: gweinberg@jouleassets.com	Email Address: [ ]	Email Address: [ ]
<b><u>PROGRAM ADMINISTRATOR ADDRESS FOR NOTICES PURSUANT TO ARTICLE 18.4</u></b>	<b><u>MUNICIPALITY ADDRESS FOR NOTICES PURSUANT TO ARTICLE 18.4</u></b>	<b><u>SUPPLIER ADDRESS FOR NOTICES PURSUANT TO ARTICLE 18.4</u></b>
ATTN: Glenn Weinberg Joule Assets Inc	ATTN: [ ]	ATTN: [ ]
Address: 22 Edgemont Road	Address: [ ]	Address: [ ]
City, State Zip: Katonah, NY	[ ]	[ ]
With a copy to:	With a copy to:	With a copy to:
Name: Stephen Filler, General Counsel Joule Assets Inc. 22 Edgemont Road Katonah, New York	Name: Address:	Name: Address:

**EXHIBIT C -**  
**OPTION FOR ALTERNATIVE SUPPLY OF POWER**

Competitive Supplier shall provide power to Participating Consumers, including the option for consumers to purchase REC's, throughout the term of this ESA and from sources of its own discretion subject to the terms of this Agreement, the RFP and the Competitive Supplier's response. However, Program Administrator desires to support the construction of, or cause the Competitive Supplier to contract directly with, renewable sources of energy (each a "Renewable Power Source") prior to award or after the Effective Date of the Program for the benefit of the Participating Consumers and of the renewable power market.

Upon agreement to a Power Purchase Agreement ("PPA"), acceptable to Program Administrator, Municipality, and Competitive Supplier with the applicable Renewable Power Source, the Competitive Supplier may purchase output from the Renewable Power Source to Competitive Supplier (or Associated Entity) either through purchase by Competitive Supplier from a third party, or by way of assignment by Program Administrator) of that PPA in accordance with this exhibit.

Competitive Supplier may either work from a roster of Renewable Power Sources pre-approved by Program Administrator (with the cooperation of Municipality) who retain a PPA consistent with Program Administrator's needs (for the benefit of Participating Consumers), or Competitive Supplier may obtain written approval from Program Administrator for an alternative source and PPA.

In the event Program Administrator identifies output from Renewable Power Source(s) that Program Administrator intends to assign or direct to the Competitive Supplier for use in the program for the benefit of Participating Consumers, Program Administrator will describe whether each product is unit-contingent or smoothed, and Program Administrator will describe the projected (if unit contingent) or committed quantity (if smoothed) for RECs, Capacity and/or kWh, including time blocks for the product, if appropriate.

The Program Administrator will then fill out the Table below, adding to it as necessary:

Product	Unit-Contingent or committed	Time Block	Zone	Price (per Unit)
kWh Output				
REC Output				

Capacity Standby				
kWh Output				
REC Output				
Capacity Standby				

Competitive Supplier will then solicit offers from the free market for like quantities of power, REC or capacity.

In such case, the Parties agree to negotiate in a commercially reasonable manner a rate adjustment to Participating Consumers to (a) compensate Competitive Supplier (or an Associated Entity) for any losses should Competitive Supplier (or an Associated Entity) need to then sell off any of the original power purchased to supply the Program at a lower price than it purchased it for, or (b) compensate Participating Consumers for any gains should Competitive Supplier (or an Associated Entity) then be able to sell off any of the original power purchased to supply the Program at a higher price than it purchased it for. Any such rate adjustment shall only amend or modify the ESA by a written instrument signed by all Parties hereto.

To benefit the Municipality or Participating Consumers, Program Administrator will be authorized to invite bidders to purchase the power being replaced (separately by kWh, capacity or REC or in any bundle it chooses) if, in its sole discretion, it believes it can sell current positions that match the unit-contingent production expectation at a higher price than Competitive Supplier is quoting as a sales price.

## Substantial Changes to HVCP Energy Supply Agreements (vs. 2019 version)

Note that all changes were provided in previous version. Almost all changes are formatting or non-material.

More substantial changes are provided in the redlined document attached.

Additionally, below is a description of the most substantial changes

Preamble: added more info about parties.

Recitals: Included more comprehensive, accurate and up to date history, list of PSC orders etc. Clarified that 100% renewable product is default.

Definitions. Some general clean ups and clarifications. For example, changed "Default Service" to "Basic Utility Service" to be clear what we're talking about the default service offered by the utility, and not the default under the CCA program. Also clarified definitions and distinctions concerning "CCA Renewable Electricity Product and Price", and a "CCA Conventional Electricity Product and Price." Changed definition of "Program Manager" to "Program Administrator." Clarified an ambiguity in "Effective Date." Clarified definition of "Eligible Consumer". Clarified definition of "Environmental Disclosure Program." Added definition of CCA "Framework Order." Clarified definitions of Regulatory Event and Qualifying Regulatory Event.

Section 2.3 Added Municipal covenant that Local Law is adopted and will remain in effect for term.

Section 2.5 added language about supplier's compliance with data security requirements and payment of fees in relation to data.

Section 2.6 Added language about Supplier compliance with Environmental Disclosure Program.

Section 3.2 Moved Supplier obligations here to Article 9.

Section 4.1 Clarification about terminations dates as to customers.

Section 4.2(d) Clarify termination by Muni if the court or PSC makes a ruling that material alters the role of the muni.

Section 4.3 Clarifies Supplier's obligation to move to another supplier if selected by muni after term of agreement

Sections 5.6/5.7 clarified approval of communications.

Section 5.11 Added supplier creditworthiness provisions

Section 5.12 Added compliance with RFP Provisions

Article 9. Added Supplier obligations.

Article 12. Clarified reporting obligations.

Section 17.2 increases threshold of what costs can be passed on to customers in the event of a Qualifying Regulatory Event. Specifies that customers are entitled to reductions as well.

Article 18. Reference to Exhibit C included in main body of agreement. See Exhibit C below.

Section 18.4 moved addresses for notice to Exhibit B.

Section 18.12 added Digital Signature provision

Section 18.14 clarified Advertising limitations.

Section 18.15 Clarified Press Release provisions

Section 19.2 Clarified limitations of liability.

Section 19.3 Added Supplier Disclaimer

Exhibits A and B Changing name of default and non-default product for clarity\_ Clarifying definition of RECs/ Removed reference to fixed pricing as that is an unlikely scenario and we can add if necessary.

Exhibit C. Describing mechanism for price readjustment if Program Administrator obtains renewable supply as replacement for supply under the contract, subject to agreement of the parties.

