**Disclaimer:** The primary objective of this document is to assist municipalities in drafting a Memorandum of Understanding to facilitate the creation of Community Choice Aggregation programs in New York State. The following information should not be a substitute for legal advice from an attorney familiar with local requirements.

**MEMORANDUM OF UNDERSTANDING (MOU)**

 THIS MEMORANDUM OF UNDERSTANDING (“MOU”), dated [date] by and between,

 [THE CITY / TOWN / VILLAGE OF \_\_\_\_\_ ], a municipal corporation of the State of New York, having its principal offices at [address] (“Participating Municipality”); and

 [CCA ADMINISTRATOR], a [type of organization], having its principal offices at [address] (“CCA Administrator”).

WITNESSETH:

 WHEREAS, [CCA name] (“Program”) is a Community Choice Aggregation (“CCA”) program in [county(s)], and

 WHEREAS, CCA is a municipal energy procurement model that replaces the utility as the default supplier of electricity for Eligible Consumers within a jurisdiction, and

 WHEREAS, by participating in CCA, communities are well-positioned to secure lower, fixed-rate energy prices, exercise more local control over energy resources, and spur clean energy innovation and investment, and

WHEREAS, the Participating Municipality represents that it is authorized to participate in a CCA program subject to local authorization, pursuant to the New York State Public Service Commission’s Order Authorizing Framework for Community Choice Aggregation Opt- Out Program, issued on April 21, 2016 in Case 14-M-0224 (“PSC CCA Order”), and

WHEREAS, the Participating Municipality represents that it has adopted a local law to authorize their participation in the Program in compliance with the PSC CCA Order, and

 WHEREAS, the CCA Administrator and the Participating Municipality, believing it to be in their respective best interests, do herby authorize cooperation for the Program as hereinafter defined, and

 WHEREAS, all the municipalities that participate in the Program intend that this MOU be uniform in form and substance in each instance throughout the Program,

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

I. DEFINITIONS

1. CCA ADMINISTRATOR shall mean [the name of the third-party CCA Administrator], duly authorized to put out for bid the total amount of electricity and/or natural gas being purchased by Participating Consumers. CCA Administrator is responsible for Program organization, administration, procurement, and communications, unless otherwise specified.
2. COMMUNITY CHOICE AGGREGATION PROGRAM or CCA PROGRAM or PROGRAM shall mean a municipal energy procurement program, which replaces the incumbent utility as the default Supplier for all Eligible Consumers within the Participating Municipality, as defined in the PSC CCA Order.
3. COMPETITIVE SUPPLIER shall mean 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 Consumers in connection with this CCA Program.
4. COMPLIANT BID shall mean that the all-inclusive price per kilowatt hour (kWh) is fixed at a level that is less than the average utility price for the same customer class, within the same utility-defined zone, over the preceding twelve-month period (using the most recent rate information available)
5. DEFAULT SERVICE shall mean a supply service provided by the Distribution Utility to consumers who are not currently receiving service from an ESCO.
6. DISTRIBUTED ENERGY RESOURCES (DER) shall mean local renewable energy projects, shared renewables like community solar, energy efficiency, demand response, energy management, energy storage, microgrid projects and other innovative Reforming the Energy Vision (REV) initiatives that optimize system benefits, target and address load pockets/profile within the CCA’s zone, and reduce cost of service for Participating Consumers.
7. DISTRIBUTION UTILITY shall mean the owner or controller of the means of distribution of the natural gas or electricity that is regulated by the PSC in the Participating Municipality.
8. ELECTRIC SERVICE AGREEMENT or ESA shall mean the Electric Service Agreement that contains all the terms and condition appertaining to the energy procurement request published by the CCA Administrator on behalf of the Participating Municipalities.
9. ESCO or ENERGY SERVICES COMPANY mean an entity duly authorized to conduct business in the State of New York as an ESCO.
10. ELIGIBLE CONSUMERS shall mean eligible customers of electricity and/or natural gas who receive Default Service from the Distribution Utility as of the Effective Date, or New 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 the ESA.
11. ENABLING LEGISLATION shall mean a local law or ordinance, adopted by a municipality according to Municipal Home Rule Authority and in compliance with PSC CCA Order, which authorizes the Participating Municipality to join a CCA program.
12. NEW CONSUMERS shall mean consumers of electricity that become Eligible Consumers after the effective date of the ESA, including those that opt in or move into Municipality.
13. PARTICIPATING CONSUMERS shall mean Eligible Consumers enrolled in the Program, either because they are consumers who receive Default Service from the Distribution Utility as of the Effective Date and have not opted out, or are New Consumers.
14. PARTICIPATING MUNICIPALITIES shall mean municipalities that have passed Enabling Legislation and have approved this Memorandum of Understanding (“MOU”).
15. PROGRAM ORGANIZER shall mean the group responsible for initiating and organizing the CCA. This group will typically secure buy-in from local governments and engage in preliminary outreach and education regarding CCA. The Program Organizer may be a non-profit organization, local government, or other third party. The Program Organizer and the CCA Administrator may be the same.
16. PSC CCA ORDER shall 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.”
17. PUBLIC SERVICE COMMISSION or PSC shall mean 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.
18. SOLICITATION shall mean the Request for Bids for CCA Energy Supply Services (Attached as Exhibit 2).

II. RIGHTS AND RESPONSIBILITIES OF THE PARTICIPATING MUNICIPALITY

1. The Participating Municipality may designate a representative to participate in the evaluation of proposals as part of the Solicitation.
2. The Participating Municipality agrees to execute the ESA with the selected vendor in a timely fashion subject to the conditions that:
3. The ESA resulting from the Solicitation shall be awarded to either the lowest responsible bidder or on the basis of a best value determination under either General Municipal Law or local law, as applicable, based on the evaluation factors set forth in the Solicitation, and
4. The proposer’s cost proposal is a Compliant Bid.
5. The Participating Municipality agrees that the selected vendor shall remit to the CCA Administrator an Administration Fee of [$0.0000] per kilowatt-hour sold to all Participating Consumers located within the jurisdiction in accordance with the ESA.

III. RIGHTS AND RESPONSIBILITIES OF THE CCA ADMINISTRATOR

1. The CCA Administrator shall provide the involved agencies and parties to the PSC CCA proceeding, including, but not limited to, the Public Service Commission and Distribution Utility, requested information and documentation of the actions undertaken by the Participating Municipality in furtherance of enabling participation in the Program;
2. The CCA Administrator shall manage a competitive procurement process for CCA energy supply services (the “Solicitation”) in a manner consistent with General Municipal Law.
3. The CCA Administrator shall develop proposals for potential offers of opt-in distributed energy resources (DER) products and services to Participating Consumers, including opportunities to participate in local renewable energy projects, shared solar, 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 zone, and reduce costs for Participating Consumers.

F. The CCA Administrator shall fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program.

IV. TERM

This agreement shall commence upon execution and expire no earlier than the date on which the Electric Service Agreement is executed and shall continue until mutually terminated.

 [THE CITY / TOWN / VILLAGE OF \_\_\_\_\_ ],

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

 [Chief Elected Official]

 [CCA ADMINISTRATOR],

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

 [Authorized Representative]