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*Admitted in: MA*

June 1, 2016

HAND DELIVER and ELECTRONIC

Mark D. Marini, Secretary  
Department of Public Utilities  
One South Station, 5<sup>th</sup> Floor  
Boston, Massachusetts 02110

Re: Town of Franklin - D.P.U. 16-57

Dear Secretary Marini:

Enclosed please find four copies of the Petition of the Town of Franklin ("Franklin") for Approval of Aggregation Plan Pursuant to G.L. c. 164, Section 134 ("Petition") pursuant to which Franklin respectfully requests that the Department of Public Utilities ("Department") approve its Community Choice Power Supply Aggregation Plan ("Aggregation Plan"). See Attachment B to Petition. The Aggregation Plan has been approved by Franklin pursuant to the requisite local process. See Petition, Attachments C – E. Franklin has also consulted with the Department of Energy Resources ("DOER") and National Grid. The DOER's letter confirming the completion of the consultation process is also included with this submittal.

Franklin has retained Colonial Power Group, Inc. ("Colonial") to prepare necessary filings before the Department and to assist in securing necessary regulatory approvals. Petition, Attachment D, p. 5. Accordingly, Colonial and its counsel are delivering this Petition on behalf of Franklin as a courtesy. Also, enclosed please find the Petition for Leave to Intervene of Colonial Power Group, Inc. Finally, enclosed please find a check for \$100 for the requisite filing fee.

Colonial notes that this Petition is being filed coincidentally with another similar petition. Franklin and Colonial respectfully request that the Department issue a combined public notice for these proceedings in order to reduce publication and service costs for the petitioners.

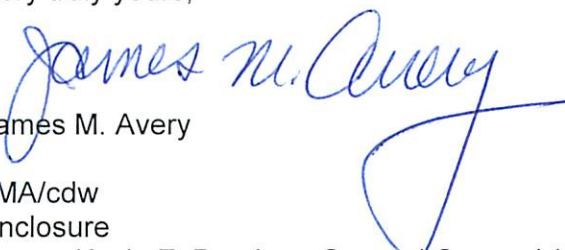
Please enter appearances on behalf of Franklin by Jeffrey D. Nutting, Town Administrator, Town of Franklin, 355 East Central Street, Franklin, Massachusetts 02038 (phone: 508.520.4949). Please also enter an appearance on behalf of Colonial by James M. Avery, Esq., Pierce Atwood LLP, 100 Summer Street, Suite 2250, Boston, Massachusetts 02110 (phone: 617.488.8100).

Mark D. Marini, Secretary  
Department of Public Utilities  
June 1, 2016  
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Please call me if you require further assistance with respect to this matter.

Thank you for your consideration.

Very truly yours,

  
James M. Avery

JMA/cdw

Enclosure

cc: Kevin F. Penders, General Counsel (w/enc via hand delivery and electronic)  
Judith Judson, Commissioner – DOER (w/enc and electronic)  
Rebecca L. Tepper, Division Chief (w/enc and electronic)  
Andrea G. Keeffe, Esq. (w/enc and electronic)  
Jeffrey D. Nutting, Town Administrator, Town of Franklin (electronic)  
Mark Cappadona, President (electronic)  
Brian E. Murphy, Clerk (electronic)

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF PUBLIC UTILITIES**

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Town of Franklin  
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D.P.U. 16-57

**PETITION FOR LEAVE TO INTERVENE  
OF COLONIAL POWER GROUP, INC.**

Pursuant to G.L. c. 30A, § 11 and 220 CMR Section 1.03, Colonial Power Group, Inc. ("Colonial" or the "Company") hereby petitions the Department of Public Utilities (the "Department") for leave to intervene in the above-referenced proceeding. In support of this motion, Colonial states the following:

1. Colonial is a Massachusetts corporation and maintains its principal offices at 277 Main Street, Marlborough, MA 01752.
2. On June 1, 2016, the Town of Franklin ("Franklin") filed a petition for approval of a proposal to implement a municipal electricity aggregation plan pursuant to G.L. c. 164, § 134 (the "Plan").
3. Colonial has been retained to design and secure necessary approvals and, if approved, will have substantial administrative responsibility for the implementation of the Plan.
4. The Department's investigation in this proceeding will address issues associated with plan design and contracting and other issues of direct concern for Colonial.
5. The Department may allow any person that "may be substantially and specifically affected" by a proceeding to intervene as a party. G.L. c. 30A, § 10; see also 220 CMR § 1.03(1).
6. Colonial is likely to be substantially and specifically affected by the Department's finding with respect to nature and implementation of the Plan.

7. Colonial expects that its participation will be focused and will facilitate the Department's review of the Plan.

8. Colonial's interests are unique and cannot be adequately represented by any other party.

9. Franklin has been contacted and has indicated that Franklin does not object to Colonial being granted intervener status in this proceeding.


10. Accordingly, Colonial moves for leave to intervene in this proceeding and participate in this proceeding in consistent with the ground rules and procedures established by the hearing officer.

WHEREFORE, Colonial respectfully requests that the Department grant this petition for leave to intervene and take such other actions as may be necessary and appropriate.

Respectfully submitted,

COLONIAL POWER GROUP, INC.

By its attorneys,



James M. Avery, Esq.  
Pierce Atwood LLP  
100 Summer Street, Suite 2250  
Boston, MA 02110  
Tel.: 617.488.8100  
Fax: 617.824.2020  
[javery@pierceatwood.com](mailto:javery@pierceatwood.com)

Dated: June 1, 2016

**THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

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Town of Franklin

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D.P.U. 16-57

**PETITION OF TOWN OF FRANKLIN FOR APPROVAL OF  
AGGREGATION PLAN PURSUANT TO M.G.L. c. 164, § 134**

**I. INTRODUCTION**

The Town of Franklin (“Town”) hereby petitions the Massachusetts Department of Public Utilities (“Department”) for approval pursuant to M.G.L. c. 164, § 134 (“Section 134”) of Franklin’s Community Choice Power Supply Program’s Aggregation Plan (“Plan”) (see Attachment B). Section 134 authorizes municipalities to aggregate the electrical load of electricity consumers located within their borders in order to procure competitive supplies of electricity.

On December 16, 2015, at a Town Council Meeting, the Town initiated the formal process to become a municipal aggregator pursuant to Section 134 by declaring its intent to become an aggregator of electric power (See Attachment C). On February 3, 2016, pursuant to M.G.L. c. 30B, § 1(b)(32), the Town elected to forego the Request for Proposals (RFP) process when seeking a consultant to assist the Town in the design, implementation and administration of the Program (See Attachment D). On February 3, 2016, the Town Administrator signed a consultant agreement with Colonial Power Group, Inc. (CPG) to be the consultant for the Town to guide it through the municipal aggregation process and to administer the Plan, if ultimately approved (See Attachment E).<sup>1</sup> On March 9, 2016, the Town Council approved the Plan (See Attachment F). In developing the Plan, the Town and CPG incorporated the comments and suggestions of public officials, including the Massachusetts Department of Energy Resources (DOER). The Town and CPG also conducted discussions with National Grid (“Local Distributor”).

**II. REQUESTED PROCEDURES TO REVIEW AGGREGATION PLAN**

The Town respectfully requests that the Department conduct its review of this petition expeditiously in order to allow the Town to proceed with Plan implementation and to negotiate binding agreements with interested Competitive Suppliers. The Town wishes to take advantage

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<sup>1</sup> Pursuant to the agreement between the Town and CPG, CPG is obligated to prepare and submit all filings relating to the Plan with the Department. Accordingly, CPG’s petition for leave to intervene in this proceeding is included with this Petition. The Town supports CPG’s petition.



of current market conditions to maximize savings for its eligible consumers. Therefore, the Town respectfully requests an order by August 1, 2016. Municipal aggregators are required by their very nature to conduct their business openly and with full participation by the public. The Town holds regular, open public meetings at which eligible consumers have had the opportunity to express their views and shape the Town's Plan. Moreover, the Town has adopted forms that comport with aggregation plans previously approved by the Department and the Plan has been reviewed by the DOER. The Town (and CPG), therefore, respectfully propose a streamlined process consistent with other aggregation plan reviews that would include a public hearing, discovery by Department staff, and an opportunity for interested persons to submit written comments after the conclusion of the public hearing. In return, the Town and CPG commit to providing requested information to the Department on an expeditious basis. Cf. Cape Light Compact, D.T.E. 04-32, p. 2 (Review procedure summarized.)

### **III. DEVELOPMENT OF AGGREGATION PLAN, SELECTION OF COMPETITIVE SUPPLIER, AND COMPLIANCE WITH STATUTORY REQUIREMENTS**

The Town and CPG developed the Plan consistent with sound and established planning practices and all relevant statutory requirements. First, the Plan was developed in conjunction with consultation with the DOER as required by M.G.L. c. 164, § 134. Second, the Town and CPG offered numerous opportunities for the public to review and comment upon the Plan. Third, the Town and CPG drew substantially from the plan and procurement processes established by and approved for the Cape Light Compact and the Community Choice Power Supply Programs administered by CPG. The Town and CPG expect to continue to benefit from the experience of these established public aggregation plans.

The Plan and a form of Electric Service Agreement (ESA) developed in order to implement the Plan ensure that Plan participants will receive required notices, that the Town will be able to choose an appropriate Competitive Supplier and that eligible consumers will be able to opt-out of the Town's Plan consistent with relevant requirements. The Plan and ESA thus meet the requirements of M.G.L. c. 164, § 134(a), ¶¶5, 6. The Town's detailed Education and Information Plan ("Education Plan") is provided as Attachment H, an Implementation Schedule is provided as Attachment I and a draft Customer Notification Form is provided as Attachment J.

The Plan and parallel portions of the ESA address the required provisions for organizational structure, operations, funding, activating and terminating the Plan, methods for entering and terminating agreements, rate setting and other costs to participants, universal access, equitable treatment of ratepayers, reliability, and rights and responsibilities of participants.

The Plan, similar to all Community Choice Power Supply Programs administered by CPG, incorporates several innovative features that best address these requirements in the context of the

requirements and objectives of the Town as being implemented by CPG with respect to the Plan. First, the Town may be “revenue neutral” with respect to the Plan. The Town has not incurred any outside costs with respect to the development of the Plan and the ESA. These efforts have been undertaken by CPG and CPG will only receive remuneration pursuant to a consumption-based charge to be reflected in the energy charge to Plan consumers. See Plan, §§ 2.4, 3.0. This fee structure was an important feature to the Town in its election to pursue the Plan.

#### **IV. WAIVER OF CERTAIN INFORMATION DISCLOSURE REQUIREMENTS**

The Town or any Competitive Supplier to the Town may be obligated to disclose to participating consumers a range of information regarding prices, collective bargaining agreements, fuel sources and air emissions, under M.G.L. c. 164, § 1F(6) and 220 C.M.R. 11.06.

Competitive Suppliers have indicated that requiring the disclosure label to be inserted into the Local Distributor’s paper bills would be costly for the supplier, and thereby drive up the bids offered to the Town. An additional burden would be placed on the Local Distributor to determine how to send the disclosure label to those customers who are on electronic billing.

The Town or its Competitive Supplier can provide much of this the information required by the statute, M.G.L. c. 164, § 1F(6), especially the information regarding the fuel sources, emissions characteristics and labor characteristics, more effectively and at lower cost by using means other than those specified in the regulation, 220 C.M.R. 11.06(4) (see Attachment H for the Town’s Education Plan). The Town therefore requests a waiver, both for itself and any Competitive Supplier, of certain of the requirements of 220 C.M.R. 11.06, under the Department’s authority for good cause, to grant an exception to the requirements of 220 C.M.R. 11.00. See 220 C.M.R. 11.08. Specifically, the Town requests that the Department waive the requirements of 220 C.M.R. 11.06(4)(c) that a Competitive Supplier provide an information disclosure label directly to retail consumers on a quarterly basis. The Department has allowed this exemption in all Department approved Municipal Aggregation Plans to date.