**TOWN OF PHILIPSTOWN**

Resolution No. \_\_\_\_\_ of 2021

**RESOLUTION APPROVING GHG EMISSION REDUCTION TARGETS AND  
CLIMATE ACTION PLAN**

**WHEREAS**, it has been demonstrated that climate change poses a massive threat to the American economy, the wellbeing of our community, the environment and climate stability and underscores the need for immediate climate emergency action at all levels of government to reduce greenhouse gas (“GHG”) emissions; and

**WHEREAS**, limiting warming to the 1.5°C (2.7°F) target established by the United Nations during this century will require an unprecedented transformation of every sector of the global economy over the next 20 years; and

**WHEREAS**, the impacts already wrought by climate change are evidenced by increased and intensifying wildfires, floods, rising seas, droughts and extreme weather; and

**WHEREAS**, it is projected that one-half to one million species are threatened with extinction, many within the next few decades, due to impacts from climate change; and

**WHEREAS**, human health has already been and will continue to be impacted by climate change; and

**WHEREAS**, the State of New York has mandated statewide reduction of GHG emissions to 40% of 1990 levels by 2030 with a plan to achieve net zero greenhouse gas emissions across New York State’s economy by 2050; and

**WHEREAS**, in addition to the threats posed by climate change, there are strong economic reasons to take local action to mitigate climate change, including but not limited to the following:

- Significantly declining costs to generate renewable energy and more affordable ways to procure renewable energy; and
- Employing efficiencies in our buildings and operations that lower energy consumption and reduce energy waste; and
- Electrification of heating via energy-efficient heat pumps will benefit both the Town of Philipstown as well as community members by potentially lowering heating costs and reducing pollution; and
- There is also the benefit of job creation that provides economic opportunity

for residents when new businesses start or existing businesses grow in response to greater demand for climate mitigation services; and

- Additionally, actions that result in GHG emission reductions will reduce the need for the Town of Philipstown to make unplanned, high cost expenditures in response to major weather events and climate disasters which are estimated to at least triple in the next 70 years unless GHG emissions are reduced; and

**WHEREAS**, the drastic reduction of carbon emissions in the community will lead to a healthier, connected, and regenerative community;

**WHEREAS**, the drastic reduction of carbon emissions in the community will require shifting the local consumption of goods and services to local businesses, incentivizing support and development of the local economy;

**NOW, THEREFORE, BE IT RESOLVED**, that the Town of Philipstown hereby adopts the GHG Emissions Reduction Target of net zero emissions by 2040 for both Government Operations greenhouse gas emissions and Community-wide greenhouse gas emissions .

**BE IT FURTHER RESOLVED**, that the Town indicates its commitment to reducing GHG emissions through the creation of a Climate Action Plan.

**BE IT FURTHER RESOLVED**, that the Town's Climate Action Plan shall include the specific targets of reducing annual community-wide gross consumption-based greenhouse gas emissions from its 2020 baseline (198,000 MTCO<sub>2e</sub>) by 50% by 2030 and 85% by 2040. In addition the Town's Climate Action Plan shall include the specific Carbon Offset targets of increasing annual community-wide carbon sequestration by 10% by 2030 and 15% by 2040 from its 2020 baseline (79,036-86,098 MTCO<sub>2e</sub>). The combination of these actions will result in a 60% net emissions reduction by 2030 and a 100% net emissions reduction (i.e. net zero emissions) by 2040.

**BE IT FURTHER RESOLVED**, that the Town's Climate Action Plan shall include the specific targets of reducing annual Government Operations greenhouse gas emissions from its 2016 baseline (690 MTCO<sub>2e</sub>) by 50% by 2030 and 85% by 2040, as well as the Carbon Offset targets of increasing annual Government Operations carbon sequestration by 10% by 2030 and 15% by 2040, the combination of which will result in a 60% net emissions reduction by 2030 and a 100% net emissions reduction (i.e. net zero emissions) by 2040.

**BE IT FURTHER RESOLVED**, that the Town's Climate Action Plan shall refer to and incorporate recommendations from the 2020 Philipstown Community GHG Emissions Inventory Report, "Sink, Store, Reduce, Offset: An innovative GHG inventory and its implications for achieving carbon neutrality," the Town's 2020 Natural Resources Inventory, the Town's 2016 Government Operations GHG Emissions Inventory Report, and the 2020 Philipstown Comprehensive Plan.

**BE IT FURTHER RESOLVED**, that the town's Climate Action Plan shall be created by the Climate Smart Philipstown Task Force with community input.



**RESOLUTION # - 2021**

The following Resolution was presented by \_\_\_\_\_, seconded by \_\_\_\_\_ and unanimously carried;

**RESOLVED**, that the Town Board hereby authorizes Supervisor Shea to sign the Real Property Agreement with Putnam County for 2021.

“THE GUARDIANS OF FAIRNESS“

MARYELLEN ODELL  
*County Executive*



LISA A. JOHNSON  
*County Director- Real Property*

# Memorandum

DATE: March 1, 2021  
TO: Town Supervisors, School Superintendents, & Village Mayors  
FROM: Lisa A. Johnson - County Director of Real Property *YJ*  
RE: 2021 Contracts

Please sign enclosed contracts and return all 3 originals with resolution attached to:

Putnam County Real Property  
40 Gleneida Ave.  
Carmel, NY 10512

A completed signed original will be returned for your records.

If you have any questions please call.

## PUTNAM COUNTY REAL PROPERTY TAX SERVICE CONTRACT

AGREEMENT MADE THIS 1<sup>st</sup> DAY OF MARCH BETWEEN: THE TOWN OF PHILIPSTOWN REFERRED TO AS THE TOWN AND THE COUNTY OF PUTNAM HAVING ITS PRINCIPAL PLACE OF BUSINESS AT 40 GLENEIDA AVENUE, CARMEL, NEW YORK 10512, HEREINAFTER REFERRED TO AS COUNTY.

