

**Electricity Supply Agreement (last revised 1 April 2020)**

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## PREAMBLE

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

The [City/Town/Village] of [NAME OF MUNICIPALITY], a municipal corporation 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**” 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), 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 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, Joule has been authorized by the Municipality to act as Program Administrator for the Community Choice Program, to issue request(s) for proposals to suppliers to provide electricity to Participating Consumers (as defined below), and to award electricity supply contracts;

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 offers to provide two distinct electric supply products and two corresponding pricing levels, (1) a CCA Standard Electricity Product and price, and (2) a CCA Renewable Electricity Product and price;

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;

WHEREAS, the municipalities that participate in the Joule Community Choice Program, including this Municipality, intend that this Agreement be uniform in form and substance in each instance throughout the Program; 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 **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.

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

1.5 **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 bundled with Renewable Energy Certificates; and/or (b) Standard electricity generation mix offered to Participating Consumers that meets the minimum Renewable Portfolio Standards for electric power established by New York State sold together with Renewable Energy Certificates.

1.6 **CCA Standard Electricity Product** –Standard electricity generation mix offered to Participating Consumers that meets the minimum Renewable Portfolio Standards for electric power established by New York State.

1.7 **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.

1.8 **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.

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

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

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

1.12 **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.

1.13 **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.

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

1.15 **Environmental Disclosure (Label) 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.

1.16 **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.

1.17 **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.

1.18 **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.

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

1.20 **General Communications** - The type of communications described and defined in Article 5.7 herein.

1.21 **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.

1.22 **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.

1.23 **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.

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

1.25 **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.

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

1.27 **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.

1.28 **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.

1.29 **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.

1.30 **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.

1.31 **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.

1.32 **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.

1.33 **Program** - Joule Community Choice Aggregation Program.

1.34 **Program Administrator** – Joule, authorized by PSC to put out for bid the total amount of electricity being purchased by Participating Consumers.

1.35 **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.

1.36 **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's consumers.

1.37 **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.

1.38 **Renewable Energy Certificate** –A renewable energy certificate registered in, and fully compliant with, the New York (State) Generation Attribute Tracking System (NYGATS), as may be amended from time to time.

1.39 **Retail Price** - As set forth in EXHIBIT A.

1.40 **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.

1.41 **Term** - As defined in Article 4.1.

1.42 **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 shall specifically authorize 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 and will remain in effect for the term of this ESA.

### 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 as an agent 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 that refer specifically to New Consumers. 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 that refer specifically to New Consumers.

### 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 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 switched 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 unanimous, 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) 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 Competitive Supplier's reasonable Standard 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 if it finds the communication inconsistent with the purposes and goals of the Municipality, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Municipality and Program Administrator fails to respond within seven (7) calendar days (not including weekends and holidays); and (ii) that no approval shall be necessary 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 any bill insert or message included at the bottom of such bill not within the scope of (a) above shall require approval. 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 if it finds the communication inconsistent with its business interests, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Competitive Supplier fails to respond within seven (7) calendar days after receipt (not including weekends and holidays); and (ii) that no approval shall be necessary 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, deemed credit-worthy for the duration of the ESA as determined by the Program Administrator or another qualified organization selected by Program Administrator.

## 5.12 COMPLIANCE WITH RFP

Competitive Supplier represents and warrants that Competitive Supplier's response to the Energy Procurement Request for Proposals is compliant with the terms and conditions set forth in the RFP and the ESA as determined by review of the Program Administrator or another qualified organization selected by Program Administrator.

## ARTICLE 6 ROLE OF THE MUNICIPALITY

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, **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.** 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 commodity 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, 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, 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.

## 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 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 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); and (iii) the number of Participating Consumer accounts active in each meter read of the reporting period. 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 Label requirement is waived by PSC, Competitive Supplier shall present a copy of the current Environmental Disclosure 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, 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 or its employees or agents, 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;

### 15.3 BY THE PROGRAM ADMINISTRATOR

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-. A certificate 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 excess or 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 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 agrees not to use, whether directly or through any of its Associated Entities, the name of the Municipality, or make any reference to the Municipality in any advertising or other information to be distributed publicly for marketing or educational purposes, unless the Municipality expressly agrees to such usage. Any proposed use of the name of the Municipality

must be submitted in writing for agreement and prior written approval which may be withdrawn through a notice in writing at any time. 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 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

**NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT.**

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.

*[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:

Address:

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

MUNICIPALITY

By: \_\_\_\_\_

Name:

Title:

Address:

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

PROGRAM ADMINISTRATOR

By: \_\_\_\_\_

Name: Michael Gordon

Title: Chief Executive Officer; Joule Assets, Inc.

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 DEFAULT CCA  
RENEWABLE ELECTRICITY PRODUCT 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 distribution utility]) territory commencing service on the first Consumer meter-read date after [\_\_\_\_\_] (“**First Meter Read Date**”).

Table 1:

Rate Class	Fixed Price per kWh	Discount off Distribution Utility rate
Residential	\$	
Small Commercial	\$	

**Terms for System Supply Service**

Term: The Price and Terms stated on this Exhibit A will commence on the First Meter Read Date and continue until the first Consumer meter read date after [\_\_\_\_\_] (“**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: 100% of electricity supply shall be CCA Renewable Electricity Product as defined in the Agreement.

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) 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.

Competitive Supplier's Standard 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.



If you submitted a fixed price in Table 1 above, please complete Table 2 below. New Consumers who enroll or are enrolled into the Program after the first Consumer meter-read date referred to above shall be served at the fixed price in Table 1 above, plus the applicable adder for each rate class outlined below.

Table 2:

Rate Class	Adder (or subtractor) per kWh
Residential	\$0.0
Small Commercial	\$0.0

This adder is above (or below) the current contracted price based on the following formula:

(Average LBMP 12 months prior to Effective Date<sup>1</sup> MINUS Average LBMP 12 months prior to date of enrollment<sup>2</sup>) PLUS 2.5\*(Capacity clearing price/kW for 12 months prior to effective date MINUS Capacity clearing price/kW 12 months prior to date of enrollment) DIVIDED BY Aggregate average kWh/customer/year in 12 months prior to enrollment.

