

February 16, 2022

Ms. Allison Kardon
Confidential Assistant to Town Supervisor
Town of Orangetown
Orangetown Town Hall
26 W. Orangeburg Rd.
Orangeburg, NY 10962

Re: Proposal for Professional Services for Veterans Memorial Park

Dear Ms. Kardon:

Nelson + Pope is pleased to submit the accompanying proposal in reference to the above referenced project. We believe that Nelson + Pope has the proven experience to provide the professional services outlined in the letter request. Our commitment to quality, together with the team's professionalism, will assist the Town of Orangetown in achieving its goals and objectives. Enclosed, please find:

- Project Understanding / Scope of Work
- Brief Statement of Qualifications
- Fee to Perform Services

We would like to take this opportunity to express our gratitude for your consideration and add that our technical ability will ensure a successful project. If you have any questions or would like to discuss the proposal, please do not hesitate to contact me.

Sincerely,
Nelson + Pope



Thomas F. Lembo, PE
Senior Partner

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I. PROJECT UNDERSTANDING / SCOPE OF WORK

N+P understands that the Town of Orangetown is seeking the services of a professional firm to undertake the drainage design and water supply design for the proposed splashpad at Veterans Memorial Park.

For the drainage design, N+P understands the work will include soil borings and percolation testing of the soil in the location of the proposed drainage structures. It is our understanding that the maximum flow rate generated by the spray features at any given time is to be 65 gpm with an overall maximum flow rate of 102.5 gpm.

For the water supply design, N+P understands the work will include one of two options. The first option being to install a new water well on-site and connect to a proposed holding tank for the spray pad. The second option is to connect the existing 1" water supply piping from the adjacent Concession Stand to a proposed holding tank. Both options will require a pump to be installed to supply the spray pad features.

Based upon the above, N+P proposes the following scope of services:

Task 1: Splash Pad Drainage Design Services

- N+P will meet with Town personnel to review existing conditions of the park and obtain any and all additional records of the existing conditions pursuant to FOIL requests filed with Rockland County Department of Health.
- Using the newly obtained data as well as the previously obtained data from the Town, N+P will prepare a design for a new drainage system in conformance with NYSDOH and RCDH requirements. The scope of the design shall include design and layout of the drainage structures and associated piping. Soil borings as well as percolation testing will be required at the proposed discharge location to determine the suitability of the existing soils for the proposed discharge.
- After the design concept is complete, N+P will meet with Town personnel to review the design. We will incorporate any comments the Town may have prior to issuing a final design set. It is our understanding that water that is discharged from a spray pad without a recirculation system does not require review and approval of the Rockland County Department of Health. N+P will coordinate the design layout and concept with RCDH for their reference.

Task 2: Splash Pad Water Supply Design Services

- N+P will meet with Town personnel to review existing conditions of the park and obtain any and all additional records of the existing conditions pursuant to FOIL requests filed with SUEZ.
- Using the newly obtained data as well as the previously obtained data from the Town, N+P will prepare a design for a new water supply system in conformance with NYSDEC, NYSDOH and RCDH

requirements. The scope of the design shall include design and layout of the water supply piping, holding tank design and layout, splash pad water supply pump and accessory equipment.

- For the scenario of installing a new water well, a separate permit may be required from the NYSDEC for the water withdrawal. It is our understanding that the NYSDEC regulates water withdrawal system that have the capacity to withdrawal 100,000 gallons per day or more. Additional accommodations will be included to protect the well (e.g., well house, lean-to, bollards, etc.). As part of the well permitting process, we will need to perform water quality testing as required by the NYS Sanitary Code Subpart 5-1 for potable drinking water.
- For the scenario of connecting to the existing water supply piping in the nearby concession stand, additional details will include but not be limited to:
 - Water supply piping system and connection details
 - Pavement, turf, and concession stand building restoration (if required)
- For both water supply scenarios, the design shall include but not be limited to detailed plans and specifications for:
 - Underground water holding tank
 - Spray feature supply pumping system
 - New electrical components
 - Operational controls
 - Required accessory equipment
- After the design concept is complete, N+P will meet with Town personnel to review the design. We will incorporate any comments the Town may have prior to issuing to the New York State Department of Environmental Conservation and the Rockland County Department of Health for their review and approval. N+P will address comments prepared by RCDH and resubmit the design documents for approval by RCDH.

II. QUALIFICATIONS

Firm Profile

N+P Engineering, Architecture and Land Surveying, PLLC (here in after Nelson + Pope or N+P) is an established multi-disciplined civil engineering, architecture and surveying partnership located in Melville, Town of Huntington, Suffolk County, New York. Our firm has been serving municipal and private clients in New York since 1954 and has fostered an excellent working relationship with many Town, County and State agencies. The firm provides a full range of services including site development; land use design and planning; highway design; park master planning and design; waterfront engineering; land surveying; construction observation, documentation and administration assistance; sanitary disposal and water supply design; traffic engineering; transportation planning; environmental engineering; architecture and landscape architecture.

N+P possesses experienced professional, technical and support staff with direct knowledge of Long Island's land development, environment and infrastructure network. Through years of quality service to our clients, the firm has grown in both reputation and size. N+P now employs over 80 technical and support staff and includes experienced teams of dedicated professionals with diversified expertise. All of the firm's principals are New York State licensed Professional Engineers, Land Surveyors and Registered Architects. The firm has on staff licensed Professional Engineers, Architects, Land Surveyors and Landscape Architects. Many of our firm's partners and full-time employees have advanced degrees in such areas as traffic engineering, transportation engineering, civil engineering, urban and regional design and planning; environmental sciences, construction management, and sanitary engineering.

Engineering services provided by N+P encompass the disciplines of:

- Pools, Park Facilities & Athletic Fields
- Site Development Engineering
- Sanitary and Water Supply Engineering
- Environmental Engineering
- Drainage Studies
- Highway Engineering
- Traffic Engineering & Analysis
- Architecture
- MEP Engineering
- Landscape Architecture & Master Planning
- Planning & Zoning
- Waterfront Engineering
- Stormwater Management Plans (SWPPP's)
- Bidding and Contract Administration
- Construction Observation
- Construction Management Assistance
- Permitting
- Sustainable Development and LEED®
- Grant Research & Processing
- Sustainable Infrastructure Design
- Local, State & Federal Permitting
- Computerized Traffic Modeling

In addition, N+P provides comprehensive land and existing condition surveying services. Technical support, computations and supervision is provided by office staff and is supported by our field personnel who use state-of-the-art field survey equipment.

Relative Project Experience

Parks and recreation facilities play an important role in the communities of New York. They are a gathering place for families, pets, friends, schools and neighborhoods. Sports fields, tennis courts, pools, playgrounds, dog parks, beaches, marinas, trails and passive park facilities all create a sense of place and enjoyment. Long Island offers some of the most spectacular and innovative park and recreation facilities in the country and we are proud to be a part of developing them.

In the area of park construction and development, N+P has been providing engineering and survey services and services during construction since the 1970's when N+P was contracted by Suffolk County to provide plans and specifications for improvements to Blydenburgh County Park in Hauppauge, NY. More recently, N+P has been providing the Towns of Oyster Bay, Hempstead, Brookhaven and Islip the required technical services for the preparation of plans and specifications for the construction of synthetic turf and multi-purpose athletic fields. Services have also included assistance during the bidding phase and the providing of construction residents and technical field personnel during the construction phases.

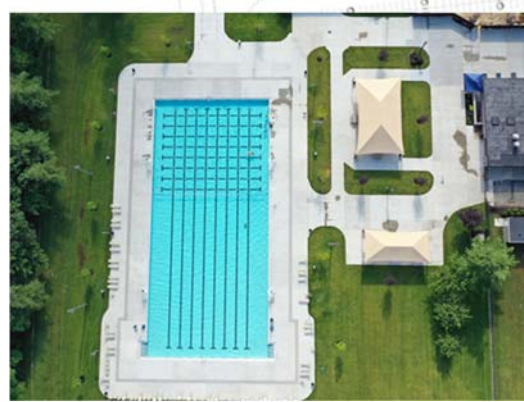
N+P specializes in the following parks and recreation services:

- Pool design and construction phase services
- Municipal Building Design
- Park and Recreation Facilities Planning, Layout and Design
- Facility Reconstruction and Repair
- Synthetic/Natural Turf Athletic Field Layout and Design
- Athletic Field Lighting Design
- Multi-Use Courts/Appropriate Appurtenances for Various Sporting Activities (basketball hoops, tennis nets, hockey goals, etc.)
- Playground Layouts
- Restrooms, Concession and Administrative Offices Design
- Parking Facilities Layout and Design
- Irrigation System Design
- Golf Course Layout and Design

Timberline Park Pool Improvements, Brentwood, NY

N+P was selected to prepare plans for the renovation of a 164' x 75' public swimming pool at the Town of Islip's Timberline Park in Brentwood, New York. The pool renovation included rehabilitation of the main swimming pool and filtration equipment upgrade. All aspects of the project were completed in accordance with the NYS Sanitary Code Subpart 6-1, ADA Regulations, the Uniform Code and all other applicable regulations. Services were provided in phases and included:

- **Design Phase:**
 - Assessment of the overall site, pool structure and mechanical equipment.
 - Rehabilitation design for the mechanical equipment, including conversion from a diatomaceous earth filtration system to a sand filtration system.
 - Rehabilitation design for the swimming pool structure, including gutter/supply system, main drain modification and pool finish.
 - Obtain all necessary permits from regulatory agencies having jurisdiction.
 - Attend multiple meetings with Town personnel for discussion of design and required actions.
- **BID Phase:**
 - Prepared construction cost estimate.
 - Preparation of Bid Documents, including Town Boilerplate.
 - Attend Pre-Bid walkthrough to discuss project with potential contractors.
 - Review questions from potential contractors and provide answers in the bid addendum.



- Bid review and recommendation.
- Provide all other bid phase activities up to contract award.
- **Construction Phase:**
 - Review contractor Shop Drawings.
 - Address Contractor RFI's.
 - Provide daily site inspections of the Work.
 - Coordinate all necessary inspections required by the SCDHS.
- Change Order review and processing.
- Contractor Claims for Payment processing
- Attend bi-weekly meetings with Town personnel to discuss progress of the Work.
- **Project Closeout:**
 - Upon completion of the Work, N+P will issue all required certifications for the constructed works to obtain permits to operate.

Roberto Clemente Park Aquatic Spray Ground and Filtration System

N+P was contracted by the Town of Islip to provide engineering services for the design and construction of the Roberto Clemente Park aquatic spray ground and filtration system. All aspects of the project were designed in accordance with the NYS Sanitary Code Subpart 6-1, NYS Sanitary Code Subpart 6-3, ADA Regulations, the Uniform Code and all other applicable regulations. Services were provided in phases and include:

- **Design Phase:**
 - Assessment of the overall site, existing wading pool structures and mechanical equipment.
 - Spray feature layout and design modifications based on Town input.
 - Spray feature pad and spray pool design.
 - Spray feature piping layout and design.
 - Modification of existing surge tanks to recirculation tanks.
 - New filtration system including chemical disinfection and spray feature pumps and controls.
 - Obtain all necessary permits from regulatory agencies having jurisdiction.
 - Attend multiple meetings with Town personnel for discussion of design and required actions.
- **BID Phase:**
 - Prepare construction cost estimate.
 - Preparation of Bid documents including Town boilerplate.
- Attend Pre-Bid walkthrough to discuss project with potential contractors.
- Review questions from potential contractors and provide answers in the bid addendum.
- Bid review and recommendation.
- Provide all other bid phase activities up to contract award.
- **Construction Phase:**
 - Review Contractor Shop Drawings.
 - Address Contractor RFI's.
 - Provide daily site inspections of the Work.
 - Coordinate all necessary inspections required by the SCDHS.
 - Change Order review and processing.
 - Contractor Claims for Payment processing.
 - Attend bi-weekly meetings with Town personnel to discuss progress of the Work.
- **Project Closeout:**
 - Upon completion of the Work, N+P will issue all required certifications for the constructed works to obtain permits to operate.



RIOC Sports Park Indoor Swimming Pool

N+P was contracted by the Roosevelt Island Operating Corporation (RIOCC) to provide an engineering assessment on the indoor swimming pool located at the sports park complex. The assessment was done with the intention to bring the facility up to Code Standards. A secondary portion of the assessment was to determine the possibility to upgrade the filtration system. All aspects of the assessment were conducted with reference to the NYS Sanitary Code Subpart 6-1, ADA Regulations, the Uniform Code and all other applicable regulations. Services provided included:



- **Site Assessment:**
 - Staff was provided full access to the indoor pool facility, locker areas, dressing rooms, bathrooms, facilities and mechanical areas.
 - Staff was provided full access to RIOCC archives including purchase orders and original design detail drawings.
 - Assessment of the overall site, pool structure, ventilation, and mechanical equipment.
 - Measurements of existing conditions, building openings and work areas were taken.
 - Prior and current issues were discussed with on-site personnel.
 - Data for all mechanical equipment was obtained.
 - Visual inspection of existing conditions including leaks, corrosion, and electrical issues.
- **Assessment Report:**
 - Provided comprehensive report detailing existing conditions and recommended actions.
 - Included “Recommended Actions Data Table: with quick reference for reason, estimated cost, duration to complete action, and lead time to acquire necessary materials.
 - Provided detailed descriptions of all equipment and current condition.
 - Provided detailed descriptions of current code violations and recommended actions for remedy.
 - Provided detailed descriptions of safety concerns for bathers, maintenance crews, and operators including but not limited to:
 - Ventilation hazards
 - Electrical hazards
 - Chemical hazards
 - Trip/Safety Hazards
 - Provided detailed description of facility amenities and required upgrades and/or remedial actions.
 - Provided feasibility for filtration upgrade and description of filtration types available.
 - Provided feasibility for chemical disinfection system upgrade and description of disinfection types available.
 - Provided feasibility for installation of automation system.
 - Provided feasibility for installing back-up of the recirculation system pumps without interrupting operation.

Manhasset Valley Park Improvements

N+P was retained by the Town of North Hempstead to prepare plans for a two-phase improvement project at the public park. Phase One included the design of, and site improvements to support a new precast concrete public restroom facility. The new restroom included separate Men's and Women's rooms, and a storage room for park maintenance and athletic equipment storage. Phase Two included sidewalk improvements, site lighting, and turf restoration for the entire park. The turf improvements included stripping of unsuitable soil, new topsoil and seed, and a full new irrigation system.



Swimming Pools Residential Developments

N+P has an extensive engineering background and considerable knowledge for both the design and construction aspects of swimming pools. The firm supplies high-quality consulting, specification development, project scheduling, design development, cost estimation, and specialty aquatic equipment specifications as well as complete filtration system and recirculating system design. In addition to the engineering services we provide, N+P also serves as an expert in the field of swimming pool construction and has completed a number of investigations regarding various issues involved with swimming pools. As part of our construction support N+P routinely provides bid services, construction observation and certification of constructed works for swimming pools. N+P ensures all pools and water features are compliant with all local, state and federal regulations:

Municipal and Commercial clients include:

- Town of Islip Parks Department
- Vineyards at Blue Point
- Vineyards at Moriches
- Mews at Charles Pond
- Cold Spring Country Club Swimming Pool
- Windwatch Swimming Pool
- Engel Burman Group
 - Double Day Court
 - Seasons at Elwood
 - Bristol Assisted Living at Lake Grove
 - Seasons at Deer Park
- Seasons at Dix Hills
- Fairfield Properties at Southampton
- Garvies Point Pool
- Ritz at North Hills Pool
- Blue Ridge Swimming Pool
- Huntington Crescent Club Pool Deck
- Huntington YMCA
- Kensington Estates Swimming Pool
- Rimor Development LLC Heritage at Cutchogue
- Saddle Rock Village
- Meadowbrook Pointe Pool

Project Organization

Key project management and design staff proposed for the project are as follows:

Thomas F. Lembo, PE, has over 25 years of experience in both implementation and management of design and construction phases for swimming pools, sewage treatment plants, pump stations and force mains, chemical containment projects, collection systems, water distribution systems, water filtrations systems and site development projects. Mr. Lembo has served as Project Manager for most of N+P's Sanitary and Water Supply Engineer of Record projects that entail Design Services, Construction Management, Plant Upgrades as well as Operations and Maintenance Review.

Kyle C. Kern, PE has over 10 years of experience and has been involved in the preparation of construction drawings and specifications of gravity sewer systems, wastewater pumping stations, force mains, wastewater treatment plants, denitrification systems, on-site commercial and residential disposal systems, swimming pools, and water distribution systems. He has provided construction project management services on various environmental engineering projects which have included the services of shop drawing review and processing, preparation of wastewater treatment plant Operation & Maintenance Manuals, sanitary inspections and construction inspections.