THE PARTIES HEREIN AGREE AS FOLLOWS:

- 1) THE COUNTY SHALL PREPARE THE TENTATIVE ASSESSMENT ROLL, FOR THE CALENDAR YEAR OF **2021** AND HAVE IT AVAILABLE ON THE COUNTY WEBSITE TO COMPLY WITH RPTL §1591
- 2) EVERY TRANSFER OF PROPERTY, CHANGE OF ADDRESS, DESCRIPTION OR VALUATION, SPECIAL FRANCHISE, PUBLIC UTILITY, SHALL BE DATA ENTERED BY ASSESSOR OF TOWN OR DESIGNATED STAFF MEMBER. ASSESSOR AND/OR DESIGNATED STAFF MEMBER IS RESPONSIBLE FOR ALL RPS SOFTWARE UPDATES TO BE CURRENT AND UPDATING REFERENCE TABLES IN RPS.
- 3) AFTER CLOSING OF THE BOOKS ON MARCH 1<sup>st</sup>, ALL CHANGES SHALL BE ENTERED ON OR BEFORE **APRIL 16<sup>th</sup>** BY THE TOWN, THIS IS ESSENTIAL SO THAT THE TENTATIVE ASSESSMENT ROLL IS RUN FOR THE MAY 1<sup>st</sup> DEADLINE.
- 4) ALL GRIEVANCE CHANGES, CORRECTION OF CLERICAL ERRORS, & UNLAWFUL ENTRIES SHALL BE APPROVED BY THE BOARD OF ASSESSMENT REVIEW AND ENTERED BY THE TOWN INTO THE REAL PROPERTY SYSTEM, BACKED UP AND BROUGHT TO THE REAL PROPERTY TAX SERVICE AGENCY NO LATER THAN **JUNE 16<sup>th</sup>** FOR FINAL ROLL PROCESSING AND SCHOOL PROCESSING.
- 5) ALL CHANGES FOR COUNTY AND TOWN TAX ROLLS SHALL BE SUBMITTED BY THE TOWN ON OR BEFORE **NOVEMBER 19<sup>th</sup>**.
- 6) ALL UNPAIDS TO BE MANUALLY ENTERED BY THE COUNTY MUST BE SUBMITTED BY **OCTOBER 30<sup>th</sup>**, RPSV4 MERGEABLE FILES MUST BE SUBMITTED BY **NOVEMBER 19<sup>th</sup>**.
- 7) A SEPARATE AGREEMENT SHALL BE NEGOTIATED FOR THE PROVISIONS OF RPTL §1537, OPTIONAL COUNTY SERVICES.

PRICE FOR THE PREPARATION OF THE FOLLOWING IS \$ 0.50 PER PARCEL:

- 1) TENTATIVE ASSESSMENT ROLL (2 COPIES\*) AND ASSOCIATED REPORTS, COA'S
- 2) FINAL ASSESSMENT ROLL (2 COPIES\*)
- 3) TAX ROLL (2 COPIES\*)
- 4) HARD & SOFT BINDERS FOR ROLLS
- 5) BANK CODE LISTINGS
- 6) APPORTIONMENT OF SPECIAL FRANCHISE
- 7) 1 SET OF TAX BILLS IN ENVELOPES
- 8) RPS 145D1,155D1 & 160D1 TAX EXTRACTS
- 9) DATA ENTRY FOR PRO-RATAS
- 10) 1 SET TAX MAPS 24" x 36"

UNPAID WATER, SEWER, OR OTHER UNPAIDS WILL BE CHARGED A FEE IN THE AMOUNT OF 50.00 PER HUNDRED IF THE DATA HAS TO BE MANUALLY ENTERED, OR IF TAX MAP NUMBERS PROVIDED IN COMPUTER FORMAT ARE INVALID.

IF ANY ADDITIONAL SPECIAL DISTRICT ROLLS ARE REQUIRED THE TOWN WILL BE CHARGED A FEE OF 0.01 PER PARCEL.

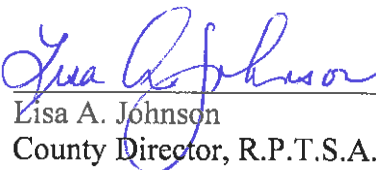
IF ANY INSERTS ARE REQUESTED THE TOWN WILL BE CHARGED A FEE OF 0.01 PER ENVELOPE.

\*.02 PER PARCEL WILL BE DEDUCTED IF ONE (1) COPY OF EACH ROLL IS REQUESTED INSTEAD OF TWO (2)

THE TOWN OF PHILIPSTOWN HEREBY REPRESENTS THAT THE AGREEMENT HEREIN HAS BEEN APPROVED BY RESOLUTION OF THE TOWN BOARD, A COPY OF WHICH IS ANNEXED HERETO AND MADE A PART HEREOF:

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT IN NEW YORK, ON THE DATE HEREIN ABOVE SET FORTH.

READ AND APPROVED BY:

_____ DATE: _____	 DATE: <u>3/1/2021</u>
MaryEllen Odell County Executive	Lisa A. Johnson County Director, R.P.T.S.A.
_____ DATE: _____	_____ DATE: _____
William J. Carlin Commissioner of Finance	Jennifer S. Bumgarner County Attorney
_____ DATE _____	_____ DATE: _____
Mat C. Bruno, Sr. Risk Manager	Richard Shea Town Supervisor

**RESOLUTION # - 2021**

The following Resolution was presented by \_\_\_\_\_, seconded by \_\_\_\_\_ and unanimously carried;

**RESOLVED**, that the Town Board hereby authorizes Supervisor Shea to sign the Outreach Worker Service Contract between the Town of Philipstown and Putnam County Office for Senior Resources for 2021.



MARYELLEN ODELL  
County Executive

MICHAEL CUNNINGHAM  
Director

March 18, 2021

Town of Philipstown  
Supervisor Richard Shea  
P.O. Box 155  
Cold Spring, NY 10516

Dear Supervisor Shea,

Enclosed please find the Outreach Worker services contract between Putnam County Office for Senior Resources and the Town of Philipstown for the term of January 1, 2021 through December 31, 2021.

Please **sign** and **notarize the duplicate contracts** and send them back as soon as possible, so it may be put through the proper channels for execution.

Thank you, in advance, for your prompt attention to the above. If you have any questions, please feel free to contact me at (845) 808-1700.

Sincerely,

Doreen Crane  
Coordinator of Services

DC:mgb

**Agreement  
between  
COUNTY OF PUTNAM  
and  
TOWN OF PHILIPSTOWN**

THIS AGREEMENT, made by and between COUNTY OF PUTNAM, a municipal corporation of the State of New York, having an office and place of business at 40 Gleneida Avenue, Carmel, New York 10512, by and through its Office for Senior Resources (hereinafter referred to as the "COUNTY") and TOWN OF PHILIPSTOWN, a municipal subdivision located at 238 Main Street, P.O. Box 155, Cold Spring, New York 10516 (hereinafter referred to as the "TOWN").