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<sup>1</sup> Weighted by monthly consumption of the aggregation

<sup>2</sup> Weighted by monthly consumption of the aggregation

**EXHIBIT A - PART 2  
PRICES AND TERMS**

JOULE ASSETS COMMUNITY CHOICE AGGREGATION PROGRAM OPT-IN CCA  
STANDARD ELECTRICITY PRODUCT

This product shall be offered to Participating Consumers on an opt-in basis.

Firm Full-Requirements Price for Power Supply by Rate Classification for all Participating Consumers located in Distribution Utility service territory commencing service on the First Meter Read Date.

Table 3:

Rate Class	Fixed price per kWh
Residential	\$
Small Commercial	\$

**Terms for System Supply Service**

Term: The Price and Terms stated on this Exhibit A 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 dates after January 1st, 2020.

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 Standard 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) 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.

Competitive Supplier's Standard 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 Basic Utility Supply Service in the event that the consumer fails to pay to Competitive Supplier amounts past due greater than sixty (60) days.

New Consumers who enroll and are enrolled into the Program after the first consumer meter-read date referred to above shall be served at the price in Table 3, above, plus the applicable adder for each rate class outlined below.

Table 4:

Rate Class	Adder per kWh
Residential	\$0.0
Small Commercial	\$0.0

Please indicate below if you are willing to replace any portion of the 100% Renewable Firm Full-Requirements Power Supply to fulfill this ESA with power supply procured or developed by the Municipality or by the Program Administrator (check one)?

Yes  No

If you checked ‘Yes’ above, please indicate what cost, if any, you will levy for that replacement (specify unit cost): \$ \_\_\_\_\_.

Competitive Supplier, as per Exhibit C agrees to work with Municipality and Program Administrator in good faith to incorporate renewable energy and/or renewable energy certificates into its supply offering for Participating Consumers choosing the renewable product option.

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

<b><u>PROGRAM ADMINISTRATOR GENERAL INFORMATION</u></b>	<b><u>MUNICIPALITY GENERAL INFORMATION</u></b>	<b><u>SUPPLIER GENERAL INFORMATION</u></b>
Joule Assets Inc Contact Name: Glenn Weinberg	[Municipality] 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	E-mail 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: [            ] ] Municipality: [            ] ]	ATTN: [     ] ]
Address: 22 Edgemont Road	Address: [     ] ]	Address: [     ] ]
City, State Zip: Katonah, NY 10536	City, State Zip: [     ] ]	[     ] ]
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 10536 sfiller@jouleassets.com	Name: Address:	Name: Address:
<b><u>CONSULTANT BANK INFORMATION FOR PAYMENTS BY ACH</u></b>	JP Morgan Chase & Co. Bank Routing #: 021000021 Bank Account #: 905941001	

**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 both Program Administrator and Competitive Supplier with any 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 who retain a PPA consistent with Program Administrator's needs, 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, 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:

<b>Product</b>	<b>Unit-Contingent or committed</b>	<b>Time Block</b>	<b>Zone</b>	<b>Price (per Unit)</b>
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.

Competitive Supplier will then be required to accept offers of \_\_\_\_\_ if \_\_\_\_\_ for supply to the Program.

In such case, the Parties shall agree to 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.

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.

# Town of Orangetown

**Town Hall** • 26 W. Orangeburg Road • Orangeburg NY, 10962  
Telephone: (845) 359-5100 ext. 2293 • Fax: (845) 359-2623  
e-mail: supervisor@orangetown.com  
website: www.orangetown.com



**Teresa M. Kenny**  
Supervisor

## **DECLARATION OF A LOCAL STATE OF EMERGENCY FOR THE TOWN OF ORANGETOWN (COVID-19 Pandemic)**

TOWN OF ORANGETOWN  
2020 APR 17 A 9:03  
TOWN CLERK'S OFFICE

Dated: April 16, 2020

WHEREAS, on March 7, 2020, the Governor of the State of New York issued Executive Order No. 202 and declared a State disaster emergency for the entire State of New York with respect to the COVID-19 pandemic, and

WHEREAS, said Executive Order has been continued, amended and implemented by Orders identified as Orders No. 202.1 through 202.17 and

WHEREAS, on March 16, 2020, the County Executive of Rockland County issued a Local State of Emergency for the County of Rockland with respect to the COVID-19 pandemic, and

WHEREAS, as of the date of this Declaration, there are over 8,400 reported cases of COVID-19 in the County of Rockland, of which there are over 760 reported cases of COVID-19 within the Town of Orangetown, and

WHEREAS, I hereby find that as a result of the circumstances to date regarding the number of reported cases, and the number of reported deaths related thereto, the Town of Orangetown is in the midst of a public emergency, and reasonable apprehension thereof, and public safety is imperiled thereby, and

WHEREAS, in order to protect the health and safety of the public, emergency action is necessary to help abate the spread of the COVID-19 virus, including the opportunity for instances in which individuals come into close contact with one another,

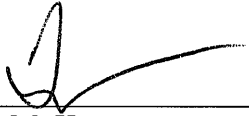
NOW THEREFORE, I, Teresa M. Kenny, Supervisor of the Town of Orangetown, by virtue of the authority vested in me by the Constitution and the laws of the State of New York, and as chief executive of the Town of Orangetown, hereby Proclaim pursuant to Section 24 of the New York State Executive Law, a Local State of Emergency in the Town of Orangetown and extend the previous State of Emergency issued on March 17, 2020.

In accordance with this Declaration, I will promulgate local emergency orders to protect life and property or to bring the emergency situation under control as the circumstances warrant, all as in accordance with New York State law.