As an alternative to providing the quarterly information disclosure label directly to participating consumers, the Town and CPG respectfully request that the Department allow that the Town may provide the information regarding fuel sources, emissions and labor characteristics by alternative means. Based upon information available to it, the Town and CPG believe that other means are as likely, if not more likely, to effectively deliver the information required by the statute and regulations. These alternative measures include press releases, public service announcements on cable TV, newsletters of civic, business and religious organization, postings at Town Hall, discussions at meetings of the Town’s Town Council (which are televised and reported in the press), and postings on the websites of the Town or CPG. In the case of all current Community Choice Power Supply Programs administered by CPG, no participating

consumers have objected to the change in delivery formats.

Importantly, the Town's and CPG's waiver request is narrow. The Town and CPG are not seeking any waiver of its obligations under M.G.L. c. 164, § 134 to provide written notice to inform all ratepayers of the automatic enrollment process, their rights to opt-out of the Plan, and of their other rights under Section 134. The Town and CPG are also not seeking any waiver of any Competitive Supplier's obligations to provide written Terms of Service to each ratepayer (220 C.M.R. 11.06(3)), and to provide to all participating consumers a toll-free telephone number for customer service and complaints (220 C.M.R. 11.06(2)(c)). Any Competitive Supplier will also provide, prior to the initiation of service, the price information required by 220 C.M.R. 11.06(2)(b).

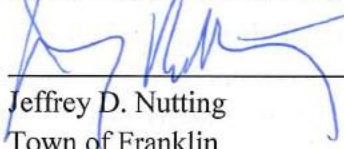
## **V. CONCLUSION**

WHEREFORE, the Town, with the support of CPG, respectfully requests that the Department find that the Town's Plan and related procedures meet all of the requirements of M.G.L. c. 164, § 134 and approve the Plan, issue the specific waiver requested in Section IV above, and take such other actions as may be necessary and appropriate.

Respectfully submitted,

TOWN OF FRANKLIN

By its Town Administrator,



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Jeffrey D. Nutting

Town of Franklin

355 East Central Street

Franklin, MA 02038

Tel.: (508) 520-4949





COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF  
ENERGY AND ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENERGY RESOURCES**  
100 CAMBRIDGE STREET, SUITE 1020  
BOSTON, MA 02114  
Telephone: (617) 626-7300  
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**Charles D. Baker**  
Governor

**Karyn E. Polito**  
Lt. Governor

**Matthew A. Beaton**  
Secretary

**Judith F. Judson**  
Commissioner

May 18, 2016

Jeffrey D. Nutting, Town Administrator  
Town of Franklin  
335 East Central Street, Route 140  
Franklin, Massachusetts 02038

**Re: Town of Franklin Municipal Load Aggregation Plan**

Dear Mr. Nutting:

I am writing to inform you that the Town of Franklin ("Franklin") has completed its consultation with the Department of Energy Resources ("DOER"), pursuant to G.L., c.164, § 134(a) in the development of its Municipal Load Aggregation Plan, detailing the process and consequences of aggregation.

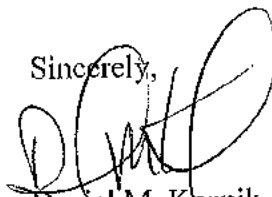
The DOER attests to the good faith effort made by Franklin and its agent, Colonial Power Group, Inc. ("Colonial") in the consideration of the undertaking; the communications it has conducted with Franklin's distribution company, National Grid; the development of a market-ready Energy Supply Agreement with licensed Competitive Suppliers; and the communications it has conducted with us. We have engaged in helpful discussions with both the Town and its consultants, Colonial, during recent weeks. During that portion of our discussion that addressed the emphasis on transparency for the benefit of its consumers and the high priority of the Town to retain its municipal autonomy throughout the implementation of its Plan, Colonial, its agent, reiterated the Municipality's intent to operate as a single Municipal Load Aggregation Plan and to solicit bids solely on its load and not jointly with other municipalities. Upon review of Franklin's documentation, we have made additional observations and comments and offered suggestions regarding revisions to its Plan and supporting documentation.

Our exchange of views has reached a satisfactory conclusion. We have now completed these discussions in response to explanations provided to our questions and assurances made accommodating our suggestions by the Town of Franklin and Colonial. After examination of

Franklin's proposal, on May 13, 2016 the DOER conducted a meeting telephonically with Jamie Hellen, the Deputy Town Administrator, and the Town's agent, Colonial, which is coordinating this effort. In performing these actions, the DOER has provided technical assistance consistent with our charge under G.L. c.25A, § 6(11).

The DOER is satisfied that the Town of Franklin and Colonial are undertaking this effort with realistic expectations of the municipal benefits that may accrue to future Aggregation Plan subscribers. Similarly, we recognize the commitment of Franklin as it seeks to bring value to the community through this public aggregation.

Sincerely,

A handwritten signature in black ink, appearing to read 'DK', is written over the word 'Sincerely,'.

Daniel M. Knapiak  
Director, Green Communities

DK: siv  
cc: Mark Cappadona



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**TOWN OF FRANKLIN  
COMMUNITY CHOICE POWER SUPPLY PROGRAM**

**PETITION AND SUPPORTING ATTACHMENTS**

**PREPARED BY**

**COLONIAL POWER GROUP, INC.**

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# **TOWN OF FRANKLIN COMMUNITY CHOICE POWER SUPPLY PROGRAM**

## **LIST OF ATTACHMENTS**

<b>ATTACHMENT A:</b>	Approval and Authorization Timeline
<b>ATTACHMENT B:</b>	Aggregation Plan
<b>ATTACHMENT C:</b>	Public Aggregator Authorization
<b>ATTACHMENT D:</b>	Request for Proposals
<b>ATTACHMENT E:</b>	Consultant Agreement
<b>ATTACHMENT F:</b>	Aggregation Plan Approval
<b>ATTACHMENT G:</b>	Electric Service Agreement
<b>ATTACHMENT H:</b>	Education and Information Plan
<b>ATTACHMENT I:</b>	Implementation Schedule
<b>ATTACHMENT J:</b>	Customer Notification Form

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# **TOWN OF FRANKLIN COMMUNITY CHOICE POWER SUPPLY PROGRAM**

## **APPROVAL AND AUTHORIZATION TIMELINE**

**PREPARED BY**

**COLONIAL POWER GROUP, INC.**

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**AGGREGATION AUTHORIZED:**

**DECEMBER 16, 2015**

The Town Council authorized the Town to become an aggregator of electricity. This vote authorized the Town to explore market prices for power supply and services on behalf of the Eligible Consumers in the Town. [Attachment C]

**REQUEST FOR PROPOSALS EXEMPTED:**

**FEBRUARY 3, 2016**

Pursuant to M.G.L. c. 30B, § 1(b)(32), the Town is not required to release a Request for Proposals when seeking a consultant to assist the Town in the design, implementation and administration of Franklin's Community Choice Power Supply Program. [Attachment D]

**CONTRACT EXECUTED:**

**FEBRUARY 3, 2016**

The Town entered into a contract with Colonial Power Group, Inc. (CPG). [Attachment E]

**PUBLIC REVIEW AND COMMENT PERIOD:**

**FEBRUARY 12 - MARCH 8, 2016**

The Town made the Aggregation Plan available for public review and comment. [Attachment F]

**AGGREGATION PLAN APPROVED:**

**MARCH 9, 2016**

The Town Council approved the Aggregation Plan. [Attachment F]

**DOER REVIEWED:**

**MAY 13, 2016**

The Town, CPG, and the Massachusetts Department of Energy Resources (DOER) conducted a meeting to review the processes, consequences, and outcomes of municipal aggregation. The Town and CPG are grateful for the assistance from the DOER.





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# **TOWN OF FRANKLIN COMMUNITY CHOICE POWER SUPPLY PROGRAM AGGREGATION PLAN**

PREPARED BY  
**COLONIAL POWER GROUP, INC.**

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## **PURPOSE OF THE AGGREGATION PLAN**

The Town of Franklin (“Town”) developed this Aggregation Plan (“Plan”) in compliance with Massachusetts law regarding public aggregation of electric consumers. It contains required information on the structure, operations, services, funding, and policies of the Town’s Plan. The Plan has been developed in consultation with an aggregation implementation consultant (Consultant), initially Colonial Power Group, Inc. (CPG) and the Massachusetts Department of Energy Resources (DOER).

The purpose of this Plan is to represent consumer interests in competitive markets for electricity. It seeks to aggregate consumers in the Town to negotiate rates for power supply. It brings together the buying power of over 32,000 consumers. Furthermore, the Town seeks to take control of energy prices. Participation is voluntary for each eligible consumer. Eligible consumers have the opportunity to decline service provided through the Plan and to choose any Competitive Supplier they wish. Based on enrollment figures from previous community aggregations, CPG anticipates that 97% of the eligible consumers will participate. The Town has distributed this Plan for public review prior to submitting it to the Massachusetts Department of Public Utilities (“Department”).

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# **REQUIREMENTS FOR MUNICIPAL AGGREGATION**

The Massachusetts Electric Utility Restructuring Act of 1997 (“Restructuring Act”) contains several requirements for municipal aggregators. One requirement is to develop an aggregation plan in consultation with the DOER. The Plan is subject to review by consumers in the participating municipality and approval by the Department.

## **1 THE PROCESS OF MUNICIPAL AGGREGATION**

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Municipal aggregation involves a multi-step public process as follows:

- 1.1 Vote and Authorization to become a Public Aggregator
- 1.2 Development of Plan in Consultation with DOER
- 1.3 Review of Plan by Town Administrator, Town Council and Consumers
- 1.4 Vote on Plan by Town Council
- 1.5 Submission of Plan for Department Approval
- 1.6 Public Hearing on Plan by Department
- 1.7 Selection of Date for Receipt of Price Terms from Competitive Suppliers
- 1.8 Selection of Competitive Supplier by Town Administrator
- 1.9 Notification of Enrollment for Eligible Consumers
- 1.10 Beginning of Opt-Out Period (30 days prior to first service date)
- 1.11 Transfer of Participating Consumers to Competitive Supplier

In addition to this process, municipal aggregators must comply with open meeting laws, ethical rules, and certain public bidding and information requirements.

## **2 FRANKLIN'S COMMUNITY CHOICE POWER SUPPLY PROGRAM**

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The Town offers one program to achieve its goals: Franklin's Community Choice Power Supply Program ("Program"). The Program provides professional representation on behalf of consumers in state proceedings and in regional or local forums to protect consumer interests in an evolving marketplace.

The Program is designed to offer competitive choice to eligible consumers and to gain other favorable economic and non-economic terms in service contracts. The Town does not buy and resell power, but represents consumer interests to set the terms for service. Through a competitive bid and negotiation process, the Town develops a contract with a Competitive Supplier for firm, all-requirements service. The contract runs for a fixed term. The process of contract approval contains checks and balances. Once the contract has been negotiated by the Town's agent, it must be submitted to the Town Administrator for approval. And lastly, eligible consumers may opt-out of the Program, and select Basic Service or power supply from any other Competitive Supplier they wish at any time before or following their enrollment in the Town's Program. No eligible consumer is required to receive service under the Town's contract. [See Section 4.1.6 for detailed information on the opt-out process.]

### **2.1 ORGANIZATIONAL STRUCTURE**

The Town's government is led by a nine person Town Council. Daily operations are overseen by a Town Administrator. Town elections are held the first Tuesday in November.

The Town Council is composed of nine members elected for two year terms. They meet every first and third Wednesday evening at 7:00 P.M. at Town Hall. They may also hold other meetings from time to time. The Town Council acts as the Town's Chief Executive Body responsible for the general welfare of the community. Specific powers and responsibilities of the Town Council are set forth in the Town Charter. The operational role of the Town and its agent in relation to consumers is outlined and described in the following pages.

### **2.2 OPERATIONAL LEVELS**

There are five operational levels to the Town's Program as follows:

#### **2.2.1 Level One: Consumers**

Consumers hold the ultimate authority over the Program and its functions. They can elect candidates for the Town Council who may take positions regarding the Program. They can

participate in local and regional meetings and hearings regarding issues related to restructuring in general and the Town's Program in particular. And they can attend meetings to express their views.

Every eligible consumer in the Town may participate in the Town's Program. All eligible consumers will also have the ability to decline service through the Competitive Supplier and choose any other power supply option they wish or remain with the Local Distributor, National Grid (NGRID). Eligible consumers who are dissatisfied with services provided under the contract negotiated by the Town may also communicate directly with the Competitive Supplier or the Consultant retained by the Town to assist with the implementation of the Plan via e-mail or toll-free telephone number in an effort to alter or otherwise improve service. Eligible consumers may also opt-out at any time by contacting the Competitive Supplier. Eligible consumers may also bring issues before the Town Council.