WHEREAS, the TOWN is a municipal subdivision in the County of Putnam, with more than 2,000 residents over the age of 60 years; and

WHEREAS, the parties herein recognize a need for linkage to County and other governmental agencies for residents of the TOWN who are over the age of 60 years; and

WHEREAS, the TOWN agrees that an Outreach Worker provided by the COUNTY to the TOWN in order that such linkage be provided to residents of the TOWN who are over the age of 60 years, as more fully described herein, is in the best interests of the TOWN.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

FIRST: The TOWN agrees to pay the sum of FIFTEEN THOUSAND (\$15,000.00) DOLLARS to the COUNTY for the services of an Outreach Worker, to be furnished by the COUNTY and agreeable to the TOWN, in accordance with the terms and conditions set forth herein.

SECOND: The COUNTY agrees to provide an Outreach Worker to the TOWN, upon the terms and conditions set forth herein:

Duties:

- a) The Outreach Worker shall actively seek out and assist persons residing in the TOWN's geographical area who are over the age of 60 years and have health and/or financial problems and/or are in need of governmental assistance; and
- b) The Outreach Worker shall provide such persons with the guidance and assistance necessary to contact and/or make application for/to obtain services from the proper governmental agencies and other available resources.

Hours:

- a) The Outreach Worker shall be available to guide and assist such persons at a designated area provided by the Office for Senior Resources and provide office hours and home visits, on demand and as deemed necessary to carry out the foregoing services, for a minimum of 35 hours per week.

THIRD: The COUNTY agrees that it will at all times faithfully, industriously and to the best of its ability, perform all of the duties that may be required of and from it pursuant to express and implicit terms hereof, to the reasonable satisfaction of the TOWN.

FOURTH: The term of this Agreement will commence January 1, 2021 and will terminate on December 31, 2021, unless otherwise terminated in accordance with paragraphs "SEVENTH" or "EIGHTH" hereof.

FIFTH: As also provided in Paragraph "FIRST" herein, for the services rendered by the Outreach Worker according to Paragraph "SECOND," the TOWN shall submit full



payment in the amount of \$15,000.00 to the COUNTY on or before December 31, 2021. It is understood and agreed that any reduction in payment to the COUNTY by the TOWN may result in reduced hours (including benefits) of the Outreach Worker.

The COUNTY shall be responsible for the payment of the Outreach Worker's salary and benefits, including training expenses and other related costs, over and above the sums payable to the COUNTY by the TOWN under this Agreement. Additionally, to the extent the Outreach Worker is required to use his/her personal vehicle in the performance of his/her duties under the terms of this Agreement, the COUNTY shall reimburse the Outreach Worker for such expenses at the current Internal Revenue Service approved mileage rate.

Any and all requests for payment to be made will be submitted on properly executed claim forms (or invoices) of the COUNTY and paid only after approval by the Director of the Office for Senior Resources or his/her duly authorized representative.

The COUNTY'S files and records reasonably pertinent to this Agreement shall be kept in accordance with sound accounting practices and each transaction shall be fully documented. Should the TOWN request such files and records, the COUNTY shall provide the files and records to the TOWN within ten (10) business days of the TOWN'S request.

SIXTH: The work to be performed pursuant to the terms of this Agreement will commence promptly upon assignment by the Director of the Office for Senior Resources or his/her duly authorized representative and will be conducted in the best interest of the parties.

SEVENTH: It is understood and agreed by and between the parties hereto that payment by the TOWN under the terms of this Agreement is a material element of this Agreement. Any failure to provide said payment will be deemed a material breach and this Agreement will

terminate without notice. No substitution of the services will be permitted during the term of this Agreement without the express written consent of the TOWN.

EIGHTH: Except as otherwise provided in paragraph "SEVENTH" herein, the COUNTY, upon ten (10) days' notice to the TOWN, may terminate this Agreement, in whole or in part, when the COUNTY deems it to be in its best interest. In such event, reimbursement to the TOWN for payments already made by the TOWN will be prorated and the COUNTY will be liable only for payment for services already rendered and expenses incurred under this Agreement prior to the effective date of termination.

The TOWN, upon thirty (30) days' notice to the COUNTY, may terminate this Agreement, in whole or in part, when the TOWN deems it to be in its best interest.

In the event of a dispute as to the value of the services rendered to the TOWN by the Outreach Worker prior to the date of termination, it is understood and agreed that the Director of the Office for Senior Resources or his/her duly authorized representative will determine the value of such services rendered by the Outreach Worker. Such reasonable and good faith determination will be accepted by the TOWN as final.

NINTH: Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the TOWN is void.

TENTH: Where applicable, the COUNTY will comply, at its sole expense, with the provisions of all state and municipal requirements and with all state and federal laws applicable to the COUNTY as an employer of labor or otherwise. The COUNTY will further comply with all rules, regulations and licensing requirements pertaining to its professional status and that of

its employees, partners, associates, subcontractors and others employed to render the services hereunder, as applicable.

ELEVENTH: No discrimination by the COUNTY will be permitted during the performance of this Agreement with respect to race, religion, creed, color, national origin, sex, age, handicap, political affiliation or beliefs.

TWELFTH: TOWN agrees, to the fullest extent permitted by law, to protect, defend, indemnify and hold the County of Putnam and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this Agreement and/or the performance hereof, unless that liability was created by the sole and exclusive negligence of the COUNTY. The TOWN further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at its sole expense, and agrees to bear all costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent.

THIRTEENTH: The failure of the COUNTY to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment for the future of such term of condition, but the same shall remain in full force and effect. No waiver by the COUNTY of any provision hereof shall be implied.

FOURTEENTH: All notices of any nature referred to in this Agreement shall be in writing and hand delivered or sent by registered or certified mail, postage pre-paid, to the



EIGHTEENTH: Unless specifically provided by law, electronic signatures may be used in lieu of a signature affixed by hand. The use of said electronic signatures shall have the same force and effect of law and shall be deemed binding. Moreover, this contract shall not be deemed effective until fully executed by the TOWN, the required COUNTY signatories and the County Executive.

IN WITNESS WHEREOF, the parties have executed this Agreement in Carmel, New York, on the date hereinabove set forth.