This Declaration and any Executive Order issued pursuant thereto are not intended to supersede or conflict with any Executive Orders issued by the Governor of the State of New York or the Rockland County Executive.

The State of Emergency shall remain in effect for thirty days, through May 15, 2020, and may be extended at any time.

Dated: April 16, 2020  
Orangeburg, New York



---

Teresa M. Kenny  
Town Supervisor  
Town of Orangetown

TOWN OF ORANGETOWN  
2020 APR 17 A 9:03  
TOWN CLERK'S OFFICE





Engineers  
Planners  
Surveyors  
Landscape Architects  
Environmental Scientists

50 Chestnut Ridge Road, Suite 101  
Montvale, NJ 07645  
T: 845.352.0411  
F: 845.231.6321  
www.maserconsulting.com

March 10, 2020

**VIA E-mail**

Mr. James Dean, Superintendent of Highways  
Town of Orangetown  
119 Route 303  
Orangeburg, New York 10962  
Attn: Mr. Stephen Munno

Re: Preliminary & Final Culvert Replacement  
Design & Construction Inspection Services for  
Re-Design of NYS Rte. 303 Culvert at 400 Rte. 303,  
Orangeburg NY, Section, Block and Lot 74.07-1-28,  
Mitigate Sediment Transport &  
Water Quality Impairment to the Sparkill Creek  
MC Project No. 18004814G

Dear Mr. Munno:

Maser Consulting is respectfully requesting the Town's approval on the following scope and fees for the Construction Phase of this project. As you may recall, the 2 tasks below were included in our original proposal, but they were not authorized by the Town. As we prepare to go into the construction phase of the project, we would appreciate you authorizing this work so we can continue to assist the town in the successful completion of this project.

**Task 17 – Construction Phase**

Maser Consulting will provide Construction Administration Services to the Town of Orangetown in accordance with the Town RFP. A fully qualified Resident Inspector will be assigned to the project to provide full time observation of all construction activities, as well as the preparation of all reporting tasks; such as meeting minutes, daily activity reports, maintaining files, etc. as described in the Town RFP. The Resident Inspector will be supported by the engineering office staff that will provide technical support to the Resident Inspector, in particular with reviewing submittals and answering RFI's as they pertain to the Contract Documents. For the purpose of this proposal, and in order to provide an estimated fee, we assumed that the Construction duration will be 4 months.

**Task 17 Lump Sum Fee**

**\$ 87,530.00**



**Task 18 – Post Construction Phase**

Maser Consulting will provide post construction phase professional services in accordance with the Town FRP; including the preparation of As-Built Plans, Punch List, Final Project Report and review of Final Payment Vouchers. Reviewing the monthly payment requests and change orders from the Contractor is evidently an important task that will be provided by the Maser Consulting staff during the Construction Phase.

**Task 18 Lump Sum Fee**

**\$ 4,390.00**

We trust that this proposal meets your approval and we look forward to working with you this project. Should you have any questions, please feel free to contact me at 845.352.0411 Ext. 3909.

Very truly yours,

MASER CONSULTING P.A.

A handwritten signature in black ink that reads 'Nabil M. Ghanem'.

Nabil M. Ghanem, PE  
Sr. Principal

NMG/ca

r:\projects\2018\18004814g\proposals\200305\_additional services\_stephen munno.docx



Preliminary & Final Culvert Replacement Design & Construction Inspection Services for Re-Design of NYS Rte. 303 Culvert at 400 Rte. 303, Orangeburg, NY, Section, Block and Lot 74.07-1-28, to Mitigate Sediment Transport & Water Quality Impairment to the Sparkill Creek

MC PROPOSAL NO. 18004814P

**FEE SUMMARY**

**TOTAL**

TASK 1: PROJECT FAMILIARIZATION	\$ 1,350.00
TASK 2: MEETINGS	\$ 6,820.00
TASK 3: COST AND PROGRESS REPORTING	\$ 5,660.00
TASK 4: SPECIFICATIONS	\$ 10,180.00
TASK 5: DESIGN SURVEY	\$ 6,210.00
TASK 6: DESIGN MAPPING	\$ 5,610.00
TASK 7: DETERMINATION OF EXISTING CONDITIONS	\$ 6,860.00
TASK 8: SOIL INVESTIGATING	\$ 6,330.00
TASK 9: HYDRAULIC CAPACITY ANALYSIS	\$ 6,240.00
TASK 10: DEVELOPMENT OF ALTERNATIVES	\$ 11,680.00
TASK 11: PUBLIC INFORMATION MEETING(S)	\$ 5,800.00
TASK 12: PRELIMINARY CULVERT PLANS	\$ 18,400.00
TASK 13: REGULATORY PERMITTING	\$ 5,940.00
TASK 14: ADVANCE DETAIL PLANS (ADP)	\$ 24,920.00
TASK 15: CONTRACT DOCUMENTS	\$ 10,790.00
TASK 16: PRE CONSTRUCTION PHASE	\$ 3,350.00
TASK 17: CONSTRUCTION PHASE	\$ 87,530.00
TASK 18: POST CONSTRUCTION PHASE	\$ 4,390.00
<b>SUB TOTAL FOR TASKS 1 THROUGH 18:</b>	<b>\$ 228,060.00</b>

**ALLOWANCES**

PERMIT FEES	\$ 500.00
SUBCONSULTANT (OSPA)	\$ 9,700.00
SPECIALIZED TESTING ALLOWANCE (SOIL BORINGS)	\$ 7,600.00
FINAL PRINTING	\$ 1,500.00
CERTIFIED MAIL / DELIVERIES	\$ 200.00
<b>TOTAL FOR ALLOWANCES</b>	<b>\$ 19,500.00</b>