### **2.2.2 Level Two: Town Council**

Based upon its existing authority or authority provided by voters at Town elections, the Town Council may act on program and policy issues and contract recommendations. In addition, it may provide instructions to the Town's agent regarding specific policy or program decisions to be made under the Program. It may also raise issues directed to it by consumers for the Town to address.

### **2.2.3 Level Three: Town Administrator**

The Town Administrator carries out the collective decisions and instructions of the Town Council and participating consumers.

### **2.2.4 Level Four: Consultant**

As the Town's agent, the Consultant shall provide the day-to-day management and supervision of the business affairs of the Program under a contract agreement. The Consultant shall serve as the Town's procurement agent, utilizing its existing staff to solicit services as requested by the Town. In addition, the Consultant provides office space and administrative support to coordinate the Program's operations.

This administrative support includes:

- communications;
- program development;
- recordkeeping; and
- program oversight and maintenance.



### **2.2.5 Level Five: Competitive Suppliers**

Competitive Suppliers contract with the Town through its Town Administrator. The contract is negotiated, recommended, and monitored for compliance by the Consultant. No contract is binding until it is approved by the Town Administrator. The complete set of Competitive Supplier responsibilities is found in the Electric Service Agreement (ESA) between the Town and the Competitive Supplier.

## **2.3 OPERATIONS**

The Program's operations are guided by the provisions and goals contained in this Plan and the instructions and decisions of the Town Administrator, the Consultant, and participating consumers.

The goals of this Plan are as follows:

- provide the basis for aggregation of eligible consumers on a non-discriminatory basis;
- acquire a market rate for power supply and transparent pricing;
- provide equal sharing of economic savings based on current electric rates;
- allow those eligible consumers who choose not to participate to opt-out;
- provide full public accountability to participating consumers; and
- utilize municipal and other powers and authorities that constitute basic consumer protection to achieve these goals.

## **2.4 STAFFING AND MANPOWER**

The operations necessary to plan, deliver, and manage the Town's Program include:

- technical analysis;
- competitive procurement of services;
- regulatory approvals;
- accounting and fiscal management;
- contract maintenance;
- communications;
- program coordination; and
- administrative support.

The Town intends to utilize the Consultant as the professional, technical, and legal consultant to operate the Program. The Consultant is a licensed broker of electricity in Massachusetts (EB-107). The Consultant has experience designing, implementing and administering opt-out

municipal aggregation programs.

The Consultant will be responsible for monitoring all aspects of the Program and any resulting contractual agreements, including but not limited to: monitoring and reporting on compliance with all contract terms and conditions, resolution of contract issues, implementation of the opt-out process for consumers, participation in negotiations with NGRID, preparation of reports, as directed, and routine updates and attendance at meetings with the Town Administrator and Town Council.

The Program has been developed on behalf of the Town by the Consultant with the support of technical consultants and legal counsel. Once a contract has been secured, the Consultant will administer the Program.

The Consultant will undertake negotiations with Competitive Suppliers and provide representation at the state level, as needed, at the direction of the Town Administrator and Town Council. The terms and conditions of any contract may be subject to review by the Town Attorney, as well as by any outside legal counsel which may be selected by the Town, and may be further subject to the Town Attorney's approval as to legal form.

### **3 FUNDING**

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Initial funding for Town's Program comes from private capital supplied by CPG. The ESA with a Competitive Supplier will include a \$0.001 per kWh adder that will be paid by the Competitive Supplier to the Consultant. The \$0.001 per kWh adder will fund the on-going costs of the Program. The start-up costs, to be borne by the Consultant, include costs for legal representation, public education, and communications. Mailing costs will be borne by the Competitive Supplier.

### **4 ACTIVATION AND TERMINATION**

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#### **4.1 ACTIVATION**

Following the process of municipal aggregation and competitive procurement of a proposed contract by the Town, activation of the Program requires the following steps:

- a) Approval of Plan by Department
- b) Acceptance of ESAs by Town Council and Town Administrator
- c) Signing of ESA by Town Council and Town Administrator
- d) Notification of Enrollment for Eligible Consumers
- e) Notification of NGRID
- f) Beginning of Opt-Out Period

g) Transfer of Participating Consumers to Competitive Supplier

Each of these steps is described as follows:

**4.1.1 Approval of Plan by Department**

The Town, through its agent, shall file this Plan with the Department. The Department is required to hold a public hearing on the Plan.

**4.1.2 Acceptance of ESAs by Town Council and Town Administrator**

All contracts negotiated by the Town shall be expressly conditioned upon the acceptance of the contract by the Town Administrator. Competitive Suppliers and contracts must comply with all applicable laws and rules and regulations promulgated by the Department concerning Competitive Suppliers.

**4.1.3 Signing of ESA by Town Council and Town Administrator**

With the signing of the contract by the Town Administrator, the terms and conditions in the contract will be utilized for service for eligible consumers within the municipal boundaries of the Town, except for those eligible consumers who have selected a Competitive Supplier prior to the contract activation date and do not wish to switch to service under the Town's contract, or those eligible consumers who affirmatively opt-out of the Program.

**4.1.4 Notification of Enrollment for Eligible Consumers**

Following approval of the contract by the Town, the Competitive Supplier shall undertake notification of all eligible consumers on Basic Service to be enrolled. NGRID will inform the Competitive Supplier and the Consultant as to which consumers are on Basic Service and which consumers are receiving power from third-party suppliers. NGRID will electronically transmit the name, address and account of eligible consumers and run this data just prior to the meter read at which the change to the Competitive Supplier is set to occur to ensure that no consumers contracted with third-party suppliers are enrolled. Only current Basic Service consumers will be sent opt-out notices. The Town may also generally notify all consumers receiving competitive service of their eligibility to receive power from the Town's Competitive Supplier. Once the appropriate notification has been provided to the eligible consumer and applicable opt-out requirements met, the Competitive Supplier will electronically enroll the eligible consumer by submitting an "enroll customer" transaction to NGRID in accordance with the rules and procedures set forth in the EBT Working Group Report, which is applicable to all Competitive Suppliers and distribution companies in Massachusetts.

The process of notification shall be multi-layered and will include:

- mailings by the Town;
- newspaper notices;
- public service announcements (PSAs); and
- notices posted in Town Hall.

Prior to enrollment, this notification shall:

- inform eligible consumers they have the right to opt-out of the aggregated entity without penalty and choose Basic Service at any time before or after their first day of service;
- prominently state all charges to be made and a comparison of the price and primary terms of the Town's contract compared to the price and terms of NGRID's Basic Service;
- explain the opt-out process; and
- provide written notification that no charges associated with the opt-out will be made by the Competitive Supplier.

When a new eligible consumer first moves to the Town, the eligible consumer will not be assigned to the Town's Competitive Supplier until the Competitive Supplier submits an "enroll customer" transaction. Prior to such "enroll customer" transaction, the eligible consumer shall receive Basic Service. The Competitive Supplier is responsible for including new eligible consumers in the Program as they move into the Town by the requesting electronic transmittals on a quarterly basis from NGRID, notifying and enrolling per the procedures followed for the initial enrollment.

The approximate timing of the major procedural steps related to the notification of consumers is as follows:

Day 1	Supply contract executed between Town and Competitive Supplier
Day 2	Competitive Supplier notifies NGRID to prepare Town eligible consumer data
Day 3	Competitive Supplier begins EDI testing with NGRID
Day 14	Competitive Supplier receives eligible consumer data from NGRID
Day 18	CPG and/or Competitive Supplier mails opt-out notice to all eligible consumers
Day 19	30-day opt-out period begins on date of postmark
Day 21	Eligible consumers receive mail
Days 21-51	Consumers wishing to opt-out return pre-paid reply card to Competitive Supplier

Day 33	Competitive Supplier completes EDI testing with NGRID
Day 52	Competitive Supplier removes opt-outs from eligible list
Day 53	Competitive Supplier sends “supplier enrolls customer” EDI for all participating consumers

Participating consumers are enrolled with supplier on the next meter read, provided that the enrollment transaction is submitted no fewer than two full business days before the meter read.

Our Consultant’s experience with previous aggregation programs suggests that the Town, Competitive Supplier and NGRID need about two months to complete the consumer notification and enrollment process.

The procedures described above may also be found in NGRID’s Terms and Conditions for Municipal Aggregators, M.D.P.U. No. 1202, as amended or superseded from time to time. These procedures were discussed in numerous meetings between CPG and NGRID.

The methods by which eligible consumers will be enrolled in the Program are consistent with NGRID’s Terms and Conditions for Competitive Suppliers, M.D.P.U. No. 1201, as amended or superseded from time to time.

#### **4.1.5 Notification of NGRID**

Along with notification of eligible consumers, the Town shall notify the selected Competitive Supplier and NGRID to begin preparation of the administrative process to transfer eligible consumers coincident with each eligible consumer’s billing cycle. Alternatively, or in combination with the Town notification, the selected Competitive Supplier may notify NGRID to begin preparation of the administrative process.

#### **4.1.6 Beginning of Opt-Out Period**

Eligible consumers may opt-out of service from the Program at no charge either in advance of service start up deadlines or at any time after the first day of service. Participating consumers who seek to return to NGRID’s Basic Service should provide notice to the Competitive Supplier and/or NGRID five or more business days before the next scheduled meter read date. Pursuant to NGRID’s Terms and Conditions for Municipal Aggregators, M.D.P.U. No. 1202, participating residential consumers will be transferred to NGRID’s Basic Service in two business days if they directly notify NGRID of the intent to terminate generation service from the Competitive Supplier. If a commercial or industrial consumer directly notifies NGRID of the choice to terminate generation service from the Competitive Supplier, the generation service shall be terminated on the date of the customer’s next scheduled meter read. If a residential, commercial, or industrial customer notifies the Competitive Supplier of the choice to terminate receipt of



generation service, the termination shall take place on the date of the customer's next scheduled meter read, so long as the Competitive Supplier has submitted the transaction to NGRID no fewer than two business days prior to the meter read date. There shall be no charge for returning to NGRID's Basic Service in this manner. Further opportunities for eligible consumer opt-out may be negotiated by the Town and the Competitive Supplier and included in the terms of the contract presented to the Town Council, the Town Administrator, and made part of the public information offered to each eligible consumer. Eligible consumers who opt-out and subsequently wish to enroll may be enrolled at the Competitive Supplier's discretion and pursuant to NGRID's Terms and Conditions for Competitive Suppliers, M.D.P.U. No. 1201, as amended or superseded from time to time.

#### **4.1.7 Transfer of Participating Consumers to Competitive Supplier**

The process of activation is an administrative function with three parts:

- a) Data Preparation: NGRID will identify all eligible consumers on Basic Service in the Town by eliminating those who have already selected a Competitive Supplier.
- b) Automatic Enrollment: All verified eligible consumers shall be transferred to the Town's Competitive Supplier coincident with NGRID's billing periods, unless they have previously sent in notification of their intent to opt-out according to established deadlines. Eligible consumers will be enrolled with the new Competitive Supplier over the period of one month. Service under the new Competitive Supplier shall begin at the start of the billing period following transfer.
- c) Notification: NGRID shall notify each transferred participating consumer of the change to the Town's Competitive Supplier with its last bill for Basic Service.

## **4.2 TERMINATION**

The Program may be terminated in two ways:

- upon contract termination or expiration without any extension, renewal, or subsequent contract being negotiated; or
- at the decision of the Town Council and Town Administrator to dissolve the Program.

Each participating consumer receiving service under the Town's Program will receive notification of termination of the Program 90 days prior to such termination.

In the event of contract termination, participating consumers would return to NGRID's Basic Service or choose a Competitive Supplier. This transfer would occur in coordination with NGRID using established EDI protocols and in accordance with the rules and procedures set forth in the EBT Working Group Report.

## **5 METHODS FOR ENTERING AND TERMINATING AGREEMENTS**

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The Town's process for entering, modifying, enforcing, and terminating all agreements associated with the Program shall comply with the requirements of the Town's charter, and state and federal laws. Where required, the procedures outlined in M.G.L. c. 30B shall be followed. Other agreements shall be entered, modified, or terminated in compliance with the law and according to the express provisions of the relevant agreement.

