

City of North Tonawanda

DONNA L. BRAUN
City Clerk-Treasurer
dbraun@northtonawanda.org

Lori Swartz
Assistant City Clerk

Denise Proefrock
Assistant City Treasurer

OFFICE OF THE CITY CLERK - TREASURER
VITAL STATISTICS
CITY HALL
216 PAYNE AVENUE
NORTH TONAWANDA, N.Y. 14120

Treasurer's Office: (716) 695-8575
Clerk's Office: (716) 695-8555
Fax: (716) 695-8557

COMMON COUNCIL WORKSHOP AGENDA

May 5, 2022

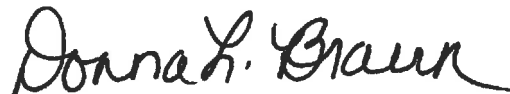
The following meeting has been scheduled for TUESDAY MAY 10, 2022:

6:00 PM PUBLIC HEARING – Proposed Local Law No.1 2022 – “Community Choice Aggregation Program”

6:30 PM Common Council

Re: General Discussion

Respectfully submitted,



**Donna L. Braun
City Clerk-Treasurer**

LEGAL NOTICE

Please take notice that the Mayor and Common Council of the City of North Tonawanda will hold a public hearing on Tuesday, May 10th, 2022 at 6:00pm in the Common Council Chambers, City Hall, 216 Payne Avenue, North Tonawanda, New York 14120. The purpose of said public hearing will be to accept comments on proposed Local Law No. 1 of the year 2022 entitled "COMMUNITY CHOICE AGGREGATION PROGRAM." A copy of said proposed Local Law No. 1 of the year 2022 is available and may be inspected on the City Hall website www.northtonawanda.org

Office of the Mayor

APR 19 2022

AUSTIN J. TYLEC

April 13, 2022

North Tonawanda Common Council
216 Payne Avenue
North Tonawanda, NY 14120

RE: Community Choice Aggregate

Dear Honorable Body,

After the presentation by Tom Harty from Joule, I am requesting the council move forward with the proposal, which has been reviewed by the city attorney through a third-party administrator.


This program would allow residents and businesses to receive their energy from renewable energy sources and can reduce energy costs through a competitive bidding process.

The general timeline:

1. Public Hearing
2. Adopt a local law (Council Vote)
3. Select third-party Administrator – in this case “Joule”
4. Third-party administrator does public outreach period for input
5. Third-party administrator does competitive bidding for energy
6. Award bid (Council Vote)
7. Opt-out period for residents not wanting to get renewable energy
8. Launch program

Throughout this process the public will have numerous opportunities for input. Thank you for your consideration, and for Councilman Lavey’s efforts to move this forward.

Respectfully,


Austin J. Tylec, Mayor

RECEIVED
CITY CLERK'S OFFICE

2022 APR 14 AM 10:53
NORTH TONAWANDA NY

Be it enacted by the City of North Tonawanda of the County of Niagara as follows:

Section 1. The Code of the Municipality is hereby amended by adding a new Chapter entitled “COMMUNITY CHOICE AGGREGATION PROGRAM,” to read as follows:

ARTICLE 1

§1. Legislative Findings; Intent and Purpose; Authority.

- A. The Municipality supports the policy of the State of New York to reduce costs and provide price certainty for the purpose of consumer protection and economic development, to expand access and opportunities for customers in retail energy markets and promote the sustainability and resilience of energy systems through the proliferation of renewable energy, energy efficiency, and Distributed Energy Resources (“DER”).
- B. Among the initiatives that may advance these objectives is Community Choice Aggregation (“CCA”). CCA is a policy that, taking into account local resources, priorities, and challenges, empowers local governments, among other things, to select default energy offerings on behalf of its residents and small businesses. Energy delivery shall remain the responsibility of the Distribution Utility.
- C. By establishing a CCA Program, it is the Municipality’s goal to provide Participating Customers with the potential to lower and stabilize their energy costs, to spur local clean energy innovation and investment, to reduce environmental impact and to help achieve New York State’s goals set forth in the Reforming the Energy Vision initiative (“REV”) and the Climate Leadership and Community Protection Act; thereby, fulfilling the purposes of this Chapter and fulfilling a public purpose.
- D. The Municipality may choose to collaborate with other local governments to form an intermunicipal CCA Program.
- E. This Chapter establishes the authority for the Municipality, to implement a CCA Program to the full extent authorized by the State of New York Public Service Commission Case No. 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs (issued April 21, 2016) as may be amended from time to time, including subsequent orders of the Public Service Commission issued in connection with, or related to, Case No. 14-M-0224 (collectively, the “CCA Orders”), which shall include, without limitation, acquiring utility data and selecting one or more Energy Supplier(s) on behalf of Participating Customers.
- F. The Municipality hereby implements this COMMUNITY CHOICE AGGREGATION PROGRAM pursuant to Section 10(1)(ii)(a)(12) of the New York Municipal Home Rule Law and to the full extent authorized by CCA Orders.
- G. This Chapter shall be known and may be cited as the “COMMUNITY CHOICE AGGREGATION PROGRAM Law of the City of North Tonawanda”

§2. Definitions.

For purposes of this Chapter, and unless otherwise expressly stated or unless the context otherwise requires, the terms in this Chapter shall have the meaning indicated herein:

- A. AGGREGATED DATA means information aggregated and anonymized at the municipal level that are used to support Program design and solicitations for energy offerings.