**SUBCONSULTANT**

**Total Fee: \$ 247,560.00**



**MAN-HOUR AND DIRECT SALARY COST BREAKDOWN SUMMARY**

Preliminary & Final Culvert Replacement Design & Construction Inspection Services  
 For the Re-Design of NYS Route 303 Culvert at 400 Route 303, Orangeburg NY, Section, Block and Lot 74.07-1-28,  
 To Mitigate Sediment Transport & Water Quality Impairment to the Sparkill Creek

SHEET 2 OF 2

8/18/2018

TASK	TITLE	PRINCIPAL	PROJ. MANAGER	PROJ. ENG.	SR. ENG.	ENG.	CADD DESIGN	CHIEF SURVEYOR	SURVEY TECH.	2-MAN SURVEY CREW	Resident Inspector	PROJECT ENVR.	SR. ENVR. SPEC.	TECH. TYPIST	TOTALS
PROJECT FAMILIARIZATION	(TASK 1)	2	2	0	0	4	0	0	0	0	0	0	0	1	9
MEETINGS	(TASK 2)	2	16	16	0	0	0	0	0	0	0	0	0	8	42
COST AND PROGRESS REPORTING	(TASK 3)	2	16	0	0	12	0	0	0	0	0	0	0	8	38
SPECIFICATIONS	(TASK 4)	2	4	0	40	40	0	0	0	0	0	0	0	0	86
DESIGN SURVEY	(TASK 5)	1	4	0	0	0	0	0	0	24	0	0	0	4	33
DESIGN MAPPING	(TASK 6)	1	4	0	0	0	40	0	0	0	0	0	0	4	49
DETERMINATION OF EXISTING CONDITIONS	(TASK 7)	2	4	16	24	0	0	0	0	0	0	0	0	4	50
SOIL INVESTIGATING	(TASK 8)	1	16	0	0	24	0	0	0	0	0	0	0	4	45
HYDRAULIC CAPACITY ANALYSIS	(TASK 9)	2	4	12	24	0	0	0	0	0	0	0	0	4	46
DEVELOPMENT OF ALTERNATIVES	(TASK 10)	4	8	16	0	24	40	0	0	0	0	0	0	0	92
PUBLIC INFORMATION MEETING(S)	(TASK 11)	4	8	8	0	16	0	0	0	0	0	0	0	4	40
PRELIMINARY CULVERT PLANS	(TASK 12)	4	16	24	0	60	40	0	0	0	0	0	0	0	144
REGULATORY PERMITTING	(TASK 13)	2	4	16	16	0	0	0	0	0	0	0	0	4	42
ADVANCE DETAIL PLANS (ADP)	(TASK 14)	4	16	20	40	60	60	0	0	0	0	0	0	4	204
CONTRACT DOCUMENTS	(TASK 15)	4	8	8	30	30	0	0	0	0	0	0	0	4	84
PRE CONSTRUCTION PHASE	(TASK 16)	1	4	8	0	0	0	0	0	0	12	0	0	0	25
CONSTRUCTION PHASE	(TASK 17)	4	16	80	0	0	0	0	0	0	750	0	0	0	850
POST CONSTRUCTION PHASE	(TASK 18)	1	2	0	0	0	0	0	0	0	40	0	0	0	43
<b>TOTAL HOURS</b>		43	152	224	174	270	180	0	0	24	802	0	0	53	1922
<b>AVERAGE HOURLY BILLING RATE</b>		\$210.00	\$190.00	\$155.00	\$115.00	\$110.00	\$105.00	\$120.00	\$90.00	\$200.00	\$95.00	\$175.00	\$140.00	\$110.00	
<b>TOTALS</b>		\$9,030.00	\$28,880.00	\$34,720.00	\$20,010.00	\$29,700.00	\$18,960.00	\$0.00	\$0.00	\$4,800.00	\$75,190.00	\$0.00	\$0.00	\$5,530.00	\$228,060.00

**TOWN OF ORANGETOWN  
HIGHWAY DEPARTMENT**

**CONTRACT DOCUMENTS  
FOR**

**THREE (3) NEW MEDIUM DUTY DUMP TRUCKS**

**March 2020**

**JAMES J. DEAN  
SUPERINTENDENT OF HIGHWAYS**

## NOTICE TO BIDDERS

SEALED BIDS WILL BE RECEIVED by the Town Board of the Town of Orangetown at the Town Clerk's Office, No. 26 Orangeburg Road, Orangeburg, New York until 10:30 A.M on March 26, 2020 and will be publicly opened and read aloud at 11:00 A.M.. for furnishing Three (3) New Medium Duty Dump Trucks, in accordance with the Contract Documents on file with and which may be obtained at the Town Clerk's Office.

The Superintendent of Highways will submit a report to the Town Board of all bids received and his recommendation concerning the awarding of a Contract at a meeting of the Town Board of the Town of Orangetown.

The Town Board requires each bid to be accompanied by a certified check for a sum equal to five percent (5%) of the amount of the bid, or a bond with sufficient sureties to be approved by the Town Attorney, in a sum equal to five percent (5%) of the amount bid, conditioned that if his/her proposal is accepted, he/she will execute such further security as may be required for the faithful performance of the Contract as set forth in these contract documents.

The Town Board reserves the right to waive any informalities in the bidding and to reject and all bids.

No bid will be accepted without a Non-Collusion Statement as required pursuant to Section 103d of the General Municipal Law.

No contract is deemed to have been created until approved by a Town Board Resolution and the Town Attorney, and until after it has been executed by the Supervisor of the Town of Orangetown, at the direction of the Town Board. All contracts are subject to appropriations approved by the Town Board, after having been provided for in the Town Budget.

By order of the Town Board of the Town of Orangetown.

