

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between:

**Sustainable Westchester, Inc., a New York non-profit corporation (“Sustainable Westchester”), and the City/Town/Village of \_\_\_\_\_ (the “Municipality”), a local government member of Sustainable Westchester (each a “Party” and collectively, the “Parties”).**

**1. Background:**

- a. In February 2015, the New York Public Service Commission issued an Order for Case 14-M-0564 as follows: “The Petition of Sustainable Westchester is granted to the extent that its municipal members are authorized to undertake a Community Choice Aggregation demonstration project consistent with the discussion in the body of this Order...”
- b. The PSC subsequently issued an Order for Case 14-M-0224 on April 21, 2016, which authorized Community Choice Aggregation (“CCA”) throughout New York State (the “CCA Order”) and on November 15, 2018 issued the “Order Approving Renewal of the Sustainable Westchester Community Choice Aggregation Program” reauthorizing the Sustainable Westchester CCA program under a Master Implementation Plan.
- c. Sustainable Westchester’s CCA Program enrolled customers from an initial group of 20 participating municipalities in April 2016. Since then, seven additional municipalities have joined and several other municipalities are actively working towards participation.
- d. For municipalities in the Con Edison utility territory, the current Electric Service Agreement for the Sustainable Westchester CCA Program will terminate on December 31, 2020
- e. In compliance with the PSC CCA Orders, the Municipality has adopted local legislation to enable Community Choice Aggregation.
- f. As a member of Sustainable Westchester in good standing and participant in the Sustainable Westchester CCA Program, the Municipality wishes to continue to engage the services of Sustainable Westchester as the Program Manager for Community Choice Aggregation for the Operation and Maintenance of the Program.

**2. Definitions:**

- a. **Eligible Customers** – Residential and small commercial consumers of electricity who receive Default Service from the Distribution Utility as of the Effective Date, or have been served by the program under the 2019 ESA and have not opted-out, or “Newly Eligible Consumers” that subsequently become eligible to participate in the Program, at one or more locations within the geographic boundaries of the Municipality, except those consumers who receive Default Service and have requested not to have their account information shared by the Distribution Utility. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality, as such boundaries exist on the Effective Date of this ESA.
- b. **Community Choice Aggregation Program or CCA Program or Program**– A municipal energy procurement program, which replaces the incumbent utility as the

- default Supplier for all Eligible Customers within the Participating Municipality, as defined in the PSC CCA Orders.
- c. **Competitive Supplier:** An entity duly authorized to conduct business in the State of New York as an energy service company (“ESCO”) that procures electric power for Eligible Customers in connection with this CCA Program.
  - d. **Compliant Bid:** Electric power supply bid from a Competitive Supplier that meets the requirements specified in this MOU and the 2021 ESA. A Compliant Bid price must be inclusive of fees owed to Program Manager and be less than:
    - i. Residential accounts: 7.65 cents/kwh;
    - ii. Small commercial accounts: 7.65 cents/kwh
  - e. **Distribution Utility:** Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission in the Participating Municipality.
  - f. **Electric Service Agreement (“ESA”):** An agreement that implements a CCA Program and contains all the terms and conditions of the Program.
  - g. **2019 ESA:** The ESA which implemented the Sustainable Westchester CCA Program during the period from January 1, 2019 to December 31, 2020.
  - h. **2021 ESA:** The ESA which will implement Sustainable Westchester CCA Program commencing January 1, 2021 for the Con Edison service territory. The 2021 ESA shall have substantially the same terms outlined in the attached 2019 ESA Template (Attached as Exhibit 1). The 2021 ESA Template tracks as closely as possible to the 2019 ESA in its content, with only minor changes regarding supplier data requirements, , additional clarification regarding NY renewable energy certificate registration, provision for recovering any NYS subsidy for CCA purchase of renewable energy certificate if such subsidy comes into force after contract signing, and deletion of the optional time-of-use product.
  - i. **CCA Orders:** Collectively, the February 26, 2015 “Order Granting Petition in Part” issued by the PSC in Case 14-M-0564; the April 21, 2016 “Order Authorizing Framework for Community Choice Aggregation Opt-out Program” issued by the PSC in Case 14-M-0224, which sets forth the requirements, terms, and conditions under which CCA programs can proceed through implementation; and the November 15, 2018 “Order Approving Renewal of the Sustainable Westchester Community Choice Aggregation Program” issued by the PSC in Case 14-M-0564, which reauthorizes the Sustainable Westchester CCA program under a Master Implementation Plan.
  - j. **Qualifications Review:** A verification of the status of the Competitive Supplier as an electricity supplier in the Distribution Utility’s service territory. A precondition for attaining such status is that Competitive Supplier has met the credit requirements established by the New York Independent Systems Operator.
  - k. **Participating Municipality:** A dues-paying municipal member of Sustainable Westchester, which has adopted the applicable local legislation for the Community Choice Aggregation Program.
  - l. **Program Manager:** Sustainable Westchester, a non-profit corporation of which the Participating Municipality is a member.