Prior to the end of the initial ESA, the Consultant will be responsible for conducting a subsequent bidding process for a new ESA. The Town Administrator is responsible for executing a new ESA. Customers will be notified through press releases and public notices. New opt-out notices will not be mailed. The Town will not use on-bill messaging or bill inserts. However, NGRID may include on-bill messaging notifying consumers of a supplier switch. The transfer of customers from the existing supplier to the new supplier is conducted by the new supplier in coordination with NGRID using established EDI protocols.

The Town will notify NGRID of the planned termination or extension of the program. In particular, the Town will provide NGRID notice:

- 90 days prior to a planned termination of the program;
- 90 days prior to the end of the anticipated term of the program's ESA; and
- four business-days after the successful negotiation of a new electricity service agreement.

## **6 RATE SETTING, COSTS, AND BILLING**

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The Town will offer the Program at rates and terms to be negotiated with Competitive Suppliers. All Competitive Supplier charges to the participating consumer will be fully and prominently disclosed under the notification process.

NGRID shall continue to provide metering, billing, and maintenance of the distribution system as a regulated monopoly function. Charges for metering, billing and other distribution services shall be regulated by the Department, unless otherwise provided for in law, or Department rules and regulations.

## **6.1 RATE SETTING**

Under Department orders, NGRID assigns the rate classification and corresponding character of service and associated regulated rates. These rates include a monthly customer charge, a distribution charge, a transmission charge, a transition charge, an energy conservation charge, and a renewable energy charge that currently make up a portion of a ratepayer's bill. Although the Town, or its agent, may participate in regulatory proceedings and represent the interests of ratepayers regarding these regulated rates, it will not assign or alter existing rate classifications without the approval of the Department. [See Section 6.3 for an example of a typical residential bill.]

The focus of the Town, as noted above, will be acquisition of competitive prices and terms for power supply. This price, or prices, will be set through the competitive bid and negotiation process, and will be noted on the participating consumer's bill as the "generation charge".

The competitive bid process will seek prices that will differ among the rate classifications established by NGRID's tariffs. The terms and conditions of service may also vary among rate classifications.

## **6.2 COSTS**

There is no cost to eligible or participating consumers. The Program funding will be derived from a \$0.001 per kWh commission fee payable by the Competitive Supplier to the Consultant.

In addition, the Town may fund personnel costs associated with an Energy Manager position(s), of which one of the responsibilities would be to assist with the Aggregation Program, through an Operational Adder payable by the Competitive Supplier to the Town.

## **6.3 BILLING**

Participating consumer billing under the Town's Program will be made by the Competitive Supplier under contract and shall be incorporated into the standard monthly utility billing. Participating consumers will receive a "complete bill" from NGRID that incorporates the power supply charge and NGRID's delivery charges. The bill shall include a clear delineation of all regulated and non-regulated charges.

The typical residential "complete bill" for use of 500 kWh shows the following charges for NGRID's Basic Service in November 2015:

For Customer With Monthly Usage of 500 kWh		
	Rate (\$/kWh)	Charge
<b>Delivery Services Detail (Rate: R1)</b>		
Customer Charge		4.00
Distribution Charge	0.03977	19.89
Transition Charge	(0.00164)	(0.82)
Transmission Charge	0.02614	13.07
Energy Efficiency Charge	0.01624	8.12
Renewable Energy Charge	0.00050	0.25
Total Delivery Services		\$ 44.51
<b>Supplier Services Detail (Rate: Basic Service)</b>		
Generation Services Charge	0.13038	65.19
Total Supplier Services		\$ 65.19
Average Bill Total		\$ 109.70

Sources: [http://www.nationalgridus.com/masselectric/non\\_html/MA\\_Residential\\_Table.pdf](http://www.nationalgridus.com/masselectric/non_html/MA_Residential_Table.pdf)  
[http://www.nationalgridus.com/non\\_html/1115meco.pdf](http://www.nationalgridus.com/non_html/1115meco.pdf)

Accessed: November 1, 2015

## 7 UNIVERSAL ACCESS

“Universal access” is a term derived from the traditional regulated utility environment in which all consumers desiring service receive that service. The DOER’s Guide to Municipal Electric Aggregation in Massachusetts has defined universal access to mean “electric services sufficient for basic needs (an evolving bundle of basic services) available to virtually all members of the population regardless of income.” The Guide also provides that a municipal aggregation plan meets the requirement of universal access “by giving all consumers within its boundaries the opportunity to participate, whether they are currently on Basic Service or the supply service of a Competitive Supplier.” For the purposes of the Town’s Program this will mean that all existing consumers within the borders of the Town and all new consumers in the Town shall be eligible for service from the Competitive Supplier under the terms and conditions of the contract. One of the Town’s goals, as indicated in Section 2.3, is to “Provide the basis for aggregation of eligible consumers on a non-discriminatory basis”.

Service under the Town’s Program shall include rate classifications in adherence with universal service principles and requirements, and the traditional non-discriminatory practices of local

government. Contracts with all Competitive Suppliers shall contain provisions to maintain these principles and equitable treatment of all rate classifications.

Eligible existing consumers in the Town shall be transferred to the Program unless they have already contracted with a Competitive Supplier or affirmatively opted-out of the Program.

Eligible low-income consumers shall remain subject to all existing provisions of state law regarding their rights to return to Basic Service and to participate in the Program as well.

New Eligible consumers in the service territory shall be enrolled in the Program unless they already contracted with a Competitive Supplier or affirmatively opted-out of the Program. New Eligible consumers will retain the right to opt-out any time after the commencement of Program service.

## **8      EQUITABLE TREATMENT OF RATEPAYERS**

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All ratepayers will be treated equitably. They will be guaranteed the right to raise and resolve disputes with the Competitive Supplier, be provided all required notices and information, and always retain the right to opt-out of the Town's Program as described herein or to switch Competitive Suppliers. The requirement of equitable treatment of all ratepayers does not, however, require that all ratepayers be offered the same pricing or terms and conditions. To impose such an interpretation to the statutory requirements governing municipal aggregation programs would, in effect, result in inequitable treatment, as attempting to apply identical prices, terms, and conditions to ratepayers with widely disparate characteristics would have the inevitable effect of giving some ratepayers more favorable service than others. The implementation of the Program will recognize this reality through appropriate distinctions in pricing and, where applicable, terms and conditions among ratepayers.

## **9      RELIABILITY**

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"Reliability" in power supply and in transmission and distribution is essential to consumers. This will be accomplished and reinforced by the Program at several levels through:

- provisions of the contract that will include language on reliability of supply, liability and damages provisions;
- traditional proceedings related to NGRID's regulated transmission and distribution services; and
- direct discussions with NGRID concerning specific or general problems related to quality and reliability of transmission and distribution service in the Town.

## **10 RIGHTS AND RESPONSIBILITIES OF PARTICIPANTS**

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### **10.1 RIGHTS**

All participating consumers shall enjoy the protections of law afforded to them as they currently exist or as they may be amended from time to time. These include rights to question billing or service quality or service practices. Under protocols developed by the Department, problems related to billing or service shall be directed to the appropriate parties. All eligible consumers shall also enjoy the individual right to decline participation in the Town's Program.

### **10.2 RESPONSIBILITIES**

All participating consumers shall meet all standards and responsibilities required by the Department, including payment of billings and access to essential metering and other equipment to carry out utility operations.

## **11 BENEFITS OF MUNICIPAL AGGREGATION**

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The Program functions under the restrictions of state law and reflects a range of results and opportunities:

### **11.1 PARTICIPATION IN COMPETITIVE MARKET**

Many consumers lack knowledge and leverage to negotiate terms for power supply. A municipal aggregator provides them with an option for professional representation and the leverage of a large group so that they may participate more effectively in the competitive process and achieve benefits.

### **11.2 SELECTION OF ALTERNATE SUPPLIER**

Because the law guarantees the right to opt-out, including the right to choose Basic Service at no charge, all eligible consumers have the right to select a Competitive Supplier other than the one chosen by the Town Administrator and Town Council.

### **11.3 INDEMNIFICATION AND RISK ASSOCIATED WITH COMPETITIVE MARKET**

In a competitive market, it is possible that the failure of a Competitive Supplier to provide service may result in the need for participating consumers to acquire alternative power supply, or for participating consumers to receive power at Basic Service prices. The Town will seek to

minimize this risk by contracting with reputable Competitive Suppliers who demonstrate reliable service. The Town also intends to include conditions in its contract with a Competitive Supplier that will indemnify participating consumers against risks or problems with power supply service.

#### **11.4 OTHER PROTECTIONS**

The Town intends to negotiate a range of provisions in its contracts to enhance participating consumer protection.

### **12 REQUIREMENTS CONCERNING AGGREGATED SERVICE**

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The Town shall comply with the requirements established by law and the rules set forth by the Department concerning aggregated service.





277 Main Street  
Marlborough, MA 01752  
T 508.485.5858 866.485.5858  
F 508.485.5854

[www.colonialpowergroup.com](http://www.colonialpowergroup.com)

March 1, 2016

Mr. Steven Venezia  
Assistant General Counsel  
Massachusetts Department of Energy Resources  
100 Cambridge Street, Suite 1020  
Boston, MA 02114

RE: The Town of Franklin's Community Choice Power Supply Program – Aggregation Plan

Dear Mr. Venezia:

Colonial Power Group, Inc. (CPG) has, in the past, received questions and comments from the Massachusetts Department of Energy Resources (DOER) related to draft versions of both the Aggregation Plan ("Plan") and the Electric Service Agreement (ESA) for other municipalities. In this communication, CPG will address these questions and comments as they relate to the Town of Franklin's ("Town") Plan.

Please do not hesitate to contact me with any further questions.

Sincerely,

Mark Cappadona  
President  
Colonial Power Group, Inc.

**GENERAL INFORMATION:**

**1. Below is the load data by rate classification (i.e. annual figures) for the Town:**

<u>Rate Class</u>	<u>No. of Accounts</u>	<u>% of Accounts</u>	<u>Annual mWh</u>	<u>% of Load</u>
G-1 Small General Service	906	7.8%	16,200	11.5%
G-2/G-3 Med/Lge General Service	68	0.6%	24,994	17.7%
<u>Residential Service</u>	<u>10,585</u>	<u>91.6%</u>	<u>100,163</u>	<u>70.9%</u>
Total	11,559	100.0%	141,357	100.0%

**Can CPG confirm that this is the size of the Town's municipal aggregation?**

CPG can confirm that this is the Basic Service load data provided by National Grid ("Local Distributor"). The actual size of the municipal aggregation will not be known until after the initial enrollment period, during which time eligible consumers may decline service and opt-out of the Town's Community Choice Power Supply Program ("Program"). Eligible consumers will retain their right to decline service under the Program and return to the Local Distributor's Basic Service or to seek other power supply sources on their own.

**MUNICIPAL ACCOUNTS:**

**1. Are the Town's electricity accounts currently under contract to receive power supply from a Competitive Supplier? If yes, when does the contract expire and what does the Town plan to do for power supply at that time?**

Yes, the Town's municipal accounts are under contract with a Competitive Supplier. They aren't currently on Basic Service and will not be included in the Program initially. When the current contract expires, the Town will re-evaluate including its municipal accounts in the Program.

**DISTRIBUTION COMPANY:**

**1. Is the Distribution Company aware of the intended municipal aggregation?**

The Local Distributor is aware of the Program.

**2. Have you discussed your plans with the Distribution Company?**

CPG has discussed the Program with the Local Distributor several times via e-mail, telephone calls, and meetings.

**3. Is there a general plan for identification and transfer of consumers?**

The process by which eligible consumers will be identified and transferred is discussed in Sections 4.1.5, 4.1.6, and 4.1.7 of the Plan and in Article 3.4 of the ESA. These sections reflect the substance of the discussions with the Local Distributor.

**4. Will the Competitive Supplier independently track accounts for the municipality?**

The Competitive Supplier is required by Article 5.8 of the ESA to independently track accounts for the municipality.

**COMPETITIVE SUPPLIERS:**

**1. Have you had any discussions with Competitive Suppliers?**

CPG has initiated discussions with several Competitive Suppliers.

**2. Are they interested in bidding for your load?**

The Competitive Suppliers most interested in bidding on the Town's load are those with a firm history of serving small accounts.