DATED: March 11, 2020

JAMES J. DEAN  
SUPERINTENDENT OF HIGHWAYS

ROSANNA SFRAGA  
TOWN CLERK

# BID

TO: TOWN BOARD, TOWN OF ORANGETOWN, TOWN HALL  
NO. 26 ORANGEBURG ROAD, ORANGEBURG, NEW YORK 10962

THE UNDERSIGNED, having a principal place of business at

80 ROUTE 304 NANUET NY 10954 ED PATNER 845-624-3600 x133

(Permanent street address is required if mailing address is different. Please include contact name and telephone number.), and being experienced and responsible for the performance of same, proposes to furnish and deliver to the Town of Orangetown, Highway Department, Three (3) New Medium Duty Dump Trucks, in accordance with the Specifications and Contract Documents hereto attached, as follows.

ITEM	UNIT PRICE	TOTAL PRICE
------	------------	-------------

<b>Three (3) New Medium Duty Dump Trucks</b>		
--	--	--

\$ 81,000

\$ 243,000

The Town Board requires each bid to be accompanied by a certified check for a sum equal to five percent (5%) of the amount of the bid, or a bond with sufficient sureties to be approved by the Town Attorney, in a sum equal to five percent (5%) of the amount bid, conditioned that if his/her proposal is accepted, he/she will execute such further security as may be required for the faithful performance of the Contract as set forth in these contract documents.

All bids will be honored for one (1) year from the date of the Agreement. Delivery shall be made within one-hundred and twenty (120) days from the date of notification of award.

It is understood that there must be a written contract executed by the Supervisor of the Town of Orangetown, pursuant to Town Board Resolution.

This is subject to appropriations approved by the Town Board.

The Town of Orangetown has adopted and disseminated a revised Policy Against Discrimination and Harassment. All Proposers are required to acknowledge that they have reviewed the revised Policy, and have been afforded an opportunity to ask a Municipality Compliance Officer any questions they may have regarding the Policy. If you have any questions regarding this Policy, feel free to contact Donna Morrison, Compliance Officer.

The undersigned declares that they have carefully examined and fully understand the Town of Orangetown Policy Against Discrimination and Harassment, effective October 23, 2018. Said policy is available on the Town's website at [www.orangetown.com](http://www.orangetown.com). Upon award of the proposal, all members of the firm who will be working on this project shall be required to review said policy and execute an acknowledgement form.

BY: 

TITLE: C.A.M.

COMPANY OR CORPORATION: SCHULTZ FORD LINDAN INC  
80 ROUTE 304  
NANUET NY 10954

TELEPHONE NUMBER: 845-624-3000 x133



## NON-COLLUSIVE BIDDING CERTIFICATE

STATEMENT ATTACHED TO AND FORMING A PART OF ALL BIDS RECEIVED  
BY THE TOWN OF ORANGETOWN.

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor:

Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any bidder or to any competitor; and,

No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A bid shall not be considered for award nor shall any award be made where (a), (1), (2), and (3) above have not been complied with; provided, however, that if in any case the bidder cannot make the forgoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (1), (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition. The fact that a bidder (a) has published price lists, rates or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a). Any bid made to any political subdivision of the State or any public department, agency or official thereof by a corporate bidder for work or service performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation or local law, and where such bid contains the certification referred to in subdivision

one of this section, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

This statement so subscribed by bidder to person signing on behalf of bidder and affirmed as true under penalties of perjury.

DATED: 3/20/2020

BY: 

FOR: SCHULTZ FORD LINCOLN INC.

**AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, between the TOWN OF ORANGETOWN, a municipal corporation located in the County of Rockland, State of New York, party of the first part, hereinafter called the "TOWN", and \_\_\_\_\_, a domestic corporation having its principal place of business at \_\_\_\_\_, party of the second part, hereinafter called the "CONTRACTOR" (Include contact name and telephone number).

Whereas, the contractor has submitted a Proposal to supply and deliver Three (3) New Medium Duty Dump Trucks to the Town of Orangetown, Highway Department Storage Yard, in accordance with the Specifications and other Contract Documents attached hereto and made a part hereof for the following prices:

ITEM	UNIT PRICE	TOTAL PRICE
<b>Three (3) New Medium Duty Dump Trucks</b>	\$ _____	\$ _____

And WHEREAS, the Town of Orangetown is desirous of purchasing said Three (3) New Medium Duty Dump Trucks at the prices indicated above, NOW THEREFORE, IT IS UNDERSTOOD AND AGREED AS FOLLOWS:

1. The Contractor agrees to furnish and the Town agrees to purchase the above described trucks at the price indicated above.
2. All deliveries shall be subject to examination by the Town and where it is found that they do not comply with the Specifications or are found defective in any manner, they shall be rejected and returned to the Contractor at his expense. Delivery shall be made within one-hundred and twenty (120) days of this agreement.
3. The prices listed herein shall remain firm for a period of one (1) year from the date of this Agreement.

4. No sales tax or other taxes will be charged to the Town. The Town will furnish to the Contractor such proof of tax exemption as may be required by law. All invoices and claims for payment will be sent to the Orangetown Highway Department, 119 Route 303, Orangeburg, New York.
5. In the hiring of employees for the performance of work under this Contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on his behalf of such contractor or subcontractor, shall by reason of race, color or sex discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee for the performance of work under this Contract on account of race, creed, color, sex or national origin.
6. Upon the refusal of a person, when called before a grand jury to testify concerning any transaction or contract had with the State, any political subdivision thereof, a public authority, or with any public department, agency or official of the State or any political subdivision thereof, or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, (a) such person, and any firm, partnership, or corporation of which he is a member, partner, director, or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district, or any public department, agency or official thereof, for goods, work or services, for a period of five (5) years after such refusal, and (b) any and all contracts made with any municipal corporation or any public department, agency or official thereof on or after the first day of July, nineteen hundred fifty-nine, or with any fire district or any agency or official thereof, on or after the first day of September, nineteen hundred sixty, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be canceled or terminated by the municipal corporation or fire district without incurring any penalty or damages on account of such cancellation or termination, but any moneys owing by the municipal corporation or fire district for goods delivered or work done prior to the cancellation or termination shall be paid.