Resumes can be provided upon request.

III. FEE

Task 1: Splash Pad Drainage Design Services Fee

Nelson + Pope can provide design services for a lump sum fee of: **\$5,000.00**

Subconsultant fee, must be included in contract: **Please see attached**

Task 2: Splash Pad Water Supply Design Services Fee

Nelson + Pope can provide design services for a lump sum fee of: **\$7,500.00**

INTERCOMPANY PROPOSAL & FEE

To: Kyle Kern
From: Steven McGinn
Date: January 4, 2022
Subject: Veterans Memorial Park, Orangetown

Client requires soil classification borings and percolation tests for the construction of a new sanitary system. We will need the ability to periodically measure the depth top groundwater (est. of max. groundwater elevation)

A. DATA ACQUISITION PHASE

1 Soil Borings (Non-Structural)

Soil borings will be performed Client by East Coast Geoservices, LLC (ECG, an N+P affiliate.)

- Contact “One-Call” for the mark-out of the underground utilities within the ROW and any known publicly owned and/or maintained utilities on the subject property
- At the location(s) identified by the project engineer, utilize a Power Probe drill rig to obtain soil samples from two (2) locations on the subject property to determine if suitable soils for sewage and stormwater leaching are present
- The boring(s) will be advanced to a maximum depth of twenty-five (25) feet, if six (6) feet of suitable material is not obtained in the final 6-ft, effort will be made to advance the boring to a depth necessary to obtain six (6) feet of suitable material
- When groundwater is encountered, effort will be made to advance the boring in the groundwater to obtain six (6) feet of suitable material
- The apparent depth to groundwater will be noted when encountered
- Upon completion of the soil borings, boring logs will be provided describing the soil classification of the material obtained and any encountered groundwater noted

Soil Boring (25-ft max. depth): \$2,150

(plus, Sales Tax as applicable)

Additional Boring Depth: \$15/foot additional

(beyond the 25-ft depth, if required)

Notes:

- *All borings will be backfilled with clean sand upon completion of the boring*
- *One-call to be contacted for a mark-out of utility owned and/or maintained underground facilities in the public ROW.*
- *Boring locations are to be located and marked by the site engineer and architect*
- *Client responsible for providing access to the boring locations, including providing a stable access path.*

1) Infiltration Rate Testing

- a) Utilize a Power Probe drill rig to install well casing in the proposed testing locations on the subject property in order to properly complete an infiltration rate test. A four (4) inch diameter PVC well casing will be set in the borehole 8-10 feet below grade.
- b) Provide four (4) inch diameter PVC well casing material for the infiltration rate testing.
- c) Infiltration rate test - utilize a water tank and pump to fill the casing to a depth of 24 inches to presoak the soils.

Perform the infiltration rate testing as follows:

Please note: if the well holds water for extended period of time, NPV personnel will return to the property 24 hours after the well is pre-soaked. Otherwise, the infiltration testing will be completed the same day after the well has been pre-soaked several times over a one hour time period.

Refill the casing with twenty-four (24) inches of clean water and monitor water level (measured drop from the top of the casing) for one (1) hour. Repeat this procedure (filling casing each time with twenty-four (24) inches of clean water) three (3) additional time, for a total of four (4) observations.

Note: The final field rate may either be the average of the four (4) observations or the value of the last observation. This is up to the tester's discretion.

- d) Reporting and Personnel - Personnel necessary for supervision, data collection and data interpretation will be provided. An infiltration rate calculation will be completed.

**Fee: \$1,500.00/Testing Location
Two (2) locations will be completed**

EXHIBIT B
2022 HOURLY RATE SCHEDULE for LONG ISLAND, NY
N & P Engineering, Architecture and Land Surveying, PLLC

Time Rates* Fee Schedule for items previously listed as time rates and other services that may be required but are not included in this proposal:

	<u>Hourly Billing Rate</u>
Senior Partner	\$375.00
Partner	\$350.00
Senior Associate Partner	\$330.00
Associate Partner	\$310.00
Senior Associate	\$305.00
Associate	\$275.00
Director of Construction Administration	\$275.00
Senior Project Manager	\$275.00
Project Manager	\$230.00
Assistant Project Manager	\$175.00
Senior Engineer	\$240.00
Project Engineer	\$190.00
Senior Engineering Technician	\$160.00
Engineer	\$140.00
Engineering Technician	\$125.00
Project Architect	\$275.00
Senior Project Manager - Architecture	\$240.00
Project Manager - Architecture	\$205.00
Assist Project Manager - Architecture	\$175.00
Job Captain	\$140.00
Architectural Designer	\$120.00
Junior Architectural Designer	\$95.00
Associate Surveyor	\$240.00
Senior Surveyor	\$190.00
Project Manager - Surveying	\$185.00
Senior Survey Technician	\$140.00
Survey Technician	\$125.00
Party Chief/CADD Draftsperson	\$130.00
Senior Draftsperson	\$130.00
Draftsperson	\$115.00
Construction Inspector I	\$125.00
Construction Inspector II	\$145.00
Construction Inspector III	\$170.00
Construction Inspector IV	\$185.00
Junior Engineer/Surveyor	\$95.00
Landscape Ecologist	\$125.00
Sr. Project Coordinator	\$155.00
Project Coordinator	\$120.00
Assistant Project Coordinator	\$90.00
Director of Grants Management Services	\$160.00
IT Consultant	\$180.00
Court Testimony	\$620.00
Field Survey Crew	
1-Person Crew-Suburban **	\$195.00
2-Person Crew-Suburban**	\$295.00

* **Time Rates** is defined as the time expended by employee to perform a given task as multiplied by the hourly billing rate assigned to such employee as stated in the Hourly Rate Schedule.

** **Field Crew Rate** applicable for all private boundary, topographical and select construction field surveying services in Nassau and Suffolk Counties. Rates applicable for Heavy Construction and Municipal surveying services will be furnished upon request (refer to Field Survey Note below).

Field Survey Note: Where a job site is represented by union workers the Survey Crew Rates, identified above, will be adjusted to reflect any applicable wage rates listed in the applicable NYS Labor Wage Rate Schedule depending on the specific projects, client or task.

EXHIBIT B
2022 HOURLY RATE SCHEDULE
NELSON, POPE & VOORHIS, LLC

Time Rates* Fee Schedule for items previously listed as time rates and other services that may be required but are not included in this proposal:

Principal	\$310.00
NPV Senior Partner	\$300.00
Partner/Division Manager	\$295.00
Partner/Principal Planner	\$280.00
Senior Associate NPV	\$260.00
Principal Planner	\$225.00
Principal Environmental Planner	\$215.00
Project Manager/Sr. Environmental Planner	\$210.00
Project Manager/Sr. Environmental Scientist	\$210.00
Project Manager/Hydrogeologist	\$195.00
Transportation Planner	\$185.00
Senior Environmental Planner	\$175.00
Senior Planner	\$170.00
Senior Environmental Scientist	\$170.00
Senior Landscape Ecologist	\$165.00
Director of Grants Management Services	\$160.00
Senior Environmental Planner II	\$160.00
Environmental Planner	\$150.00
Environmental Planner II	\$145.00
Environmental Planner III	\$135.00
Economic Analyst/Planner	\$150.00
Environmental Engineer	\$135.00
Planner	\$125.00
Environmental Analyst	\$105.00
Environmental Analyst II	\$ 90.00
Planning Analyst	\$105.00
Landscape Ecologist	\$125.00
Assistant Landscape Ecologist	\$ 105.00
Assistant Landscape Ecologist II	\$ 95.00
Environmental Scientist	\$ 95.00
Environmental Scientist/Geologist	\$ 95.00
Environmental Technician	\$ 95.00
Field Technician	\$ 90.00
Project Coordinator	\$ 120.00
Assistant Project Coordinator	\$ 90.00
Junior Landscape Ecologist	\$ 80.00
Planning Technician	\$ 60.00
Court Testimony	\$480.00

* **Time Rates** is defined as the time expended by employee to perform a given task as multiplied by the hourly billing rate assigned to such employee as stated in the Hourly Rate Schedule.

EXHIBIT C
GENERAL TERMS AND CONDITIONS
N & P Engineering, Architecture and Land Surveying, PLLC

The following **General Terms and Conditions** are applicable to Agreements between **N & P Engineering, Architecture and Land Surveying, PLLC, "N+P" or "Nelson + Pope"** and the **Client**, when attached to and made part of such Agreement or Proposals. The **"Client"** or **"Applicant"** is defined as the person or business entity signing the Agreement authorizing **N&P Engineering, Architecture and Land Surveying, PLLC, "N+P" or "Nelson + Pope"** to commence work (collectively herein after **"N+P"**).

1.0 INVOICES, REIMBURSABLE EXPENSES, ESCALATION OF FEES

1.1 Invoices

N+P will submit invoices to **Client** on **N+P's** standard invoice form, terms net thirty (30) days. Partially completed items of work for which a fee has been specified will be billed based upon percentage of completion as estimated by **N+P** otherwise invoices will be based upon **N+P's** Schedule of Standard Hourly Rates in effect at the time the work is performed. Past due balances are subject to interest of 1.0 percent per month, or the maximum permitted under state law, whichever is less. **N+P**, after giving seven (7) days written notice, may suspend services under any Agreement until all past due accounts, including applicable interest, have been paid. In the event that the invoice is not paid voluntarily and promptly and must be liened and/or referred to an attorney or agency for collection, the **Client** agrees to pay to **N+P**, **N+P's** reasonable collection and attorney's fee equal to twenty-five percent (25%) of the total amount due at that time.

The payment of fees for services rendered is not contingent upon receipt of approvals from regulatory agencies having jurisdiction.

N+P fees include only those revisions to **N+P** prepared plans and related documents resulting from the reviewing municipal entity's comments as they relate to the entity's applicable published standards and requirements.

The minimum time segment for charging of survey field work is four (4) hours and the minimum time segment for charging of all other work is one-half hour., unless otherwise modified or defined in our Scope of Services and Fees. Where applicable, rental charges will be applied to the project to cover the cost of instrumentation and/or technical equipment.

1.2 Reimbursable Expenses

Reimbursable expenses are charged to the **Client** at cost plus twenty-five percent (25%).

1.2.1 Reproduction of plans, specifications, and other documents, including documents necessary for submission to regulatory agencies and for coordination with **Client** and any other **Client** consultant. Reproduction charges for documents reproduced by **N+P** in-house are: blackline (\$0.45/sf); translucent bond (\$0.70/sf); mylar (\$6.75/sf); presentation paper (\$3.35/sf); B&W- 8 1/2x11 (\$0.10/ea), 8 1/2x14 (\$0.15/ea), 11x17(\$0.30/ea); Color 8 1/2x11 (\$0.65/ea), 8 1/2x14 (\$1.25/ea), 11x17(\$2.00/ea), other size (\$2.00/sf); report binding (\$10.00/ea creation of portable document format (PDF) and emailing of documents. In-house document reproduction not subject to reimbursable markup. The cost of outside services for document reproduction will be billed as reimbursable expense. In addition to the Reproduction Charges listed, all **N+P** labor associated with the document reproduction will be billed at Time Rates as defined in the Scope of Services and Fees Exhibit.

1.2.2 Permit, Application and Filing fees advanced by **N+P**. In general, all processing fees including but not limited to permits and applications shall be the responsibility of the **Client**.

1.2.3 The cost of equipment rental including where applicable equipment operators, and subcontracted services, such as authorized photogrammetry, testing services, geotechnical services, laboratory services, archeological services, and other specialized services by consultants, excluding those services which are explicitly included in the **N+P** proposal.

1.2.4 Expenses for the specific benefit of the **Client** consisting of travel, incidental expenses, and expendable materials and supplies purchased specifically for the project.

1.2.5 If the services covered by this Agreement are subject to local or state taxes or fees (except state income taxes), such additional costs will be charged to the project and are subject to reimbursement as provided herein.

1.2.6 Cost of delivery of documents to **Client**, regulatory agencies, or to others designated by the **Client** will be billed at either Time Rates, if performed by **N+P** staff, or as a reimbursable expense, if an outside service is used.

1.3 Escalation of Fees

1.3.1 Fees and schedule commitments are subject to renegotiations for unreasonable delay caused by the **Client's** failure to provide specified facilities or information, or for delays caused by unpredictable occurrences, or force majeure, such as fires, floods, strikes, riots, unavailability of labor or materials or services, acts of God or of the public enemy, or acts or regulations of any governmental agency. Temporary work stoppage caused by any of the above may result in additional cost (reflecting a change in scope) beyond that outlined in this proposal.

1.3.2 **N+P** shall have the right to increase its compensation payable by the **Client** to **N+P** in the event that **N+P** must modify services, facilities or equipment to comply with laws or regulations that become effective after execution of this Agreement, provided that **N+P** give the **Client** thirty (30) days prior notice as to the cause for escalation and the additional amounts involved.

1.3.3 **N+P** may make an annual adjustment to its Standard Hourly Rates and document reproduction fees. Services performed on an hourly cost basis will be invoiced in accordance with the Rate Schedule in effect at the time such services are performed.

1.3.4 **N+P** reserves the right to make adjustments fees after 1 year from submittal of proposal.

2.0 INSURANCE

N+P represents and warrants that it now has in full effect and will maintain the following insurances for the duration of this project:

N+P will furnish to the **Client** certificates of insurance upon request. Premiums for insurance coverage in excess of these coverages, when requested by the **Client**, will be charged to the project and are subject to reimbursement.

2.1 Commercial General Liability Insurance covering as insured **N+P** and as an additional insured **Client** with the following limits of liability:

Personal Adv. Injury -	\$1,000,000 for each occurrence
General Aggregate	\$2,000,000 in the aggregate
Excess Liability-Umbrella	\$5,000,000 for each occurrence
and	\$5,000,000 in the aggregate

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2.2 Worker's Compensation Insurance securing compensation for the benefit of **N+P's** employees as required by the Worker's Compensation Law. Premiums for additional insurance coverage required for work on or near the waterfront will be charged to the project and are subject to reimbursement.

2.3 Comprehensive Automobile Liability Insurance covering owned, non-owned, and hired vehicles will be provided upon request.

2.4 Professional Liability Insurance insuring against negligent acts, errors, and omissions, by **N+P**, in an amount of \$2,000,000 per claim with a \$4,000,000 aggregate.

3.0 CLIENT'S RESPONSIBILITIES

3.1 The **Client** shall provide all criteria and full information as to **Client's** requirements for the Project; designate a person to act with authority on **Client's** behalf in respect to all aspects of the Project; examine and respond promptly to **N+P's** submissions; and give prompt written notice to **N+P** whenever he observes or otherwise becomes aware of any defect in the work.

3.2 The **Client** shall provide right of entry for **N+P** personnel and equipment necessary to complete the work.

3.3 While **N+P** will take all reasonable precautions to minimize any damage to the property, it is understood by **Client** that in the normal course of work some damage may occur, the correction of which is not part of this agreement.

3.4 The **Client** shall be responsible for payment of all fees in connection with the Project. Payment of fees by **Client** is NOT contingent upon receipt of Agency Approvals.

4.0 COMMENCEMENT AND COMPLETION OF WORK

4.1 **N+P** shall commence work on this project after receipt of a signed Proposal which establishes our Agreement for Professional Services at a schedule agreed upon by **N+P** and **Client** and any required Retainers. Retainers will to be applied to the final billing.

4.2 Proposals that have been submitted but not signed will be considered as being accepted if the client verbally instructs **N+P** to proceed.

4.3 Should the performance or completion of the work by **N+P** hereunder be delayed by flood, earthquake, fires, strikes, governmental orders or any other similar or dissimilar causes beyond the control of **N+P** or due to changes, delays, acts or omissions, by **Client**, contractors or their agents and representatives, then the time for performance or completion by **N+P** hereunder shall be extended for the period of such delays.

5.0 CHANGED CONDITIONS

Certain conditions may arise during the performance of our services which may differ significantly from those assumed to exist when the Scope of Services was prepared.

If, in the professional opinion of **N+P**, based upon its knowledge, information and belief and consistent with the Standard of Care (as defined herein), the Agreement is no longer adequate in light of occurrences or discoveries that were not originally contemplated by or known to us, we have right to renegotiate the Agreement by first identifying the Changed Condition and informing the **Client**.

The **Client** and **N+P** shall promptly and in good faith enter into renegotiation of the Agreement to help us to meet the **Client's** needs. If renegotiated terms cannot be agreed to, the **Client** agrees that **N+P** has an absolute right to terminate this Agreement.

