TOWN OF EGREMONT

CONSULTANT AGREEMENT
FOR MANAGEMENT OF THE TOWN'S MUNICIPAL AGGREGATION PROGRAM AND ENERGY-RELATED SERVICES

This Consultant Agreement is made and entered into this 30th day of Nov, 2015 by and between the Town of Egremont ("Town"), a municipal corporation having its principal place of business at 171 Egremont Plain Road, Egremont, MA 01252 as represented by the Board of Selectmen acting for and on behalf of the Town who signs these presents in its official capacity and incurs no liability in its individual capacity, and Colonial Power Group, Inc., having its principle place of business at 277 Main Street, Marlborough, MA 01752 ("Consultant"). It is agreed between the parties hereto as follows:

SCOPE OF SERVICES, DELIVERABLES: See Attachment A.

CONTRACTUAL RELATIONSHIP: The Consultant shall provide services described in the contract documents, which shall be as detailed in the specifications contained in the Request for Proposals which are incorporated herein and made a part hereto, including all addenda issued prior to execution of this Agreement. While so performing the services under this Agreement, the Consultant and the Town agree, understand and recognize that pursuant to M.G.L. c. 149, § 148B, the Consultant is: (1) free from control and direction in connection with the performance of the service, both under this Agreement and in fact; and (2) the service is performed outside the usual course of the business of the Town; and, (3) the Consultant is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the execution of the service.

APPLICABLE LAW: This Agreement shall be construed in accordance with the Uniform Procurement Act, M.G.L. c. 30B, and other laws of the Commonwealth of Massachusetts.

PAYMENT TERMS AND SCHEDULE: The Consultant shall receive a price of .001 per kilowatt hour (kWh). Said price per kWh shall be the complete price for all services and expenses incurred by the Consultant, and shall be paid directly to the Consultant by the Competitive Supplier.

TAX COMPLIANCE: The Consultant has provided certification of tax compliance in accordance with M.G.L. c. 62C, § 49A.

UNEMPLOYMENT CONTRIBUTION: The Consultant has provided certification of unemployment contribution or payments in lieu of contributions in accordance with M.G.L. c. 151A, § 19A.

DEBARMENT: The Consultant certifies under penalty of perjury that the said undersigned is not presently debarred from entering into a public contract in the Commonwealth of Massachusetts under the provisions of M.G.L. c. 29, § 29F, or any other applicable debarment

provisions of any other chapter of the Massachusetts General Laws or any rule or regulation promulgated there under.

INDEMNIFICATION: The Consultant, at its expense, shall to the maximum extent permitted by law, indemnify and save harmless the Town, its officers, agents and employees from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, and expenses (including reasonable attorney's fees) for any personal injury or property damage or other damages that the Town may sustain which arise out of or in connection with the Consultant's performance of a Contract, by the Consultant, its employees, or agents, including but not limited to negligence and/or reckless or intentional conduct of the Consultant, its agents, officers, employees, sub-consultants, or subcontractors. The existence of insurance shall in no way limit the scope of this indemnification. The Consultant further agrees to reimburse the Town for damage to the Town's property caused by the Consultant, its employees or agents, unless damage is caused by the Town's gross negligence or willful misconduct. After prompt notification of a claim by the Town, the Consultant shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The Town shall not be liable for any costs incurred by the Consultant arising under this paragraph.

ASSIGNMENT PROHIBITED: The Consultant agrees that it will not be permitted to assign or underlet the contract, nor assign either legally or equitably, any monies hereunder, or its claim thereto, without the previous written consent of the Board of Selectmen.

AMENDMENTS OR CHANGES: Any amendments or changes to this Agreement must be in writing, in compliance with M.G.L. c. 30B, and signed by officials with authority to bind the Consultant and the Town.

ABANDONMENT OF WORK OR OTHER DEFAULT: The Consultant agrees that abandonment or delay of services, or the supply of reports after the date of execution of this Agreement, shall be a breach of this Agreement. The Town may, by whatever legal remedies are available to it, complete or cause to be complete, the work or services and the Consultant shall bear full responsibility of the entire cost of completing the terms of the Agreement and agrees to pay to the Town any losses, damages, costs and expenses, including attorney's fees, sustained or incurred by the Town by reason of any of the foregoing causes.

PROCUREMENT ERRORS: If errors in the procurement or bidding laws or regulations of the Commonwealth, whether said errors were made by the Consultant or the Town, are found to exist by any agency of the Commonwealth or by any court of competent jurisdiction, this Agreement shall become null and void.

TERMINATION: This Agreement shall terminate on the date specified in this Agreement, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated under this Section upon prior written notice to the Consultant; provided however, that it is further agreed by the Consultant that any breach by the Consultant of the provisions of this Agreement and its incorporated attachments shall be sufficient cause for the Town to terminate this Agreement five (5) calendar days after the date of a written notice to the Consultant.

SEVERABILITY: And it is further agreed by the Consultant and the Town that the provisions of this Agreement are severable. If any provision of this Agreement is held invalid or if any court of competent jurisdiction holds any provision unlawful or not legal, the remaining provisions shall remain in effect.