7. The Proposal and Non-Collusion Statement made pursuant to Section 103d of the General Municipal Law, and the Specifications provided for in the Contract Documents herein are made a part hereof, as though set forth at length herein.
8. The Contractor has complied with all conditions precedent hereto required to be complied with by him.
9. The Contractor shall promptly comply with all Federal, State, and Local Laws concerning the subject matter herein.
10. By the acceptance of the labor, materials and supplies delivered pursuant to this Agreement, the Town does not waive any of the terms and conditions of this Agreement.
11. No contract is deemed to have been created until approved by a Town Board Resolution and the Town Attorney, and until after it has been executed by the Supervisor of the Town of Orangetown, at the direction of the Town Board. All contracts are subject to appropriations approved by the Town Board, after having been provided for in the Town Budget.

IN WITNESS WHEREOF, the respective parties have hereto executed this Agreement and caused same to be signed by the proper officers of said parties and their respective seals affixed, the day and year first written above.

ATTEST:

\_\_\_\_\_  
TOWN CLERK (SEAL)

TOWN OF ORANGETOWN

BY \_\_\_\_\_  
SUPERVISOR

TOWN OF ORANGETOWN  
HIGHWAY DEPARTMENT

BY \_\_\_\_\_  
SUPERINTENDENT

ATTEST:

\_\_\_\_\_  
SECRETARY (SEAL)

\_\_\_\_\_  
CONTRACTOR AND/OR  
CONTRACTING FIRM/  
CORPORATION

BY \_\_\_\_\_

STATE OF NEW YORK    )  
  : ss.:  
COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, the undersigned a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which individual(s) acted, executed the instrument.

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

STATE OF NEW YORK    )  
  : ss.:  
COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, the undersigned a Notary Public in and for said State, personally appeared \_\_\_\_\_, the subscribing witness(es) to the foregoing instrument, with whom I am personally acquainted who, being by me duly sworn, did depose and say that he/she/they reside(s) in \_\_\_\_\_, New York, that he/she/they know(s) \_\_\_\_\_ to be the individual(s) described in and who executed the foregoing instrument; that said subscribing witness(es) was/were present and saw said \_\_\_\_\_ execute the same; and that said witness(es) at the same time subscribed his/her/their name(s) as a witness thereto.

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

STATE OF NEW YORK )

ss.

COUNTY OF ROCKLAND )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally came TERESA M. KENNY, to me known and known to me to be the same person who subscribed the foregoing instrument, and who by me being duly sworn did say he resides in Rockland County, New York and that he is the Supervisor of the Town of Orangetown, the corporation described in and which executed the above instrument; that he knows the seal of said corporation and the seal affixed to the foregoing instrument is the corporate seal of said corporation, and was hereto affixed by order of the Town Board of said corporation, and that he signed the same as Chief Fiscal Officer of said Town of Orangetown by virtue of a like order of the said Town Board.

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

STATE OF NEW YORK )

ss.

COUNTY OF ROCKLAND )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally came JAMES J. DEAN, to me known and known to me to be the same person who subscribed the foregoing instrument, and who by me being duly sworn did say he resides in Rockland County, New York and that he is the Superintendent of the Department of Highways of the Town of Orangetown, the corporation described in and which executed the above instrument; that he knows the seal of said corporation and the seal affixed to the foregoing instrument is the corporate seal of said corporation, and was hereto affixed by order of the Town Board of said corporation, and that he signed the same as Superintendent of the Department of Highways of said Town of Orangetown by virtue of a like order of the said Town Board.

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



**CERTIFICATION OF TOWN ATTORNEY**

I, ROBERT V. MAGRINO, Town Attorney of the Town of Orangetown, hereby certify that, from a legal standpoint, all conditions precedent to the execution of this contract have been complied with and it is in all respects, a valid and binding obligation upon the parties thereto.

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

\_\_\_\_\_  
ROBERT V. MAGRINO, Town Attorney

## Three (3) New Medium Duty Dump Trucks

### COMPLIANCE TO SPECIFICATION

It shall be bidders responsibility to examine each item of specification. The bidder shall indicate **100%** compliance by checking "YES". Any deviation from the specification as written must be marked "NO" for each line item. **Unilateral interpretations will not be accepted!** Failure to offer a properly completed bid or failure to respond accurately to each individual item of the technical specification may cause the offender's bid to be rejected. Where the bidder answers "NO", all such variances, exceptions, and/or deviations shall be fully described in writing, identified by section, line item on attachment marked "Exceptions/Deviations". Any space left blank shall be considered non-compliant. **NO VERBAL INTERPRETATIONS WILL BE ACCEPTED!** In addition NO deviations below "minimum" specifications as written will be accepted. Bidders shall not use deceit or false statements in responding to written specifications as such may be cause for rejection of bid and/or other penalties.

### EQUIVALENT PRODUCT STATEMENT

Bids will be accepted for consideration on any make or model that is equal or superior to the New Medium Duty Dump Trucks specified. Decisions of equivalency will be at the sole interpretation of the Town of Orangetown Highway Department. A blanket statement that equipment proposed will meet all requirements will not be sufficient to establish equivalence. Original manufacturer's brochures of the proposed unit are to be submitted with the proposal. All modifications made to the standard production unit described in the manufacturer's brochures must be certified by the manufacturer and submitted with the bid, or the bid will be deemed "non-responsive" and rejected without further review. Bidder must be prepared to demonstrate a unit similar to the one proposed, if requested.