- B. CCA ADMINISTRATOR means the third-party duly authorized to administer the CCA Program including without limitation to request Aggregated Data and Customer Specific Data; to solicit Energy Offerings on behalf of Default Customers; and to offer Participating Customers additional opportunities to participate or enroll in programs or projects related to DER. The CCA Administrator shall be responsible for program organization, administration, procurement, communications, and for meeting all requirements for program implementation specified in the CCA Orders, unless otherwise specified.
- C. CCA ORDERS means the PSC's Order Authorizing Framework for Community Choice Aggregation Opt-Out Program, issued on April 21, 2016 in Case 14-M-0224, "Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs," as it may be amended from time to time, including subsequent orders of the Public Service Commission issued in connection with, or related to, Case No. 14-M-0224
- D. COMMUNITY CHOICE AGGREGATION PROGRAM or CCA PROGRAM means the Community Choice Aggregation Program enabled by this local law.
- E. CUSTOMER-SPECIFIC DATA means personal data and utility data for Default Customers including without limitation customer of record's name, mailing address, account number, and primary language, if available, and any customer-specific alternate billing name, and address.
- F. DEFAULT CUSTOMER means a customer of electricity and/or natural gas services eligible to participate on an opt-out basis in the CCA Program (as set forth in the CCA Orders) or a customer who subsequently becomes eligible to participate in the CCA Program.
- To the extent permitted by the CCA Orders, the Municipality may further limit Default Customers to specific geographic areas, specific service classes or otherwise defined segments of the Municipal population.
- For the avoidance of doubt, a Default Customer must reside or be otherwise located within the geographic boundaries of the Municipality, as such boundaries exist as of the date an Energy Contract goes into effect.
- G. DER PROVIDER means a provider of products and/or services related to Distributed Energy Resources.
- H. DISTRIBUTED ENERGY RESOURCES or DER means local renewable energy projects, community distributed generation (e.g., community renewables), energy storage, peak demand management, energy efficiency, demand response, community resilience microgrid projects, and other clean energy projects and initiatives that reduce cost of service for Participating Customers, optimize system benefits, and/or address infrastructure and demand challenges within the geography of the CCA Program.
- I. DISTRIBUTION UTILITY means the owner or controller of the means of distribution of electricity or natural gas in the Municipality. The Distribution Utility also serves as the default supplier of electricity or natural gas preceding the establishment of a CCA Program.

- J. ENERGY CONTRACT means an agreement to provide a default Energy Offering to Participating Customers as entered into by and between the Energy Supplier, Municipality and/or CCA Administrator.
- K. ENERGY OFFERING means any product or service authorized by the CCA Orders to be part of a CCA Program, including without limitation electricity or gas supply; community distributed generation; demand response or load management; energy efficiency; or other DER.
- L. ENERGY SUPPLIER means an ESCO, DER Provider, or a provider of other energy products or services that provides a default Energy Offering for Participating Customers in connection with this Chapter.
- M. ESCO or ENERGY SERVICES COMPANY means an entity duly authorized to conduct business in the State of New York as a generator of electricity and/or natural gas or other entity that procures and resells electricity or natural gas.
- N. MUNICIPALITY means the City of North Tonawanda.
- O. PARTICIPATING CUSTOMER means a Default Customer of the CCA Program who has not opted out, and a non-Default Customer of any service class who has voluntarily enrolled in the CCA Program.
- P. PUBLIC SERVICE COMMISSION or PSC means the New York State Public Service Commission.

§3. Authorization of a Community Choice Aggregation Program.

- A. A Community Choice Aggregation Program as set forth more fully herein, is hereby authorized by the Municipality, which the Municipality may implement to the full extent authorized by the CCA Orders.
- B. The Municipality may enter into Energy Contracts with one or more Energy Supplier(s) on behalf of Participating Customers.
- C. The Municipality may enter into one or more agreements with other municipalities, non- profits, consultants, and/or other third parties to: i) develop and implement the CCA Program; ii) act as CCA Administrator and/or iii) develop offers of DER products and services to Participating Customers.
- D. The operation and ownership of the utility service shall remain with the Distribution Utility. The Municipality's participation in the CCA Program constitutes neither the purchase of a public utility system, nor the furnishing of utility service. The Municipality shall not take over any part of the electric or gas transmission or distribution system.

- E. The Public Service Commission supervises retail and DER markets and participants in these markets through regulatory authority, which includes rules relating to the eligibility of participating ESCOs and DER Providers, the operation by which they provide energy services, and the terms on which they may enroll customers.

§4. Eligibility.

- A. All Default Customers shall be enrolled in the CCA Program on an opt-out basis. Such Default Customers will have the right to opt-out of the CCA Program before an Energy Contract goes into effect or dis-enroll any time thereafter with no penalty. Such Default Customers who do not opt-out before the Energy Contract goes into effect will be enrolled automatically.
- B. The CCA Administrator shall issue one or more solicitation(s) to Energy Suppliers to provide a default Energy Offering(s) to Default Customers and may then award an Energy Contract(s) in accordance with the CCA Program, this Local Law, and the CCA Orders.

§5. Opt-Out Process.

- A. The CCA Administrator shall cause the mailing of a program notification letter, printed on municipal letterhead, to Default Customers at least 30 days prior to customer enrollment. The letter shall include information on the CCA Program and the Energy Contract executed with the selected Energy Supplier(s) including specific details on rates, price, benefits, services, contract term, and methods for opting out of the CCA Program. The letter shall explain that Default Customers who do not opt-out will be enrolled in the CCA Program under the Energy Contract terms and that information on those customers, including energy usage data, will be provided to the Energy Supplier.
- B. After the initial 30 day opt-out period, all Participating Customers shall have the option to dis-enroll from the CCA Program at any time without penalty.

§6. Data Protection Requirements.

- A. CCA Administrator may request Aggregated Data and Customer Specific Data from the Distribution Utility.
- B. Customer-Specific Data shall be protected in a manner compliant with, collectively, (i) all national, state and local laws, regulations and other government standards relating to the protection of information that identifies or can be used to identify an individual Default Customer or Participating Customer that apply with respect to the Municipality or its representative's processing of confidential utility information; (ii) the Distribution Utility's internal requirements and procedures relating to the protection of information that identifies or can be used to identify an individual Default Customer or Participating Customer that apply with respect to the Municipality or its representative's processing of confidential utility information; and (iii) the CCA Orders and PSC rules, regulations and guidelines relating to confidential data.
- C. The CCA Administrator shall enter into an agreement with the Distribution Utility that obligates each party to meet the above provisions of this paragraph.

§7. Administration Fee.

The CCA Administrator may collect, or cause to be collected, fees from Energy Suppliers and/or funds from Participating Customer payments to pay for administrative costs associated with operating the CCA Program.

§8. Reporting.