6.0 COMPLIANCE WITH CODES AND STANDARDS

6.1 **N+P's** services shall be consistent with sound engineering and surveying practices and shall incorporate those publicly announced federal, state and local laws, rules, regulations, codes and standards that are applicable at the time **N+P** rendered their services. In the event of change in a law, rule, regulation, code, standard or similar document **N+P** shall assess its impact. If, in **N+P's** professional opinion, based upon its knowledge, information and belief and consistent with the Standard of Care (as defined herein), the impact is such to significantly affect **N+P's** fees, costs or anticipated completion date, a Changed Condition shall be deemed to exist and shall be dealt with pursuant to Section 5. In any event, the **Client** waives any claim against **N+P**, and agrees to defend, indemnify and hold **N+P** harmless for any claim or liability for injury or loss allegedly arising from **N+P's** failure to abide by federal, state and local laws, rules, regulations, codes and standards that were not in effect or publicly announced at the time when **N+P** otherwise would have incorporated their intent into the work. The **Client** further agrees to compensate **N+P** for any time spent or expenses incurred by **N+P** in defense of any such claim, in accordance with **N+P's** prevailing fee schedule and expense reimbursement policy and the statements for legal services rendered to **N+P**.

6.2 Any and all of **N+P's** designs and/or plans shall be prepared and rendered in compliance with applicable federal, state and local laws, rules, regulations and code that are related to the services of **N+P**. The **Client** recognizes that changing weather and climatic conditions, including but not limited to changing rainfall events or patterns and coastal sea rise, may occur at any time which **N+P** has no control over. The **Client** agrees that **N+P** shall not be liable in any manner for any impact or affect that changing weather and climatic conditions may have on **N+P's** designs and/or plans.

7.0 MAINTENANCE OF PROFESSIONAL STANDARDS AND ETHICS

7.1 The **Client** recognizes that **N+P's** services in all cases must be rendered in accordance with prevailing professional standards and ethics, as well as certain laws or regulations that apply specifically to **N+P** or to the engineering and surveying professions. Services performed by **N+P** under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions at the same time and in the same locality ("Standard of Care"). NO OTHER WARRANTY, EXPRESSED OR IMPLIED, IS MADE. Notwithstanding any clause in this Agreement to the contrary, **N+P** expressly disclaims all express or implied warranties and guarantees, including any warranty of fitness for purpose or merchantability with respect to the performance of professional services. If a situation emerges that causes **N+P** to believe compliance with the **Client's** wishes could result in **N+P** violating an applicable provision or aspect of professional standards or ethics, laws or regulations, **N+P** shall so advise the **Client**. The **Client** and **N+P** shall immediately enter into discussions to arrive at a mutually satisfactory solution. Failing achievement of a solution, either party may terminate this Agreement in accordance with termination provisions stated herein.

7.2 The Consultant makes no representation or warranties that the Project will achieve any LEED certification level or accreditation or impact the future performance or operating costs associated with the Project.

7.3 **N+P** shall act as an independent contractor at all times during the performance of its services, and no term of this Agreement, either expressed or implied, shall create an agency or fiduciary relationship.

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8.0 OWNERSHIP OF DOCUMENTS

8.1 All reports, studies, plans and specifications, logs, field data, field notes, laboratory test data, calculations, estimates and other documents, including but not limited to electronic documents, prepared by **N+P** as instruments of service ("Instruments of Service"), shall remain the property of **N+P**.

8.2 **Client** agrees that all reports and other work furnished to the **Client** or his agents, which are not paid for, will be returned upon demand, and will not be used for any purpose whatsoever.

8.3 **Client** acknowledges and agrees that all reports and other work and professional opinion furnished to the **Client** or his agents by **N+P** are intended for the sole use of the **Client** and not by any third-party. **N+P** shall not be liable for the **Client's** use of the Instruments of Service for any purpose other than intended by the terms of this Agreement. Any such use or modification shall be at the sole risk of the party or third-party relying on the Instruments of Service, without liability or legal exposure to **N+P**.

8.4 **N+P** will retain all pertinent records relating to the services performed for the period of six (6) years following submission of the report, study, plans and specifications, during which period the records will be made available to the **Client** for inspection at **N+P's** office, at reasonable times, provided, however, that all **N+P** invoices rendered in connection with the services performed have been paid.

9.0 DEFECTS IN SERVICES

The **Client** and the **Client's** personnel, contractors and subcontractors shall promptly report to **N+P** any defects or suspected defects in **N+P's** work or services, in order that **N+P** may take prompt, effective measures which in **N+P's** professional opinion, based upon its knowledge, information and belief and consistent with the Standard of Care, will minimize the consequences of a defect in service.

10.0 INDEMNIFICATION AND LIMITATION OF LIABILITY

10.1 **N+P**, subject to the limitation in 10.3 herein, agrees to hold the **Client** harmless from and against all claims arising out of the negligent professional acts, errors, and omissions of **N+P** in connection with the performance of the work described in this Agreement.

10.2 **N+P** shall not be responsible for the acts or omissions of the **Client**, contractor or any third parties in connection with or arising out of the project. The **Client** hereby holds harmless and indemnifies **N+P** against all claims, damages, costs, suits, expenses, and attorney's fees which may be incurred by **N+P** which arise out of the foregoing, including but not limited to **Client's** failure to carry out recommended corrective actions. Expenses shall include, but not be limited to time charges by **N+P's** partners and employees at **N+P's** then standard hourly fees.

10.3 The **Client** agrees that **N+P's** aggregate liability to the **Client** and to all construction contractors and subcontractors on the project, due to **N+P's** professional negligent acts, errors, omissions and/or alleged breach of contract shall not exceed **N+P's** total fee for services rendered on the project.

10.4 The **Client** shall make no claim for professional negligent acts, errors, omissions and/or alleged breach of contract either directly or in a third-party claim, against **N+P** unless the **Client** has first provided **N+P** with a written certification executed by an independent design professional currently practicing in the same discipline as **N+P** and licensed in the state in which the project for which **N+P's** services were rendered is located. This certification shall: a) identify the name and license number of the certifier; b) specify each and every

act or omission that the certifier contends is a violation of the standard of care expected of a design professional performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to **N+P** not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding.

10.4.1 The **Client** shall make no claim for breach of contract, misrepresentation, or fraud arising out of any statement, representation or omission by **N+P** in any certification or report required under the Martin Act (General Business Law §§ 352,353), or the regulations enacted thereunder, in connection with any project for which the plans and specifications were approved by **Client** and/or the municipality with jurisdiction over said plans or specifications prior to the issuance of said report or certification, arising out of any design element, error or omission known to or disclosed to **Client** and/or said municipality prior to the time of said approval, and **Client** shall indemnify, defend and hold **N+P** harmless from and against any such claim made by any homeowners association or unit owner claiming to have relied upon any such certification or report.

10.5 The **Client** recognizes that topographical mapping prepared from aerial photography is subject to an inherent margin of error. **Client** agrees that **N+P** shall not be liable for any site work changes due to differences between actual site conditions and conditions depicted on topographic mapping used to prepare plans for the Project.

10.6 **N+P** has no control over, charge of, or responsibility for construction. **Client** (owner) shall retain a qualified contractor(s), licensed in the jurisdiction of the project ("Contractor"), to implement the construction of the project ("Work"). The Contractor shall coordinate, supervise, and direct all portions of the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, safety, and security. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the **Client**, **N+P**, **N+P's** subconsultants, and agents and employees or any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of, or resulting from performance of the Work. Contractor shall provide insurance and name the **Client**, **N+P**, **N+P's** subconsultants as additional insured on Contractor's Commercial General Liability insurance policies.

10.7 **Waiver of Consequential Damages.** **N+P** and the **Client** waive consequential damages for claims, disputes and other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the provisions defining termination.

11.0 DISPUTES

11.1 In the event that a dispute should arise relating to the performance of the services to be provided under this Agreement and should that dispute result in litigation in which **N+P** prevails, it is agreed that **N+P** shall be entitled to recover all reasonable costs incurred as a result of the claim, including staff time, court costs, attorney's fees and other claim-related expenses.

11.2 Notwithstanding the foregoing, **N+P** shall have the right to submit any controversy or claim arising out of or relating to this contract, or the breach thereof, to binding arbitration administered by the American Arbitration Association in accordance with the

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Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

11.3 The **Client** recognizes **N+P**'s right not to release documents until the **Client** has made the account receivables current, excluding only any billed fees in dispute, providing the **Client** has notified **N+P** in writing within thirty (30) days of the invoice date identifying the portion of the fees in dispute and the reason for the dispute. All undisputed fees on the disputed invoice shall be paid in accordance with these terms.

12.0 TERMINATION

12.1 This Agreement may be terminated by either party upon ten (10) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, **N+P** shall be paid for services performed to the termination notice date plus reasonable termination expenses.

12.2 This Agreement may be terminated by **N+P**, pursuant to Section 5 and 7 hereof, upon ten (10) calendar days written notice.

12.3 In the event of termination, or suspension for more than three (3) months, prior to completion of all work contemplated by this Agreement. **N+P** may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of **N+P** in completing such analyses and reports. A final invoice will be calculated on the first or fifteenth of the month (whichever comes first) following the end of the cancellation period (the effective date of cancellation).

12.3.1 Where method of contract payment is lump sum, the final invoices will be based on the percentage of work completed to the effective date of cancellation, plus 3 percent of the billings to such date as a closeout cost.

12.3.2 Where method of contract payment is based on time and materials, the final invoice will include all services and direct expenses associated with the project up to the effective date of cancellation, plus 3 percent of the billings to such date as a closeout cost.

12.3.3 Where method of contract payment is cost plus a fixed fee, the final invoice will include all costs to date of termination and a pro-rata share of the fixed fee plus 3 percent of the billings to such date as a closeout cost.

The closeout cost referred to in 12.3.1, 12.3.2 and 12.3.3 herein is not to be considered as a penalty but represents an allowance for demobilization of personnel and equipment and costs not available on short notice.

13.0 GOVERNING LAW

The laws of the state in which the office of **N+P**, performing the work under this Agreement, is domiciled will govern the validity of this Agreement, its interpretation and performance, and remedies for contract breach or any other claims related to this Agreement.

14.0 ASSIGNS

The **Client** may not delegate, assign, sublet or transfer his duties, obligations, or interest in this Agreement without the written consent of **N+P**.

15.0 INUREMENT. This Agreement insures to the benefit and binds **N+P** and **Client** and their respective successors and permitted assigns. This Agreement shall not create any rights in any person other than **N+P** and **Client**, and no other person or entity is intended to be a third-party beneficiary to this Agreement.

16.0 FORCE MAJEURE. Notwithstanding any provision herein to the contrary, neither **N+P** nor **Client** shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement and/or any proposal between the Parties where such delay or failure is caused by an unforeseen force majeure event, including, but not limited to: fire, flood, water, the elements, explosions, acts of God, war, accidents, pandemic, COVID-19, orders of a government agency, failure of a regulatory entity to act in a timely or expected manner, failure by either Party to furnish information or act in a timely or expected manner, or other unexpected or unforeseen cause beyond the reasonable control of the Party delayed or prevented from performing (a "Force Majeure Event"). Notwithstanding this provision, each Party shall take all commercially reasonable steps to avoid, alleviate or mitigate the impact of any force majeure event. If and to the extent that a Party's performance is prevented or delayed by a Force Majeure Event, then the affected performance will be excused for so long as the Force Majeure Event continues to prevent or delay performance and the Party continues efforts to recommence performance to the extent possible without delay. The affected Party will promptly notify the other Party in writing, describing the Force Majeure Event in reasonable detail. If any Force Majeure Event delays performance of the Subconsultant's Work for more than ninety (90) days, either Party may terminate this Agreement and/or Work Order as of a date specified by the Party in a termination notice to the other Party, unless otherwise agreed upon in writing by the Parties.

February 10, 2022

Ms. Allison Kardon
 Confidential Assistant to Town Supervisor
 Orangetown Town Hall
 26 W. Orangeburg Rd.
 Orangeburg, NY 10962

RE: Proposal for Engineering Services associated with a new Splash Pad at Veterans Memorial Park

Dear Ms. Kardon:

NV5 is pleased to present the following proposal to provide engineering design services in connection with the development of a splash pad just north of the existing baseball field within Veteran’s Memorial Park.

BRIEF PROJECT UNDERSTANDING AND APPROACH:

NV5 understands that the Town of Orangetown proposes to construct a splash pad facility utilizing grant funding from the Dormitory Authority of the State of New York (DASNY). The implementation of the design and construction will consist of a project team, which will include Town forces and a splash pad vendor/contractor. NV5 shall be a consultant to the Town of Orangetown, coordinate the design with the project team, and provide the following engineering design services:

1. **Drainage/Sanitary System:** NV5 shall prepare preliminary design and final construction plans for the design of the proper wastewater discharge system for the proposed splash pad as required by code.
2. **Water Service:** NV5 shall design the water supply piping to the splash pad following all codes and regulations. The new service will connect from the municipal water main on Hunt Road to the new splash pad location.



The electrical service required for the splash pad will be provided by the Town’s electrician.

The design of the splash pad itself, as well as any associated details will be provided by the Town’s splash pad vendor.

SCOPE OF BASIC SERVICES:

- NV5 will become familiar with the existing conditions and any considerations, which may affect the project planning, and design.
- NV5 will review existing record plans and create a base map in AutoCAD utilizing recent NYSGIS aerial photographs.
- NV5 will visit the site, and supplement base map with utility information based on utility records and field edits.
- NV5 shall investigate if any New York State Department of Environmental Conservation (NYSDEC) permits are required due to the proximity of the project to the open water bodies adjacent the project area. The permitting process is NOT included, if warranted.
- NV5 shall develop plans for the design of a septic system to capture stormwater runoff and water from the new splash pad spray features following all regulations set forth by the Rockland County Department of Health and New York State Department of Health.
- A minimum of two (2) soil borings shall be required to determine the feasibility of the construction of a septic field for proper drainage of the proposed splash pad. NV5 will prepare specifications to obtain soil boring services within the site to determine soil composition, water table elevation, and rate of infiltration. NV5 will solicit and obtain bids from at least three (3) contractors and award the contract to the lowest responsible bidder. NV5 will be responsible for overseeing the field work to confirm that it has been completed in accordance with the contract. The cost for the boring contractor shall be a direct pass through paid by the Town.
- NV5 shall develop plans for the design of a new 2" to 3" diameter water service pipe connection from the water main on Hunt Road to the splash pad site. NV5 will prepare all necessary plans and will file an application with the Suez Water District for the new service installation and associated backflow prevention equipment, RPZ device, meter pit, and Hot Box® equipment enclosure.

DELIVERABLES:

- NV5 anticipates developing the following Construction Plans:
 - **Site Plan** to show the design of new splash pad in context with surrounding area and accessible pathway connections.
 - **Storm & Sanitary Sewer Plan**
 - **Water Service Plan**
- NV5 shall prepare an **Engineer's Cost Estimate** of probable construction cost for all work shown in the drawings.

It is assumed that the design plan package shall be provided to the Town forces and splash pad vendor's contractor for construction.

TECHNICAL ASSUMPTIONS UPON WHICH THE FEE IS BASED:

1. Record plans of the facilities, site and utilities will be provided to NV5 by the Town of Orangetown. NV5 will work with the record plans, draft up a base map in AutoCAD and supplement it with field measurements and observations.
2. A topographic site and utility survey in AutoCAD format is NOT included in this proposal. NV5 recommends that the Town commission such a survey for most accuracy and completeness. NV5 can supply such services for an additional fee.
3. All plans and applications, as required and appropriate will be signed and sealed by a Professional Engineer licensed in New York State.
4. This proposal assumes the project does NOT require any Board Review for approval.

5. NO environmental permitting services or permitting fees are included in this proposal. Based on the design the Town may require approvals from the following authorities having jurisdiction over this project: Rockland County Sewer District, Rockland County DOH, Suez Water District, and NYSDEC. NV5 will assist the Town by completing appropriate paperwork and forms. This scope of work does NOT include attendance at meetings with regulatory authorities or the preparation of additional or special documentation required by such authorities, without additional compensation.
6. Invoices will be based on substantial completion and rendered monthly.
7. NV5's proposal assumes that the project is NOT going out for public bid. NV5's scope does not include the preparation of bid documents, specifications, bid sheets, soliciting and securing bids, bid review and selection of qualified bidder.
8. Design of the splash pad system shall be provided by the Town's vendor. NV5 shall coordinate with the Vendor for all aspects of the facilities. NV5's plans shall provide sufficient information for the Town's splash pad vendor to construct the facilities.
9. NV5 is under the assumption that the splash pad will be designed as a flow-through/drain-to-waste system, and does not require a holding tank, a filtration device, precast building to house equipment, additional shower stalls, and/or to be filed with NYSDOH.
10. Design of electrical service to the new splash pad and/or to the hotbox for the reduced pressure device for the water service shall be provided by the Town's electrician. NV5 shall coordinate with the electrician for all aspects of the facilities.
11. This proposal assumes the project does NOT require the design of any pump systems.
12. Soil borings costs by a geotechnical contractor are NOT included in the basic services of this proposal.
13. Additional Services beyond the Basic Services noted above may be provided if authorized in writing. NV5 will not proceed with any extra work until an agreed upon scope and fee has been determined and NV5 has been directed, in writing, to proceed.