### BIDDING REQUIREMENTS SECTION

SECTION	SPECIFICATION DETAILS	YES	NO
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### SPECIFICATIONS FOR A 2021 FORD F-750 DIESEL REGULAR CAB BASE WITH DUMP BODY OR APPROVED EQUAL

**WHEELBASE: 158: CA: 84" AF: 49" OAL: 246" GVW:31,000 lbs**

**COMPLY**

**DIMENSIONS:**

- Front of Bumper to Front Axle: 39"
- Front Bumper to Back of Cab(BBC): 113"
- Wheelbase (WB): 158"
- Overall Length (OAL): 246"
- Back of Cab to Rear Axle (CA): 84"
- Back of Cab to End of Frame: 133"
- Rear Axle to End of Frame (AF): 49"
- Frame Section Height: 10.10"
- Rear Frame Height Unloaded: 38"
- Rear Frame Height Loaded: 36.50"
- Cab Height: 94.30"
- Body Width: 96.70"
- Maximum Ground Clearance: N/A
- Minimum Ground Clearance: N/A
- Front Tread: 83.50"
- Rear Tread: 72.70"



**WEIGHT:**

Front Axle Total: 10,000 lbs  
Rear Axle Total: 21,000 lbs  
Total: 31,000 lbs

**YES / NO**

**FRAME**

Single Channel- Straight 'C' 14.18 SM, 120,000 PSI  
1,701,600 RBM  
Heat treated alloy steel; 10,125"x 3.580"x 0.312" (257.2mm x 90.9mm x 8.0mm)

**YES / NO**

**FRONT AXLE**

10,000 lb. Cap Non- Driving- Dana E-1002I- I- Beam Type or Equal  
Taper- Leaf Springs, Parabolic- 10,000 lb. Cap  
2-leaf, 62" x 3.15"  
Also includes standard duty, dual double acting shock absorbers.

**YES / NO**

**BRAKE SYSTEM**

Air Brakes- Straight Truck with Traction Control  
Meritor Q-Plus with ABS, Bendix Anti- Lock Brake System, 4-Channel or Equal  
15"x4" front brakes, dual direct reading air pressure gauges, brake lines color coded nylon  
Bendix 13.2 CFM capacity air compressor or equal, instrument panel mounted yellow knob  
parking brake control valve, automatic slack adjusters front and rear, two rear spring parking air  
brake chambers mounted on front of rear axle, three drain valves and two air tanks  
Air Dryer, Bendix AD/IS w/ Heater or Equal- mounted left frame rail  
Trailer Connection Socket- 7- Way  
Wired for Turn Signals Combined with Stop- mounted at rear of frame, for combined trailer stop,  
tail, turn.

**YES / NO**

**EXHAUST**

Under Cab, Right Side Outlet, Switchback- Style  
Single, horizontal muffler, right side, under cab, outside of frame rail with rear discharge

**YES / NO**

**ELECTRICAL**

Extra Heavy Duty Alternator- 12- Volt, 200 Amp Denso SC5 or Equal  
Battery- Three 900 CCA, 2700 Total, Includes Steel Battery Box, 12 Volt Motorcraft or Equal  
Body Builder Wiring- At End of Frame, Combined- (ILO Standard- Back of Cab Combined)  
Includes sealed connectors for 2 ground circuits, with combined left/ stop, combined right/stop,  
stop lamps, back up lamps. Also includes 2 additional pass through wires to cab  
Daytime Running Lamps

**YES/NO**

**ENGINE**

6.7L Power Stroke V8 Turbo Diesel or Equal  
270 HP @ 2400 RPM  
Includes Engine Exhaust Brake and manual regen capability  
Torque: 700 ft. lbs @ 1500 rpm  
50-State Emissions  
Engine Block Heater, Phillips, 120 Volt/ 750 Watt

**YES/NO**

**TRANSMISSION**

Ford TorqShift HD 6-Speed Automatic or Equal  
Double Overdrive, Less PTO Provision- Less Park Pawl  
Transmission Power Take- Off  
Provision with LiveDrive Capability and Tow/Haul

**YES/NO**

**REAR AXLE**

21,000 lb Single Reduction- Open- Dana Spicer 21060S or Equal  
Multi- Leaf Springs- 21,000 lb Cap  
Double Acting- Rear- Shock Absorbers  
6.50 Axle Ratio

**YES/NO**

**FUEL TANK**

LH 50 Gallon Rectangular- Aluminum  
12 Gallon Single Tank Fuel Fill  
Mandatory Charge Applied, Based on Tank Selection

**YES/NO**

**CAB INTERIOR**

30/70 Air Ride Drive(External Air Source) & Fixed 2- Passenger Bench- Vinyl Preferred Equipment Package 600A or Equal- Includes:  
Bumper; Front- Black, Full Width  
Wheel Seals, Front- Oil lubricated, SKF Scot Seal Plus XL Seals or Equal  
Wheel Seals, Rear- Oil lubricated, SKF Scot Seal Plus XL Seals or Equal  
Manual Regen Initiation- Drive Interace in Message Center  
Engine Exhuast Brake  
Extra Heavy Duty Alternator- 12 Volt- 00 Amp Denso SC5 or Equal  
Painted Grille-Plastic  
Lights- Roof Marker/ Clearance- Amber Lenses, 5 Lights  
Tow Hooks, Front (2)- Frame- Mounted, Painted Black  
Four Body Builder Switches- Mounted in Center Instrument Panel with connector access located in engine compartment. Amperages vary by switch: 10,15,25,25.  
Floor covering- Black Vinyl  
Intelligent Oil Life Monitor  
Steering Column- Tilt/ Telescoping  
Steering Wheel- Black PVC w/ Integral Cruise Control Switches, includes Audio Controls  
Rapid Heat Supplemental Cab Heater  
Radio: AM/FM Stereo with 2 Speakers, USB input, Clock Display and Bluetooth  
Interior Color: Gray

YES / NO

**CAB EXTERIOR :**

Horn, Air- Black, Single Trumpet- Air solenoid operated, chassis mounted on rail back of bumper  
Mirrors, Dual- Heated Rectangular, XL 2020- 102" Width  
Integral spot mirror, sail type, manual fold, solid black finish.