- A. The CCA Administrator shall prepare and file with the City Board of the Municipality an annual report by March 31 of each year concerning the operations of the CCA Program for the previous calendar year.
- B. Each annual report shall include, at a minimum, the following: number of Participating Customers served; number of Participating Customers cancelling; number of complaints received; commodity prices paid; value-added services provided (e.g., installation of DER or other clean energy services); and administrative costs collected. The first annual report shall also include the number of customers who opted-out in response to the initial opt-out letter or letters.
- C. If an Energy Contract is scheduled to expire less than one year following the filing of an annual report, such annual report shall describe current plans for soliciting a new Energy Contract, negotiating an extension, or terminating the CCA Program.

§9. Effective Date.

This Local Law shall be effective immediately upon being filed with the New York State Secretary of State.

§10. Severability.

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

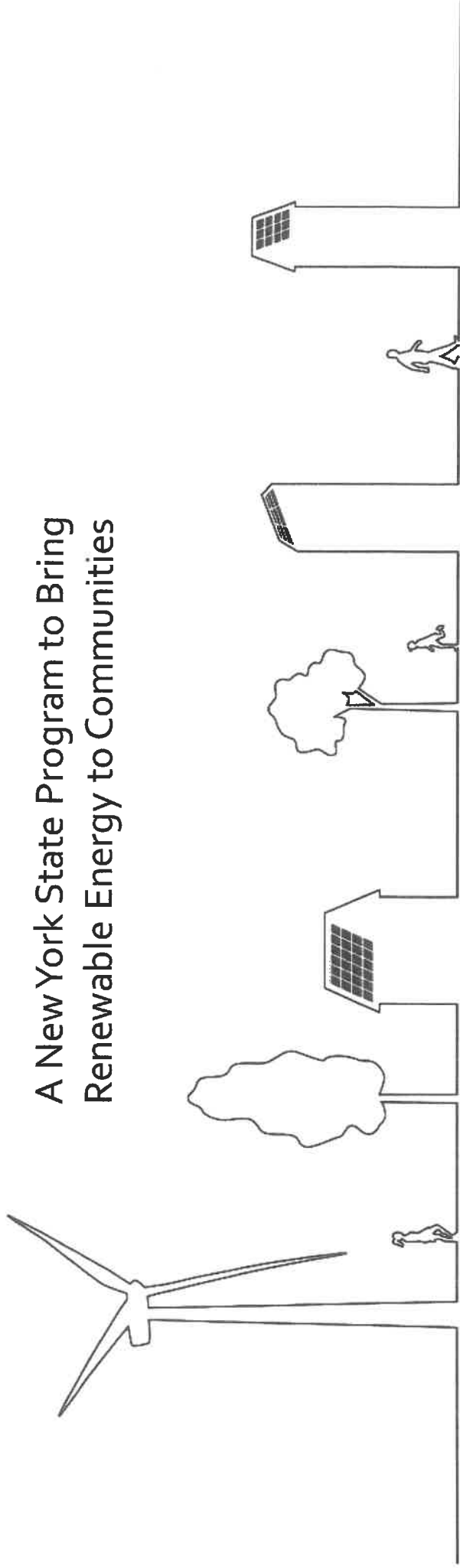


Tom Harty

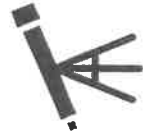
t.harty@joulecommunitypower.com
(716) 535-0103 (m)

Community Choice Aggregation Community Power

A New York State Program to Bring
Renewable Energy to Communities



Joule Community Power



Our Vision. 100% clean energy
with cost savings for consumers



Our Mission. Empower
communities to accelerate local
renewable development

Joule represents more than 280,000 NYS households and
small businesses, across 40+ municipalities

What does a CCA Administrator do?

Joule is a CCA Administrator in NYS with regulatory approval to offer Community Choice Solar

Joule is a CCA Administrator with a NYSERDA contract to develop CCA resources and Programs

As Administrator, Joule is responsible for:

- Program design and implementation
- Competitive bid and contract drafting, review and management
- **Outreach and education**

Joule Community Power

Renewable Electricity Supply

- New default for residents
- Low fixed rate
- Free opt-out anytime

Community Choice Solar

- Guaranteed savings off monthly electricity bill
- LMI customers given priority
- Support local community solar farms
- Earn \$ for local sustainability projects

Reduce carbon emissions
+
electricity costs
while protecting consumers



Active Joule NY Programs

CHOICE
Community Power



ROCKLAND
Community Power

GATEWAY
Community Power

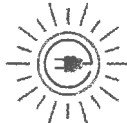


rochester
community power



Hudson Valley Community Power

Finger Lakes Community Choice



Monroe Community Power





**Local Control of
Energy
Decisions**

Community Choice Aggregation (CCA)

A **policy** enabling **municipalities** to determine default energy offerings, including renewable electricity and community solar, on behalf of its residents and small businesses

Local Control of Energy Decisions

Municipal authority (local law):