Date  
\_\_\_\_\_

**TOWN OF PHILIPSTOWN**  
238 Main Street, P.O. Box 155  
Cold Spring, New York 10516

By: \_\_\_\_\_  
Please Print Name & Title

**ACKNOWLEDGMENT OF TOWN:**

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF PUTNAM            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_ before me personally appeared \_\_\_\_\_ 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 s/he executed the same in his/her capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

WHEREAS, the Town of Philipstown approved a contract for general ambulance service within the Town in 2021 with the Philipstown Volunteer Ambulance Corps ("PVAC") which listed the amount of compensation to be paid to PVAC as \$345,000; and

WHEREAS, the correct amount of compensation to be paid to PVAC for general ambulance service for 2021 is \$345,500; and

WHEREAS, the Town Board has before it a revised 2021 ambulance contract with PVAC in which the correct amount of compensation is listed;

NOW, THEREFORE, BE IT RESOLVED as follows:

- 1. That the Town Board of the Town of Philipstown hereby approves the revised 2021 PVAC ambulance service contract, which shall supersede the version of the said contract previously approved by the Town Board; and
- 2. That the Town Supervisor is hereby authorized to execute the said revised contract and any documents necessary to carry out the terms thereof.

\_\_\_\_\_ presented the foregoing resolution which was seconded by \_\_\_\_\_,

The vote on the foregoing resolution was as follows

Judith Farrell, Councilwoman, voting \_\_\_\_\_

John VanTassel, Councilman, voting \_\_\_\_\_

Robert Flaherty, Councilman, voting \_\_\_\_\_

Michael Leonard, Councilman, voting \_\_\_\_\_

Richard Shea, Supervisor, voting \_\_\_\_\_

**AGREEMENT BETWEEN THE TOWN OF PHILIPSTOWN AND  
THE PHILIPSTOWN VOLUNTEER AMBULANCE CORPS  
FOR MUNICIPAL AMBULANCE SERVICE.**

This AGREEMENT, effective as of the 1<sup>st</sup> day of January, 2021, by and between the TOWN OF PHILIPSTOWN, a Municipal Corporation having its offices at 238 Main Street, P.O. Box 155, Cold Spring, New York 10516, (hereinafter referred to as the "TOWN"), and PHILIPSTOWN VOLUNTEER AMBULANCE CORPS INC., a not-for-profit corporation in the State of New York with an office at 14 Cedar Street, Cold Spring, New York 10516, (hereinafter referred to as "PVAC", provides as follows:

WHEREAS, the TOWN is a municipal corporation duly organized and existing under the laws of the State of New York; and

WHEREAS, heretofore the TOWN has undertaken to provide general ambulance service within the TOWN to residents and non-residents, and

WHEREAS, New York State General Municipal Law §122-b states that in providing general ambulance service the TOWN may contract with one or more organizations having sufficient trained and experienced personnel for operation, maintenance and repair of such ambulance vehicles and for the furnishing of prehospital emergency treatment on behalf of the TOWN; and

WHEREAS, PVAC is organized under the laws of the State of New York as a volunteer ambulance corps, and since 1965 has been furnishing emergency ambulance service to various areas and residents of the TOWN; and

WHEREAS, PVAC has sufficient trained and experienced personnel for operation of ambulance vehicles and provision of EMS service; and

WHEREAS, PVAC has provided general ambulance service on behalf of the TOWN for many years in return for contract payments; and

WHEREAS, PVAC has used funds received from the TOWN to purchase ambulances and other vehicles to be used in providing ambulance service for the TOWN; and

WHEREAS, in addition to contract payments, the TOWN has permitted PVAC to bill for general ambulance service and to retain the proceeds of such billing as additional compensation; and

WHEREAS, pursuant to the provisions of General Municipal Law Section 122-b, the TOWN wishes to contract with PVAC for the provision of general ambulance service within the TOWN for the term hereof; and

WHEREAS, the TOWN further wishes to establish a schedule of fees for municipal ambulance service within the TOWN in accordance with General Municipal Law Section 122-b; and

WHEREAS, in entering into this Agreement with PVAC, the TOWN wishes to assume the obligation of PVAC's patients who are documented residents of the TOWN to pay co-payments for ambulance service rendered under this Agreement in the fixed and limited amount set forth herein as an agreed upon lump sum payment of the reasonable and accurate estimate of the total annual amount of such co-payments; and

WHEREAS, PVAC is willing to enter into a contract with the TOWN for provision of general ambulance service for the TOWN on the terms and conditions set forth below;

NOW, THEREFORE, IT IS HEREBY AGREED as follows:



**(1.) TERM.**

(A.) The term of this Agreement shall be January 1, 2021 through December 31, 2021.

(B.) Either party to this Agreement may cancel and terminate this Agreement for cause on not less than sixty (60) days' written notice to the other party mailed to the address listed above by certified mail return receipt requested. For purposes of this Agreement "cause" shall mean any material breach of the terms hereof or the Rules & Regulations for ambulance service adopted by the TOWN.

(C.) In the event that the TOWN or PVAC determines not to negotiate or offer a new contract at the end of the term hereof, the party making such determination will make a good faith effort to inform the other of such decision within a reasonable amount of time after such decision has been reached. Provided, that nothing herein shall be construed as imposing any legal obligation on either party to enter into any additional or further contracts beyond the term hereof, nor shall either party be entitled to money damages based upon a claim of failure to give notice hereunder.

**(2.) GENERAL AMBULANCE SERVICE.**

(A.) PVAC shall furnish general ambulance service within the area of the TOWN lying north of the northerly boundary line of the "Garrison Fire Protection District of the TOWN of Philipstown". More particularly, PVAC shall at all times during the term hereof be subject to call for ambulance service by anyone for any person or persons residing or found within the aforesaid area.

(B.) When mutual aid ambulance service is requested over the County 911 system, PVAC shall respond to and render such general ambulance service without delay and with suitable equipment and personnel. However, other than County 911 mutual aid, PVAC shall not

enter into any contracts for ambulance service or mutual aid rendered by PVAC for more than thirty (30) days' duration without the prior written consent of the TOWN.

(C.) In providing ambulance service on a mutual aid basis PVAC shall at all times maintain at least one ambulance and EMS personnel sufficient to staff the ambulance in the TOWN for purposes of answering emergency calls from persons residing or found therein. Provided, however, that PVAC may dispatch any or all of its ambulances to provide mutual aid outside of the TOWN in the event that it receives a mutual aid call for a Priority 1 emergency or a mass casualty incident.

(D.) Upon execution of this Agreement, PVAC shall furnish the TOWN with certificates certifying that it is a New York State Certified ambulance service and has complied with all of the laws of the State of New York regarding the training of personnel. PVAC shall provide the equipment, ambulances, and qualified personnel necessary to furnish general ambulance service hereunder.