FEES FOR PROFESSIONAL SERVICES:

The fee for the basic work described above is estimated at **\$34,500**.

Thank you for the opportunity to submit this proposal. To initiate the work, please sign and return one copy of this agreement to our office. We appreciate considering us as part of your design team and look forward to working with you. Feel free to call me at (631) 891-3212 if you have any questions.

Thank you for this opportunity. I look forward to hearing from you.

Very truly yours,

NV5 New York – Engineers, Architects, Landscape Architects and Surveyors



Susanne Boyle, R.L.A.

Principle Landscape Architect – Long Island

Attachments:

- *NV5 Terms and Conditions*

TERMS AND CONDITIONS

1.0 Termination: This agreement can be terminated by either party only upon written notice of seven (7) calendar days. In the event of termination of this contract, the Consultant shall be paid for all services rendered to the effective date of written notice of termination, at contract rates plus other applicable expenses. CLIENT shall be entitled to copies of all design documents, to the extent completed at the effective date of termination.

2.0 Ownership of Documents: All documents prepared by the Consultant pursuant to this agreement, including sketches, design reports, drawings, CADD and/or computer design files and specifications are instruments of service in respect to the subject project. As such, the originals of all such documents shall be retained by and remain the property of the CONSULTANT. The CLIENT shall be entitled to copies of all such documents produced by the CONSULTANT for the subject project. It is understood and the parties agree that the CLIENT shall not use or reuse said documents or information contained therein for additions or modifications to the subject project, for other projects, or for completion of this project by another design professional, except by prior written agreement between the parties hereto and with appropriate compensation to the CONSULTANT for such use or reuse. Any such use or reuse by the CLIENT shall be at the CLIENT's sole risk and without liability or legal exposure to the CONSULTANT. Further, the CLIENT shall defend, indemnify and hold harmless the CONSULTANT, its officers, associates, servants, employees, consultants and agents, from and against any and all claims, demands, damages, losses or expenses of whatever kind or nature, including attorney's fees, arising out of/or claimed to arise out of any such unauthorized use or reuse of said documents or information.

3.0 Insurance: At all times during the terms of this Agreement the CONSULTANT shall maintain, at its own cost and expense, insurance coverage as protection from claims filed against CONSULTANT as follows:

- Workers Compensation (as required by law)
- General Liability (to person or property)
- Automobile Liability (to person or property)
- Professional Liability (errors and omissions)

Insurance shall be written by a company or companies licensed to do business in the State of New York. At the request of the CLIENT, CONSULTANT shall provide appropriate certificates thereof. In the event a claim against the CONSULTANT is brought, alleging errors or omissions by the CONSULTANT and CONSULTANT is found NOT to be legally liable, then CLIENT shall pay all costs incurred by CONSULTANT in defending itself against such claim.

4.0 Standard of Care: The Services shall be performed in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar conditions and in the same locality as the Project. Data, interpretations and recommendations by Consultant will be based solely on information discovered by, or made available to, consultant during the course of the engagement. In connection with such information, Consultant shall not be responsible for the use or interpretation of such information by non-parties to this Agreement. Consultant shall not be held liable for problems that may occur if Consultant's recommendations are not followed.

4.1 It is understood and agreed that the CONSULTANT shall not be held responsible for any inaccuracies in any materials, data or records as provided to the CONSULTANT by the CLIENT, which have been prepared by any other person, firm or agency and on which CONSULTANT in its professional judgement has relied and/or utilized in the performance of the CONSULTANT's services. Client agrees that Consultant shall not be responsible for the means, methods, procedures performance, site safety of the construction contractors or subcontractors, or for their errors or omissions. Client agrees that the work created pursuant to this Agreement is for the sole and exclusive use of Client and is not for the benefit of any third parties. This Agreement and the Services to be performed hereunder shall in no way be construed as a guarantee of deficient-free construction.

5.0 Accuracy: The Consultant shall be entitled to rely upon the accuracy of information, documents and survey supplied by the Owner.

6.0 Intellectual Property: All designs remain the intellectual property of the Consultant with license granted to Client for use under this Agreement and Project. All documents produced by the Consultant under this agreement shall remain the property of the Consultant and may not be used by this Client for any endeavor without the written consent of the Consultant.

7.0 Billing and Payment: Client shall pay Consultant in accordance with the schedule of fees or charges as shown in the Proposal or fee schedule. Backup data on billing will not be available unless prior arrangements have been made. Prior to initiation of the Services, Client is required to remit any retainer specified in the Proposal. Thereafter, Consultant will submit to Client invoices for the balance due, which shall be due and payable immediately upon submission. If Client objects to all or any portion of any invoice, Client will so notify Consultant in writing within ten (10) calendar days of the invoice date, identify the cause of disagreement, and immediately pay that portion of the invoice not in dispute. In the absence of written notification described above, the balance as stated on the invoice shall be deemed accepted. Invoices are delinquent if payment has not been received within thirty (30) days from date of invoice. In such event, Client shall pay an additional charge of one and one-half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. Consultant shall be entitled to recover for all costs and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount. Fee schedules are periodically revised. Unless otherwise agreed, new rates apply to ongoing work as such rates are issued.

8.0 Limitation of Liability. To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability, in the aggregate, of the Consultant, and its officers, directors, partners, employees, agents and sub-consultants, and any of them, to the Client and anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of the Consultant, and its officers, directors, employees, agents or sub-consultants, or any of them, shall not exceed the total compensation received by the Consultant, for Services provided under this Agreement or \$50,000 whichever is more.

9.0 Dispute Resolution: Disagreement(s) between the parties to this Agreement concerning disputes, questions, or other matters relating to and resulting from the terms and conditions of this Agreement shall be submitted to nonbinding mediation if both parties consent. In the event the parties do not consent to mediation, they may pursue a resolution of the disagreement(s) through any available legal recourse. A written request for mediation shall be made to the other party within a reasonable time after the occurrence causing the disagreement(s) between the parties.

10.0 Delay: The CONSULTANT shall not be liable for any delay in the performance of its obligations hereunder or of any damages suffered by reason of such delay, when such delay is directly or indirectly caused by, or in any manner arises from fires, floods, accidents, riots, acts of God, war, governmental interferences or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials or supplies, transportation delays, or any other causes beyond its control.

11.0 Successors and Assigns: Each party to this Agreement binds themselves, their partners, successors, heirs and assigns to the terms of this Agreement. This Agreement cannot be assigned by either party without the prior written consent of the other party.

12.0 No Third Party Beneficiaries: The Agreement gives no rights or benefits to anyone other than Client and Consultant and does not create any third party beneficiaries to the Agreement.

13.0 Mutual Negotiation: Client expressly agrees that all provisions of the Agreement, including the clause limiting the liability of Consultant, were mutually negotiated. But for the inclusion of the limitation of liability clause in the Agreement, the Consultant's compensation for services would otherwise be greater and/or the Consultant would not have entered into the Agreement.

14.0 The Agreement: This Agreement constitutes the entire Agreement between CONSULTANT and CLIENT and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument. The failure of either party to insist upon strict adherence to any term of this Agreement on any occasion shall not operate or be construed as a waiver of the right to insist upon strict adherence to that term or any other term of this Agreement on any other occasion. This Agreement shall be governed and construed and obligations of the parties hereto shall be determined in accordance with the Laws of the State of New York.

The signators below hereby certify that they are duly authorized to bind their respective firms to the terms hereof.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as the day and year first above written.

Agreed and Accepted:

(CLIENT)

Sign: _____

Print: _____

Title: _____

NV5 New York—Engineers, Architects, Landscape Architects
and Surveyors

(CONSULTANT)

Sign: _____

Print: Stephen Normandin, PE

Title: Managing Director



BROOKER ENGINEERING, PLLC

NY OFFICE
74 Lafayette Avenue
Suite 501
Suffern, NY 10901

845.357.4411 Tel.
845.357.1896 Fax

NJ OFFICE
22 Paris Avenue
Suite 105
Rockleigh, NJ 07647

201.750.3527 Tel.

February 10, 2022

Orangetown Town Hall
26 W. Orangeburg Rd.
Orangeburg, NY 10962

Att: Supervisor Teresa M. Kenny

Re: **Proposal for Engineering Services: Veteran's Park Splashpad**
BE #22033

Dear Ms. Kenny:

As requested by Allison Kardon, we are pleased to provide this proposal for Consulting Site Engineering Services for conceptual review of potential strategies for disposal of wastewater from the proposed Veteran's Park Splashpad. We will work with your office and with Eamon Reilly to evaluate alternatives for wastewater disposal. We propose to perform the following work:

Task 1: Splashpad Wastewater Evaluation:

- 1) We will meet with Town Staff at the site and review the proposed location and any other potential short-term plans in the vicinity the Town may have at the Park that could impact the splashpad.
- 2) We will consult with the Health Department and any other outside jurisdictional agencies that may have jurisdiction and will summarize any jurisdictional requirements related to wastewater disposal.
- 3) We will consult with the Splashpad vendor regarding flow rates, flow durations and capturing Splashpad wastewater.
- 4) We may perform soil testing if subsurface disposal is an option.
- 5) We will prepare sketches of the Splashpad location and any methods of wastewater disposal under consideration. Sketches will be prepared using Rockland County Planning public mapping.
- 6) We will prepare a preliminary cost-estimate for any methods of wastewater disposal under consideration.
- 7) We can meet with you and/or your representative to review our findings.

We propose to perform Task 1 on a time/cost basis in accordance with our attached fee schedule. Since we do not know the extent of work that will be required, we propose to budget an initial fee amount of \$10,000 and if we approach this amount we will communicate with your office and you can decide if the Town wishes to budget additional funding towards this work.

➤ ***Fee for Task 1: Time/Cost (Review when fees approach \$10,000)***

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Brian Brooker, P.E.	Eve Mancuso, P.E., C.M.E.	Ken DeGennaro, P.E., C.F.M.	Stuart Strow, P.E., C.F.M.	
Anthony Riggi, P.E.	Dennis Rocks, P.E., C.F.M.	John Bezuyen, P.L.S.	Hillary Chadwick, P.E.	Joseph J. Moran, P.E.
Vincent Kane, P.E.	Nestor Celiz, P.E.	Benjamin Levitz, P.E.	Joseph Nyitray, P.E.	

Task 2: Additional Work

Any work required by you that is not listed or exceeds the scope of work as outlined in the above Task 1 will be billed on a time/cost basis in accordance with our attached fee schedule. Additional out of scope tasks may include:

Out of Scope Work:

1. Changes to the sketches requested by the owner.
2. Additional Meetings beyond Task 1.
3. Design Plans
4. Survey
5. Applications, Permits, and Fees
6. Utility designs
7. Retaining wall design and certification.
8. Structural and geotechnical engineering.
9. Design and restoration to improvements and utilities disturbed during the course of anticipated work.
10. Environmental Studies, Environmental assessment investigations, or Environmental Impact Statements.
11. Architectural services.
12. Legal services.
13. Planning services
14. Construction inspection services.
15. Erosion Control Inspections.
16. Structural & Geotechnical Investigation.
17. Wetland surveys, delineations, and permitting.
18. Design of off-site improvements
19. Construction management, support and inspection.
20. Certified Landscape Architectural services.
21. Traffic reports and studies
22. Water Supply Studies
23. Sanitary Sewer Studies
24. Machinery and labor for soil testing.
25. Environmental Analysis, Soil Testing, Phase I Investigations.
26. Water Quality Testing, Well Testing
27. Printing fees
28. Application fees

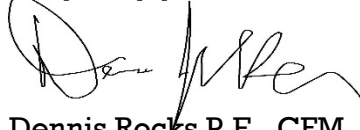
➤ ***Fee for Task 2: Time/Cost***

The above Tasks have been organized in a sequential order that generally corresponds with how the work will proceed from start to finish. If at any point you choose to suspend our work on this project, we will be entitled to full payment for any work completed and/or for percentages of work completed.

Fees for services will be billed in accordance with our Standard Terms and Conditions. Invoices will be submitted for payment monthly as work progresses. Printing, copies, postage and delivery costs will be billed to you as a reimbursable expense.

If you find this proposal acceptable, please indicate your acceptance by signing below and returning a signed copy for our records. Please contact our office with any questions you may have regarding our services.

Very truly yours,



Dennis Rocks P.E., CFM
BROOKER ENGINEERING, PLLC

The undersigned agrees and consents to the Standard Terms and Conditions attached hereto and made part of this contract and also to reimburse and pay to Brooker Engineering, PLLC ("Brooker"), all of Brooker's costs, expenses and disbursements, including Brooker's reasonable attorney's fees and any other costs of collection, if any invoice or bill for Brooker's services to the undersigned is not fully paid within thirty (30) days of its issuance to the undersigned, and the undersigned further agrees and consents to additionally pay to Brooker a finance charge of 1.5% (of the outstanding balance) per month, for each and every month that an invoice or bill for Brooker's services (or portion thereof) remains unpaid.

Accepted By:

Print Name	Title	Signature	Date
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BROOKER ENGINEERING PLLC

NY OFFICE
74 Lafayette Avenue, Suite 501 845.357.4411 Tel
Suffern, NY 10901 845.357.1896 Fax

NJ OFFICE
22 Paris Avenue, Suite 105 201.750.3527 Tel
Rockleigh, NJ 07647

STANDARD TERMS & CONDITIONS

- 1) It is agreed that this proposal will serve as a contract for professional services.
- 2) The proposal is valid for a period of 60 days. The consultant reserves the right to accept or reject a signed proposal returned after 60 days.
- 3) This contract is not assignable except with the prior written consent of the Consultant and no assignment shall relieve the undersigned of any obligations under this contract.
- 4) The undersigned agrees to pay the Consultant within 30 days of invoicing for work performed in accordance with the terms of this contract and the consultant reserves the right to suspend work on overdue accounts.
- 5) Payment of the Consultant is expressly not contingent on the formal approval, adoption or acceptance of any proposal, study, report or recommendation contained herein by the undersigned or by any other person, agency, official or organization.
- 6) Payment of the Consultant is also not contingent on the undersigned receiving any payment from third parties who are not a party to this contract.
- 7) The individual executing this contract, if acting on behalf of a partnership or corporation, represents that they have the authority to do so.
- 8) In the event the services of a collection agency or attorney are required to enforce payment, the undersigned will pay all related costs.
- 9) In the event that payment is not received within 30 days of invoicing, a service charge of 1½% per month will be added to the balance due, which amount will also be subject to all of the above terms.
- 10) The design professional's liability is limited to, and shall not under any circumstances, exceed the amount of the fee paid to the design professional for work on the project.
- 11) The retainer shall be applied to the final invoice for our work.
- 12) In the event that the project becomes inactive, the undersigned shall pay the consultant for all work performed to date including partial payment of tasks in progress based on percent complete. If the project then becomes active after a period of 4 months or longer, the fee shall be subject to renegotiation.

We appreciate the opportunity to submit this proposal to assist you in this matter. If you agree with this proposal, we request that a representative of the property owner sign the proposal as indicated and return a signed copy for our files. If you have any questions, please do not hesitate to call.



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Suffern, NY 10901 845.357.1896 Fax

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Rockleigh, NJ 07647

STANDARD BILLING RATES - TECHNICAL SERVICES

January 1st thru December 31st, 2022

<u>Personnel/Service Provided</u>	<u>Hourly Rate</u>
Principal	\$305.00
Partner	\$245.00
Associate	\$229.00
Engineer (E.I.T., Senior Engineer, P.E.).....	\$146.00 - \$223.00
Technical / Draftsperson	\$115.00 - \$135.00
Construction & Field Personnel.....	\$106.00 - \$134.00
Two-Man Crew.....	\$225.00
Survey Analyst.....	\$206.00
Reproduction.....	Direct Cost + 10%
Messenger Service / Postage	Direct Cost + 10%

Notes:

- 1) Billing occurs periodically as the work proceeds, generally monthly.
- 2) Lump sum contracts will be billed based upon the percentage of work completed.