Home Rule authority to determine default energy offerings

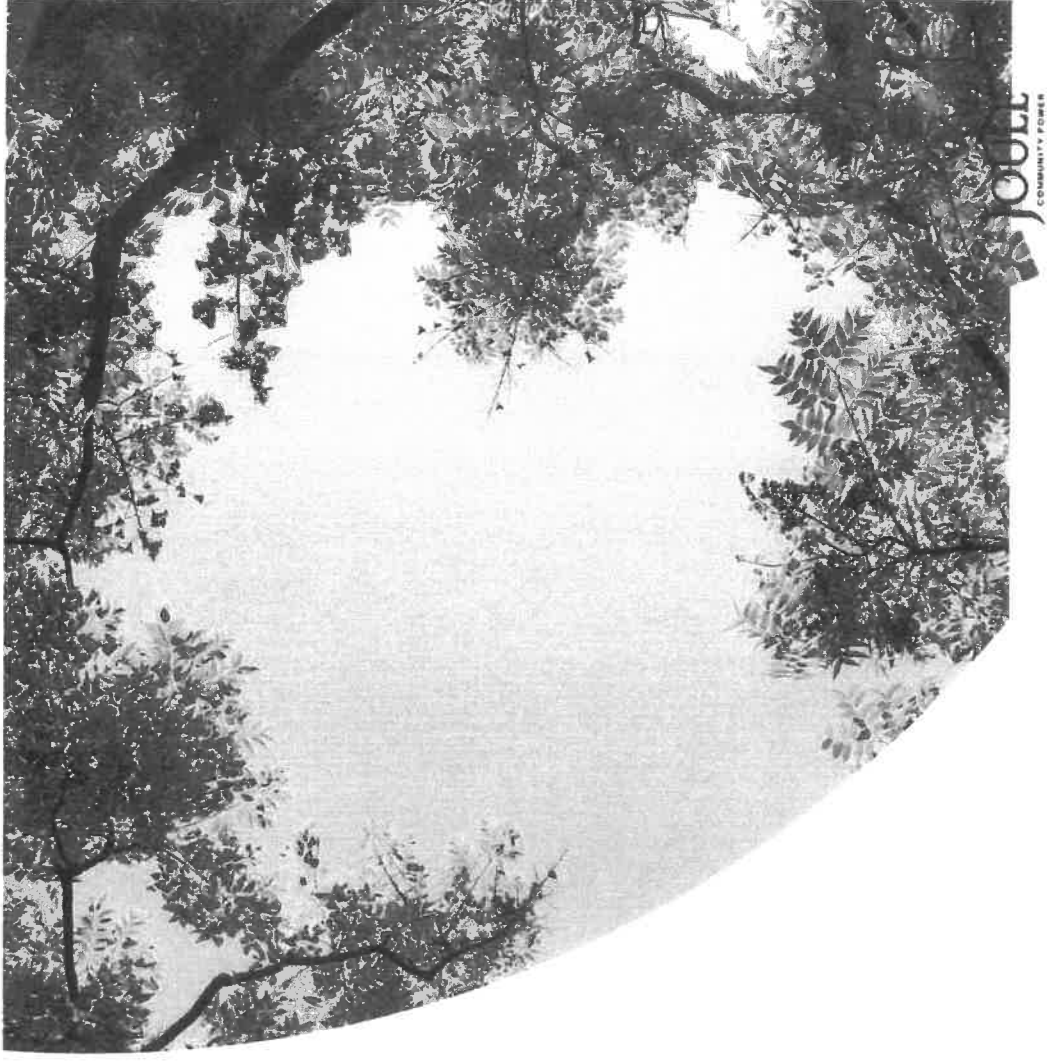
Regulatory authority granted by Public Service Commission

Default offering:

Eligible residents enrolled unless they opt out

Replaces existing default (utility variable supply)
Consumer choice

Offerings selected through competitive bid



150+ Community Choice Enabled NY Communities



NYS 2019 Climate Law

- 70% renewable electricity by 2030
- 100% carbon-free electricity by 2040
- 6 GW solar by 2025

Renewable Electricity Supply

Community Empowerment

Enabled through non-binding legislation

Climate Action

Shift community away from fossil fuel

Market Power

Leverage collective demand to dictate terms

Consumer Protection

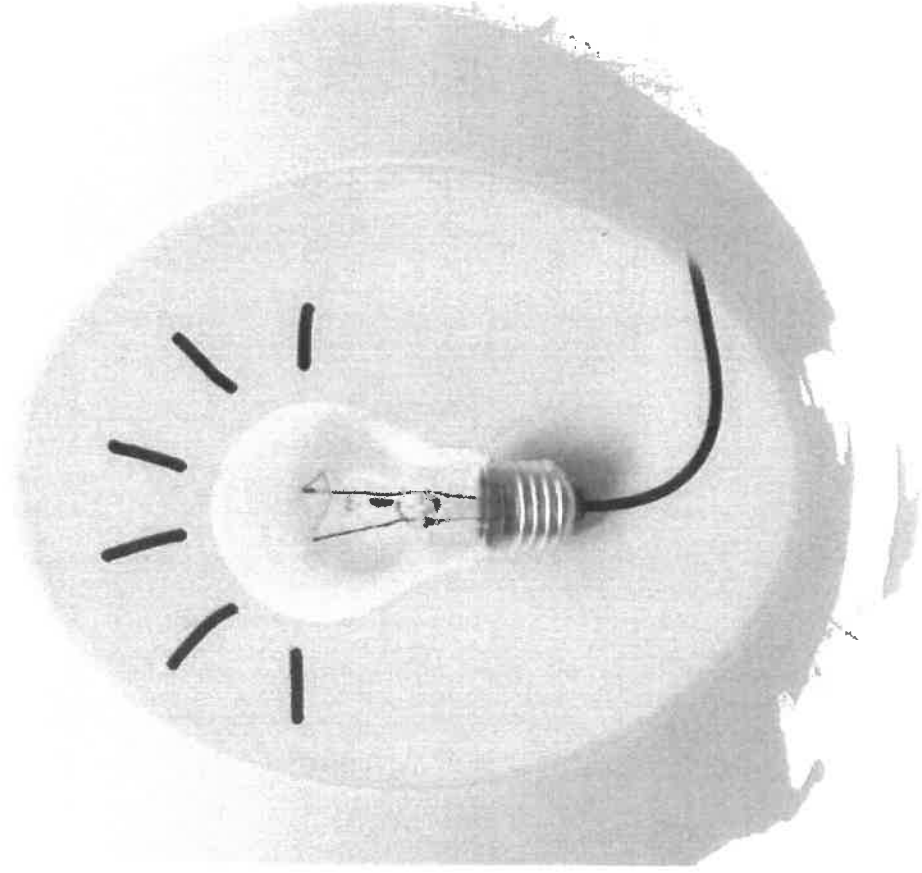
Municipality not bound if terms are not met; free opt-out any time