**(3.) EMERGENCY MEDICAL SERVICE VEHICLES & EQUIPMENT.**

(A.) Upon execution of this Agreement PVAC will provide the Town with a list of ambulance vehicles titled to PVAC including the model, make, year and VIN number of each such vehicle. In the event that PVAC acquires any new vehicles during the term hereof, PVAC shall promptly update the said list and provide it to the TOWN.

(B.) In light of the contract payments made hereunder to PVAC by the TOWN, in the event that PVAC ceases to operate as a volunteer ambulance corps, the TOWN shall have a right of first refusal to purchase any vehicles titled to PVAC during the term hereof for ONE AND 00/100 DOLLAR (\$1.00). The said right of first refusal on any vehicles titled to PVAC during the term hereof shall survive the expiration of the term of this contract and shall continue for as

long as PVAC retains title to the said vehicles. Provided, however, in the event that PVAC acquires or has previously acquired vehicles with funds or by other means other than purchase with funds paid under contracts with the TOWN (i.e., compensation and/or additional compensation), such vehicles shall not be subject to the said right of first refusal.

(C.) In the event that the TOWN exercises its right to purchase a vehicle under the aforesaid right of first refusal, the TOWN shall assume any existing debt on the vehicles being purchased.

(D.) The TOWN and GVAC agree and acknowledge that the right of first refusal set forth herein is not superior to the lien of any financing to be obtained by PVAC to acquire a vehicle.

(E.) In the event that PVAC sells or otherwise disposes of any vehicles titled to PVAC during the term hereof, PVAC shall provide written notice to the TOWN no later than thirty (30) days after the date of such sale or disposition of the vehicle.

(F.) PVAC shall be responsible for storing, maintaining, repairing, and conducting regular inspections of all ambulances, emergency vehicles, equipment and apparatus used in providing general ambulance service hereunder.

**(4.) INSURANCE.**

(A.) PVAC shall secure and keep in effect policies of automobile liability insurance on all ambulances and emergency vehicles titled to PVAC in amounts of not less than \$1,000,000/\$3,000,000 on which policies the TOWN shall be listed as an additional named insured and shall be entitled to no less than thirty (30) days' prior written notice of any lapse or cancellation of such policy. A certificate of such insurance shall be provided by PVAC to the TOWN prior to PVAC entering into performance of its obligations hereunder which shall list the

TOWN as an additional named insured and shall include a provision for notification of the TOWN of any cancellations, amendments or lapses in payment of premiums.

(B.) PVAC shall secure and keep in effect a Commercial General Liability Insurance policy (also known as Emergency Service Liability Coverage) with limits of no less than \$1,000,000. The TOWN, including its officers, employees, agents and servants, shall be listed as a named additional insured on such policy and shall be entitled to no less than thirty (30) days' prior written notice of any lapse or cancellation of such policy. A certificate of such insurance shall be provided to the TOWN prior to PVAC entering into performance of its obligations hereunder which shall list the TOWN, including its officers, employees, agents and servants (by title), as a named additional insured and shall include a provision for the aforesaid notification of the TOWN of any cancellations, amendments or lapses in payment of premiums any lapse or cancellation of such policy.

(C.) PVAC shall secure and keep in effect Volunteer Ambulance Workers Benefit Coverage throughout the term hereof on which the TOWN shall be entitled to no less than thirty (30) days' prior written notice of any lapse or cancellation of such policy. It is agreed that the policy satisfies the Town's obligation to provide VAWBL benefits and thereby inures also to the benefit of the Town. A certificate of such insurance shall be provided to the TOWN prior to PVAC entering into performance of its obligations hereunder which shall list the TOWN as an additional named insured and shall include a provision for the aforesaid notification of the TOWN of any cancellations, amendments or lapses in payment of premiums any lapse or cancellation of such policy.

**(5.) AMBULANCE SERVICE RULES & REGULATIONS.**

(A.) Pursuant to General Municipal Law §122-b(2), the TOWN has formulated and adopted rules and regulations for the provision of municipal ambulance service. A copy of the current Ambulance Service Rules and Regulations is attached hereto as Schedule "A."

(B.) In addition to its Standard Operating Procedures or Guidelines and its By-laws, during the term hereof PVAC shall strictly adhere to the said Ambulance Service Rules and Regulations, and any officer, member, employee or agent of PVAC violating such rules and regulations shall be subject to appropriate disciplinary action by PVAC.

(C.) During the term hereof, PVAC shall provide a copy of the TOWN's Ambulance Service Rules and Regulations to all of its members, and shall secure written acknowledgement of receipt of the same from each of its members and shall provide a copy of such acknowledgment to the TOWN within thirty (30) days after the date of its approval of this Agreement. Further, all persons becoming members of PVAC subsequent to the date hereof shall be provided by PVAC with a copy of the TOWN's Ambulance Service Rules and Regulations and PVAC shall provide a written acknowledgement of receipt of the same to the TOWN within thirty (30) days after the date of the new member's admittance to PVAC.

(D.) Additionally, PVAC shall provide legally compliant sexual harassment training to its members, officers and directors on an annual basis and shall maintain a sexual harassment policy which substantially complies with the New York State Model Policy. PVAC shall ensure that any contractors upon PVAC's premises shall similarly agree to comply with such model rules.

**(6.) OFFICERS & DIRECTORS OF PVAC.**

Contemporaneous with execution of this Agreement PVAC shall provide the TOWN with a list of all officers and directors of PVAC. In the event that any changes in officers and directors of PVAC occurs during the term hereof, PVAC shall promptly advise the TOWN of the same in writing.

**(7.) COMPENSATION TO PVAC FOR SERVICES RENDERED.**

(A.) For full and faithful performance of its obligations hereunder, PVAC shall, for the term of this Agreement, be entitled to receive a payment of \$336,500 plus the "additional compensation" listed below in this Agreement.

(B.) The TOWN hereby assumes the obligation of PVAC's patients who are documented residents of the TOWN to pay co-payments for ambulance service rendered under this Agreement to the extent set forth herein. All other patients of PVAC shall remain obligated to pay such co-payments as may be due and owing. The co-payment amount, provided by the TOWN and accepted by PVAC as payment in full of the said co-payment obligation for the term of this Agreement is \$9,000. The TOWN and GVAC have made reasonable attempts to calculate the potential co-payments and have arrived at this figure as a reasonable and accurate estimate of the annual amount of the same. The TOWN shall have no obligation whatsoever to pay co-payments for any residents except as set forth above; nor shall the provisions of this paragraph be interpreted as imposing any obligation on the TOWN to pay any amounts for co-payments above and beyond the dollar figure listed herein.