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Brian Brooker, P.E. Eve Mancuso, P.E., C.M.E. Ken DeGennaro, P.E., C.F.M. Stuart Strow, P.E., C.F.M.
Anthony Riggi, P.E. Benjamin Levitz, P.E. Dennis Rocks, P.E., C.F.M. Elvia Baca, P.E. Hillary Chadwick, P.E. John Bezuyen, PP.L.S.
Joseph J. Moran, P.E. Joseph Nyitray, P.E. Matthew Trainor, P.E. Nestor Celiz, P.E. Shardul Patel, P.E. Vincent Kane, P.E.

AGREEMENT made this ____ day of February, 2022, by and between the Town Board of the Town of Orangetown, a municipal corporation with its principal offices at 26 W Orangeburg Road, Orangeburg, New York (hereinafter the "Town") and Keane & Beane, P.C., a law firm, having its Offices at 445 Hamilton Avenue, White Plains, New York (hereinafter "Counsel"), upon the following terms and conditions:

1. The Town hereby engages Counsel to provide legal advice and services to the Town with regard to special counsel services as more fully set forth below.

2. In consideration of the sums hereinafter set forth Counsel shall provide the following services to the extent requested by the Town:

A. Advice and counsel, as requested by the Town, regarding the review of contracts, leases and other agreements, including but not limited to the review of bid documents, responses to bid documents and other municipal bid proceedings;

B. Litigation as requested by the Town, including but not limited to Federal Court matters and State Court matters; and

D. Any other special counsel or special litigation matters to the extent requested by the Town.

3. Compensation for the aforementioned services shall be at the hourly rate of \$275 per hour for partners and \$245 per hours for associates to be paid within thirty (30) days of the submission of such bills for services rendered as well as reimbursement for reasonable disbursements.

4. Any out of pocket expenses and reasonable disbursements, including, but not limited to, reproduction costs, overnight delivery expenses, online research, parking and travel expenses and other such extraordinary fees or expenses are payable in addition to the legal fees. These expenses also will be included in our monthly statements.

5. All payments shall be made by the Town to Keane & Beane, P.C., upon submission of bills itemizing services provided.

6. This Agreement shall, upon approval of the Town Board, become effective February ____, 2022 and shall remain in effect until December 31, 2022.

7. In the event a dispute arises between us relating to fees, you have the right to seek arbitration of the dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts. A copy of Part 137 will be provided to you upon your request.

8. You have the right, at any time, to terminate this engagement upon written notice to us. Immediately upon receipt of such written notice, we will cease to render any

further services. Should you elect to exercise your right of termination, you will have the continuing obligation to pay all fees for services rendered and disbursements incurred prior to such termination. Once such fees and disbursements have been paid in full, we will cooperate in arranging for the transfer of files and records to you or your designee.

9. We may terminate our engagement and withdraw from representing the Town at any time with the consent of the Town or for good cause. Should we elect to exercise said right, you agree to cooperate and free us of any obligation to perform further services on your behalf and to pay to us in full all sums due to us for work performed and disbursements incurred prior to such withdrawal. For these purposes "good cause" shall be deemed to include (i) those instances in which you fail to meet your obligations under this Agreement and continue to fail to do so for thirty (30) or more days after written notice from us of such failure, (ii) your refusal to cooperate with us and (iii) any circumstance which would render our continuing representation of you unethical, impracticable or unlawful.

10. It is expressly understood that we do not guarantee or predict any result whatsoever in connection with the legal services to be performed on your behalf. Further, this Agreement shall be deemed to exclude matters not expressly included herein. We will consult with you or with whomever you designate prior to undertaking to perform any services with regard to such excluded matters, including, but not limited to, litigation matters and arbitrations, and will enter into a separate retainer arrangement with you as to such services.

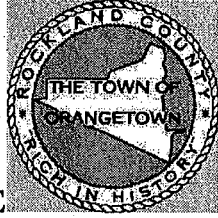
11. This Agreement sets forth the complete agreement and understanding of the parties. It shall not be changed except upon the mutual consent of the parties reduced to a writing signed by both parties.

TOWN OF ORANGETOWN

By: _____
Supervisor, Teresa M. Kenny

KEANE & BEANE, P.C.

By: _____
Eric Gordon



TOWN ATTORNEY'S OFFICE INTER-OFFICE MEMORANDUM

DATE: March 2, 2022

TO: Rosanna Sfraga, Town Clerk (with originals)

cc: Town Board Members (w/o encl.)
Kimberly Allen, Administrative Secretary to the Supervisor (w/o encl.)
Ellie Fordham, Secretarial Assistant II, DEME (w/o encl.)

FROM: Dennis D. Michaels, Deputy Town Attorney
(m f)

RE: Certificate of Plumbing Registration (Sewer Work) 2022

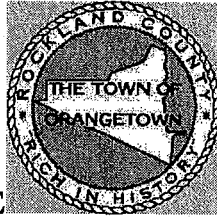
The following applicant is qualified, pursuant to the qualification certificate received from Eamon Reilly, Commissioner of the Department of Environmental Management and Engineering (original attached), and the bond and insurance certificates having been reviewed and approved (originals attached), from a legal standpoint, by the Office of the Town Attorney.

Rino Paving & Construction, Inc.
20 Viola Road
Suffern, NY 10901
Tel.: 845-357-5473

This Certificate of Registration has been placed on the next Regular Town Board Meeting agenda scheduled for March 8, 2022. Should you have any questions, please do not hesitate to contact this Office.

Should you have any questions, please do not hesitate to contact this Office.

encl.



TOWN ATTORNEY'S OFFICE INTER-OFFICE MEMORANDUM

DATE: March 2, 2022

TO: Rosanna Sfraga, Town Clerk (with originals)

cc: Town Board Members (w/o encl.)
Kimberly Allen, Administrative Secretary to the Supervisor (w/o encl.)
Ellie Fordham, Secretarial Assistant II, DEME (w/o encl.)

FROM: Dennis D. Michaels, Deputy Town Attorney
(MF)

RE: Certificate of Plumbing Registration (Sewer Work) 2022

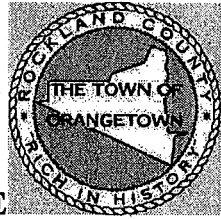
The following applicant is qualified, pursuant to the qualification certificate received from Eamon Reilly, Commissioner of the Department of Environmental Management and Engineering (original attached), and the bond and insurance certificates having been reviewed and approved (originals attached), from a legal standpoint, by the Office of the Town Attorney.

Michael Sasso Plumbing, Inc.
P.O. Box 507
New City, NY 10956
Tel.: 845-638-2900

This Certificate of Registration has been placed on the next Regular Town Board Meeting agenda scheduled for March 8, 2022. Should you have any questions, please do not hesitate to contact this Office.

Should you have any questions, please do not hesitate to contact this Office.

encl.



TOWN ATTORNEY'S OFFICE INTER-OFFICE MEMORANDUM

DATE: March 2, 2022

TO: Rosanna Sfraga, Town Clerk (with originals)

cc: Town Board Members (w/o encl.)
Kimberly Allen, Administrative Secretary to the Supervisor (w/o encl.)
Ellie Fordham, Secretarial Assistant II, DEME (w/o encl.)

FROM: Dennis D. Michaels, Deputy Town Attorney
(mf)

RE: Certificate of Plumbing Registration (Sewer Work) 2022

The following applicant is qualified, pursuant to the qualification certificate received from Eamon Reilly, Commissioner of the Department of Environmental Management and Engineering (original attached), and the bond and insurance certificates having been reviewed and approved (originals attached), from a legal standpoint, by the Office of the Town Attorney.

Victor P. Zugibe, Inc.
66 W. Railroad Avenue
Garnerville, NY 10923
Tel.: 845-947-2255

This Certificate of Registration has been placed on the next Regular Town Board Meeting agenda scheduled for March 8, 2022. Should you have any questions, please do not hesitate to contact this Office.

Should you have any questions, please do not hesitate to contact this Office.

encl.

Assignment and Assumption Agreement

This Assignment and Assumption Agreement (the "**Agreement**"), is by and between the Village of South Nyack, a municipal corporation in the Town of Orangetown, State of New York ("**Village**"), and the Town of Orangetown, a municipal corporation in the State of New York ("**Town**").

WHEREAS, in accordance with Article 17-A the General Municipal Law of the State of New York, and a Final Dissolution Plan of the Village dated July, 2021, the Village intends to dissolve on March 31, 2022;

WHEREAS, as of September 16, 2020, the Village, Joule Assets, Inc., and Constellation, New Energy, Inc. ("**Constellation**") entered into a Community Choice Aggregation Electricity Supply Agreement, pursuant to which the parties agreed, among other things, that Constellation would provide electricity supply to certain electricity customers within the Village on an opt-out basis with Joule serving as CCA Program Administrator (the "**ESA**");

WHEREAS, pursuant to the ESA, Constellation's obligation to provide electricity terminates with Participating Consumers' "**Final Meter Read Date**" as defined and set forth in the ESA, and Exhibit A Parts 1 and 2 thereto, i.e the first consumer meter read date after 1 October 2022;

WHEREAS, as part of the dissolution, the Village desires to assign and Town desires to assume the ESA and all obligations thereunder;

WHEREAS, it is understood that any obligation of the Town to accept provision of electricity supply after the Final Meter Read Date on behalf of then former residents of the Village would require an express subsequent agreement between Constellation, or another electricity supplier, and the Town;

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. All capitalized terms used in this Agreement but not otherwise defined herein are given the meanings set forth in the ESA.
2. Effective Date. This Agreement shall be effective as of March 31, 2022 or such other date of dissolution of the Village (the "**Effective Date**").
3. Assignment and Assumption. Village hereby assigns, grants, conveys and transfers to Town all of Village's right, title and interest in and to the ESA. The Town hereby accepts such assignment and assumes all of Village's duties and obligations under the ESA and agrees to perform and discharge, as and when due, all of the obligations of Village under the ESA.
4. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

5. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

6. Further Assurances. Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

TOWN OF ORANGETOWN

VILLAGE OF SOUTH NYACK

By _____

By _____

Name:

Name:

Title:

Title:

Dated:

Dated:

Municipal Energy Services Agreement

This Municipal Energy Services Agreement (the “**Agreement**”) is entered into as of June 28, 2019 2019 (the “**Effective Date**”) by and between the Village of South Nyack of Rockland County, a municipal corporation of the State of New York, having its principal offices at 282 South Broadway, South Nyack, NY 10960 (“**Municipality**”) and Joule Assets Inc. a Delaware corporation having its principal offices at 22 Edgemont Drive, Katonah, New York 10536 (“**Joule**”)(Municipality and Joule are referred to individually as a “**Party**” and collectively as the “**Parties**”).

RECITALS

WHEREAS, Joule is in the business of, among other things, providing consulting and program administration services in connection with municipal energy services (collectively, the “**Municipal Energy Services**”) for energy programs for municipalities and for residents and business located therein (collectively, the “**Municipal Energy Programs**”) including, without limitation, services related to Community Choice Aggregation (“**CCA**”), demand response (“**DR**”), demand management, micro-grids, distributed energy resources (“**DER**”), community distributed generation (“**CDG**”), and financing in connection therewith;

WHEREAS, the New York State Public Service Commission has authorized municipalities to participate in CCA pursuant to the CCA Order (as defined below);

WHEREAS, the PSC has authorized CDG project development and operation pursuant to the CDG Order (as defined below);

WHEREAS, the Municipality is exploring whether CCA and/or other Municipal Energy Programs are appropriate for the Municipality and its residents and businesses; and

WHEREAS, Municipality desires to engage Joule in connection with Municipal Energy Services, and Joule desires to provide Municipal Energy Services to Municipality in accordance with this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

1.1 The following terms shall have the meanings ascribed below:

(a) “**Applicable Law**” means the CCA Order, the CDG Order and all statutes, ordinances, laws, rules and regulations that are related or applicable to the Municipal Energy Services, this Agreement, the parties to this Agreement, or to parties to an Agreement related to this Agreement.

(b) “**Bidder**” means a Competitive Supplier that submits a bid in response to a Solicitation.

(c) “**CCA**” has the meaning set forth in the Recitals to this Agreement.

(d) “**CCA Administrative Fee**” has the meaning set forth in Section 5.1(a).

(e) “**CCA Enabling Legislation**” means a local law adopted by Municipality according to Municipal Home Rule Authority and in compliance with the CCA Order that authorizes Municipality to join a CCA Program.

(f) “**CCA Order**” means the April 21, 2016 “Order Authorizing Framework For Community Choice Aggregation Opt-Out Program” issued by the PSC in Case 14-M-0224, “Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs” as may be amended or supplemented from time to time by the PSC.

(g) “**CCA Program**” means an energy procurement program that replaces the incumbent utility as the default supplier for all eligible customers within the Municipality, in accordance with the CCA Order.

(h) “**CCA Program Administrator**” means Joule.

(i) “**CDG**” has the meaning set forth in the Recitals to this Agreement.

(j) “**CDG Developer**” means an entity duly authorized to act as developer or sponsor of one or more CDG projects in accordance with the CDG Order and other Applicable Law.

(k) “**CDG Fee**” has the meaning set forth in Section 5.2.

(l) “**CDG Order**” means the July 17, 2015 “Order Establishing a Community Distributed Generation Program and Making Other Findings” issued by the PSC in Case 15-E-0082, “Implementing a Community Net Metering Program” as may be amended or supplemented from time to time by the PSC.

(m) “**CDG Program**” means a program in which Joule provides services to a CDG Developer in relation to one or more CDG projects in which residents or businesses located within the Municipality are offered the opportunity to become Subscribers to a CDG project.

(n) “**Competitive Supplier**” means an entity duly authorized to conduct business in the State of New York as an energy service company (“**ESCO**”) that procures electric power and/or natural gas for Eligible Customers in connection with a CCA Program.

(o) “**Compliant Bid**” means a bid, submitted in compliance with the requirements set forth by the Parties in the Solicitation, the terms of which are agreed upon by Municipality and Joule.

(p) “**Compliant Bidder**” means a Competitive Supplier who makes a Compliant Bid.

(q) “**Default Service**” means the energy supply service provided by the Distribution Utility to customers who are not currently receiving electric service from an ESCO.

(r) “**Distribution Utility**” means the owner or controller of the means of distribution of the natural gas or electricity that is authorized to be the distribution utility regulated by the Public Service Commission for a particular service area.

(s) “**Effective Date**” shall have the meaning set forth in the preamble to this Agreement.

(t) “**Electricity Supply Agreement**” or “**ESA**” means the Electricity Supply Agreement that may be entered into by and between Municipality and the Selected Supplier that contains the terms and condition concerning electricity supply procurement.

(u) “**Municipal Energy Program**” means a program described in the Recitals to this Agreement.

(v) “**Municipal Energy Services**” means services provided by Joule in connection with one or more Municipal Energy Programs as described in the Recitals to this Agreement.

(w) “**Municipality**” means the municipality set forth in the preamble to this Agreement.

(x) “**Participating Customer**” means a customer who participates in the CCA Program in accordance with the CCA Order including without limitation a customer who is eligible to participate on an opt-out basis and has not opted out, and customer who is eligible to participate on an opt-in basis and has opted-in.

(y) “**Program Administrator**” means Joule.

(z) “**Program Organizer**” means a person or entity selected by Joule in accordance with Article 4 to provide certain services with respect to the subject Program(s).

(aa) “**Program Organizer Agreement**” has the meaning set forth in the Recitals to this Agreement.

(bb) “**Public Service Commission**” or “**PSC**” means the New York State Public Service Commission or the New York State Department of Public Service acting as staff on behalf of the Public Service Commission.

(cc) “**Selected Supplier**” means the supplier of electricity selected by the Municipality following the Solicitation.

(dd) “**Solicitation**” has the meaning set forth in Section 3.2(c).

(ee) “**Subscriber**” means a subscriber to a CDG project.

ARTICLE 2. RIGHTS AND RESPONSIBILITIES OF THE PARTICIPATING MUNICIPALITY

2.1 Municipality agrees to investigate with Joule the benefits and desirability of implementing a CCA Program, and other Municipal Energy Programs.

2.2 In the event that Municipality within eighteen (18) months from the Effective Date enacts, or having previously enacted, CCA Enabling Legislation and authorizes the issuance of a Solicitation to receive Compliant Bids for an Electric Service Agreement from Competitive Suppliers in connection therewith; then, Municipality agrees that Joule will serve as Program Administrator in connection therewith.

