

# **RESOLUTION**

**R19-43**

## **RESOLUTION AUTHORIZING EXECUTION OF MEMORANDUM OF UNDERSTANDING WITH JOULE ASSETS, INC. REGARDING COMMUNITY CHOICE AGGREGATION PROGRAM**

**INTRODUCED BY COUNCILMEMBER SALEM** \_\_\_\_\_ :

**WHEREAS**, pursuant to Local Law LL-18-2 adopted on March 19, 2018, the City of Poughkeepsie Common Council enacted a local law to establish a Community Choice Aggregation Program (the, “CCA Program”); and

**WHEREAS**, the City issued a Request for Proposal (“RFP”) seeking a qualified Municipal Program Administrator and based on the results has selected Joule Assets, Inc. (“Joule”); and

**WHEREAS**, the City is desirous of entering into a Municipal Energy Services Agreement with Joule with respect to the CCA Program which would allow the City to participate in a program to procure energy supply for residents within the City from energy services companies for the residents of the City, with Joule Assets, Inc. as Program Manager; and

**WHEREAS**, to launch the CCA Program, the City and Joule seek to obtain competitive electricity supply bids from electricity suppliers that will lead to the execution of an Electricity Supply Agreement (the “Supply Agreement”) with a bidder selected in accordance with the terms and conditions of a Memorandum of Understanding between the City and Joule (the “MOU”); and

**WHEREAS**, the City and Joule are seeking to enter into the MOU to: (i) confirm that Joule will serve as Program Administrator for the CCA Program in relation to the Supply Agreement; (ii) authorizing the execution of a Program Administrator Agreement; and (iii) obtain the parties’

agreement that each will execute a Supply Agreement with a selected bidder, subject to the terms and conditions in the MOU.

**NOW THEREFORE, BE IT RESOLVED**, that, the Mayor of the City of Poughkeepsie or the City Administrator is authorized to execute the attached MOU and take other actions necessary in furtherance of the City's participation in the CCA Program; and

**BE IT FURTHER RESOLVED**, that the Mayor or City Administrator is authorized to execute an Electricity Supply Agreement, in the form attached as Exhibit "1" to the Memorandum of Understanding, subject to further review and revision by the City Corporation Counsel, which Electricity Supply Agreement authorizes Joule to accept bids for energy services for the City so long as the minimum requirements set forth in the MOU and Electricity Supply Agreement are satisfied; and

**BE IT FURTHER RESOLVED**, that the Mayor or City Administrator is authorized to execute a Program Administrator Agreement with Joule in form and substance that is consistent with the Request for Proposal issued by the City and acceptable to the Corporation Counsel.

**SECONDED BY COUNCILMEMBER** \_\_\_\_\_

Community Choice Aggregation Memorandum of Understanding  
(revised March 7, 2019)

This Community Choice Aggregation Memorandum of Understanding (“**MOU**”) is entered into by and between Joule Assets, Inc., a Delaware corporation (“**Joule**” or “**Program Administrator**”), and the City of Poughkeepsie (“**Municipality**”) as of the \_\_\_\_ day of \_\_\_\_\_, 2018 (the “**Effective Date**”).

**1. Background:**

- a. Effective April 21, 2016, the New York State Public Service Commission (“**Commission**”) issued an “Order Authorizing Framework for Community Choice Aggregation Opt-Out Program” in Case #14-M-0224 “authoriz[ing] the establishment of CCA programs by municipalities statewide” (the “**CCA Framework Order**”).
- b. Effective March 16, 2018, the Commission issued an Order Approving Joule Assets’ Community Choice Aggregation Program with Modifications” (the “**Joule Plan**”) in Case #14-M-0224 “approv[ing] Joule’s proposed CCA program, with modifications” (the “**Joule Order**”).
- c. On March 19, 2018, the Municipality has adopted Local Law# 2 of 2018 entitled, Local Law Authorizing the Establishment of a Community Choice Aggregation Program (the “**Municipal Program**”).
- d. After the issuance of a Request for Proposals, the City of Poughkeepsie has selected Joule to act as Municipality’s program administrator and the Municipality intends to engage the services of Joule as Program Administrator for the Program (the “**Program Administrator Agreement**”).
- e. As Program Administrator, Joule will perform a variety of functions for Municipality including: (i) preparing, submitting and obtaining approval by the Commission of the Joule Plan; (ii) obtaining anonymized aggregate consumption data from the Distribution Utility (as defined herein) as needed to solicit electricity supply bids; (iii) prequalifying of, and obtaining soliciting indicative pricing from, Competitive Suppliers (as defined herein); and (iv) with the assistance of Joule’s local organizer, organizing and executing a broad public outreach and education campaign in the Municipality, and reporting such efforts to the Commission.
- f. To launch the Municipal Program, Municipality and Joule seek to obtain competitive electricity supply bids from electricity suppliers that will lead to an Electricity Supply Agreement (in the form attached as Exhibit 1) (“**Supply Agreement**”) with a bidder selected in accordance with this MOU.
- g. Municipality and Joule enter into this MOU to (i) confirm that Joule will serve as Program Administrator for the Program in relation to the Supply Agreement; (ii) authorize the execution of a Program Administrator Agreement; and to (iii) obtain the parties’ agreement that each will execute a Supply Agreement with a selected bidder subject to the terms and condition of this MOU.