Turnkey Management

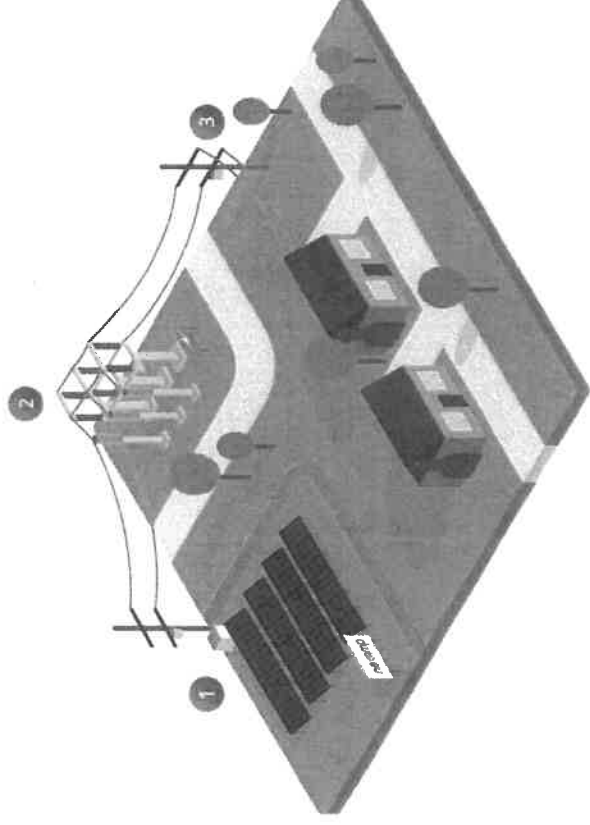
Expert program administration at no cost to municipality

Benefits Stay Local

System resilience, economic development, green jobs



Community Solar

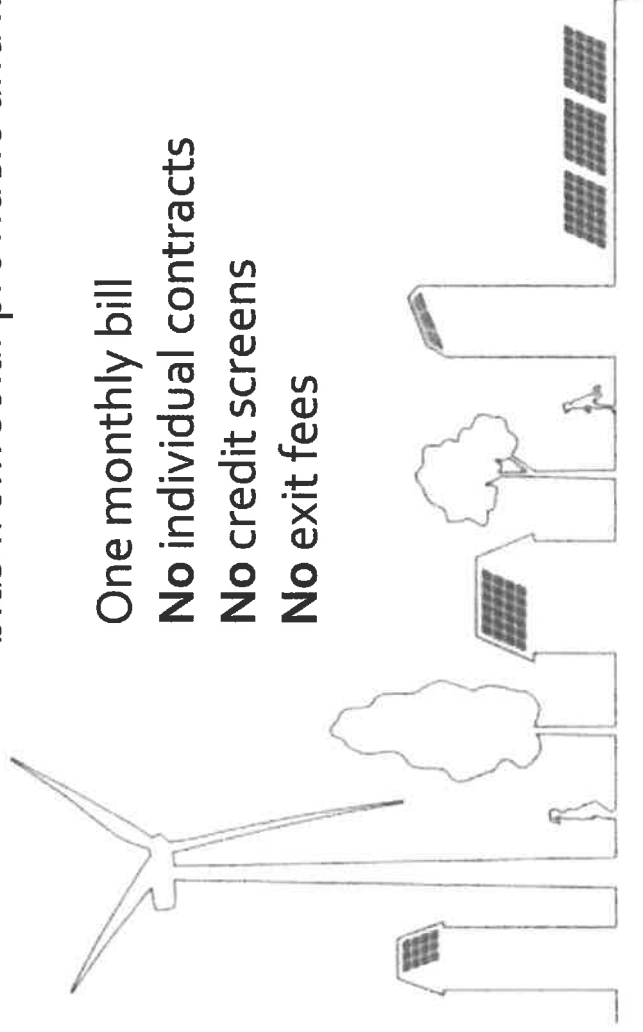


1. Subscribe to a share of a solar farm (each farm serves up to ~1000 homes)
2. The farm feeds clean power into the grid
3. Subscribers earn credits on their utility bill, reducing monthly electricity costs

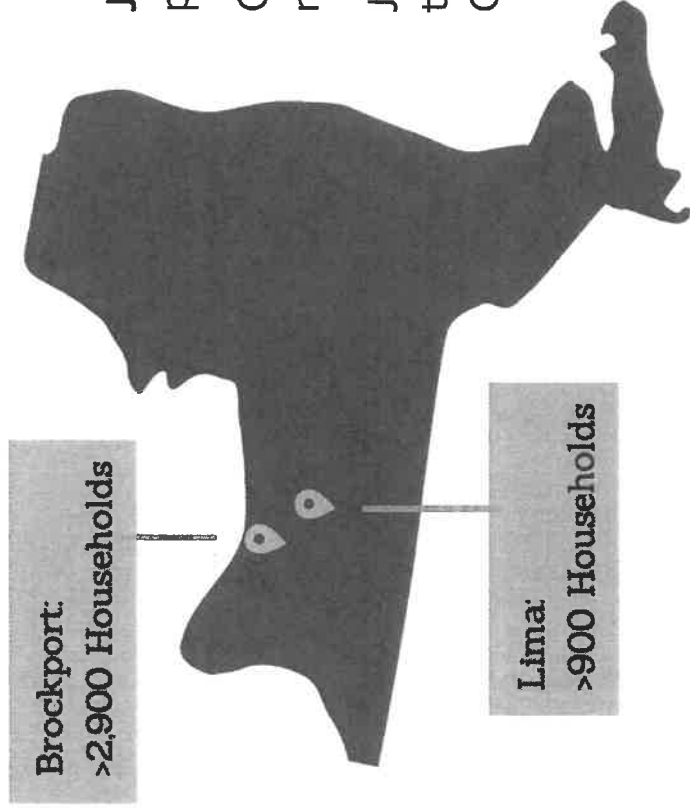
Community Choice Solar

Empowers homeowners, renters, and small businesses to access the benefits of solar without installing solar panels. By pooling local buying power, municipalities solicit competitive bids from solar providers and negotiate favorable terms.

- One monthly bill
- No individual contracts
- No credit screens
- No exit fees



Community Choice Solar



Joule launched the first **Community Choice Solar** program in the United States in Western NY this year.