2.3 In connection with Section 2.2:

(a) The Parties will work cooperatively to create a Solicitation, and Joule, with the Municipality’s consent and approval, shall select the winning Competitive Supplier from among Compliant Bidders provided that:

- i. The selected Competitive Supplier’s proposal must be a Compliant Bid whose bid Joule determines to be the most advantageous to the CCA Program and Municipality based on the evaluation factors set forth in the Solicitation;
- ii. Municipality may designate a representative to review and participate in the evaluation of the Compliant Bids;
- iii. In the event that a Compliant Bid is received and accepted, Municipality shall execute an ESA (the terms of which shall be consistent with this Agreement and

shall be subject to both Parties' input and consent, such consent not to be unreasonably withheld) with the Selected Supplier in a timely fashion. It is agreed that such ESA will either be a two-party agreement by and between the Municipality and Selected Supplier, or a three-party agreement by and between the Municipality, the Selected Supplier and Joule; and

- iv. Municipality agrees that the Selected Supplier shall remit a fee directly to Joule in accordance with Section 5.1 and the Municipality shall have no obligation to pay or collect any such fees.

2.4 In relation to a CDG Program, Municipality will provide support to Joule in enrolling Subscribers within the Municipality by promoting the program, educating the public, and advocating for the benefits to both the municipality and the CDG Subscribers. This will include scheduling, conducting and facilitating public meetings to disseminate educational information.

2.5 Regardless of whether Municipality elects to implement a CCA Program, in the event that Municipality desires to implement other Municipal Energy Programs and engage Joule's assistance in connection with such implementation, the Parties may, but are not required to, enter into a subsequent agreement describing the scope of Joule's services and the payment to Joule in connection therewith.

2.6 In connection with any Municipal Energy Program, Municipality:

(a) Shall assist Joule by providing to Joule all publicly available information pertinent to potential or actual Municipal Energy Programs upon reasonable request; and

(b) Authorizes Joule to act on behalf of the Municipality to secure release of other data applicable to potential or actual Municipal Energy Programs that is held by others, including but not limited to residential and small commercial customer account and load information under the authority granted by the respective PSC Orders. Municipality further agrees to furnish Joule such information, to execute and deliver such additional documents, and to take such other actions as may be reasonably necessary for Joule to secure release of such data.

2.7 Municipality shall comply with all Applicable Laws.

ARTICLE 3. RIGHTS AND RESPONSIBILITIES OF JOULE

3.1 Joule shall perform each of the following activities as part of the Municipal Energy Services:

(a) Provide Municipality with information concerning the benefits and desirability of implementing a CCA Program and other Municipal Energy Programs at public meetings, work sessions, phone calls and otherwise; and

(b) Provide marketing services for the potential Programs.

3.2 During and upon the occurrence of the events described in Section 2.2:

(a) Joule and/or Program Organizer shall (i) support the Municipality and attend board and public meetings; and (ii) provide marketing services for the Municipal Energy Program(s); and

(b) Joule shall provide to the PSC and the Distribution Utility, requested information and documentation of the actions undertaken by the Municipality in connection with the Municipal Energy Program(s), and otherwise coordinate efforts with such entities; and

(c) Joule shall in relation to a CCA Program,

- i. Manage a competitive procurement process (the “**Solicitation**”) in a manner consistent with New York General Municipal Law including, without limitation:
 - a. Prepare bid specifications and procure of competitive bids;
 - b. Review responses to competitive bids to determine if they are Compliant Bids; and
 - c. Contract negotiations with the Selected Supplier; and
- ii. In the event that there is a Compliant Bid:
 - a. prepare program notification letters to opt-out customers, and supervise other notices and publications required under the CCA Order to facilitate the adoption and operation of the Program; and
 - b. Prepare, or have prepared, a program implementation plan and a data protection plan in accordance with the CCA Order.

3.3 Joule shall, in relation to a CDG Program, negotiate in good faith with prospective CDG Developer(s) to identify a suitable project(s) and accompanying terms that are advantageous to the Subscribers and the CDG Program.

3.4 For other Municipal Energy Programs, subject to the approval of the Municipality, Joule may develop proposals for potential offers of opt-in or opt-out distributed energy resources (DER) products and services to Participating Customers, including opportunities to participate in energy efficiency, demand response, energy management, and other innovative Reforming the Energy Vision (REV) initiatives and objectives designed to optimize system benefits, target and address load pockets/profile within the CCA, and reduce costs for Participating Customers.

3.5 Joule shall comply with all Applicable Laws.

ARTICLE 4. ROLE OF PROGRAM ORGANIZER FOR CCA PROGRAM

4.1 Upon the consent of Municipality, which shall not be unreasonably withheld, conditioned or delayed, Joule may select a Program Organizer to Municipality in connection with the CCA Program or other Municipal Energy Programs. Joule may enter into a Program Organizer Agreement with such Program Organizer, may assign or delegate certain or all of its Program Administrator tasks to the Program Organizer, and may share a portion or all of the associated Administrative Fee as described in Section 5.1 and 5.2 with the Program Organizer. Joule shall be solely responsible for any fees or payments due for services provided by the Program Organizer.

4.2 In accordance with the foregoing section, Municipality hereby consents to the selection of the Center for Economic and Environmental Partnership, Inc. a New York-based 501c3 nonprofit organization with a business address of Post Office Box 8625, Albany, New York 12208 (“CEEP”) as Program Organizer and, provided that (a) Joule is Program Administrator, (b) CEEP and Joule have executed a Program Organizer Agreement that is and remains in effect, then Joule and Municipality agree that CEEP shall be Program Organizer.

ARTICLE 5. PAYMENT.

5.1 In relation to CCA:

(a) Upon commencement of an ESA, Municipality agrees that Joule will be paid by the Selected Supplier per kWh (volumetrically) for electricity purchased for all Participating Customers during the duration of the ESA a fee of \$0.0008/kWh (8/100^{ths} of one cent/kWh) per ESA contract year, or another fee agreeable in writing to both Parties (the “**CCA Administrative Fee**”);

(b) It is understood and agreed that as part of the Municipal Energy Services in connection with a potential CCA Program, the Distribution Utility may require a payment for records related to electricity usage of potential Participating Customers. Upon enactment of CCA Enabling Legislation, Joule is authorized to pay the Distribution Utility up to \$0.16 (16 cents) per record, or such other amount authorized by the Public Service Commission; for which Municipality shall not be liable, provided that Joule may seek reimbursement of such payment from the Competitive Supplier as part of an ESA (apart from the CCA Administrative Fee); and

(c) No portion of the CCA Administrative Fee shall be paid by Municipality.

5.2 In relation to CDG:

(a) During and after the term of this Agreement, nothing herein shall prevent Joule from entering into one or more agreements with one or more CDG Developers pursuant to which Joule shall be entitled to receive a fee for services in relation to one or more CDG projects including without limitation the delivery to a CDG Developer of Subscribers residing in the Municipality, or leads for such Subscribers (“**CDG Fee**”); and

(b) No portion of the CDG Fee shall be paid by Municipality.

ARTICLE 6. TERM AND TERMINATION

6.1 This Agreement shall commence on the Effective Date and, except as provided herein:

(a) If no ESA is executed as contemplated by Sections 2.2, this Agreement shall expire at the end of the period described therein; or

(b) If one or more ESA is executed as contemplated by Sections 2.2, or other Agreements are entered into between the Parties in relation to Municipal Energy Services, this Agreement shall expire or terminate at the expiration or termination of such agreement that is last in effect.

6.2 Termination for Cause. This Agreement may be terminated for cause by either Party (the “**Non-breaching Party**”) upon a material breach of the other Party (the “**Breaching Party**”) if such Breaching Party has failed to cure such material breach within thirty (30) days of receiving notice of such breach from the Non-breaching Party.

6.3 In the event of any termination or expiration of this Agreement:

(a) Joule shall deliver to Municipality copies of all files and documents pertaining to any Program;

(b) Except as expressly provided herein, all obligations of the Parties hereto pursuant to this Agreement shall terminate.

ARTICLE 7. INSURANCE AND INDEMNIFICATION

7.1 Upon Joule becoming a CCA Program Administrator in accordance with Section 2.2 and for the balance of the term of the Agreement, Joule shall secure and maintain, at its own expense, errors and omissions insurance in an amount not less than one million dollars (\$1,000,000.00) per claim/annual aggregate to protect itself and Municipality from any claim arising out of the performance of professional services and caused by negligent acts or omissions for which Joule may be legally responsible, with a deductible not to exceed \$50,000 without prior written approval.

7.2 In addition to any other remedies available to the Municipality at law or equity, and notwithstanding any other provision contained herein, Joule shall indemnify, defend and hold harmless the Municipality and the Municipality's elected officials, officers, employees, agents, representatives and independent contractors (the "**Indemnified Parties**"), 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 Indemnified Parties to the extent arising directly from or in connection with a claim by a third-party (i.e. a person other than the Indemnified Parties) arising out of (i) any material breach of this Agreement by Joule (including its obligations, covenants, representations or warranties) and not resulting from the actions (or omissions where there is a duty to act) of the Municipality or its elected officials, officers, employees or agents; or (ii) any material action or omission taken or made by Joule in connection with Joule's performance of this Agreement, which action or omission is found in a final judgment by a court of competent jurisdiction or by arbitration to constitute Joule's gross negligence or willful misconduct, and excepting from both (i) and (ii) claims resulting from the actions (or omissions where there is a duty to act) of the Municipality or its respective elected officials, officers, employees or agents.

ARTICLE 8. CONFIDENTIAL INFORMATION.

8.1 During the Term, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**") information about its business affairs, products/services, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information shall not include information that, at the time of disclosure: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 8.1 by the Receiving Party or any of its representatives; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of the Receiving Party or its representatives prior to being disclosed by or on behalf of the Disclosing Party as demonstrated by written records; (iv) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information as demonstrated by written records; or (v) is required to be disclosed pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (the "**Order**"), provided that in such event the Receiving Party shall give the Disclosing Party prompt written notice of the Order and shall reasonably cooperate with the Disclosing Party prior to disclosure to provide the Disclosing Party with the opportunity, at

Disclosing Party's expense, to interpose any and all objections it may have to disclosure of the information required by the Order, or to otherwise limit any disclosure required by the Order to the maximum extent permitted by law and all information disclosed shall otherwise remain Confidential Information until another exception exists described in this Section 8.1. The Receiving Party shall: (A) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (B) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (C) not disclose any such Confidential Information to any third party, except to the Receiving Party's representatives, or approved subcontractors, who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under the Agreement, and who are under confidentiality obligations at least as protective as this Agreement. The Receiving Party shall be responsible for any breach of this Section 8.1 caused by any of its representatives or subcontractors. In the event that a request is known to have been made by anyone seeking a court order disclosing any Confidential Information, the Receiving Party will provide (if permitted by the court order) the Disclosing Party with at least fifteen (15) days' notice identifying the information sought to be disclosed, the name, address and telephone number of the third party seeking disclosure, the reason for the requested disclosure, the case style, case number and court having jurisdiction over the action, if any, in which disclosure is sought, and will provide copies of the request for disclosure.

8.2 The Parties agree that any Confidential Information disclosed by Disclosing Party shall only be disclosed to those officials, employees, representatives, and agents of the Receiving Party that have a need to know in order to administer the Agreement.

8.3 Compliance by the Municipality with the New York State Freedom of Information Law ("NY FOIL") shall not be a violation of this Article and Municipality shall have no duty to litigate or defend any action against it under the NY FOIL.

8.4 The obligations under this Article 8 shall survive the termination or expiration of this Agreement for two (2) years.

ARTICLE 9. MISCELLANEOUS

9.1 The Parties acknowledge and agree that Joule is an independent contractor and is not an agent or employee of Municipality. Nothing in this Agreement shall be construed to create a relationship between Joule and Municipality of a partnership, association, or joint venture.

9.2 Joule covenants that the individuals engaged by Joule in any capacity, including but not limited to, employees, subcontractors and independent contractors, are authorized to work in the United States. Joule represents and covenants that it has completed the I-9 verification process for all persons who perform services for Municipality.

9.3 Neither party may assign this Agreement without obtaining express, written consent from the other party prior to assignment, which consent shall not be unreasonably withheld.

9.4 This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the Parties. This Agreement may be amended or modified only by a writing executed by the

duly authorized officers of the Parties. It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by the Parties.

9.5 Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whether between the Parties, or of any of the Parties' employees, agents or affiliated businesses, will be resolved under the laws of the State of New York without regard to conflict of laws principles, in any court of competent jurisdiction in the county in which the Municipality is located.

9.6 If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and shall be replaced by a valid, mutually agreeable and enforceable provision which so far as possible achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.

9.7 Section headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date and the year first above written.

Joule Assets Inc.

By: 

Name: Michael Gordon

Title: Chief Executive Officer

Village of South Nyack

By: 

Name: Bonnie R. Christian

Title: Mayor, South Nyack, N.Y.

Electricity Supply Agreement
between Supplier, Joule Assets, Inc. and Village of South Nyack

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PREAMBLE

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

The Village of South Nyack, a municipal corporation in the State of New York, with a principal place of business at 282 South Broadway, South Nyack, NY 10960 (the “**Municipality**”);

Constellation, New Energy, Inc. (“**Constellation**”) 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 1310 Point St. Baltimore, MD 21231 (“**Competitive Supplier**” or “**Supplier**”); and

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ELECTRICITY SUPPLY AGREEMENT

ARTICLE 1 -- DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.29 **NYISO** - The New York Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New York and the bulk transmission of electricity throughout the New York power grid.

1.30 **Participating Consumer** – an Eligible Consumer who is enrolled in the Program, either because consumer receives Basic Utility Supply Service from the Distribution Utility as of the Effective Date and has not opted out, or is a New Consumer.

1.31 **Parties** - The Municipality, the Program Administrator, and the Competitive Supplier, as the context requires. In the singular, "Party" shall refer to any one of the preceding.

1.32 **Point of Delivery** - The boundary of the Distribution Utility's electricity franchise, or the point at which the Competitive Supplier delivers the power to the Distribution Utility.

1.33 **Point of Sale** - The electric meter for each Participating Consumer's account, as designated by the Distribution Utility, such that all line loss costs are included in Competitive Supplier price to bring power to the meter.

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

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

1.36 **PSC or DPS** -- The New York State Public Service Commission or the New York State Department of Public Service acting as Staff on behalf of the PSC, or any successor state agency.

1.37 **Qualifying Regulatory Event** — A Regulatory Event that impacts or provides opportunity for substantially all consumers in the same rate class, but not including a Regulatory Event that applies uniquely to Competitive Supplier.

1.38 **Regulatory Event** -- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation.

1.39 **Renewable Energy Certificate** –A renewable energy certificate registered in, and fully compliant with, the New York (State) Generation Attribute Tracking System ("NYGATS") operating rules, dated May 18, 2018, as may be amended from time to time.

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

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

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

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

ARTICLE 2 -- RIGHTS GRANTED

2.1 GENERAL DESCRIPTION AND LIMITATIONS

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

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

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

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

2.2 NO THIRD PARTY BENEFICIARIES

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

2.3 COMPLIANCE WITH LAWS

The Municipality represents and covenants that the Local Law has been duly adopted 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 on behalf of Municipality for such data must be protected by the Competitive Supplier and its Associated Entities to the fullest extent possible under the law and all PSC Orders; 2) the Competitive Supplier does not hold any permanent right, title or interest in this data; and 3) this

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

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

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

2.6 ENVIRONMENTAL DISCLOSURE PROGRAM

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

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

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

3.2 NOTIFICATION TO NEW CONSUMERS OF OPT-OUT RIGHTS

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

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

3.3 CONSUMER AWARENESS

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

3.4 ENROLLMENT

3.4.1 Participating Consumers

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

3.4.2 New Consumers

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

3.4.3 Eligible Consumers Opting Out

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

3.4.4 Consumers Served by Third-Parties

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

3.4.5 Termination Fees

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

ARTICLE 4 -- TERM OF CONTRACT AND TERMINATION

4.1 TERM

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

4.2 TERMINATION

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

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

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

4.3 OBLIGATIONS UPON TERMINATION

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

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

4.4 EXTENSION

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

ARTICLE 5 -- CONTINUING COVENANTS

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

5.1 STANDARDS OF MANAGEMENT AND OPERATIONS

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

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

5.2 CUSTOMER SERVICE ACCESS

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

5.3 RESPONDING TO REQUESTS FOR INFORMATION

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

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

5.4 ARRANGING FOR FIRM FULL-REQUIREMENTS POWER SUPPLY

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

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

5.5 NON-DISCRIMINATORY PROVISION OF SERVICE

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

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

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

5.6 APPROVAL OF GENERAL COMMUNICATIONS

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

5.7 COMMUNICATION OF INSERTS AND MESSAGES

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

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

5.8 PARTICIPATING CONSUMER LISTS

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

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

5.9 COMPLIANCE WITH LAWS

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

5.10 CONSENT

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

5.11 CREDITWORTHINESS

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

5.12 COMPLIANCE WITH RFP

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

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

ARTICLE 7 -- ROLE OF PROGRAM ADMINISTRATOR**7.1 PROGRAM ADMINISTRATOR RIGHTS AND DUTIES**

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

Program Administrator, agrees to:

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

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

7.2 PROGRAM ADMINISTRATOR FEE

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

7.3 PAYMENT OF FEE

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

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

7.4 INDEPENDENT CONTRACTOR

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

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

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

8.2 OBLIGATION TO SERVE

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

8.3 METERING

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

8.3.1 Title

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

8.3.2 Billing and Payment

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

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

8.3.3 Regional and Local Transmission

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

8.3.4 Taxes

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

ARTICLE 9 -- ADDITIONAL COMPLIANCE BY COMPETITIVE SUPPLIER

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

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

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

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

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

10.2 DESCRIPTION OF SUPPLIER'S PROCEDURES AND SERVICES

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

10.3 DISPUTE RESOLUTION

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

ARTICLE 11 -- NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

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

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

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

12.1.2 Consumer-Related Data

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

12.1.3 Standard of Care

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

12.2 POWER SUPPLY REPORT

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

Participating Consumers pursuant to this ESA, except to the extent such disclosure would violate any confidentiality obligations of Competitive Supplier.