ENTIRE AGREEMENT CLAUSE: The Town and the Consultant agree that this Agreement and its attachments constitute the entire Agreement between the Town and the Consultant, and no other binding agreement exist other than those incorporated herein.

DURATION OF CONTRACT: It is agreed the duration of this Agreement shall be 3 years with options to renew/extend for 3 years. These options are exercisable solely at the Town's discretion. It is understood and agreed that there is no financial contractual obligation of the Town in this Agreement or in any years subsequent to the fiscal year in which this Agreement is executed.

IN WITNESS WHEREOF, the said Consultant, and the said Town hereto set our hands and seals.

FOR THE CONSULTANT
BY:

Mark Cappadona, President

Date: 12/3/15

FOR THE TOWN OF EGREMONT
BY ITS BOARD OF SELECTMEN:

Bruce Turner, Chairman

Charles Flynn, Vice Chairman

Mary Brazie

Date: 11.30.15

ATTACHMENT A

SCOPE OF SERVICES / DELIVERABLES

1. OBTAINING AND ANALYZING LOAD DATA

The Consultant shall obtain and analyze the electrical load data for all consumers of electricity in the Town.

2. PREPARATION AND ISSUANCE OF RFP's FOR SUPPLY OF POWER

The Consultant shall develop a Request for Proposals ("RFP") for power supply for review and approval by the Town. In general, the procurement document shall include several components:

1. a description of the load aggregation (potential size of the aggregated load, and the number of customers and/or accounts);
2. the services and features desired by the Town;
3. the qualification criteria required in order to have a bid considered;
4. the criteria used to select the supplier;
5. the essential provisions of the standard contract between the chosen supplier and the Town on behalf of participating eligible consumers; and
6. the term of service.

The Consultant shall assist the Town with the review and analysis of all responsive and responsible bids from suppliers, and shall be responsible for recommending the bid that is in the best interests of the Town and meets the goals of the Town's Municipal Aggregation Program. Bids from suppliers shall be evaluated based on price, the supplier's proposed contract terms and conditions, reputation of supplier, quality of supplier's service, extent to which service meets Town's needs, supplier's past relationship with the Town, and previous work experience with governmental agencies. The Consultant shall obtain and verify references for similar supply contracts, if available.

3. BROKER SERVICES AND NEGOTIATIONS FOR SUPPLY CONTRACT

The Consultant shall act as the Town's broker during the procurement process. The Consultant shall provide all technical services during the negotiations and term of any contract with prospective power suppliers.

4. CUSTOMER ENROLLMENT / TRANSITION PROCESS

After approval of the price and term of the agreement by the Town with a supplier, the Consultant shall take all measures necessary to effectuate the transfer of customer data from the local distributor to the new supplier. The Consultant shall also manage the customer enrollment and opt-out process.

The Consultant shall have established procedures to respond to:

1. consumer queries and problems;
2. power supplier problems;
3. Distribution Company problems; and
4. media queries.

5. PUBLIC EDUCATION

The Consultant shall prepare or cause to be prepared all informational and educational materials for the general public and for the media, subject to the approval of the Town, including meetings with representative from the media. The Consultant shall prepare a recommended public education and information strategy to be used as part of the municipal aggregation program following commencement of the supply contract.

6. LEGAL ASSISTANCE

The Consultant shall prepare all required filings for the Department of Energy Resources ("DOER"), the Department of Public Utilities ("DPU"), and any other state agency if applicable.

7. MANAGEMENT OF MUNICIPAL AGGREGATION PROGRAM

The Consultant will administer and provide technical oversight of the Town's Municipal Aggregation Program including:

1. monitoring and reporting on compliance by the supplier with all contract terms and conditions;
2. resolution of contract issues;
3. administration of the "opt-out" process for customers;
4. participation in negotiations with the competitive suppliers and the distribution company serving the Town relating to the Municipal Aggregation Program;
5. preparation of written reports on the ongoing operations of the Town's Municipal Aggregation Program to be submitted on a quarterly basis to the Town; and
6. routine updates and attendance at meetings with the Town officials, Board and Committees.

8. MAINTENANCE OF EFFORT

After a contract is executed between the Town and an electricity supplier, the Consultant shall conduct ongoing power supply analyses, be the advocate for ratepayers, provide answers to questions from ratepayers, and provide a hotline and web site where ratepayers can seek information related to the Town's Municipal Aggregation Program.

The Consultant shall provide a written report concerning the following issues and items to the Town on a quarterly basis:

1. supplier's compliance with all terms and conditions of contract;
2. contract issues and resolutions, if any;
3. whether supplier's contract milestones have been met;
4. administration/customer service, defaults, litigation and penalties, if any;
5. customer participation;
6. changes in the financial stability of the supplier, if any; and
7. changes in organizational structure of the supplier, if any.

The Consultant shall provide a written report concerning the following issues to the Town prior to the expiration, extension or renewal of the contract:

1. assessment of achievement of contract milestones;
2. possible revision or upgrading of goals;
3. market assessment or new feasibility study if conditions in the service area or operations have changed significantly;
4. public process to affirm goals and evaluation;
5. bidding and negotiation process;
6. formulation of new contract; and
7. service transition process, if needed.