Offers **guaranteed savings** community solar to **all** eligible residents, regardless of income or credit

Joule has regulatory approval in three NYS utility territories; **20+ municipalities have authorized** Community Choice Solar

Implementation Timeline

Step	Task	Municipal Approval	Timeline
1	Adopt enabling local law	Adopt law	Start
2	Select CCA Administrator	Execute CCA Administrator Agreement	1 month
3	Public outreach period		2 months
4	Regulatory approval & data request		1 months
5	Bid for default energy offerings	Approve terms	2 months
6	Bid award, contract execution & program kickoff	Award provider(s) & execute contract(s)	½ month
7	Opt-out period		1 month
8	Process opt-outs & enrollments		½ month
9	Program launch		Total: 8 months

Next Steps

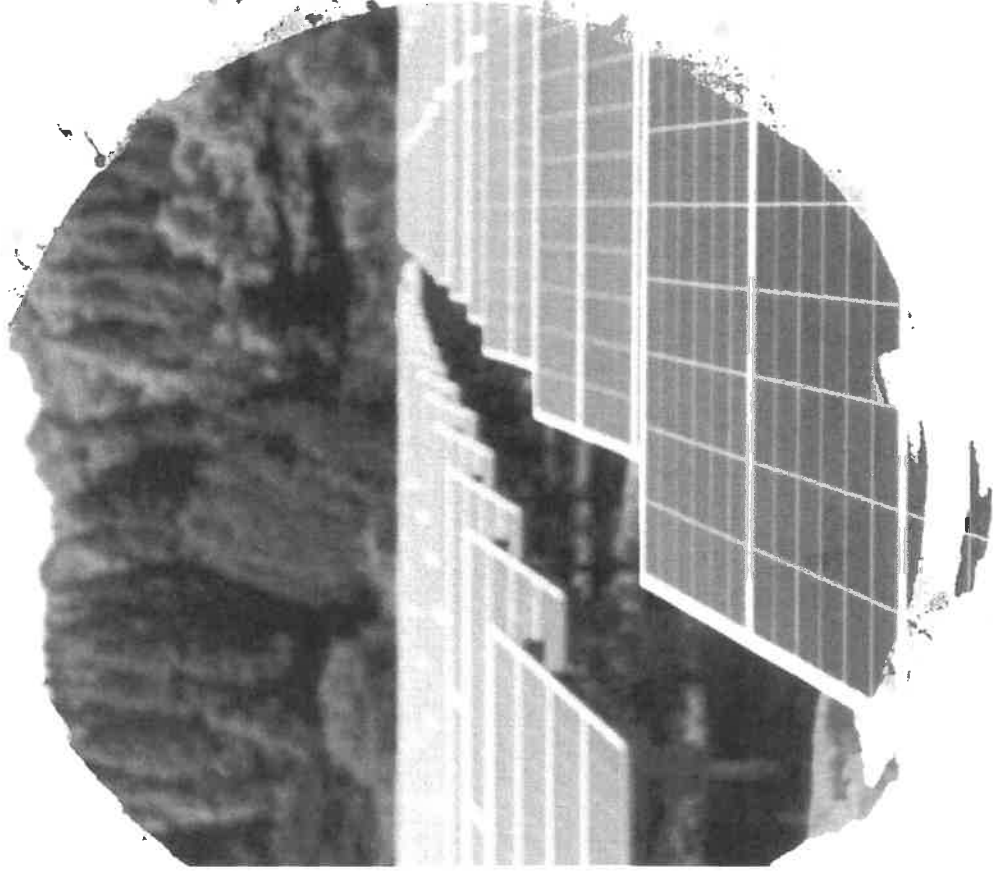
1. Approve CCA Local Law

Does not commit the municipality to CCA -- authorizes Municipality to determine default energy offerings

2. Select Joule as Program Administrator

Does not commit the municipality to CCA -- authorizes Administrator to collect data and present contract options

Municipality does not pay Joule for services





Tom Harty
CCA Advocate,
Joule Community Power

t.harty@joulecommunitypower.com

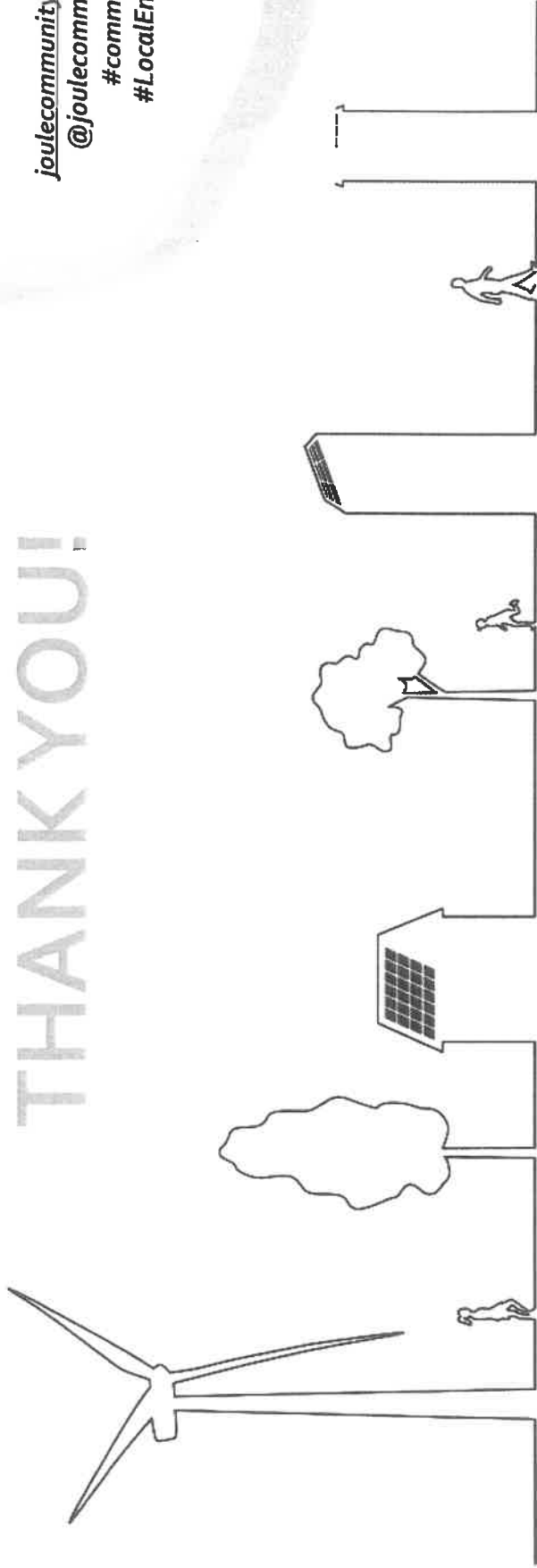
(716) 535-0103 (m)