12.3 BOOKS AND RECORDS

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

12.4 COPIES OF REGULATORY REPORTS AND FILINGS

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

ARTICLE 13 -- RESOLUTION OF DISPUTES; CHOICE OF LAW AND FORUM

13.1 CHOICE OF LAW AND FORUM

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

13.2 DISPUTE RESOLUTION

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

ARTICLE 14 -- INDEMNIFICATION

14.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER

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

14.2 NOTICE OF INDEMNIFICATION CLAIMS

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

14.3 SURVIVAL

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

14.4 DUTY TO MITIGATE

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

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

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

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

15.2 BY THE MUNICIPALITY

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

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

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-. Proof acceptable to the Municipality that each such insurance coverage is in force and effect, and listing the Municipality as an additional insured on all policies, shall be submitted on or before the Effective Date and thereafter whenever renewed or requested by the Municipality. All insurers must be notified that the insurance policies must provide that a copy of any notice of cancellation or non-renewal will be sent to the Municipality.

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

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

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

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

17.2 QUALIFYING REGULATORY EVENT

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

17.3 NEW TAXES

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

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

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

18.2 NO ASSIGNMENT WITHOUT PERMISSION

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

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

18.3 DIRECT MARKETING

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

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

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

18.4 NOTICES

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

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

18.5 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

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

18.6 ENTIRE AGREEMENT; AMENDMENTS

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

18.7 FORCE MAJEURE

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

18.8 EXPENSES

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

18.9 NO JOINT VENTURE

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

18.10 NO RULE OF STRICT CONSTRUCTION

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

18.11 COUNTERPARTS

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

18.12 DIGITAL SIGNATURES

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

18.13 WAIVER

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

18.14 ADVERTISING LIMITATIONS

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

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

18.15 PRESS RELEASES

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

18.16 HEADINGS AND CAPTIONS

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

18.17 SURVIVAL OF OBLIGATION

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

ARTICLE 19 -- REMEDIES

19.1 GENERAL

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

19.2 LIMITATIONS OF LIABILITY

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

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

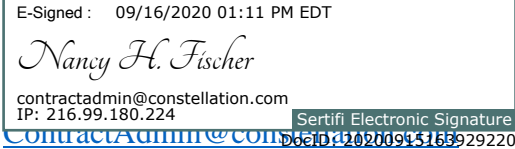
19.3 DISCLAIMER

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

[SIGNATURE PAGE TO FOLLOW]

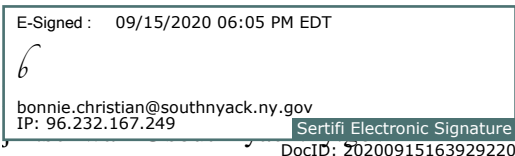
IN WITNESS WHEREOF, the Parties have caused this ESA to be executed by their duly authorized representatives, as required by the applicable laws of the city, town or municipality and the laws, rules and regulations of the State of New York, as of the respective dates set forth below.

CONSTELLATION, NEW ENERGY, INC. (COMPETITIVE SUPPLIER)

By: 
 Name: *Nancy H. Fischer*
 Title: contractadmin@constellation.com
 Email: IP: 216.99.180.224
 Address: 1001 Louisiana St. Suite 2300
 Houston, TX 77002

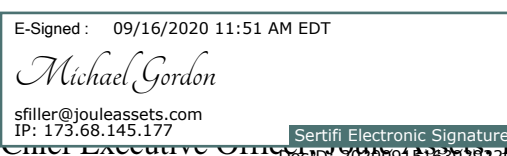
Dated: _____

VILLAGE OF SOUTH NYACK (MUNICIPALITY)

By: 
 Name: *B*
 Title: bonnie.christian@southnyack.ny.gov
 Email: IP: 96.232.167.249
 Address: 282 South Broadway, South Nyack, NY 10960

Dated: _____

JOULE ASSETS INC (PROGRAM ADMINISTRATOR)

By: 
 Name: *Michael Gordon*
 Title: sfiller@jouleassets.com
 Email: IP: 173.68.145.177
 Address: mgordon@jouleassets.com
 22 Edgemont Road, Katonah, NY 10536

Dated: _____

[SIGNATURE PAGE TO ELECTRICITY SUPPLY AGREEMENT]

EXHIBIT A - PART 1
PRICES AND TERMS

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

This shall be the default product offered to Participating Consumers.

Firm Full-Requirements Price by Rate Classification for all Participating Consumers located in the Distribution Utility (to wit, ORANGE & ROCKLAND) territory commencing service on the first consumer meter-read date after 1 November 2020 (“**First Meter Read Date**”).

Table 1:

Rate Class	Fixed Price per kWh	Fixed Price per kWh including local Gross Receipts tax (x 1.0099)
Residential	\$ 0.07167	\$0.07238
Small Commercial	\$ 0.07167	\$0.07238

Terms for System Supply Service

Term: The Price and Terms stated on this EXHIBIT A – Part 1 will commence on the First Meter Read Date and continue until the first consumer meter read date after 1 October 2022 (“**Final Meter Read Date**”), unless this ESA is sooner terminated in accordance with ARTICLE 4.2 of this ESA.

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

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

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

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

NY Class II Voluntary RECs Purchase. This Agreement includes a purchase of RECs, sourced from NY Class II Voluntary Renewable Resources in an amount equal to **100%** of Participating Consumers electricity usage as of the Effective Date of this Agreement. For clarification purposes, the 100% RECs purchase consists of any then-current New York renewable energy standard requirements applicable to alternative retail electric suppliers in New York plus additional NY Class II Voluntary RECs in an amount equal to 100% of the customer’s usage. Competitive Supplier shall notify Municipality in writing regarding the

source of your NY Class II Renewable Resource(s). Each REC represents the environmental attributes associated with one MWh of electricity generated by a NY Class II Renewable Resource, but does not include any tax credits, depreciation allowances or third party subsidies of any kind. For purposes of this Agreement:

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

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

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

EXHIBIT A - PART 2
PRICES AND TERMS (continued)

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

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

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

Table 3:

Rate Class	Fixed Price per kWh	Fixed Price per kWh including local Gross Receipts tax (x 1.0099)
Residential	\$ 0.06515	\$0.06579
Small Commercial	\$ 0.06515	\$0.06579

Terms for System Supply Service

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

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

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

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

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

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

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

EXHIBIT B -
CONTACT, NOTICE AND PAYMENT INFORMATION

<u>PROGRAM ADMINISTRATOR GENERAL INFORMATION</u>	<u>MUNICIPALITY GENERAL INFORMATION</u>	<u>SUPPLIER GENERAL INFORMATION</u>
Joule Assets Inc Contact Name: Glenn Weinberg	Village of South Nyack Contact Name: Jill Schwarz	Constellation NewEnergy Inc. Contact Name: Adam Fairbanks
Address: 22 Edgemont Road Katonah, New York 10536 914 - 977 - 3444	Address: 282 South Broadway, South Nyack, NY 10960. Tel: 845-358-0287	500 Summit Lake Drive, Valhalla, NY 10595 914-629-2840
E-mail Address: gweinberg@jouleassets.com	jill.schwarz@southnyack.ny.gov	adam.fairbanks@constellation.com
<u>PROGRAM ADMINISTRATOR ADDRESS FOR NOTICES PURSUANT TO ARTICLE 18.4</u>	<u>MUNICIPALITY ADDRESS FOR NOTICES PURSUANT TO ARTICLE 18.4</u>	<u>SUPPLIER ADDRESS FOR NOTICES PURSUANT TO ARTICLE 18.4</u>
ATTN: Glenn Weinberg Joule Assets Inc	ATTN: Jill Schwarz Village of South Nyack	Constellation NewEnergy Inc. Attn: Contract Admin
22 Edgemont Road	282 South Broadway	1001 Louisiana St. Suite 2300
City, State Zip: Katonah, NY 10536	South Nyack, NY 10960	Houston, TX 77002
With a copy to:	With a copy to:	With a copy to:
Stephen Filler, General Counsel Joule Assets Inc. 22 Edgemont Road Katonah, New York 10536 sfiller@jouleassets.com	James Birnbaum, Village Attorney. Address: 282 South Broadway, South Nyack, NY 10960. james.birnbaum@southnyack.ny.gov	Adam Fairbanks 500 Summit Lake Drive Valhalla, NY 10595

EXHIBIT C -
OPTION FOR ALTERNATIVE SUPPLY OF POWER

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

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

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

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

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

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

Capacity Standby				
kWh Output				
REC Output				
Capacity Standby				

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

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

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

-

JAMES J. DEAN
Superintendent of Highways
Roadmaster IV

Orangetown Representative:
R.C. Soil and Water Conservation Dist.-Chairman
Stormwater Consortium of Rockland County
Rockland County Water Quality Committee



**HIGHWAY DEPARTMENT
TOWN OF ORANGETOWN**

119 Route 303 · Orangeburg, NY 10962
(845) 359-6500 · Fax (845) 359-6062
E-Mail – highwaydept@orangetown.com

Affiliations:

American Public Works Association NY Metro Chapter
NYS Association of Town Superintendents of Highways
Hwy. Superintendents' Association of Rockland County

February 17, 2022

TO: Allison Kardon, Confidential Assistant to Town Supervisor
FROM: Katherine Fairclough, Clerk Stenographer
RE: 2022 Highway School

Please place on the Town Board Workshop of March 22, 2022:

Proposed Text, RESOLVED, that permission is hereby granted for the following personnel: Jim Dean, Stephen F. Munno, Anthony Limandri & Karl Bohn, to attend the 2022 Association of Towns Annual Highway School, Ithaca, NY, from June 6-8, 2022, with the Town paying cost of courses and travel to be charged to appropriate departmental accounts.

/kf



TOWN OF ORANGETOWN

REQUEST TO ATTEND CONFERENCE, MEETING, SEMINAR OR SCHOOL

(Complete and forward original to Finance Office. Retain copy for your records.)

REQUESTING DEPARTMENT: Highway Department DATE: 2/17/22

NAME(S) OF PERSON(S) TO ATTEND: James J. Dean, Stephen Munno,
Anthony Limandri, Karl Bohn

CONFERENCE, ETC. – NAME & LOCATION: 2022 Association of Towns,
Highway School, Ithaca, NY

CONFERENCE, ETC DATE(S): June 6-8, 2022

WHAT DO YOU EXPECT TO GAIN FROM ATTENDANCE (ATTACH COPY OF BROCHURE):
see attached brochure

DATE(S) LAST ATTENDED A SIMILAR CONFERENCE, ETC.: June 2019

ESTIMATED EXPENSES:

Item	CHARGE TO:		Total
	Schls & Confs	Travel Exp*	
Registration Fee	\$ <u>330.00</u>	\$ _____	\$ _____
Lodging	<u>1,134.00</u>	_____	_____
Meals	<u>200.00</u>	_____	_____
Travel	<u>75.00</u>	_____	_____
Other	_____	_____	_____
Total	\$ <u>1,739</u>	\$ _____	\$ _____

*Use if only travel expense is involved

REMAINING BALANCE IN 0441 Account: \$ _____

IF TRAVEL ONLY, REMAINING BALANCE IN 0480 Account: \$ _____

DEPARTMENT HEAD APPROVAL/ SIGNATURE(if not attendee): _____

FINANCE OFFICE VERIFICATION OF FUNDS AVAILABILITY: 0441-\$ _____ 0480-\$ _____

TOWN BOARD ACTION: Approved _____ Disapproved _____ Date: _____ Res. No. _____

REASON FOR DISAPPROVAL: _____

TOWN SUPERVISOR SIGNATURE: _____

DISTRIBUTION BY TOWN CLERK:

Original to Head of Requesting Department: _____ Date: _____

Retain photocopy for file.

NYS LTAP Center - Cornell Local Roads Program

The Annual School for Highway Superintendents June 6-8, 2022

Join us at the largest annual training and educational conference for local roads professionals in NYS.

About Highway School

The Highway School features short sessions of general interest in the mornings and 24-28 afternoon workshops lasting 75 minutes each. A partnership with statewide vendors supports the Pothole Picnic on the first day. Over 700 participants, the majority being local highway and public works officials, attend the Highway School every year.

The [Association of Towns of the State of New York](#) co-sponsors the Highway School, and handles all of the registrations.

2022 Highway School Details:

Highway School will be taking place June 6-8, 2022

Registration opens March 14th!

To view a lodging list of hotels in the area please click [here](#)

2022 Highway School Topics:

- ▲ Recruiting & Retaining Workers
- ▲ Legal Panel
- ▲ Dealing with Extreme Weather
- ▲ Maintaining your Pavement
- ▲ Work Zone & Flagging Demos
- ▲ CDL Requirements

JAMES J. DEAN
Superintendent of Highways
Roadmaster IV

Orangetown Representative:

R.C. Soil and Water Conservation Dist.-Chairman
Stormwater Consortium of Rockland County
Rockland County Water Quality Committee



**HIGHWAY DEPARTMENT
TOWN OF ORANGETOWN**

119 Route 303 • Orangeburg, NY 10962
(845) 359-6500 • Fax (845) 359-6062
E-Mail – highwaydept@orangetown.com

Affiliations:

American Public Works Association NY Metro Chapter
NYS Association of Town Superintendents of Highways
Hwy. Superintendents' Association of Rockland County

MEMORANDUM

Date: February 23, 2022

To: Kimberly Allen, Administrative Secretary

From: James J. Dean, Superintendent of Highways

Re: **Town Board Resolution- Highway Open House**

Please place on the Town Board workshop of March 8, 2022:

Proposed Text: RESOLVED, upon the recommendation from the Superintendent of Highways, that the Town Board hereby authorizes the Town of Orangetown Highway Department to host their 26th Annual Open House on Saturday, May 14, 2022, from 10:00 AM to 12:00 noon, to be held at the Highway Department Facility, located at 119 Route 303, Orangeburg, NY.

/kf





Portable Toilet Request Form

The Town of Orangetown accepts requests for portable toilets from not-for-profit groups for their events and programs. Applications must be submitted 8 weeks prior to the event. In case of any changes, the organization must contact Mark Albert at malbert@orangetown.com no later than 48 hours prior to the event.