**3. At what size of load do Competitive Suppliers show interest in servicing large numbers of small consumers?**

Competitive Suppliers generally seek a balance between the quantity of accounts and the quality of accounts. There is no threshold number of accounts that garners interest from all Competitive Suppliers. The load profile and a healthy mix of residential and commercial consumers will attract many Competitive Suppliers.

**4. How and in what time frame will a contract be developed and agreed to between the Competitive Suppliers and the municipality?**

A general ESA has been developed and will be sent to the DOER. The non-price provisions of the contract that are acceptable to the Town will be established prior to any solicitation for service.

**MUNICIPAL SERVICES:**

**1. Who in the Town government will be responsible for oversight of the municipal aggregation?**

Oversight of the Program will be performed by CPG, as discussed in Section 2.2 of the Plan.

**2. Who will consumers call with questions about the municipal aggregation?**

Participating consumers may call either CPG or the Competitive Supplier with any questions about the Program.

**3. Will there be a contact person for participants in Town Hall? Will the Town have the capability to answer consumer questions?**

Participating consumers who call Town Hall will be referred to CPG's toll-free telephone number. However, the Town Administrator and his/her staff will have the capability to answer most questions about the Program.

**MONITORING AND EVALUATION:**

**1. How will the power supply contract be monitored and evaluated?**

The power supply contract will be monitored and evaluated by CPG, as discussed in Article 11 of the ESA, and through the compilation, by CPG and the Competitive Supplier, of data related to the Program's operations (e.g., participation, migration, billing issues, tax-exempt issues, costs, savings, etc.).

An evaluation of the Program's success will be conducted by CPG, the Town Administrator, and the Town Council prior to the termination or extension of any power supply contract. The criteria for success includes the savings to the participating consumers, the efficient transfer of and continued service to the participating consumers, and the Competitive Supplier's commitment to continue working with the Town.

**STAFFING AND MANPOWER:**

**1. In the draft Aggregation Plan CPG mentions representation of the Town before boards and other bodies. Are you aware of the need for attorneys to represent the Town in most cases and where are those legal services in the contract? Who will provide the legal services?**

James Avery, Esq. of Pierce Atwood LLP ("Pierce Atwood") will represent the Town before the Massachusetts Department of Public Utilities (DPU) and other boards and bodies, as necessary. Mr. Avery has already indicated to CPG that such representation does not create a conflict of interest for him or his firm. Mr. Avery successfully represented CPG and the Cities of Marlborough, Lowell, Haverhill, Newburyport and Methuen, the Towns of Ashby, Ashland, Lancaster, Lanesborough, Lunenburg, Winchendon, Burlington, Auburn and Tewksbury, and 13 Berkshire County communities during their municipal aggregation processes.

**SPECIFIC REVIEW COMMENTS:**

**1. What is the basic value proposition you expect to present to the Town's participants as the reason for the municipal aggregation?**

**For Example:**

**A value proposition is a straightforward reason for a consumer to participate. It is often "to save money" or "stabilize the price you pay for electricity".**

The basic value proposition is to take control of energy prices in an effort to provide stability. Subsequently, the Town can chart its own course by seeking a variety of rate plans from Competitive Suppliers and selecting the one most consonant with the Town's evolving goals.

**2. How do you plan to evaluate a price?**

**For Example:**

**Depending on the date of procurement there will be a known "price to beat" or Basic Service rate for six months or less. Given this situation, how will you evaluate offers from interested Competitive Suppliers?**

The Town plans to evaluate Competitive Suppliers' bids with respect to price, stability of price, length of the term of the proposed power supply, surety and the financial condition of the Competitive Supplier at the time the bids are provided. The Town may use the prevailing Basic Service rate and, if known at the time of bid evaluation, the future Basic Service rate as a tool for comparing and analyzing bids. The Town will also have each Competitive Supplier's bid to contrast with each other as well as with the Basic Service rate. The Town may also take into account a Competitive Supplier's experience operating this type of municipal aggregation program. In the future, should the Town look to broaden the Program to go beyond mere power supply, the Town may seek Competitive Suppliers who demonstrate the willingness to work as a partner with the Town to fund other programs (e.g., special programs for low income consumers, energy education initiatives in the local schools).

**3. What premium over the Basic/Default Service rate (if any) will the municipal aggregation find acceptable to residential, small business, and large commercial and industrial consumers?**

The Town will not accept pricing that is above the prevailing Basic Service rate.

**4. What term is the municipality expecting to purchase power supply for (1 year, 2 years, other)?**

The Town will consider proposals with multiple year terms. Competitive Suppliers will submit bids for 6, 12, 18, 24 and 36 months. The Town will entertain any proprietary pricing proposals that Competitive Suppliers would like to offer. At that time, the Town and CPG will discuss the benefits and concerns of each Competitive Supplier bid. Ultimately, market conditions and the Competitive Suppliers' proposals will determine the power supply term.

**5. Will there be any green energy products available?**

CPG believes in slowly expanding the product offerings over time. It is CPG's hope that the Town can work with a Competitive Supplier that will offer opt-in green power prices, or, as REC prices fluctuate, purchase RECs in excess of the RPS minimum.

**6. During operation of the municipal aggregation should the price for municipal supply be higher than the price of Basic Service offered by the Distribution Company, what action will the municipality take?**

CPG will contact the Town to discuss the current market conditions and the options available in relation to its existing contract. CPG will meet with the Town, outline any and all market opportunities, and discuss the pros and cons of each option. Ultimately, the Town retains the right to extend a Competitive Supplier's contract, decline renewal of a Competitive Supplier's contract or allow the current contract to expire. Upon expiration, all participating consumers would be returned to the Local Distributor's Basic Service.

**7. Has the aggregator developed a Competitive Supplier contract with terms and conditions that are agreeable to the Town and to one or more Competitive Supplier?**

Yes. CPG will be sending a general ESA to the DOER as part of our responses to these inquiries. The ESA will also be a part of our DPU filing.

**8. Can CPG make a copy of the Competitive Supplier contract available to the DOER?**

Please see the attached ESA.

**9. Prior to enrollment consumers will receive notification of primary terms of the Town's contract. Please provide a draft notice.**

Please see the attached Customer Notification Form.

**10. The DOER requests that the Town periodically notifies the DOER of the progress of the municipal aggregation. The status report should include:**

- a) number of participants by rate classification;
- b) number of consumers opting out by rate classification;
- c) load served;
- d) savings and/or stability data.

CPG and the Town are required by the DPU to provide an annual report on the progress of all municipal aggregations. A copy of the report will also be forwarded to the DOER. The report will include all of the above.



Sponsor: Administration

## TOWN OF FRANKLIN

### RESOLUTION 15-75

#### AUTHORIZATION FOR MUNICIPAL AGGREGATION OF ELECTRICITY

**WHEREAS**, the Commonwealth of Massachusetts, by enacting Chapter 164 of the Acts of 1997, has established a competitive marketplace through deregulation and restructuring of the electric utility industry, and

**WHEREAS**, the residents and businesses of the Town of Franklin have substantial economic, environmental, and social interests at stake and are interested in reducing their electricity rates, and

**WHEREAS**, if an aggregation of electricity load is implemented in the town, individual residents and businesses would retain the right to opt-out of the aggregation with no penalty and to choose any other competitive supplier or to stay with the default utility.

**NOW, THEREFORE**, the Franklin Town Council hereby authorizes the appropriate department(s) to research, develop and participate in a contract, or contracts, to aggregate the electricity load of the residents and businesses in the Town of Franklin and for other related services, independently, or in joint action with other municipalities, and authorizes the Town Administrator to execute all documents and take any other action necessary to accomplish the same.

This Resolution shall become effective according to the rules and regulations of the Town of Franklin Home Rule Charter.

DATED: December 16, 2015

A True Record Attest:

  
Teresa M. Burr  
Town Clerk

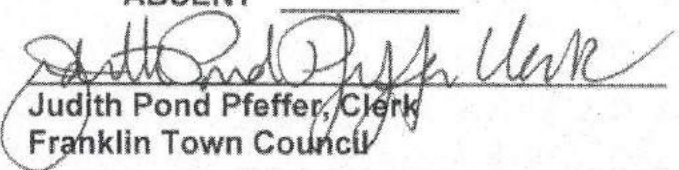
#### VOTED:

UNANIMOUS ☒

YES 9 NO 0

ABSTAIN 0

ABSENT 0

  
Judith Pond Pfeffer, Clerk  
Franklin Town Council

A True Copy of the Record

Franklin Town Clerk



# Town of Franklin

Town Administrator  
Tel: (508) 520-4949

Fax: (508) 520-4903



355 East Central Street  
Franklin, Massachusetts 02038-1352

February 3, 2016

Pursuant to M.G.L. c. 30B, § 1(b)(32), the Town of Franklin is not required to go through the Request for Proposals process when contracting with an energy broker to initiate a municipal aggregation program.

Broker contracts are exempt from standard procurement procedure and therefore, in accordance with State Law, the Town of Franklin has elected to forego the Request for Proposals process.

The Town of Franklin has chosen Colonial Power Group, Inc. to design, implement and manage its municipal aggregation program.

The Town of Franklin intends to enter into an energy aggregation contract with Colonial Power Group, Inc. for energy or energy-related services arranged and/or negotiated on behalf of its residents.

Sincerely,

Jeffrey D. Nutting  
Town Administrator





## **AGREEMENT**

This contract is made this 28th day of January, 2016, between the Town of Franklin ("Town"), a municipal corporation having its principal place of business at 355 East Central Street, Franklin, MA 02038 as represented by Jeffrey D. Nutting, Town Administrator acting for and on behalf of the Town who signs these presents in his official capacity and incurs no liability in his 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:

### WITNESSED:

Whereas, the Town utilized a sound business practice for the solicitation of work to assist the Town of Franklin with implementation of a Municipal Electricity Aggregation Program ("Program") as defined in a scope of services as detailed in Attachment A to perform the work required for the Program, and the Town has decided to award the contract therefore to the Consultant.

NOW, THEREFORE, the Town and the Consultant agree as follows:

1. **Contract Documents.** The Contract Documents consist of this Agreement and the Consultant's proposal dated January 15, 2016 entitled "Scope of Services/Deliverables" attached hereto as "Attachment A." These Contract Documents constitute the entire Agreement between the parties concerning the services and all are as fully a part of this Agreement as if attached hereto. In the event of conflicting provisions, the language of this Agreement shall govern provided that if the conflict relates to quantity or quality of goods or services, the greater quantity or higher quality specified shall be required.
2. **Goods/ Services.** The Consultant shall furnish all services related to the Program in accordance with the specifications provided in the attached proposal and shall not subcontract any services as outlined in the "Scope of Services/Deliverables" in (Attachment A) without the written consent of the Town.
3. **Performance of Work.** If applicable, the Consultant shall furnish all equipment, staffing and materials to accomplish the Program in strict conformity with all applicable Federal, State, and local laws, each of which is incorporated by reference and shall be responsible for obtaining all necessary approvals/permits as required for the performance of the Program.
4. **Standard Contract Term.** The Consultant shall commence the Program in accordance with the schedule provided (Attachment A).
5. **Payment for Work.** The Town shall not be liable for any payments for the duration of the Program to the Consultant or any third-party. The Consultant shall receive a price of .001 per kilowatt hour (kWh) if the Town chooses to enter into a contract at the conclusion of the procurement as outlined in the Scope of Services (Attachment A). 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.