(C.) Except as provided below in regard to additional compensation through billing, all amounts due to PVAC as compensation under this Agreement shall be paid quarterly and such

payments shall be due no later than the last day of the quarter for which it is due. Provided, however, that:

(i.) Notwithstanding that payments for compensation and co-payments are due on a quarterly basis, as a voluntary accommodation to PVAC, the Town shall provide PVAC with an advance payment of 75% of the said contract payments (i.e., \$259,125) within thirty (30) days of execution of this Agreement by all parties and the remaining 25% (\$86,375) no later than July 31, 2021; and

(ii.) The TOWN shall not be obligated to make payment of the same unless and until the TOWN receives the tax monies levied upon real property within the TOWN; and

(iii.) The TOWN shall not be required to make payment in multiples of less than \$100.00, save at the option of the TOWN.

(D.) In the event that this Agreement is terminated by either party prior to the end of the term hereof, PVAC shall be entitled to retain only the amount of the payment received equal to the corresponding amount of the quarterly payment(s) due at the time of termination and in regard to the quarter in which the notice of termination was issued PVAC shall be entitled to receive a portion of the contract payment due for such quarter pro rata based on the number of days that have elapsed in such quarter when the notice was issued, including outstanding amounts and if possible, forgiven amounts.

(E.) For purely informational purposes, PVAC shall advise the TOWN in writing no later than October 1<sup>st</sup> of the total amount of all funds received by PVAC since October 1<sup>st</sup> of the prior year from sources other than contract payments and billing funds received under this Agreement, (such as fundraising, donations, and in-kind donations of goods, equipment, and vehicles).

**(8.) BILLING FOR EMS FEES; ADDITIONAL COMPENSATION.**

(A.) The TOWN has adopted a schedule of fees pursuant to General Municipal Law §122-b(2) to be charged to persons receiving EMS services from the TOWN, a copy of which is attached as Schedule "B."

(B.) PVAC shall enter into a contract with an Emergency Medical Service ("EMS") billing company during the term hereof, subject to approval by the TOWN which shall not be unreasonably be withheld.

(C.) PVAC shall issue bills through the said billing company for all ambulance and EMS services it provides for the TOWN in accordance with the TOWN's schedule of fees. In issuing such bills, PVAC shall use its Medicare Provider Identification Number.

(D.) PVAC shall render biannual (i.e., June 30 and December 31) reports to the TOWN as to the total amounts for the said periods of all of the invoices issued by the said billing company and all receipts of payment on the invoices.

(E.) PVAC's compensation under this Agreement shall include retention of all payments received on bills for service rendered by PVAC under this Agreement (i.e., "additional compensation"). Provided, however, that the TOWN shall have no obligation to make any payments to PVAC for "additional compensation" above and beyond the payment amounts received on such billing, and, further, the TOWN shall have no obligation to make any efforts or incur any expenses to collect upon any bills.

(F.) In the event that this Agreement is terminated by either party prior to the end of the term hereof, PVAC shall be entitled to retain as additional compensation any payments received upon bills issued for services rendered before or on the date of the notice of termination.



**(9.) INDEMNITY.**

PVAC shall indemnify and hold harmless the TOWN, its officers, employees, agents and servants from and against any and all liability, claims, losses, costs, or damages on account of injury to persons or property arising from the alleged negligence or other tortious conduct on the part of PVAC, its officers, members, employees, agents, servants, licensees or sub-contractors arising from performance under this Agreement.

**(10.) INDEPENDENT CONTRACTOR.**

It is understood and agreed that in carrying out the provisions of this Agreement PVAC is acting as an independent contractor and is not subject to any direction or control in any manner by the TOWN except as expressly conferred by law and the Ambulance Service Rules & Regulations. Provided, however, that the manner of use of vehicles, equipment and apparatus in the course of rendering general ambulance service and EMS service shall be the sole responsibility of and shall be formulated exclusively by PVAC.

**(11.) COMPLETE UNDERSTANDING.**

This Agreement, including the attached schedules, constitutes the entire understanding among the parties and supersedes and replaces in all respects any and all prior contracts, agreements and/or understandings, whether formal or informal, oral or written, among the parties with respect to the subject matter hereof. This Agreement may only be amended, modified or terminated by a writing signed by all parties hereto.

**(12.) MISCELLANEOUS.**

(A.) Neither this Agreement nor any rights and obligations contained herein may be assigned by PVAC.

(B.) This Agreement shall be governed by the laws of the State of New York. Venue for any legal disputes arising hereunder shall be New York State Supreme Court, Putnam County.

(C.) The TOWN represents to PVAC that the execution of this Agreement by the Supervisor of the TOWN has been duly authorized by a resolution of the Town Board.

(D.) PVAC represents to the TOWN that the execution of this Agreement by the President of PVAC has been duly authorized by a resolution of the Board of Directors of PVAC.

(E.) This Agreement may be signed in counterparts, with each such counterpart being deemed an original and having that same force and validity as an original signed document.

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

TOWN OF PHILIPSTOWN

By: \_\_\_\_\_  
Richard Shea, Supervisor  
Authorized by Resolution of the Town Board dated March \_\_\_\_, 2021

PHILIPSTOWN VOLUNTEER AMBULANCE CORPS INC.,

By: \_\_\_\_\_  
Authorized by Vote of the Philipstown Volunteer Ambulance Corps Inc.,  
dated March \_\_\_\_, 2021

RESOLUTION APPROVING SEQRA EAF AND ADOPTING A  
NEGATIVE DECLARATION

WHEREAS, the Town of Philipstown has issued a Request For Proposals ("RFP") for a Power Purchase Agreement ("PPA") with a solar energy company which will involve the Town granting a license to the solar energy company to attach solar panels to the roof of the Town's Recreation Center; and

WHEREAS, the proposed modification to the Recreation Center building is an action subject to the New York State Environmental Quality Review Act ("SEQRA"); and

WHEREAS, the Town Board as the only involved agency in SEQRA Review has caused to be prepared an Environmental Assessment Form ("EAF") Part I; and

WHEREAS, the Town Board, as assisted by its consultants, has considered the potential environmental impacts of the proposed action and has caused to be prepared an EAF Part II;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. That the Town Board accepts and approves the said EAF Parts I and II, and the Supervisor is hereby authorized to sign the same; and
2. That after considering all of the information presented to it, including the EAF, the Town Board adopts the Negative Declaration attached hereto.