Event Information

Event Name * Relay for Life Rockland County- American Cancer Society

Event Location Name * Central Avenue Field Pearl River

Event Address *

Street Address
Central Avenue Field
Address Line 2
City Pearl River State / Province / Region NY
Postal / Zip Code 10965 Country Rockland

Event Start Date * 6/11/2022
10:00:00 AM

Event End Date * 6/11/2022
11:59:00 PM

Set-up Info * Please describe the exact location the units should be placed on the event site
The portable toilets should be placed along the fence separating the field and the fire house

Number of regular units required * 3

Number of ADA units required * 1

Total Number of units required * 4

Applicant Information

Applicant First Name * Kathie

Applicant Last Name * Kelley

Organization Name * ACS Rockland Relay for Life

Organization Not For Profit? * Yes
 No

Organization Address *

Street Address

3380 Chastain Meadows Pkwy NW Suite 200

Address Line 2

City

Kennesaw

State / Province / Region

GA

Postal / Zip Code

30144-0101

Country

USA

Phone (w) *

845 304 7540

Phone (c) *

845 304 7540

Email *

kakelley@caldwell.edu

Certificate of Insurance *

lyoc_15504513_X0SKX2A3.pdf

103.29KB

Certificate must list the Town of Orangetown as additional Insured

Signature *





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/28/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Commercial Lines – (404) 923-3700 USI Insurance Services LLC 1 Concourse Parkway NE, Suite 700 Atlanta, GA 30328	CONTACT NAME: Jennifer Lefler PHONE (A/C. No. Ext): 470-875-0441 FAX (A/C. No): 610-537-1929 E-MAIL ADDRESS: jennifer.lefler@usi.com																					
INSURED American Cancer Society, Inc. 3380 Chastain Meadows Pkwy. NW Suite 200 Kennesaw, GA 30144-0101	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A:</td> <td>ACE American Insurance Company</td> <td style="text-align: center;">22667</td> </tr> <tr> <td>INSURER B:</td> <td>ACE Fire Underwriters Ins. Co.</td> <td style="text-align: center;">20702</td> </tr> <tr> <td>INSURER C:</td> <td></td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	ACE American Insurance Company	22667	INSURER B:	ACE Fire Underwriters Ins. Co.	20702	INSURER C:			INSURER D:			INSURER E:			INSURER F:		
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COVERAGES

CERTIFICATE NUMBER: 15504513

REVISION NUMBER: See below

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: Event	X		HDO G72478162	09/01/2021	09/01/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 2,500 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 25,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			ISA H2555999A	09/01/2021	09/01/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WLR C68911102 (AOS)	09/01/2021	09/01/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
B				SCF C6891114A (WI)	09/01/2021	09/01/2022	E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: COIR000011656 Event: Relay for Life Of Rockland County, Pearl River Central Ave Field 58 E Central Ave, Pearl River, NY 10965. Event Date: June 10-12, 2022.

Certificate holder is included as an additional insured in accordance with the terms and conditions of the General Liability policy and only if required by written contract or agreement.

CERTIFICATE HOLDER

Pearl River Union Free School District
 District Administration
 135 West Crooked Hill Road
 Pearl River, NY 10965

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Application for Showmobile Use

Showmobile Requirements

Applications must be submitted to the Parks & Recreation Office no later than 8 weeks prior to your event in order to be placed on a Town Board agenda.

There are two pages to this application. Please read and understand all items listed on page 1 (this page) and upload your certificate of insurance.

Click "next" to advance to page 2 and fill out all requested information.

Upload Certificate of Insurance * lyoc_15504513_X0SKX2A3.pdf 103.29KB

Before completing the Showmobile Request Form, please be aware of the following:

- + The total area needed for the Showmobile is a space 50 feet in length, 15 feet in width and 25 feet in height.
- + Showmobile stage measures 28 feet long x 14 feet 7 inches deep x 25 feet high when open. One set of stairs is available with hand railings. (Please note that this measurement does not include the trailer hitch or the tow vehicle).
- + The lights require a 110 volt, 20 amp circuit to plug into within 150 feet of the right front side of the Showmobile. Additional electrical equipment must be plugged into a separate circuit.
- + The Showmobile must be parked in a relatively level space. The placement of the Showmobile is at the discretion of the Orangetown Parks & Recreation staff. Although every effort will be made to meet requests, this equipment does not go off road, over curbing, on uneven ground or over rough terrain.
- + The area must be free of obstructions such as overhanging tree limbs, electrical wires, etc.
- + The tow vehicle must remain with the Showmobile for the duration of the event.
- + In the event of winds in excess of 30 MPH, the stage canopy must be closed.
- + The Town seal is not to be covered and no nails, staples, tacks or tape may be used to attach any items to the Showmobile)
- + The organization will receive an emailed invoice after their event is complete. Payment is expected no later than 14 days after receipt of invoice.
- + A member of the organization renting the unit must be on site at time of arrival for proper set up as well as time of departure to assure all event tasks have been completed (i.e. removal of equipment)
- + Any changes/cancellations (unless otherwise agreed upon) to the event must be made 24 hours in advance by contacting Mark Albert at malbert@orangetown.com.

Additional Requirements:

- + Certificate of insurance required. Must name the Town of Orangetown as additionally insured.
- + Rental Costs: \$500.00 plus labor.

Showmobile Application

Event Information

Event/Festival Name * Rockland Relay for Life

Event Location Name * Central Avenue Field

Event Address *

Street Address
Central Avenue Field Pearl River
Address Line 2
City Pearl River State / Province / Region NY
Postal / Zip Code 10965 Country Rockland

Setup Date & Time * 6/11/2022
09:00:00 AM

Take-Down Date & Time * 6/11/2022
11:59:00 PM

Stair Arrangement *

Right side of stage
 Left side of stage
 Front of stage
 Not Sure

Set-up Info *

Please describe in detail what the stage will be used for and how you intend to set it up. If you have a rain date, please list it here so long as all the information above is the same.

Used for MC of ceremonies and our DJ
We have reserved the field from 4pm the day before until 12noon the 12th. Setup and breakdown can be in those times if needed

Placement *

Pavement
 Grass/Field
 Other

Applicant Information

Applicant's Name * Kathie

Organization Name * Kelley

Organization Address * 3380 Chastain Pkwy NW Suite 200

Organization City * Kennesaw

Organization State * GA

Phone (w) * 845 304 7540

Phone (c) * 845 304 7540

Email*

kakelley@caldwell.edu

Signature*

A rectangular box containing a handwritten signature in cursive script that reads "Kathie Kelley".

By checking this box and submitting this form, I acknowledge I have read, understand, accept, and agree to the above terms and conditions.

*

I accept the terms and conditions



Application for Showmobile Use

Showmobile Requirements

Applications must be submitted to the Parks & Recreation Office no later than 8 weeks prior to your event in order to be placed on a Town Board agenda.

There are two pages to this application. Please read and understand all items listed on page 1 (this page) and upload your certificate of insurance.

Click "next" to advance to page 2 and fill out all requested information.

Upload Certificate of Insurance * COI for Town of Orangetown for Bataan Commemoration 4-9-2022 (1).pdf 17.31KB

Before completing the Showmobile Request Form, please be aware of the following:

- + The total area needed for the Showmobile is a space 50 feet in length, 15 feet in width and 25 feet in height.
- + Showmobile stage measures 28 feet long x 14 feet 7 inches deep x 25 feet high when open. One set of stairs is available with hand railings. (Please note that this measurement does not include the trailer hitch or the tow vehicle).
- + The lights require a 110 volt, 20 amp circuit to plug into within 150 feet of the right front side of the Showmobile. Additional electrical equipment must be plugged into a separate circuit.
- + The Showmobile must be parked in a relatively level space. The placement of the Showmobile is at the discretion of the Orangetown Parks & Recreation staff. Although every effort will be made to meet requests, this equipment does not go off road, over curbing, on uneven ground or over rough terrain.
- + The area must be free of obstructions such as overhanging tree limbs, electrical wires, etc.
- + The tow vehicle must remain with the Showmobile for the duration of the event.
- + In the event of winds in excess of 30 MPH, the stage canopy must be closed.
- + The Town seal is not to be covered and no nails, staples, tacks or tape may be used to attach any items to the Showmobile)
- + The organization will receive an emailed invoice after their event is complete. Payment is expected no later than 14 days after receipt of invoice.
- + A member of the organization renting the unit must be on site at time of arrival for proper set up as well as time of departure to assure all event tasks have been completed (i.e. removal of equipment)
- + Any changes/cancellations (unless otherwise agreed upon) to the event must be made 24 hours in advance by contacting Mark Albert at malbert@orangetown.com.

Additional Requirements:

- + Certificate of insurance required. Must name the Town of Orangetown as additionally insured.
- + Rental Costs: \$500.00 plus labor.

Showmobile Application

Event Information

Event/Festival Name * Commemoration of the 80th Anniversary of the Bataan Death March

Event Location Name * parking area of Dominican College

Event Address *

Street Address
Western Highway by Mountainside Rd.
Address Line 2
City Orangeburg State / Province / Region NY
Postal / Zip Code 10962 Country Rockland

Setup Date & Time * 4/9/2022
08:00:00 AM

Take-Down Date & Time * 4/9/2022
04:00:00 PM

Stair Arrangement *

Right side of stage
 Left side of stage
 Front of stage
 Not Sure

Set-up Info *

Please describe in detail what the stage will be used for and how you intend to set it up. If you have a rain date, please list it here so long as all the information above is the same.

would like to do it like last time, in 2017.
look at video linked below, at about 2mins, to see what was done.
https://www.youtube.com/watch?v=q_4xrKfX-A8

Placement *

Pavement
 Grass/Field
 Other

Other Location (Describe) * ?

Applicant Information

Applicant's Name * Jerome Kleiman

Organization Name * Philippine-American Cultural Foundation

Organization Address * Philippine-American Cultural Foundation

Organization City * New City

Organization State * NY

Phone (w) * 8456414217

Phone (c) *

+845641421

Email *

jeromekleiman@att.net

Signature *

A rectangular box containing a handwritten signature in cursive script that reads "Jerome Kleiman".

By checking this box and submitting this form, I acknowledge I have read, understand, accept, and agree to the above terms and conditions.

*

I accept the terms and conditions



Portable Toilet Request Form

The Town of Orangetown accepts requests for portable toilets from not-for-profit groups for their events and programs. Applications must be submitted 8 weeks prior to the event. In case of any changes, the organization must contact Mark Albert at malbert@orangetown.com no later than 48 hours prior to the event.

Event Information

Event Name * Commemoration of the 80th Anniversary of the Bataan Death March

Event Location Name * Dominican College parking area

Event Address *

Street Address
west of Western Highway; North of Bataan Rd./

Address Line 2

City State / Province / Region
Orangeburg NY

Postal / Zip Code Country
10956 United States

Event Start Date * 4/9/2022
11:00:00 AM

Event End Date * 4/9/2022
05:00:00 PM

Set-up Info * Please describe the exact location the units should be placed on the event site
Northern most section of the auxillary parking area of Domin. College. (I can show exactly where it as placed in 2017.

we anticipate 1000+ attendees. is there a ratio of toilets to persons? the event will last about 2-3 hours in parking area. Your feedback will help re: toilet numbers

Number of regular units required * 6

Number of ADA units required * 2

Total Number of units required * 8

Applicant Information

Applicant First Name * Jerome

Applicant Last Name * Kleiman

Organization Name * Philippine-American Cultural Foundation

Organization Not For Profit? * Yes
 No

Organization Address *

Street Address	
23 Yale Drive	
Address Line 2	
City	State / Province / Region
New City	NY
Postal / Zip Code	Country
10956	United States

Phone (w) * 845-641-4217

Phone (c) * 845-641-4217

Email * jeromekleiman@att.net

Certificate of Insurance * COI for South Orangetown School District for Bataan Commemoration 4-9-2022 (1).pdf 17.2KB
Certificate must list the Town of Orangetown as additional Insured

Signature *



BID OPENING TIME 11:00AM **DATE** February 24, 2022

CONTRACTOR NAME & ADDRESS

*Joe Lombardo
Plumbing & Heating
Suffern, NY*

*HAUSER BROS.
STANGEBOURG, NY*

DATE RECEIVED	2/23/22	2/24/22				X
TIME RECEIVED	1:08p	10:07A				
NON COLLUSION STATEMENT	✓	✓				
BID BOND or CERTIFIED CHECK	✓	✓				

LABOR COSTS FOR HVAC TECHNICIAN

Line #1 – Labor Rates for Monday to Friday / 8:00 A.M. to 4:00 P.M.

UNIT	HOUR	HOUR	HOUR	HOUR	HOUR	X
UNIT PRICE	\$ 105.00	\$ 152.00	\$	\$	\$	

Line #2 – Labor Rates for Monday to Friday / 4:00 P.M. to 8:00 A.M.

UNIT	HOUR	HOUR	HOUR	HOUR	HOUR	X
UNIT PRICE	\$ 157.50	\$ 215.00	\$	\$	\$	

Line #3 – Labor Rates for Saturday / 8:00 A.M. to Midnight

UNIT	HOUR	HOUR	HOUR	HOUR	HOUR	X
UNIT PRICE	\$ 157.50	\$ 215.00	\$	\$	\$	

Line #4 – Labor Rates for Sunday and Holidays

UNIT	HOUR	HOUR	HOUR	HOUR	HOUR	X
UNIT PRICE	\$ 210.00	\$ 277.00	\$	\$	\$	

COST FOR MATERIALS

Line #5 – PERCENT MARK-UP

If no discount is being offered, enter "0" in the space provided. Mark-Up shall not exceed 10%.

There shall be no Mark-Up on freight

UNIT	Pct. Mark-Up	Pct. Mark-Up	Pct. Mark-Up	Pct. Mark-Up	Pct. Mark-Up	X
UNIT PRICE	\$ 10%	\$ 10%	\$	\$	\$	

TOTAL ANNUAL COST OF SERVICES OUTLINED ABOVE

	\$ 16,200.00	\$ 21,200.00				X

Town Of Orangetown

DATE: March 8, 2022

WARRANT

Warrant Reference	Warrant #	Amount
Approved for payment in the amount of		
	122621	\$ 167,737.14
	021722	\$ 376,494.49
	022522	\$ 830,998.52
	030222	\$ 83,000.00 So Nyack
	030822	\$ 675,045.20
		\$ 2,133,275.35

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

APPROVAL FOR PAYMENT

AUDITING BOARD

Councilman Gerald Bottari

Councilman Paul Valentine

Councilman Thomas Diviny

Councilman Brian Donohue

Supervisor Teresa M. Kenny

**TOWN OF ORANGETOWN
FINANCE OFFICE MEMORANDUM**

TO: THE TOWN BOARD
FROM: JEFF BENCIK, *DIRECTOR OF FINANCE*
SUBJECT: AUDIT MEMO
DATE: 3/3/2022
CC: DEPARTMENT HEADS



The audit for the Town Board Meeting of 3/8/2022 consists of 5 warrants for a total of \$2,133,275.35.

The first warrant had 7 vouchers for \$167,737 and had the following items of interest (2021 items).

1. Collier's Engineering & Design (p2) - \$43,197 for Traffic Signal design/construction (bonded).
2. Commissioner of Finance (p2) - \$36,125 for 2021 RCPA school.
3. Verde Electric (p3) - \$85,423 for construction of 9 traffic signals (bonded).

The second warrant had 50 vouchers for \$376,494 and was for had the following items of interest (2022 items).

4. NYPA (p2) - \$21,790 for streetlight contract.
5. Village of S. Nyack (p15) - \$228,650 for various equipment.

The third warrant had 26 vouchers for \$830,998 and had the following items of interest (2022 items).

6. MetLife (p2) - \$14,125 for Police dental benefits.
7. NYS Dept. of Civil Service (p3) - \$801,267 for healthcare benefits.

The fourth warrant had 1 vouchers for \$83,000 and was for the purchase of equipment from S. Nyack (2022 items).

The fifth warrant had 195 vouchers for \$675,045 and had the following items of interest (2022 items).

8. Applied Golf (p4) - \$124,500 for Blue Hill maintenance Contract.
9. Applied Golf (p4) - \$49,583 for Broadacres maintenance Contract
10. Atlantic Salt (p8) - \$36,287 for Highway salt purchases.
11. Commissioner of Finance (p15) - \$9,000 for Police schools and conferences.
12. Cotter, Michael (p16) - \$8,250 for CTR inspections.

13. CSEA Employee Benefit Fund (p18) - \$32,784 for dental benefits.
14. Dell Marketing (p19) - \$8,396 for servers.
15. Global Montello (p26) - \$50,750 for fuel.
16. Helmke (p28) - \$6,550 for OHA snow removal.
17. Johnson Controls (p33) - \$7,386 for HVAC inspections Town Hall.
18. Keane & Beane (p34) - \$6,885 for outside counsel.
19. Ken's Tree Care (p34) - \$6,640 for tree cutting/removal.
20. Laberge Engineering & Consulting (p35) - \$8,614 for zoning study S. Nyack.
21. Morano Brothers Inc. (p38) - \$55,129 for N. Middletown Rd. Ped. Link.
22. Precision Safe Sidewalks (p42) - \$36,000 for sidewalk sawcutting.
23. Ruscon Truck Services (p53) - \$15,668 Highway truck repairs.
24. Schultz Ford (p55) - \$16,283 for bid-bond releases.
25. Shi International (p56) - \$35,489 for various computer equipment.
26. Slack Chemical Co. (p56) - \$20,424 for sewer chemicals.

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

Jeffrey W. Bencik, CFA

845-359-5100 x2204