6. **Indemnification of the Town.** The Town's liability hereunder shall be limited to the amounts due the Consultant for services actually rendered. The Consultant shall defend, indemnify and hold harmless the Town, its officers, boards, agents and employees to maximum extent permitted by law from any liability loss, damage, cost, charge, or expense resulting from any employees or third party Consultant or suppliers claim for payment for wagers, labor, materials, goods or services rendered to Consultant or from any claim for injury to person or property, which may be made as a result of any act, omission or default on the part of the Consultant, or any of its agents or employees and will pay promptly on demand all costs and expenses of the investigation thereof, including attorney's fees and expenses.
7. **Consultant's Standard of Care.** In providing services under this Agreement, the Consultant will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the profession currently practicing under similar circumstances. Upon notice to the Consultant and by mutual agreement between the parties, the Consultant will, without additional compensation, correct those services not meeting such a standard.
8. **Consultant's Personnel.** The Consultant shall utilize only its employees and shall not utilize any third-party Consultants without prior written approval of the Town.
9. **Insurance.** The Consultant shall provide the following insurance policies. The Town will require a Certificate of Insurance for Professional Liability Insurance and General Liability with a minimum of \$1,000,000 and proof of Worker's Compensation regulations (per Statute). The Town will require the Certificate of Insurance to include the naming the Town of Franklin as an additional insured.
10. **Independent Consultant.** The Consultant is an independent Consultant and is not an agent or employee of the Town and is not authorized to act on behalf of the Town. The Town will not withhold Federal, State or payroll taxes of any kind, on behalf of the Consultant or the employees of the Consultant. The Consultant is not eligible for, and shall not participate in, any employee pension, health or other fringe benefit plan of the Town.
11. **Successors and Assigns.** This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the Town nor the Consultant shall assign or transfer any interest in the Agreement without the written consent of the other.
12. **Inspection and Reports.** The Town shall have the right at any time to inspect the records of the Consultant relative to the services provided to the Town pursuant to this Agreement. This shall include the right to enter upon any property owned or occupied by the Consultant, whether situated within or beyond the limits of the Town. Upon request the Consultant shall immediately furnish to the Town any and all written reports relative to such services arising out of its operations under this Contract during and/or after the termination of the contract.

### 13. Termination.

a. For Cause - The Town shall have the right to terminate this Agreement if (i) the Consultant's neglects or fails to perform or observe any of its obligations hereunder and a cure is not effected by the Consultant within seven (7) days next following its receipt of a termination notice issued by the Town, (ii) if an order is entered against the Consultant approving a petition for an arrangement, liquidation, dissolution or similar relief relating to bankruptcy or insolvency and such order remains unvacated for thirty (30) days; or (iii) immediately if the Consultant shall file a voluntary petition in bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to bankruptcy, insolvency or other relief for debtors or shall seek or consent or acquiesce in appointment of any trustee, receiver or liquidation of any of the Consultant's property.

The Town shall pay all reasonable and supportable costs incurred prior to termination, which payment shall not exceed the value of services provided.

b. For Convenience - The Town may terminate this Agreement at any time for any reason upon submitting to the Consultant thirty (30) days prior a written notice of its intention to terminate. Upon receipt of such notice, the Consultant shall immediately cease to incur expenses pursuant to this Agreement unless otherwise directed in the Town's termination notice. The Consultant shall promptly notify the Town of costs incurred to date of termination and the Town shall pay all such reasonable and supportable costs which payment shall not exceed the unpaid balance due on this Agreement.

c. Return of Property - Upon termination, the Consultant shall immediately return to the Town, without limitation, all documents and items of any nature whatever, supplied to Consultant by the Town or developed by the Consultant in accordance with this Agreement.


14. Notice. Any and all notices, or other communications required or permitted under this Contract, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, be registered or certified mail or by other reputable delivery service, to the parties at the address set forth on Page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service.

15. Severability. If any term of this Contract or application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, legality, and enforceability of the remaining terms and conditions of the Contract shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

16. **Governing Law.** The performance of this Contract shall be governed, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts. Claims and Disputes and Resolution Procedure, Claims, Disputes, or other matters in question with the Town and Consultant or any other party claiming rights under this agreement relating to or arising from the Project, the Work, or interpretation of any terms of the Contract or Contract documents shall be resolved only by a civil action commenced in the Commonwealth of Massachusetts in either Superior Court Department, Norfolk County, or the District Court Department, Wrentham Division, of Massachusetts Trial Court; in the alternative, private arbitration or mediation may be employed if the parties mutually agree in writing to do so.
17. **Entire Agreement.** This Contract, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Contract supersedes all prior agreements; negotiations, either written or oral and it shall not be modified or amended except by a written document executed by the parties hereto.


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

**FOR THE CONSULTANT  
BY:**


  
Mark Cappadona, President

**Date:** 2/3/16

**Approved as to Form:**

  
Mark Cerel,  
Town Attorney

**Town of Franklin, MA**

  
Jeffrey Nutting  
Town Administrator

## **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 representatives 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.



Sponsor: Administration

## TOWN OF FRANKLIN

### RESOLUTION 16-12 (Revised)

#### AUTHORIZATION FOR MUNICIPAL AGGREGATION OF ELECTRICITY

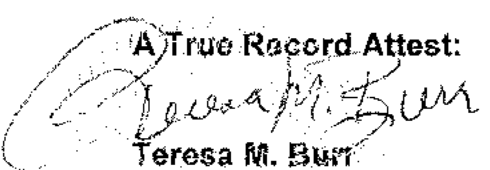
**WHEREAS**, the Town Council unanimously adopted Resolution 15-75 on December 16, 2015 authorizing the Town Administrator to administer a municipal aggregation program on behalf of the Town.

**NOW, THEREFORE**, the Franklin Town Council hereby approves the Town of Franklin's Community Choice Power Supply Program Aggregation Plan prepared by the Colonial Power Group, Inc., a copy of which is attached hereto as Exhibit A for submittal to the Department of Public Utilities (DPU), Department of Energy Resources (DOER), and other regulatory state agencies required by law for approval.

This Resolution shall become effective according to the rules and regulations of the Town of Franklin Home Rule Charter.

DATED: March 9, 2016

A True Record Attest:

  
Teresa M. Burr  
Town Clerk

VOTED: yes

UNANIMOUS       

YES 8 NO       

ABSTAIN       

ABSENT       

  
Judith Pond Pfeffer, Clerk  
Franklin Town Council





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## Municipal Aggregation Program

[Printer-Friendly Version](#)

### Franklin Officials Have Released the Town's Community Choice Power Supply Program Aggregation Plan

The Town of Franklin developed the Aggregation Plan in compliance with Massachusetts law regarding public aggregation of electric consumers. It contains required information on the structure, operations, services, funding, and policies of the Town's Plan. The Plan has been developed in consultation with the Town's aggregation implementation consultant, Colonial Power Group, Inc. (CPG) and the Massachusetts Department of Energy Resources (DOER).

The purpose of this Plan is to represent consumer interests in competitive markets for electricity. It seeks to aggregate consumers in the Town to negotiate rates for power supply. It brings together the buying power of over 32,000 consumers. Furthermore, the Town seeks to better manage energy prices. Participation is voluntary for each eligible consumer. Eligible consumers have the opportunity to decline service provided through the Plan and to choose any Competitive Supplier they wish. The Town has distributed this Plan for public review prior to submitting it to the Massachusetts Department of Public Utilities.

### Public Review and Comment Period

The Town of Franklin's Aggregation Plan is available for public review and comment from **Friday, February 12, 2016, at 12:00 p.m. Noon** through **Tuesday March 8<sup>th</sup>, 2016, at 4:00 p.m.**~

Any person who desires to comment may do so in person at the Town Clerk's office or submit written comments using one of the following methods: (1) by e-mail to [jhellen@franklin.ma.us](mailto:jhellen@franklin.ma.us); or (2) by postal mail to the address below.

Comments must be clearly marked **Town of Franklin's Aggregation Plan** and must be received (not postmarked) by the end of the comment period in order to be addressed.

Jamie Hellen  
Deputy Town Administrator  
Town Hall  
355 East Central Street  
Franklin, MA 02038

Any questions pertaining to this should be directed to Jamie Hellen, Deputy Town Administrator at (508) 528-7900 x 4887.

Click [here](#) to read the Town of Franklin's Aggregation Plan. An original hardcopy of the Plan is also available at the Town Clerk's office.

**KIA VALUES... Great Wagner Deals!**  
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NEWS NOW ... FBI, IRS investigating state Sen. Brian Joyce ... Scientists: Maine's puffins might winter in Jersey ... Moonlight

# Franklin: Public comment sought on energy plan



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 Get up to **\$600k** for your business in **24 hours**  
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A better way to borrow.™

By Mike Gleason

Daily News Staff



Posted Feb. 14, 2016 at 5:49 PM

FRANKLIN - Public comment is being welcomed on a proposal aimed at reducing local power bills.

The town is looking to partner with Marlborough firm Colonial Power Group to pursue municipal electrical aggregation, in which groups look to lower electrical rates by shopping among different suppliers, using their large numbers of

customers as negotiation leverage.

Deputy Town Administrator Jamie Hellen said the public review and comment period for the proposal opened at noon on Friday.

"A public comment period is required under state law," he said. "We're looking to get feedback on the proposed plan, which is on our website."

One matter in which residents could provide feedback is whether the town should prioritize renewable energy when it selects a power supplier, officials said.

Hellen said the period - which runs until March 8 at 4 p.m. - will not be the only chance for residents to speak on the matter.

"We're anticipating a short Town Council presentation in the beginning of March - tentatively March 9," he said.

Franklin is offering more than the required amount of time for public comment in order to encourage feedback, according to Hellen.

"We're required to have 15 days, and I think we're going to have almost a full month," he said.

The requirement does not include holidays or weekends, Hellen said.

Comments may be submitted in person at the town clerk's office or via email at [jhellen@franklin.ma.us](mailto:jhellen@franklin.ma.us).

The Town Council voted last December to research municipal aggregation as a way to potentially lower power bills in town. Earlier this month, the town contracted with Colonial Power Group as a way to bring the process forward.

Any solution the town devises will have to be approved by both the state Department of Energy Resources and Department of Public Utilities.

*Mike Gleason can be reached at 508-634-7546 or [mgleason@wickedlocal.com](mailto:mgleason@wickedlocal.com). For news throughout the day, follow him on Twitter @MGleason\_MDN.*

# Franklin Matters

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Sunday, February 14, 2016

## Municipal Aggregation Program

### Franklin Officials Have Released the Town's Community Choice Power Supply Program Aggregation Plan

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The Town of Franklin's Aggregation Plan is available for public review and comment from Friday, February 12, 2016, at 12:00 p.m. Noon through Tuesday March 8th, 2016, at 4:00 p.m.~

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Comments must be clearly marked Town of Franklin's Aggregation Plan and **must be received** (not postmarked) by the end of the comment period in order to be addressed.

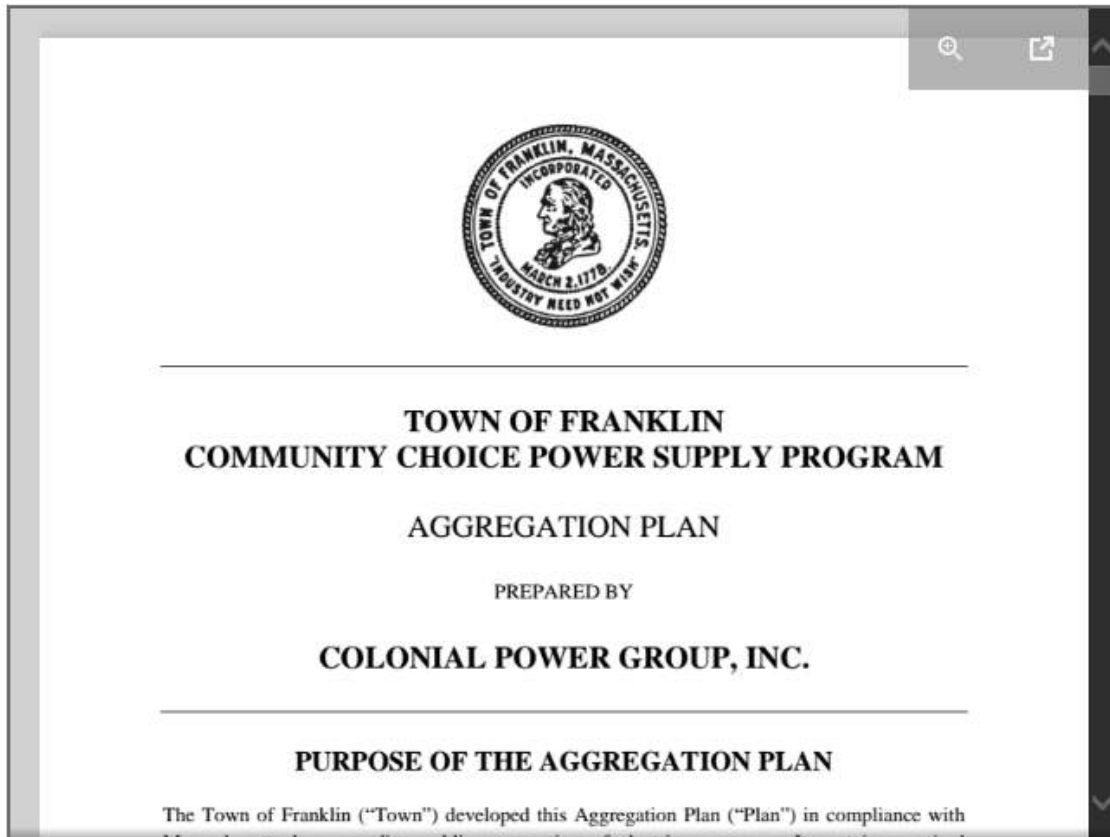
Jamie Hellen  
Deputy Town Administrator  
Town Hall  
355 East Central Street  
Franklin, MA 02038

Any questions pertaining to this should be directed to Jamie Hellen, Deputy Town Administrator at (508) 528-7900 x 4887.