YES / NO

**PAINT**

Paint Type- Environmentally Frenly, "3- Wet System" or Equal  
Paint Color: Cab- School Bus Yellow

YES / NO

**TIRES AND WHEELS**

22.5 X 8.25 White Powder Coated Steel, 10- Hole  
285.75MM BC hub piloted, flanged nut, metric mount  
8.25 DC rims with steel hubs  
Two Front 11R22.5G Goodyear Fuel Max RSA(497 rev/mile) or Equal  
Four Rear 11R22.5G Goodyear Fuel Max RTD(493 rev/mile) or Equal

**WHEELBASE**

158" Wheelbase/ 84" CA/49" AF/ 246" OAL

YES / NO

**TURNING RADIUS**

Turning radius to curb: 21.92 ft  
Turning radius to bumper: 23.49 ft

YES / NO

**BODY SPECS**

Rugby 10' 5-7 Yard Dump Body "Titan" Series or Equal  
7 Gauge Steel Sides with fully boxed dirt shedding top rail  
24" High Sides  
34" Tailgate Height  
Three vertical boxed braces per side  
8 Gauge steel floor with radiused corners  
8 Gauge 34" height four way tailgate  
4" structural steel cross members on 12" centers  
Oval shaped LED STOP/ Turn/ Tail Light built into corner post  
Combination S/T/T and back up light two in one light, 1 each side  
LED Marker Lights  
All Appearance corners have radiused bends  
96" O.D. Width  
10' Outside Length  
Installed and Painted Black  
Rugby SF26DM Hydraulic Hoist or Equal  
Chelsea 249 PTO, Pump, Oil Reservoir or Equal  
Hotshift PTO Driven pump  
Cab Control, One Handle Floor Mount Air Operated  
½ Cabshield Titan Series or Equal  
Rugby Coal Chute for "TITAN ONLY" or Equal  
Cab Hood to be Painted Black  
Donovan 5000GLU Semi Automatic Tarp System or Equal  
Ground Level Crank  
Chain Guard  
Under Body Spring Design  
14' Asphalt Tarp  
Donovan Steel Wind Deflector for 5000 and 7000 Series Tarp System or Equal  
Buyers Hitch Plate 1809043 with Buyers PH15 Pintle Hitch  
Back Up Alarm 97DB or Equal  
Plug, 6 Prong Trailer  
Brake Controller only wire to existing plug  
2 Buyers 6.5" Oval Amber LED Strobes in Rear of Body or Equal  
Buyers LED Strobe Light mounted on the center of the cab roof or Equal  
Truck Body Style: Dump  
Body Length: 10.80'  
Body width: 96"

YES / NO

**MISCELLANEOUS**

Any and All Exceptions to This Specification (NO MATTER HOW SMALL)

MUST be Noted to the Right of the Item in the Space provided.

If No Exceptions are Noted, it is Expected to be the Exact Specification

Bidder Must Provide Current Literature & Spec. Sheets with the Bid.

This Entity Wishes to Purchase Only Domestic Vehicles

Produced in the United States Bidder Must have A

Parts, Service, and Warranty Location Within 25 Miles who Stocks

Adequate Parts for the Efficient Repair of These Vehicles

YES / NO

EXCEPTIONS:

NO GUARANTEE ON DELIVERY DUE TO THE GLOBAL  
IMPACT THAT WE ARE CURRENTLY LIVING IN.





**WARRANT**

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Warrant Reference	Warrant #	Amount
Approved for payment in the amount of		
	040820	\$ 340,990.38
	040920	\$ 22,315.00
	042020	\$ 85,937.72 Utilities incl De Lage
	042120	\$ 633,298.91
	Total	\$ 1,082,542.01

The above listed claims are approved and ordered paid from the appropriations indicated.

**APPROVAL FOR PAYMENT**

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**AUDITING BOARD**

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Councilman Gerald Bottari

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Councilman Paul Valentine

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Councilman Thomas Diviny

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Councilman Denis Troy

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Supervisor Teresa M. Kenny

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**TOWN OF ORANGETOWN  
FINANCE OFFICE MEMORANDUM**

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**TO:** THE TOWN BOARD  
**FROM:** JEFF BENCIK, *DIRECTOR OF FINANCE*  
**SUBJECT:** AUDIT MEMO  
**DATE:** 4/15/2020  
**CC:** DEPARTMENT HEADS



The audit for the Town Board Meeting of 4/21/2020 consists of 4 warrants for a total of \$1,082,542.01.

The first warrant had 64 vouchers for \$340,990 and had the following items of interest.

1. Applied Golf (p1) - \$126,250 for Blue Hill contract.
2. Applied Golf (p1) - \$59,500 for Broadacres contract.

The second warrant had 4 vouchers for \$22,315 and had the following items of interest

3. Hewitt Exc. (p1) - \$14,000 for Sewer materials.

The third warrant had 5 vouchers for \$85,937 and was for utilities.

The fourth warrant had 174 vouchers for \$633,298 and had the following items of interest.

4. American Wear Uniforms (p3) - \$5,598 for uniform rentals various departments.
5. B & H Camera and vides (p6) - \$6,474 for camera equipment.
6. Brown & Weinraub (p16) - \$8,000 for lobbying services.
7. Capasso & Sons (p17) - \$68,562 for recycling.
8. De Lage Landen (p20) - \$15,908 for golf cart leases.
9. Dell Marketing LP (p21) - \$8,681 for IT equipment.
10. Financial Risk Analyst (p24) - \$6,900 for actuarial services.
11. Goosetown (p30) - \$10,030 for Police equipment leases.
12. H2M (p32) - \$276,409 for Community Center Prioject.
13. Maser Consulting (p39) - \$28,785 for traffic signals and route 303
14. Mobile Communications America (p42) - \$9,406 for Police patrol antennas.

15. Shi International (p55) - \$15,288 for for IT licenses.
16. Springbrook Software (p56) - \$14,767 for Finance software.
17. Verde Electric (p60) - \$62,855 for traffic signal.

Please feel free to contact me with any questions or comments. Thank you.

Jeffrey W. Bencik, CFA  
845-359-5100 x2204