\_\_\_\_\_ presented the foregoing resolution which was  
seconded by \_\_\_\_\_,

The vote on the foregoing resolution was as follows

Judith Farrell, Councilwoman, voting \_\_\_\_\_

John VanTassel, Councilman, voting \_\_\_\_\_

Robert Flaherty, Councilman, voting \_\_\_\_\_

Michael Leonard, Councilman, voting \_\_\_\_\_

Richard Shea, Supervisor, voting \_\_\_\_\_

**STATE ENVIRONMENTAL QUALITY REVIEW ACT  
NEGATIVE DECLARATION**

April 8, 2021

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Town of Philipstown Town Board as Lead Agency has determined that the proposed action described below does not present any potential significant adverse environmental impacts and a Draft Environmental Impact Statement will not be prepared.

**Name of Action:** Solar Energy PPA and solar panel installation at Town Recreation Center.

**Action Type:** Unlisted

**Conditioned Negative Declaration:** No

**Description of Action:** The Town of Philipstown proposes to enter into a Power Purchase Agreement ("PPA") with a solar energy company which will involve the Town granting a license to the solar energy company to attach solar panels to the roof of the Town's Recreation Center.

**Contact Person:** Richard Shea, Supervisor, Town of Philipstown, Old VFW Hall, 34 Kemble Avenue, Cold Spring, N.Y. 10516.

**Location:** 107 Glenclyffe Drive, Garrison, New York 10524.

**Reasons Supporting Negative Declaration:**

The Town's Recreation Center is an existing stand-alone building. As per the analysis in the EAF, the attachment of solar panels to the roof with utility support materials on and alongside the Recreation Center building will have no adverse environmental impacts.

## Short Environmental Assessment Form

### Part 1 - Project Information

#### Instructions for Completing

**Part 1 – Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information				
Name of Action or Project: Solar Energy PPA				
Project Location (describe, and attach a location map): Town Recreation Center, 107 Glencllyffe Dr, Garrison, NY 10524				
Brief Description of Proposed Action: The Town of Phillipstown is entering into a solar energy Power Purchase Agreement under which it will grant a license allowing a solar energy company to attach solar panels to the roof of the Town's Recreation Center building. The Town will then purchase the electricity produced by the solar panels.				
Name of Applicant or Sponsor: Town of Phillipstown		Telephone: 845-265-5200 E-Mail: supervisor@phillipstown.com		
Address: Old VFW Hall, 34 Kemble Avenue,				
City/PO: Cold Spring	State: NY	Zip Code: 10516		
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval:			NO <input type="checkbox"/>	YES <input type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		_____ N/A acres		
b. Total acreage to be physically disturbed?		_____ N/A acres		
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ N/A acres		
4. Check all land uses that occur on, are adjoining or near the proposed action:				
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)				
<input checked="" type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):				
<input checked="" type="checkbox"/> Parkland				

	NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input checked="" type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
a. Will storm water discharges flow to adjacent properties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	<input type="checkbox"/>	<input type="checkbox"/>
If Yes, briefly describe: _____ _____		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b>		
Applicant/sponsor/name: <u>Town Board Town of Phillipstown</u> Date: <u>April</u> , 2021		
Signature: _____      Title: <u>Town Supervisor</u>		

Project:

Date:

**Short Environmental Assessment Form  
Part 2 - Impact Assessment**

**Part 2 is to be completed by the Lead Agency.**

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>



Project: \_\_\_\_\_

Date: \_\_\_\_\_

### **Short Environmental Assessment Form Part 3 Determination of Significance**

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
<input checked="" type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.
Town of Philipstown	April , 2021
Name of Lead Agency	Date
Richard Shea	Town Supervisor
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

PRINT FORM

**RESOLUTION APPROVING SOLAR PPA PROPOSAL**

WHEREAS, the Town of Philipstown has issued a Request For Proposals ("RFP") for a Power Purchase Agreement ("PPA") with a solar energy company for placement of solar panels on the roof of the Town's Recreation Center building; and

WHEREAS, the Town has received a proposal from SunPower by New York State Solar Farm ("SunPower") for a PPA for the Town's Recreation Center; and

WHEREAS, the Town Board wishes to accept the said proposal for a PPA and to enter into such an agreement with SunPower; and

WHEREAS, review of the proposed PPA and attachment of solar panels to the roof of the Town's Recreation Center under the New York State Environmental Quality Review Act has been completed;

NOW, THEREFORE, BE IT RESOLVED as follows:

- 1. That the Town Board accepts the RFP submitted by SunPower; and
- 2. That upon submission by SunPower of a PPA setting forth the terms and conditions listed in the RFP for the same, in form acceptable to the Town Attorney, the Supervisor is authorized to sign the PPA.

\_\_\_\_\_ presented the foregoing resolution which was seconded by \_\_\_\_\_,

The vote on the foregoing resolution was as follows

Judith Farrell, Councilwoman, voting \_\_\_\_\_

John VanTassel, Councilman, voting \_\_\_\_\_

Robert Flaherty, Councilman, voting \_\_\_\_\_

Michael Leonard, Councilman, voting \_\_\_\_\_

Richard Shea, Supervisor, voting \_\_\_\_\_



# Town of Philipstown

Code Enforcement Office  
238 Main Street, PO Box 155  
Cold Spring, NY 10516

Office (845) 265-5202 Fax (845) 265-2667

## MONTHLY REPORT for March 2021

1. Fees Collected	<u>26,434.25</u>
2. Total Number of Permits Issued	<u>28</u>
3. New One- or Two-family dwellings:	<u>1</u>
4. New Commercial/Industrial buildings:	<u>0</u>
5. New Hazardous (H) occupancies:	<u>0</u>
6. New Multi family occupancies:	<u>0</u>
7. Additions, alterations or repairs residential buildings	<u>4</u>
8. Additions, alterations or repairs commercial buildings:	<u>0</u>
9. All other permits (pools, sheds, decks, plumbing, HVAC, etc.)	<u>23</u>
10. Number of Certificates of Occupancy :	<u>44</u>
11. Number of Stop Work Orders issued:	<u>1</u>
12. Operating permits issued	<u>-</u>
13. Operating permits issued hazardous materials	<u>-</u>
14. Operating permits Hazardous processes and activities	<u>-</u>
15. Permits Issued for the Use of pyrotechnic devices:	<u>-</u>
16. Inspection of public assembly :	<u>1</u>
17. Inspection of commercial occupancies	<u>-</u>
18. Inspection of buildings with 3 or more dwelling units:	<u>-</u>

Projects of Significance: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_