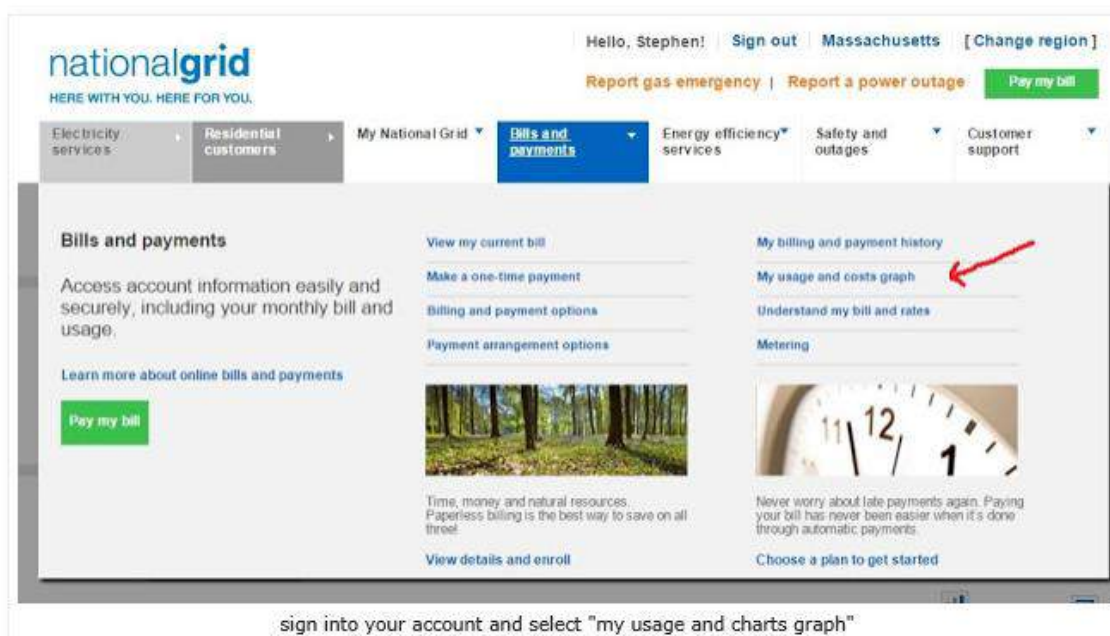
[Click here](#) to read the Town of Franklin's Aggregation Plan. An original hardcopy of the Plan is also available at the Town Clerk's office.



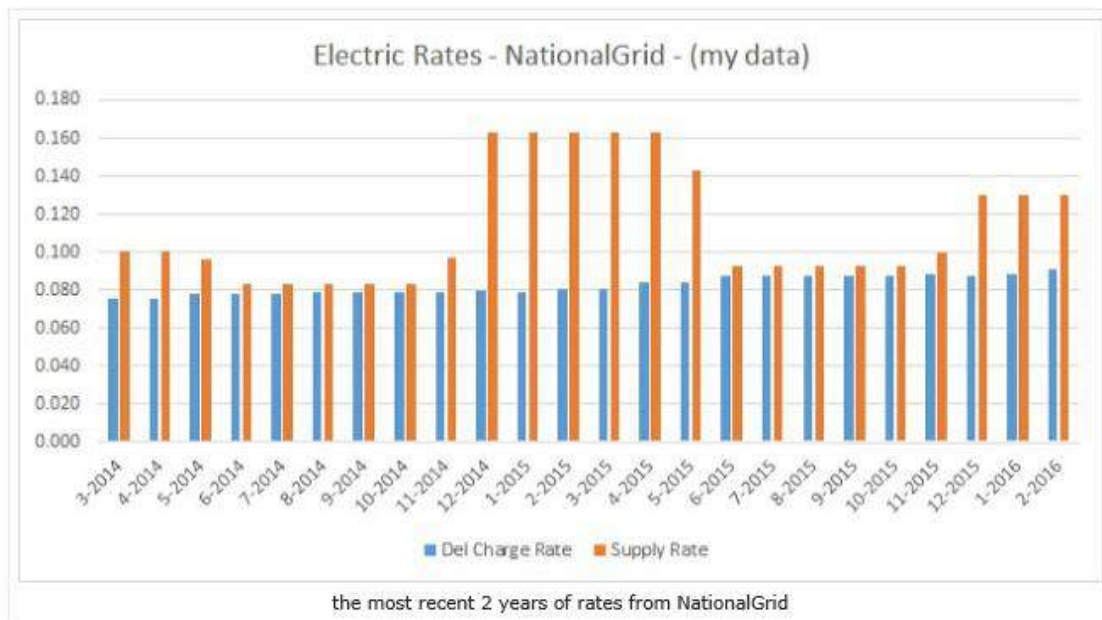
A copy has also been posted here for your convenience



If your electricity is provided by NationalGrid you can download your recent information for further calculations. The supply rate is what the aggregation will enable savings for. The delivery charges will remain as they are from NationalGrid.




The municipal aggregation should do two things for our electric rate. (1) it should provide some stability in the rate and (2) it should lower the rate with the power of the group purchase.





Message

Sun, Feb 28, 2016 4:03 PM

From:  Chris S <supertato1@gmail.com>

To:  **Jamie Hellen**

Subject: We support green energy

---

Hi Jamie,  
I heard you are working on a deal with Colony? We support expansion of renewable energy.  
Thank you,  
Chris & Val Sternadore  
2 Charlotte Ct  
Franklin



Message

Sat, Feb 27, 2016 12:13 PM

From: Susan Sheridan <suesheridan@comcast.net>

To: **Jamie Hellen**

Subject: green energy

---

Hi Jamie,

I would be interested in having green energy as part of the package deal with Colony Energy.  
Thank you for considering this!

Sue Sheridan  
21A Hawthorne Village





Message

Fri, Feb 19, 2016 1:12 PM

From: "Colonial energy" <jimhill51@yahoo.com>

To: Jamie Hellen

Subject: Aggregate energy

---

Dear Mr. Hellen,

Thanks so much for working on this plan to lower electric rates for our town's residents. I for one want as much of this energy to be green as possible. I hope others feel the same. Sincerely James F. Hill, 5 Gloucester Drive.



Message

Sun, Feb 21, 2016 3:26 PM

From: "Alan Davis" <peppermill15@hotmail.com>

To: **Jamie Hellen**

Subject: **Comments on Municipal Electricity Aggregation**

---

Hi Jamie -

I'm happy to see that Franklin is pursuing lower electric rates for the residents. For the past 35 years, I have been involved in the energy industry (energy efficiency, utilities, and renewables). Too many of my neighbors are unaware of the competitive marketplace for electricity supply. I believe that municipal aggregation is a good way to help the residents of Franklin save money on the electric bills.

The article in the Gazette mentioned that you wanted feedback on the inclusion of renewable energy in the supply mix that would be purchased through the Colonial Power Group. Even though I'm a proponent of renewable energy, I firmly believe that getting the lowest cost per kWh must be the Town's primary objective. People that want renewable power (solar PV, wind, etc.) can still choose to have solar panels installed on their roof or they can participate in a community solar project. They could even opt-out of the aggregation program and purchase renewable energy from another supplier. I don't believe that the Town of Franklin should be making the choice on our behalf to purchase renewable power.

I have no affiliation Colonial Power Group.

Regards,  
Alan

Alan Davis  
15 Peppermill Lane  
Franklin



Message

Tue, Feb 23, 2016 10:22 PM

From: [REDACTED] Brett Feldman <feldjamin@hotmail.com>  
To: [REDACTED] jnutting@franklin.k12.ma.us [REDACTED] Jamie Hellen

Subject: Electricity Aggregation

---

Hi Jeff and Jamie, I am glad to see the aggregation plan moving forward after Bryan and I talked about it last year. A few questions/thoughts:

- I would like to see a green plan as an option, but not the only one
- How did you choose Colonial? Were there other options? It's nice that they don't charge us at all, but I want to make sure they are on our side and don't favor any specific suppliers.
- Did we have the opportunity to combine with any other municipalities to get even more scale?
- I know it can be very confusing for people to understand this idea, and the comparisons that get made can be misleading, so I want to make sure everything is clear and above-board.

Thanks, let me know if I can help along the way since I am familiar with the industry,

Brett Feldman



Message

Tue, Feb 23, 2016 11:54 PM

From: James Adams <adamsjjw@gmail.com>  
To: **Jamie Hellen**

Subject: **Aggregation Plan Consultant**

---

Dear Jamie Hellen:

I reviewed the Town's proposed Aggregation Plan. Since all matters in town procurement must be open to a public bidding process, a maxim you seem to be following with regard to obtaining prices from competitive suppliers, I wonder why there was no open and advertised review of the role of "Consultant," granted to Colonial Power Group, with no qualifying statement other than that Colonial is a licensed agent. There are over 100 licensed energy agents in Massachusetts.

You are granting tremendous power to Colonial Power. An agent must have operational insight into all of the major suppliers of electricity on the New England ISO grid. An agent must have experience at all levels of fixed-price supply contract services, understanding the market connection between natural gas and electric prices in New England; pipeline capacity issues; and regional price trends. An agent must be able to distinguish the fine points of each supplier's contract in terms of maximum flexibility with regard to rights of termination and rollover provisions, among many more. How was a fee of \$.0001/kWh agreed upon? Based on the usage of 23,000 accounts, Colonial Power will make a substantial sum of money, regardless of the price achieved. You have conceded any incentive for Colonial to obtain the lowest price possible, because Colonial receives the same amount of pay at any price.

The role of "Consultant" is the most important in the entire process. This is a public procurement. I would like to know why there was not an open process in selecting a consultant.

I look forward to your answer. Thank you.

Sincerely yours,

Jim Adams  
781-249-1205

--



Message

Mon, Feb 15, 2016 2:43 PM

From: tree1a@aol.com

To: Jamie Hellen tree1a@aol.com

Subject: Theresa Shea / Monday

[Like](#)

[Comment](#)

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oing

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noticed on fb your making good progress on the Electric

I was wondering are you close to getting a rate for us

I see a lot of work had been done..thanks for that

Just wondering when we will know a rate

Keep Warm!

take care

Theresa Shea  
tree1a@aol.com

Stephen Sherlock and John Power posted in #VOTEFranklin . Stephen Sherlock February 14 at 8:18pm If you did not go solar, there is a way to reduce your electric supply rate with the power of community purchase. Franklin is putting together an aggregation program to purchase electricity for those of us who chose to join. The plan is available for review on the official Franklin webpage or visit Franklin Matters for a copy of the document. Like Comment Share



[Facebook](#)



Message

Tue, Feb 16, 2016 2:01 PM

From: tree1a@aol.com

To: Jamie Hellen

---

Subject: THERESA SHEA ELEC

---

Here is more info on the elec  
right now I can't upload Aol having issues lol

But an example  
last year 2015  
With National Grid ..the rate was 16.3  
so my bill was 347.96  
This year with ConEd the rate is 10.1  
and my bill is 214.29  
Big savings!  
and that is only one month.....

I am in process of getting into a lower rate of 9.20  
To save even more

And the two companies are the only two I would go with  
as they do not have hidden fees or monthly charges..they  
notify you if the rate changes and if you leave them there is  
not penalty fee which can be as high as 150 dollars.