JouleCommunityPower.com





THANK YOU!



www.joulecommunitypower.com



Follow us to learn more

joulecommunitypower.com
[@joulecommunitypower](https://www.instagram.com/joulecommunitypower)
#communitychoice
#LocalEnergyChoice

CCA Administrator Agreement

This CCA Administrator Agreement (the “**Agreement**”) is entered into as of October 14, 2021 (the “**Effective Date**”) by and between the City of North Tonawanda, a municipal corporation of the State of New York, having its principal offices at 216 Payne Avenue North Tonawanda, NY 14120. (“**Municipality**”) and Joule Assets Inc. a Delaware corporation having its principal offices at 22 Edgemont Road, 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 for Community Choice Aggregation (“**CCA**”) Programs for municipalities and the residents and business located therein;

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

WHEREAS, effective March 16, 2018, the PSC issued an “Order Approving Joule Assets’ Community Choice Aggregation Program with Modifications” in Case 14-M-0224 authorizing Joule, as CCA Administrator, to implement its Community Choice Aggregation Program with opt-out Community Distributed Generation (“**CDG**”)

WHEREAS, the Municipality is exploring whether a CCA Program is appropriate for the Municipality and its residents and businesses and has passed enabling legislation or intends to pass enabling legislation;

WHEREAS, Municipality desires to engage Joule in role as CCA Administrator and Joule desires to provide CCA Administrator 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 Capitalized terms that are used but not defined elsewhere this Agreement, shall have the meanings ascribed below:

(a) “**Applicable Law**” means the CCA Orders, and all statutes, ordinances, laws, rules and regulations that are related or applicable to the CCA Program, this Agreement, or the Parties to this Agreement.

(b) “**CCA**” means community choice aggregation as defined in the CCA Orders.

(c) “**CCA Administrator**” means the third-party duly authorized to administer the CCA Program

including without limitation program organization, administration, procurement, communications, and for meeting all requirements for program implementation specified in the CCA Orders, unless otherwise specified.

(d) “**CCA Enabling Legislation**” means a local law adopted by Municipality according to Municipal Home Rule Law and in compliance with the CCA Orders that authorizes Municipality to implement a CCA Program.

(e) “**CCA Orders**” mean the PSC’s “Order Authorizing Framework for Community Choice Aggregation Opt-Out Program,” issued on April 21, 2016 in Case 14-M-0224, “Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs,” as it may be amended from time to time, including subsequent orders of the Public Service Commission issued in connection with, or related to, Case No. 14-M-0224.

(f) “**CCA Program**” means the framework that Municipality uses to aggregate eligible customers located within the Municipality to provide access to default Energy Offerings on an opt-out basis and other Energy Offerings on an opt-in basis, as permitted or authorized by the CCA Orders.

(g) “**Compliant Bid**” means a bid for Energy Offering(s), submitted in compliance with the requirements set forth by the Parties in a solicitation, the terms of which are agreed upon by Municipality and Joule.

(h) “**Default Customer**” means a customer of electricity and/or natural gas services eligible to participate on an opt-out basis in the CCA Program or a customer who subsequently becomes eligible to participate in the CCA Program.

To the extent permitted by the CCA Orders, the Municipality may further limit Default Customers to specific geographic areas, specific service classes or otherwise defined segments of the Municipal population.

For the avoidance of doubt, a Default Customer must reside or be otherwise located within the geographic boundaries of the Municipality, as such boundaries exist as of the effective date of the applicable Energy Contract.

(i) “**DER Provider**” means a provider of products and/or services related to Distributed Energy Resources.

(j) “**Distributed Energy Resources**” or “**DER**” means local renewable energy projects, community distributed generation (e.g., community renewables), energy storage, peak demand management, energy efficiency, demand response, community resilience microgrid projects, and other clean energy projects and initiatives that reduce cost of service for Participating Customers, optimize system benefits, and/or address infrastructure and demand challenges within the geography of the CCA Program.

(k) “**Distribution Utility**” means the owner or controller of the means of distribution of electricity or natural gas in the Municipality. The Distribution Utility also serves as the default supplier of electricity or natural gas preceding the establishment of a CCA Program.

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

(m) “**Energy Contract**” means an agreement to provide an Energy Offering to Participating Customers as entered into by and between the Energy Supplier, Municipality and/or Joule.

(n) **“Energy Offering”** means any product or service authorized by the CCA Orders to be part of a CCA Program or otherwise permitted to be offered by Joule, including without limitation electricity or natural gas supply; community distributed generation, demand response or load management; energy efficiency; other DERs; and financing in connection therewith.

(o) **“Energy Supplier”** means an ESCO, DER Provider, or a provider of other energy products or services.

(p) **“ESCO”** means an entity duly authorized to conduct business in the State of New York as a generator of electricity and/or natural gas or other entity that procures and resells electricity or natural gas.

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

(r) **“Participating Customer”** means a Default Customer of the CCA Program who has not opted out, and a non-Default Customer of any service class who has voluntarily enrolled in the CCA Program.

(s) **“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.

ARTICLE 2. APPOINTMENT OF JOULE AS CCA ADMINISTRATOR

2.1 Municipality hereby appoints Joule, and Joule agrees to serve, as CCA Administrator in connection with the Municipality’s CCA Program for the term of this Agreement as permitted by, and in accordance with, the terms and provision of this Agreement, the CCA Orders and other Applicable Law. Municipality shall not hire another CCA Administrator for the term of the Agreement.

ARTICLE 3. RESPONSIBILITIES OF THE PARTICIPATING MUNICIPALITY

3.1 Municipality agrees to investigate with Joule the benefits and desirability of implementing a CCA Program.

3.2 Municipality has enacted, or will enact, CCA Enabling Legislation.

3.3 Municipality shall, with Joule’s support, promote and advocate for the CCA Program and educate the public, including without limitation:

- (a) Supporting the scheduling and facilitation of public meetings to disseminate educational information; and
- (b) Allowing use of municipal logo or seal and letterhead for CCA Program promotion; and
- (c) Supporting the promotion of the CCA Program through use of municipal website, social media, municipal newsletter and other municipal communication tools and press outlets.