**2. Definitions:** Defined terms have the meanings ascribed elsewhere in this MOU or as follows:

- a. **Bid Review:** An assessment by Joule of each Competitive Supplier's response to be performed by, or paid for, by Joule. For each Competitive Supplier's response, such assessment will include a determination of (i) the creditworthiness of the Competitive

Supplier or adequate documentation of alternative credit arrangement that is at least as secure as a credit-worthy Competitive Supplier, and (ii) whether such supplier has provided a Compliant Bid.

- b. **Community Choice Aggregation Program:** A municipal energy procurement program that replaces the incumbent Distribution Utility as the default supplier for Default Consumers within the Municipality.
- c. **Competitive Supplier:** An entity duly authorized to conduct business in the State of New York as an energy service company (ESCO) that procures electricity for customers located in the Municipality in connection with this Program.
- d. **Compliant Bid:** An electricity supply bid from a Competitive Supplier that meets the requirements specified in this MOU and the Supply Agreement. A Compliant Bid price must be inclusive of fees due to Program Administrator. Compliant Bids must meet one of the following criteria:
  - i. the default bid price is guaranteed to be not less than \$.0005 below the Distribution Utility price for the specified customer class, within the specified utility defined zone, in each calendar month or monthly billing period; or
  - ii. the default price is fixed at a level that is less than the average Distribution Utility price for the same customer class, within the same utility defined zone, over the Preceding Twelve-Month Period (as defined below).
- e. **Default Consumers:** Residential and non-demand commercial customers of electricity who are purchasing electricity from the Distribution Utility at the time immediately prior to the execution of the Supply Agreement, and will be enrolled in the Municipal Program unless they opt-out.
- f. **Distribution Utility:** Central Hudson Gas & Electric Corp.
- g. **Preceding Twelve-Month Period:** For purposes of evaluating a Compliant Bid, the most recent twelve-month period for which the applicable information is available.

### 3. Roles and Responsibilities of Joule:

- a. Joule reaffirms its obligations under the Program Administrator Agreement.
- b. Prior to execution of the Supply Agreement, Joule will manage the energy procurement bidding process including:
  - i. the notification of prequalified firms seeking to be the Competitive Supplier;
  - ii. the Request for Proposals (“RFP”) process from preparation of the content, to publication of the RFP, to management of firms responding to the RFP;
  - iii. the final preparation of the Supply Agreement that will be included in the RFP;
  - iv. the acceptance and secure opening of the responses to the RFP; and
  - v. the Bid Review.
- c. Joule agrees to fulfill other responsibilities as may reasonably adhere to implementation of the Municipal Program, subject to the Program Administrator’s contractual or other legal obligation to act at the direction, and in best interests, of the Municipality.

### 4. Roles and Responsibilities of the Municipality:

- a. Municipality abide by its obligations under the Program Administrator Agreement.

- b. Municipality agrees to establish participation by Municipality in a Community Choice Aggregation Program that will be managed on its behalf by Joule under the terms set for in this MOU, the Program Administrator Agreement, and in the Supply Agreement, if and as executed.

**5. Roles and Responsibilities of each Party:**

- a. Each Party agrees to execute the Supply Agreement subject to the conditions of review and approval described in this MOU in a timely fashion subject to the condition that:
  - i. the Competitive Supplier is deemed creditworthy for the duration of the Supply Agreement as determined by the Bid Review, or the Competitive Supplier arranges alternative credit terms that are, at a minimum, as secure as those provided by a creditworthy Competitive Supplier as defined in this MOU, by the Bid Review, and
  - ii. the Competitive Supplier's response to the RFP is deemed a Compliant Bid in accordance with this MOU by the Bid Review.
  
- b. Each Party agrees to perform its obligations under and otherwise comply with the Supply Agreement if and when executed.

6. **Term and Termination:** Memorandum of Understanding shall expire on the earlier of May 31, 2019 or the date on which the Supply Agreement is signed by all three counterparties to the Supply Agreement (i.e., the parties hereto and the chosen Competitive Supplier). Municipality shall have the right to terminate this Memorandum of Understanding for any of the reasons set forth in the Termination section of the Supply Agreement attached hereto as Exhibit 1.

7. **Miscellaneous:** The undersigned represents and warrants that he/she has the authority to enter into this MOU on behalf of the applicable party.

IN WITNESS WHEREOF, the parties hereto have executed this MEMORANDUM OF UNDERSTANDING as of the Effective Date.

**CITY OF POUGHKEEPSIE**

Signature of Authorized Individual

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

Name of Authorized Individual

ROBERT G. ROLISON

Title of Authorized Individual

MAYOR

Address: 62 Civic Center Plaza

Poughkeepsie, New York 12601

Telephone(s): (845) 451-4200

Email: mayor@cityofpoughkeepsie.com

**JOULE ASSETS INC.**

Signature of Authorized Individual By: \_\_\_\_\_

Name of Authorized Individual \_\_\_\_\_

Title of Authorized Individual \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone(s): \_\_\_\_\_

Email: \_\_\_\_\_

Address for Notices (if different):

Attachments:  
Exhibit 1, Electricity Supply Agreement