- m. **Public Service Commission (“PSC”)**: 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.
3. **Purpose**: The purpose of the Memorandum of Understanding is as follows:
- a. To establish participation by **The Municipality (hereafter, the “Participating Municipality”)** in a Community Choice Aggregation Program (hereafter, the “Program”) that will be managed on its behalf by **Sustainable Westchester, (hereafter, the “Program Manager”)** under the 2021 ESA.
  - b. To affirm that the Participating Municipality and Program Manager agree to adhere to the terms and conditions of the 2021 ESA in the event they execute it.
  - c. To affirm that the Participating Municipality and Program Manager agree to execute the 2021 ESA, subject to the conditions of review and approval outlined in 4(c) and 5(a), below.
4. **Roles and responsibilities of the Program Manager**: As Program Manager, Sustainable Westchester agrees to perform all duties outlined in the 2021 ESA and, prior to execution of that agreement, Program Manager agrees to:
- a. Provide the involved agencies and parties to the PSC CCA Orders, including, but not limited to, the Public Service Commission and Distribution Utility, requested information about and documentation of the actions undertaken by the Participating Municipality in furtherance of enabling participation in the Program;
  - b. Manage the energy procurement bidding process including:
    - i. the identification and notification of potential firms seeking to be the Competitive Supplier,
    - ii. the management of the Request for Proposals (“RFP”) process from preparation of the content to the publication of the RFP and management of firms responding to the RFP,
    - iii. the preparation of the 2021 ESA that will be included in the RFP,
    - iv. the acceptance, secure opening, and review of the responses to the RFP, and
    - v. the organization of the Qualifications Review and bid evaluation,all in a manner that is transparent to the Participating Municipality and firms seeking to be the Competitive Supplier;
  - c. Sign the 2021 ESA in a timely fashion subject to the conditions that:
    - i. the Competitive Supplier is deemed qualified for the duration of the 2021 ESA by the Qualifications Review, and
    - ii. such Competitive Supplier’s response to the RFP is deemed by the Program Manager to be a Compliant Bid as defined in Section 2 above.
  - d. Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program, subject to the Program Manager’s inherent and original role as an organization driven by the deliberated priorities of its constituent member municipalities.
5. **Roles and responsibilities of the Participating Municipality**: the Participating Municipality agrees to:
- a. Sign the 2021 ESA for the Standard Product / 100% Renewable Clean Power Product [select one and initial] as the Default Product for its residents and small businesses, in a timely fashion, subject to the conditions that:

- i. the Competitive Supplier is deemed qualified for the duration of the 2021ESA by the Qualifications Review, and
- ii. such Competitive Supplier's response to the RFP is deemed by the Program Manager to be a Compliant Bid as defined in Section 2 above.

**6. Term and Termination:** Memorandum of Understanding shall expire on the earlier of December 31, 2020 or the date on which the 2021 ESA is signed by the Participating Municipality, the Program Manager, and the selected Competitive Supplier. Participating Municipality shall have the right to terminate this Memorandum of Understanding for any of the reasons set forth in the Termination section of the ESA attached hereto as Exhibit 1.

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IN WITNESSETH WHEREOF, the Parties have signed this MEMORANDUM OF UNDERSTANDING on the day and year appearing below their respective signatures.

**City/Town/Village of** \_\_\_\_\_

Authorized Official Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

E-Mail Address: \_\_\_\_\_

Address for Notices: \_\_\_\_\_

**Sustainable Westchester, Inc.**

Authorized Official Name and Title: Steven Rosenthal, Interim Executive Director

Signature: \_\_\_\_\_

Address: 40 Green Street, Mount Kisco, NY 10549

Telephone(s): (914) 242-4725

E-Mail Address: [steve@sustainablewestchester.org](mailto:steve@sustainablewestchester.org)

Address for Notices: 40 Green Street, Mount Kisco, NY 10549

Attachments: Exhibit 1, 2021 ESA Template