3.4 Municipality shall, in collaboration with Joule, support CCA Program implementation, including without limitation:

- (a) Participating in the solicitation, review, selection and award of a Compliant Bid to one or

more Energy Supplier(s); and

- (b) If requested by Joule, approving a municipal resolution in advance of any solicitation approving the terms and conditions of an Energy Contract relating to such solicitation, subject to the approval of such Energy Contract by the Municipality and its legal counsel; and
- (c) Executing one or more approved Energy Contract(s) with one or more Energy Supplier(s); and
- (d) Reviewing and approving of opt-out letter; and
- (e) Directing CCA Program questions to Joule.

3.5 Municipality shall comply with all Applicable Laws.

3.6 Nothing in this Agreement shall obligate Municipality to enter into any Energy Contract.

ARTICLE 4. RESPONSIBILITIES OF JOULE

4.1 As CCA Administrator, Joule shall be responsible for CCA Program organization, administration, procurement, communications, and implementation described in the CCA Orders, and as described herein.

4.2 Joule shall perform outreach and education activities on behalf of the Municipality for the CCA Program, including without limitation:

- (a) Provide Municipality with information concerning the benefits and desirability of implementing a CCA Program at public meetings, work sessions, phone calls and otherwise; and
- (b) Provide public outreach and education for the CCA Program for a minimum of the duration and breadth required by the PSC.

4.3 Joule shall implement the CCA Program on behalf of the Municipality, including without limitation;

- (a) Prepare, or have prepared, a CCA Program implementation plan and a data protection plan in accordance with the CCA Orders; and
- (b) Provide to the PSC, requested information and documentation of the actions undertaken by the Municipality in connection with the CCA Program and receive required regulatory approvals from the PSC; and
- (c) Manage the procurement process, including without limitation, preparing bid specifications, procuring competitive bids, reviewing responses and negotiating Energy Contract(s) with selected Energy Supplier(s) that are most advantageous to the CCA Program and Municipality; and
- (d) Secure the release of data from the Distribution Utility and manage data in compliance with all national, state and local laws, regulations and other government standards including a data security agreement executed with the Distribution Utility; and

- (e) Prepare opt-out letter and manage printing and mailing of letter to eligible customers; and
- (f) Manage the opt-out process including staffing of a call center to respond to questions or requests to opt-out; and
- (g) Conduct public outreach and education, on at least an annual basis, for the purpose of maintaining public support and awareness for the CCA Program; and
- (h) Provide reports to Municipality and PSC as required by the CCA Orders; and
- (i) Support communications between the Distribution Utility, Energy Supplier(s) and DPS, as required to enable a successful CCA Program.

4.4 Joule shall comply with all Applicable Laws.

ARTICLE 5. PROGRAM ADMINISTRATION FEE

5.1 As consideration for providing services as CCA Administrator, Joule shall be paid by the Energy Supplier(s) a fee or commission. Such fee or commission shall either be described in the applicable solicitation or shall be approved in writing by the Parties.

5.2 In no event shall Municipality be required to make a payment to Joule for Joule's CCA Program Administration or other services, or for any expenses in relation to the CCA Program, except as agreed in writing by the Municipality.

ARTICLE 6. TERM AND TERMINATION

6.1 Term. This Agreement shall commence on the Effective Date and shall have a term of eighteen (18) months; this Agreement shall auto renew for an additional eighteen (18) months, unless terminated in writing 30 days prior to such termination; provided, however, if one or more Energy Contract(s) is executed by the Municipality during the term (including during any renewal or extended term), the term of this Agreement shall extend until the expiration or termination of any such Energy Contract 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 written notice of such breach from the Non-breaching Party.

ARTICLE 7. INSURANCE AND INDEMNIFICATION

7.1 Upon execution of an Energy Contract and for the balance of the term of this 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 for claims arising out of the performance of professional services and caused by negligent acts or omissions, with a deductible not to exceed \$50,000 without prior written approval of Municipality.

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, and employees, agents, representatives and independent contractors (the "**Municipal 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 Municipal 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 Municipal Indemnified Parties) arising out of (i) any material breach of this Agreement by Joule (including its obligations, covenants, representations or warranties); or (ii) any material action or omission taken or made by Joule in connection with Joule's performance of this Agreement; which material breach, material action or omission is found in a final judgment by a court of competent jurisdiction or by arbitration to constitute Joule's material breach, 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, agents, representatives or independent contractors.

7.3 In addition to any other remedies available to Joule at law or equity, and notwithstanding any other provision contained herein, Municipality shall indemnify, defend and hold harmless Joule and its officers, and employees, agents, representatives and independent contractors (the "**Joule 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 Joule 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 Joule Indemnified Parties) arising out of (i) any material breach of this Agreement by Municipality (including its obligations, covenants, representations or warranties); or (ii) any material action or omission taken or made by Municipality in connection with Municipality's performance of this Agreement; which material breach, material action or omission is found in a final judgment by a court of competent jurisdiction or by arbitration to constitute Municipality's material breach, 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 Joule or its respective officers, employees, agents, representatives or independent contractors.

ARTICLE 8. CONFIDENTIAL INFORMATION.

8.1 During the term of this Agreement, 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; provided, however, if legally permitted Municipality shall provide notice to Joule of any such compliance prior to disclosure which results in the disclosure of information otherwise prohibited by this Agreement.

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 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 Neither Party may assign this Agreement without obtaining the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

9.3 All notices concerning breach or termination of this Agreement (each, a "**Breach or Termination Notice**") shall be in writing and addressed to the Parties at the applicable Address for Notices set forth on the signature page of this Agreement (or to such other address that may be designated by a receiving Party from time to time in accordance with this Section). All Breach or Termination Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Breach or Termination Notice is effective only (a) upon receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

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.

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.

9.8 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.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, as required by the applicable laws of the municipality and the laws, rules and regulations of the State of New York as of the date and year first above written.

Joule Assets Inc.

City of North Tonawanda

By: _____

By: _____

Name:

Name:

Title:

Title:

Address for Notices:

Address for Notices:

Name:

Name:

Address:

Address:

Email:

Email:

Attention:

Attention:

With a copy to:

With a copy to: