

SPECIAL CITY COUNCIL AGENDA
THURSDAY, MAY 11, 6:30 P.M.
CITY COUNCIL CHAMBERS- HURLEY BUILDING
205 SALTONSTALL ST.

VIRTUAL: <https://us06web.zoom.us/j/82103183289>

LIVE STREAM: <https://fingerlakestv.org/live/>

City Council:

- Bob Palumbo, Mayor**
- Ellen Polimeni, Councilmember Ward I**
- Dan Unrath, Councilmember Ward II**
- Karen White, Councilmember Ward III**
- Erich Dittmar, Councilmember Ward IV**
- Sim Covington, Councilmember-at-Large**
- Thomas Lyon, Councilmember-at-Large**
- Renée Sutton, Councilmember-at-Large**
- Steve Uebbing, Councilmember-at-Large**

John Goodwin, City Manager
David Hou, Corporation Counsel

- 1. Pledge of Allegiance**
- 2. Roll Call**
- 3. Public Hearings:** N/A
- 4. Review of Community Core Values:**
As residents, city staff and appointed & elected officials of the City of Canandaigua, our decisions and actions will be guided by these core values: Responsive; Participatory Governance; Caring & Respect; Integrity; Heritage; Stewardship; and Continuous Improvement.
- 5. Approval of Minutes:** N/A
- 6. Recognition of Guests:** DPW Director Jim Sprague – MS4 Annual Report
- 7. Committee Reports:**
- 8. Resolutions:**

Resolution #2023-056: A Resolution Authorizing an Agreement to Operate the Kershaw Park Food Service Concession

Resolution #2023-057: A Resolution Approving an MOU and ESA for Community Choice Aggregation

- 9. Ordinances:**
- 10. Local Laws:**
- 11. Manager's Report:**
- 12. Appointments:**
- 13. Miscellaneous:**
- 14. Adjournment**

RESOLUTION #2023-056

**A RESOLUTION AUTHORIZING AN AGREEMENT TO OPERATE THE KERSHAW
PARK FOOD SERVICE CONCESSION**

WHEREAS, the lease of the Kershaw Park Bathhouse Concession Stand expired on December 31, 2022 and

WHEREAS, an RFP was published and resulted in receipt of one proposal that was rejected for various reasons; and

WHEREAS, City Staff identified another potential vendor to operate concessions at Kershaw and found Kix on Main; and

WHEREAS, City Staff recommended contracting with Kix on Main to operate concession with a lease fee of \$1,500 and said recommendation was reviewed and approved at the May 9, 2023 Environmental Committee meeting;

NOW, THEREFORE, BE IT RESOLVED that City Council hereby authorizes the City Manager to execute an agreement with Kix on Main to provide the food service concession at Kershaw Park with an annual fee amount of \$1,500 with the option to renew for two successive beach seasons.

ADOPTED this 11th of May, 2023.

ATTEST:

Erin VanDamme
City Clerk

OPERATION OF A FOOD SERVICE CONCESSION AT KERSHAW PARK

AGREEMENT

THIS AGREEMENT made effective the 12th day of May, 2023, by and between the **CITY OF CANANDAIGUA**, a municipal corporation organized and existing under and by virtue of the Laws of the State of New York and being one of its political subdivisions, by and through its Parks and Recreation Department, having its principal place of business at 205 Saltonstall Street, Canandaigua, New York, 14424, Ontario County, New York, hereinafter called “City”, and Kix on Main, LLC, having offices 170 South Main Street, Canandaigua, New York hereinafter called “Contractor.”

WITNESSETH:

WHEREAS, the City desires to have a concession stand at Kershaw Park; and

WHEREAS, the Contractor desires to operate said concession services and is in compliance with the proposal documents; and

WHEREAS, the parties are desirous of entering into a contract for said purposes.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained the parties agree as follows:

1. **SCOPE OF WORK.** Scope of work is contained in proposal.
2. **TERM.** The term shall be May 15, 2023 through September 15, 2023. May extend for up to two additional seasons upon mutual agreement.
3. **CONSIDERATION.** \$1,500.
4. **INSURANCE.** Contractor agrees to maintain insurance as specified by attached Appendix “E” and shall provide the Canandaigua Treasurer with a certificate of insurance naming the City of Canandaigua as an additional insured. Self-employed persons must carry such workers’ compensation coverage as directed by the Treasurer. If Workers’ Compensation Insurance is required by law and Contractor fails to provide it than this Agreement shall be void and of no effect unless the person or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of said contract, such employees, in compliance with the provisions of such law. The cost of obtaining any additional insurance shall be the responsibility of Contractor.
5. **COMPLIANCE WITH RULES, REGULATIONS AND LAWS.** It is mutually agreed that all rules, regulations and laws pertaining hereto shall be deemed to be part of this Agreement, and anything contained herein that may be in whole or in part inconsistent therewith shall be deemed to be hereby amended and modified to comply with such legislation, rules, regulations and laws, for and during such time the same shall be in effect, but at no other time. If any provision contained herein is found now or during the life of this Agreement to be null and void, in whole or in part as a matter of law, then said clause or part hereof shall be deemed to be severed and deleted from this Agreement leaving all other clauses or parts thereof in full force and effect. It is further agreed that there shall be no gap in the coverage or applicability of said remaining clauses or parts thereof.

Contractor, if applicable, agrees to comply with the Federal Commercial Drivers License Drug and Alcohol Testing Program requirements set forth in 49 CFR Parts 40 and 382.

In acceptance of this Agreement, Contractor covenants and certifies that it will comply in all respects with all Federal, State, County or other Municipal Law which pertains hereto regarding work on municipal contracts, matters of employment, length of hours, workers' compensation and human rights.

6. **GOVERNING LAW AND VENUE.** The Laws of the State of New York, excluding its choice of law provisions, shall govern and control the within Agreement. The parties agree to submit themselves in any legal action or proceeding arising out of or relating to this agreement, or for the recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the Supreme Court of the State of New York, Ontario County, if in State Court, or the courts of the United States District Court, Western District of New York, if in Federal Court, and all related appellate courts. The parties agree to be subject to personal jurisdiction in and consent to service of process issued by a court in which venue is proper as defined in this paragraph.
7. **CONFLICT OF INTEREST.** Contractor hereby stipulates and certifies that there is no member of the Canandaigua City Council or other Canandaigua City Officer or Employee forbidden by law to be interested in the Agreement directly or indirectly, who will benefit therefrom or who is a party thereto.
8. **LICENSES.** Contractor hereby agrees that it will obtain, at its own expense, all licenses or permits necessary for this work, if any are necessary prior to the commencement of said work.
9. **WARRANTIES AND REPRESENTATIONS.** Contractor warrants and represents, that it is qualified by training and experience to perform the services outlined in this Agreement.
10. **CONFIDENTIAL INFORMATION.** The Contractor agrees that any information or data obtained, documents produced, or any other material received by the Contractor during the furtherance of Contractor's obligations in accordance with this Agreement will be treated by the Contractor in full confidence and will not be revealed to any other persons, firms, or organizations.
11. **INDEPENDENT CONTRACTOR STATUS.** Contractor covenants and agrees that it will conduct itself consistent with its status, said status being that of an independent contractor and that itself, its employees or agents will neither hold themselves out as, nor claim to be an officer or employee of the City of Canandaigua, for such purposes as, but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security or Retirement membership or credit.
12. **HOLD HARMLESS.** Contractor shall at all times save harmless the City of Canandaigua, its officers, and its employees, together with their officers, agents, servants, and employees, from and against any and all liability, losses, claims, suits, causes of action, costs, expenses, damages or judgments or for the defense or payment thereof, based on any claim, action or cause of action whatsoever, including any action for libel, slander, or personal injury, or any affiliated claims, by reason of any act or failure to properly act on the part of Contractor or its agents, officers, employees and/or sub-contractors and in particular as may arise from Contractor's performance under this contract, except those arising out of any willful misconduct or grossly negligent act of City.
13. **NOTICE OF INJURY.** In the event that Contractor's employee, agent, or sub-contractor is injured or causes injury or damage while in performance of services under this Agreement then Contractor shall cause written notice to be served upon the Canandaigua City Attorney at 2 North Main Street, Canandaigua, New York 14424 within twenty-four hours of any such injury or damage.
14. **TAXES.** The City shall not be responsible for payment of any state or federal taxes, which may be incurred by Contractor, pursuant to this Agreement.

15. **TERMINATION.**
- a.) Either Party may terminate this Agreement at any time with 30 days advance written notice.
 - b.) In the event of a material breach of this license by the Contractor, the City shall have the right to terminate this agreement on 72 hours written notice to Contractor.
 - c.) The City may terminate this Agreement immediately upon written notice in the event of bankruptcy, insolvency, or any other financial condition creating reasonable doubt as to Contractor's ability to perform hereunder.
 - d.) Upon written notice of termination from the City, the Contractor shall immediately cease all work under this Agreement and remit all outstanding funds, if any, due to the City.
 - e.) No such termination shall affect or discharge any obligations of either party, which arose prior to the effective date of termination with respect to warranties, indemnification, monies owed or confidential information.
16. **CONFLICT OF TERMS.** In the event that a conflict exists between the terms and conditions of this Agreement and any exhibits, appendices, or attachments hereto, that are proposed by Contractor, the terms and conditions of this Agreement shall control, unless such conflicting or additional terms are accepted in a writing making reference to this Agreement and signed by the City. Performance of the Scope of Work pursuant to this Agreement shall be deemed to be unqualified acceptance of the terms and conditions contained herein.
17. **COUNTERPARTS.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
18. **ASSIGNABILITY.** This contract may not be assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the City of Canandaigua.
19. **AMENDMENTS.** This Agreement may be amended, modified or extended only by written instrument duly authorized and executed by the parties with the same formality as this Agreement.
20. **WAIVER.** The failure of the City to insist, in any one or more instances, upon the full performance of any of the terms and conditions of this Agreement, or to exercise any rights it may have hereunder, shall not be construed as a waiver of any legal rights it may have with respect to such nonperformance, or be construed as the City's condoning of further nonperformance of such terms or conditions.
21. **NOTICES.** Any notice or consent required or permitted to be given pursuant to this Agreement shall be given to the respective parties in writing, by ordinary, first class mail or otherwise delivered to the addresses listed above, or any other addresses the parties may from time to time designate. Notices and consents, which are sent by mail, shall be deemed received by the other party five (5) days following their deposit in the U.S. Mail. Contractor agrees to accept service of process at the address listed above in any action brought by the City pursuant to this Agreement.
22. **HEADINGS.** Titles, captions, or headings to any provision, article, etc. shall not limit the full contents of the same. Each article has the same full force and effect as if no title existed.
23. **MERGER CLAUSE.** The parties agree the foregoing and the attached exhibits constitute the entire Agreement between the parties and shall supersede any verbal statements or other writings, except an amendment, mutually agreed upon between the parties and in writing, and designated as an amendment to this Agreement, shall supersede or vary the positions herein.
24. **AUTHORIZATION.** Each party asserts and acknowledges that the signatory indicated below is authorized and empowered to execute this Agreement on behalf of that party. Contractor acknowledges that this Agreement has no force and affect unless approved by the Canandaigua City Council.

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

CITY OF CANANDAIGUA

Dated: _____ BY: _____
City Manager

CONTRACTOR

Dated: _____ BY: _____

APPENDIX E

CITY OF CANANDAIGUA STANDARD INSURANCE REQUIREMENTS

Prior to commencement of work, delivery of services, acquisition of merchandise or equipment a Certificate of Insurance and a policy endorsement covering items A, B & C must be delivered to the City Department responsible for the agreement and to the City Clerk/Treasurer. A Certificate of insurance may be used to show coverage only.

ITEMS:

- A. The City of Canandaigua, 2 North Main Street, Canandaigua, N.Y., 14424 shall be named as an additional insured (for the purposes of coverage but not the payment of premium).
- B. ACKNOWLEDGEMENT: The insurance companies providing coverage acknowledge that the named insured is entering into a contract with the City of Canandaigua in which the named insured agrees to defend, hold harmless, and indemnify the City, its officials, employees and agents against all claims resulting from work performed, material handled and services rendered. The contractual liability coverage evidenced will cover the liability assumed under the City-Contractor agreement.
- C. Prior to non-renewal, cancellation or a change of coverage on this policy, at least twenty (20) days advance written notice shall be given to City Clerk/Treasurer at City Hall, 2 North Main Street, Canandaigua, N.Y., 14424

MINIMUM COVERAGES AND LIMITS ARE

Workers' Compensation Coverage will be required for anyone doing any kind of work for the City of Canandaigua. This includes self-employed individuals. The City Clerk/Treasurer may waive this requirement.

TYPE OF CONTRACT	COVERAGES REQUIRED	LIMITS REQUIRED
PROFESSIONAL SERVICES	PROFESSIONAL LIABILITY	MINIMUM \$1,000,000
	AUTO LIABILITY TO INCLUDE: OWNED, HIRED & NON OWNED	MINIMUM \$1,000,000
	WORKERS COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
	DISABILITY BENEFITS	STATUTORY
CONSTRUCTION & MAINTENANCE	COMPREHENSIVE GENERAL LIABILITY TO INCLUDE: PREMISES & OPERATIONS, PRODUCTS & COMPLETED OPERATIONS, INDEPENDENT CONTRACTOR, CONTRACTUAL, BROAD FORM PROPERTY DAMAGE, (XCU HAZARDS)	MINIMUM \$1,000,000
	AUTO LIABILITY TO INCLUDE: OWNED, HIRED, & NON OWNED	MINIMUM \$1,000,000
	WORKERS' COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
	DISABILITY BENEFITS	STATUTORY
ACQUISITION OF SUPPLIES OR EQUIPMENT	COMPREHENSIVE GENERAL LIABILITY TO INCLUDE: PRODUCTS & COMPLETED OPERATIONS, CONTRACTUAL, BROAD FORM PROPERTY	MINIMUM \$1,000,000
	WORKERS' COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
	DISABILITY BENEFITS	STATUTORY
CITY PROPERTY USED BY OTHERS	COMPREHENSIVE GENERAL LIABILITY TO INCLUDE: PREMISES & OPERATIONS, PRODUCTS & COMPLETED OPERATIONS, INDEPENDENT CONTRACTOR, CONTRACTUAL, PERSONAL INJURY, LIQUOR LEGAL LIABILITY	MINIMUM \$1,000,000
	AUTO LIABILITY TO INCLUDE: OWNED, HIRED, & NON OWNED	MINIMUM \$1,000,000
	WORKERS' COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
	DISABILITY BENEFITS	STATUTORY
CONCESSIONAIRE SERVICES LIVERY SERVICES MUNICIPAL AGREEMENTS	COMPREHENSIVE GENERAL LIABILITY TO INCLUDE: PREMISES & OPERATIONS, PRODUCTS & COMPLETED OPERATIONS, INDEPENDENT CONTRACTOR, CONTRACTUAL, PERSONAL INJURY, LIQUOR	MINIMUM \$1,000,000
	AUTO LIABILITY TO INCLUDE: OWNED, HIRED, & NON OWNED	MINIMUM \$1,000,000
	WORKERS' COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
	DISABILITY BENEFITS	STATUTORY

Bid specifications, particular contracts, leases or agreements may require increased limits and or additional coverages. If there are questions please contact the City Clerk/Treasurer at 585-396-5000.

RESOLUTION #2023-057

A RESOLUTION APPROVING A MOU AND ESA FOR COMMUNITY CHOICE AGGREGATION

WHEREAS, effective April 21, 2016, the New York State Public Service Commission (“PSC”) issued an “Order Authorizing Framework for Community Choice Aggregation Opt-Out Program” authorizing the establishment of Community Choice Aggregation programs by municipalities statewide; and

WHEREAS, effective March 16, 2018, the PSC issued an “Order Approving Joule Assets’ Community Choice Aggregation Program with Modifications” that authorized Joule Assets, Inc. (“Joule”) to serve as a Community Choice Aggregation Program Administrator on behalf of cities, towns, and villages in New York State; and

WHEREAS, on November 7, 2019, the City, adopted local law 2019-003, “A Local Law to Establish a Community Choice Aggregation Program in The City of Canandaigua”, enabling a Community Choice Aggregation Program in the City (the “Program”); and

WHEREAS, the City engaged the services of Joule seeks to obtain competitive bids from electricity suppliers (each a “Supplier”) pursuant to a request for proposal that included provisions for a 100% renewable supply option, blended at 50% renewable and conventional supply (the “Supply RFP”), that is intended to result in a three-party Electricity Supply Agreement between the selected Supplier, the City and Joule that, among other things, will govern the terms of provision of the electricity supply by Supplier for the Program; and

WHEREAS, Joule prequalified prospective bidders based on creditworthiness and competence; has executed the public outreach campaign in the City as required by the New York State Department of Public Service, and has obtained utility data from the local distribution utility, all of which is necessary to solicit bids through the Supply RFP; and

WHEREAS, Joule has requested a Memorandum of Understanding (MOU) with conditional authorization to execute the “Electricity Supply Agreement” (in the form attached hereto), or ESA, and has been deemed to provide benefits, adequate protections, and minimize risk to the City, as well as to residential and small commercial utility customers therein; and

WHEREAS, Staff recommends approving the ESA and authorizing the City Manager to execute the agreement, and this recommendation was reviewed and approved at the May 9, 2023 Environmental Committee Meeting;

NOW, THEREFORE, BE IT RESOLVED, that City Council approves the MOU in the form attached to this Resolution; and

BE IT FURTHER RESOLVED, subject to the conditions that the awarded Supplier has been prequalified as required by Joule and that the awarded bid meets the specifications established in the Supply RFP, City Manager is authorized to execute an Electricity Supply Agreement on behalf of the City with any changes deemed necessary in City Manager’s reasonable discretion with the awarded Supplier and Joule in a timely fashion; provided, however, the City is under no obligation to award the Supply RFP should these conditions not be met.

ADOPTED this 11th day of May, 2023.

ATTEST:

Erin VanDamme
City Clerk

Memorandum of Understanding (“**MOU**”)
(with Conditional Authorization to Execute Electricity Supply Agreement)

To: Joule Assets, Inc.
Glenn Weinberg
gweinberg@jouleassets.com

From: Name of Municipality: City of Canandaigua (the
“**Municipality**”)
Name of City Manager: John D. Goodwin

Re: Request for Proposal for Electricity Supply dated March 29, 2023 (the “**RFP**”) and execution of the Electricity Supply Agreement attached thereto (the “**ESA**”).

Dated: as of May 11, 2023 (the date the Municipality signs the signature page, to be completed by Municipality)

This MOU and the attached signature page of the ESA attached hereto as Exhibit A (the “**Signature Page**”) is provided by the Municipality at Joule’s request:

- (i) To specify Municipality’s Default Product selection for the ESA;
- (ii) To facilitate execution of a binding ESA provided that certain conditions are met;
and
- (iii) To approve the Template Opt-Out Letter attached hereto as Exhibit B.

Default Product Option: In connection with the ESA, the Municipality chooses the following Default Product (select one):

- CCA Conventional Electricity Product (standard option).
- CCA Blended Electricity Product (50% New York State renewable supply).
- CCA Renewable Electricity Product (100% New York State renewable supply).

By delivering this MOU with the Signature Page signed by the Municipality (attached hereto as Exhibit A), Municipality authorizes Joule to release such signed Signature Page to the selected electricity supplier as part of the ESA, add the applicable execution date, and thereby complete execution of the ESA on behalf of the Municipality, but only upon satisfaction of the following two conditions:

- 1) Joule has received one or more RFP responses from one or more pre-qualified ESCOs that meets one or more of the following pricing benchmarks:
 - For CCA Conventional Electricity Product,

- (a) a variable price that is guaranteed to be at least \$0.0005 or 1% below the utility residential supply rate in each calendar month; or
 - (b) a fixed price not greater than 5% above the trailing 12-month average utility residential variable supply rate, as published by RG&E as of May 5, 2023. Such fixed price must be below the following rate:
\$0.0749/kWh (Residential), \$0.0771/kWh (Small Commercial)); or
 - For CCA Blended Electricity Product and CCA Renewable Electricity Product, a price not greater than the applicable benchmark for CCA Conventional Electricity Product set forth above plus a current representative market price for NYS voluntary Environmental Disclosure Program eligible RECs (\$0.022/kWh) and National RECs (\$0.005/kWh) necessary to fulfill obligations for the applicable offering:
 - CCA Renewable Electricity Product: **\$0.0969/kWh (Residential), \$0.0991/kWh (Small Commercial)**
 - CCA Blended Electricity Product: **\$0.0884/kWh (Residential), \$0.0906/kWh (Small Commercial)** and
- 2) The Municipality informs Joule in writing (including by email) that it may award the RFP to a qualified bidder and execute the ESA substantially in the form attached to the RFP.

EXHIBIT A

Signature Page to ESA

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.

Dated: _____ (to be entered by Competitive Supplier on the date that the last party signs) (the “Effective Date”)

NAME OF COMPETITIVE SUPPLIER:

By: _____
Print Name: _____
Title: _____
Email: _____

NAME OF CITY, TOWN, VILLAGE:

City of Canandaigua

By: _____
Print Name: John D. Goodwin
Title: City Manager
Email: john.goodwin@canandaiguanewyork.gov

JOULE ASSETS INC. (PROGRAM ADMINISTRATOR)

By: _____
Jessica Stromback
Chief Executive Officer
jstromback@jouleassets.com

[SIGNATURE PAGE TO ESA - MAY BE EXECUTED IN TRIPLICATE]