Theresa Shea  
tree1a@aol.com

---

**TOWN OF FRANKLIN**  
**COMMUNITY CHOICE POWER SUPPLY PROGRAM**  
**COMPETITIVE ELECTRIC SERVICE AGREEMENT**

PREPARED BY  
  
**COLONIAL POWER GROUP, INC.**

---

WHEREAS, the Massachusetts Legislature has adopted Chapter 164 of the Electric Utility Restructuring Act of 1997, (“Restructuring Act”), which, *inter alia*, (1) allows for competition in the generation and supply of electricity to consumers, (2) authorizes municipalities to aggregate the electrical load of electricity consumers within their boundaries, and (3) allows municipal aggregators to formulate an aggregation plan and conduct aggregation programs;

WHEREAS, the Town of Franklin (“Town”) has developed a Community Choice Power Supply Program (“Program”) to aggregate consumers located within the Town and to negotiate competitive rates for the supply of electricity for such consumers;

WHEREAS, the Town has received approval of its Program from the Massachusetts Department of Public Utilities (“Department”) in D.P.U. 16-57;

WHEREAS, Competitive Supplier, a State corporation duly authorized to conduct business in the Commonwealth of Massachusetts (“Competitive Supplier”), desires to provide All-Requirements Power Supply to consumers located within the Town, pursuant to the terms and conditions of the Town’s Program and this Competitive Electric Service Agreement (ESA); and

WHEREAS, the Town desires that the Competitive Supplier provide All-Requirements Power Supply as an alternative to Basic Service for consumers within the Town.

NOW THEREFORE, IT IS AGREED THAT, the Town and the Competitive Supplier hereby enter into this ESA subject to the terms and conditions below.

## ARTICLE 1 DEFINITIONS

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Capitalized and in bold type terms that are used but not defined in the body of this ESA, including the Exhibits hereto, shall be defined as set forth in this Article 1. Words defined in this Article 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

**1.1 All-Requirements Power Supply** - The service under which the Competitive Supplier provides all of the electrical energy, capacity, reserves, and ancillary services, transmission services, transmission and distribution losses, congestion management, and other such services or products necessary to provide firm power supply to Participating Consumers at the Point of Delivery.

**1.2 Bankruptcy** - With respect to a Party, such Party (i) ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any corporate action to authorize or that is in contemplation of the actions set forth in this clause (i); or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule and, such proceeding is not dismissed within ninety (90) days after the commencement, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal or otherwise within ninety (90) days after the appointment, or, within ninety (90) days after the expiration of any such stay, has not been vacated, *provided that*, notwithstanding the foregoing, the exercise of rights to take over operation of a Party's assets, or to foreclose on any of a Party's assets, by a secured creditor of such Party (including the appointment of a receiver or other representative in connection with the exercise of such rights) shall not constitute a Bankruptcy.

**1.3 Basic Service** - As defined in M.G.L. c. 164, § 1 and in orders of the Department, as amended or promulgated, as the case may be, from time to time.

**1.4 Commercially Reasonable** - Any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations.



**1.5 Competitive Supplier** - \_\_\_\_\_, a \_\_\_\_\_ corporation duly authorized to conduct business in the Commonwealth of Massachusetts.

**1.6 Competitive Supplier's Guarantor** - \_\_\_\_\_.

**1.7 Credit Rating** - With respect to the Competitive Supplier or Competitive Supplier's Guarantor, its senior unsecured, unsubordinated long-term debt rating, not supported by third party credit enhancement, and if such debt is no longer rated, then the corporate or long-term issuer rating of Competitive Supplier or Competitive Supplier's Guarantor; *provided, however*, that the standing guaranty of \_\_\_\_\_, in favor of Competitive Supplier's Guarantor, shall not be considered to constitute "third party credit enhancement" for purposes of this definition.

**1.8 Delivery Term** - The period for which prices for All-Requirements Power Supply have been established, as set forth Exhibit A.

**1.9 Department** - The Massachusetts Department of Public Utilities or any successor state agency.

**1.10 EDI** - Electronic Data Interchange: The exchange of business data in a standardized format between business computer systems.

**1.11 Effective Date** - The date on which this ESA is executed by the Parties (to be determined by the later date, if the Parties execute on different dates).

**1.12 Eligible Consumers** – Residential, commercial, industrial, municipal, or other consumers of electricity who receive Basic Service from the Local Distributor as of the Effective Date, at one or more locations within the geographic boundaries of the Town. 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 Town; as such boundaries exist on the Effective Date of this ESA.

**1.13 ESA** - This Competitive Electric Service Agreement.

**1.14 Force Majeure** - Any cause not within the reasonable control of the affected Party which precludes that party from carrying out, in whole or in part, its obligations under this ESA, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the Town may not be asserted as an event of *Force Majeure* by the Town; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse any Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

**1.15 General Communications** - The type of communications described and defined in Article 5.6 herein.

**1.16 Governmental Authority** - Any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, excluding the Town.

**1.17 Governmental Rule** - Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, or similar form of decision of any Governmental Authority having the effect and force of law.

**1.18 Green Power** – Electric energy generated by equipment or facilities including solar power, biomass, landfill gas, wind turbine, hydro power or other renewable energy generating resource or technology, as may be defined by M.G.L. c. 25 A, § 11F, § 11F1/2, or M.G.L. c. 164, § 1, or, that may be otherwise added by mutual agreement of the Parties.

**1.19 ISO-NE** - The New England Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New England and the bulk transmission of electricity throughout the New England power grid.

**1.20 kWh, kW** - Kilowatt-hour and kilowatts, respectively.

**1.21 Local Distributor** - Utility, or any successor company(ies) or entity(ies) providing electricity distribution services in the Town.

**1.22 NEPOOL** - The New England Power Pool.

**1.23 New Consumers** - Residential, commercial, industrial, municipal, or other consumers of electricity that become Eligible Consumers after the Effective Date.

**1.24 New Taxes** - Any taxes not in effect as of the Effective Date enacted by a Governmental Authority or the Town, to be effective after the Effective Date with respect to All-Requirements Power Supply, or any Governmental Rule enacted and effective after the Effective Date resulting in application of any existing tax for the first time to Participating Consumers.

**1.25 Participating Consumers** - Eligible Consumers enrolled in the Program.

**1.26 Parties** - The Town and Competitive Supplier, as the context requires. In the singular, “Party” shall refer to any one of the preceding.

**1.27 Plan** - Franklin’s Community Choice Power Supply Program as adopted or amended by the Town from time to time, and as approved by the Department on \_\_\_\_\_ in D.P.U. 16-57. The Aggregation Plan is a plan developed by the Town to aggregate electricity consumers for the primary purpose of negotiating the best rates for the supply of electricity for such consumers.

**1.28 Point of Delivery** - The point of interconnection between NEPOOL Pool Transmission Facilities and the transmission facilities of the Local Distributor.

**1.29 Point of Sale** - The electric meter for each Participating Consumer's account, as designated by the Local Distributor.

**1.30 Program** - Franklin's Community Choice Power Supply Program, under which, the Plan is described and implemented.

**1.31 Regulatory Event** - A change in a Governmental Rule by a Governmental Authority, including without limitation the Local Distributor's tariffs, market rules, operating protocols and definitions, that have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation.

**1.32 Retail Price** - As set forth in Exhibit A.

**1.33 Service Commencement Date** - The Participating Consumers' first meter read dates for the month of \_\_\_\_\_, or as soon as necessary arrangements can be made with the Local Distributor thereafter.

**1.34 Term** - As defined in Article 4.1.

## **ARTICLE 2 RIGHTS GRANTED**

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### **2.1 GENERAL DESCRIPTION AND LIMITATIONS**

Competitive Supplier is hereby granted the exclusive right to provide All-Requirements Power Supply to Participating Consumers pursuant to the terms of the Program and this ESA. For the avoidance of doubt, Competitive Supplier shall be authorized to supply All-Requirements Power Supply only to Participating Consumers, and the Local Distributor will continue to have the right and obligation to supply electricity to Eligible Consumers who opt-out of the Program and remain on, or return to, Basic Service, until changes in law, regulation or policy may allow otherwise. Competitive Supplier further recognizes that this ESA does not guarantee that any individual Eligible Consumer will be served by the Competitive Supplier.

In accordance with Article 3 below, all Eligible Consumers shall be automatically enrolled in the Program unless they choose to opt-out. In the event the geographic boundaries of the Town change during the term of this ESA, Competitive Supplier shall only be obligated to supply All-Requirements Service to those Participating Consumers located within the Town as such boundaries existed on the Effective Date of this ESA. As between the Parties, the Competitive Supplier has the sole obligation of making appropriate arrangements with the Local Distributor, and any arrangements which may be necessary with the ISO-NE so that Participating Consumers receive the electricity supplies to be delivered pursuant to this ESA.

The Town shall specifically authorize the Local Distributor to provide, and Competitive Supplier the right to obtain and utilize as required, all billing and energy consumption information for Participating Consumers as is reasonably available from the Local Distributor. Competitive Supplier shall request consumption data for individual Participating Consumers from the Local Distributor via EDI. If further action is required by the Local Distributor to authorize Competitive Supplier to receive such consumption and billing data, the Town agrees to use Commercially Reasonable efforts, at Competitive Supplier's cost, to assist Competitive Supplier, if so requested by it, in obtaining such information for Participating Consumers, including, without limitation, assisting Competitive Supplier in obtaining permission from such Eligible Consumers and/or the Department, where necessary as a prerequisite to the provision of such information. Competitive Supplier shall not be responsible for any errors that Competitive Supplier makes in the provision of All-Requirements Power Supply to the extent such errors are caused by errors or omissions in the information provided to it by the Local Distributor.

## **2.2 AGENCY RELATIONSHIP**

The Town is authorized to act on behalf of the Eligible Consumers in contracting for electric supply for such Eligible Consumers, and is authorized to act as agent for all Participating Consumers. The Town and Competitive Supplier agree and understand that Participating Consumers shall be principals under this ESA and shall have privity of contract with Competitive Supplier; *provided, however*, that in any litigation arising under this ESA, only the Town, as agent for the Participating Consumers, has the right to bring claims against the Competitive Supplier.

## **2.3 COMPLIANCE WITH LAWS**

By entering into this ESA, the parties specifically represent that they have exercised due diligence to review and have fully complied with all relevant regulations and orders of the Federal Energy Regulatory Commission (FERC), the Department, Massachusetts Attorney General (AG), and the Massachusetts Department of Energy Resources (DOER) and any other governmental authorities having jurisdiction over any element of the transactions contemplated by this ESA.

## **2.4 CONDITIONS PRECEDENT**

The Town's obligations under this ESA shall be conditioned upon the Competitive Supplier, or, with respect to (c) and (d) below, Competitive Supplier's wholesale power marketing affiliate, fulfilling the following requirements:

- a) maintain Competitive Supplier's license from the Department (as such term is defined in the Local Distributor's Terms and Conditions for Competitive Suppliers);
- b) execute a Competitive Electric Supplier Service Agreement with the Local Distributor in a form reasonably satisfactory to Competitive Supplier;
- c) execute any appropriate ISO-NE applications and agreements;
- d) obtain authorization from the FERC to sell power at market-based rates; and
- e) complete EDI testing with Local Distributor.

If Competitive Supplier has not fulfilled all such requirements by the Service Commencement Date, either Party may terminate this ESA without any liability to the other Party.

## **2.5 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA**

Competitive Supplier acknowledges that the Town shall have exclusive ownership of all right, title, and interest in and to all Eligible Consumer data (including addresses, telephone numbers or other identifying information) made available to Competitive Supplier as a result of execution of this ESA. Competitive Supplier shall use Eligible Consumer data solely to provide All-Requirements Power Supply to Participating Consumers and to render other services expressly required or permitted under this ESA. Any other use of Eligible Consumer data without the prior written consent of the Town is strictly prohibited. Pursuant to such authorized use, Competitive Supplier may share such Eligible Consumer data with affiliates and third-party vendors as reasonably necessary to accommodate Competitive Supplier's provision of All-Requirements Power Supply or other performance pursuant to this ESA (including, without limitation, collection of receivables), provided that Competitive Supplier will take reasonable measures to inform any such vendor of the confidential nature of such data and the restrictions set forth in this Article 2.5 and elsewhere in this ESA. Except as expressly provided in this ESA, Competitive Supplier shall not disclose any Eligible Consumer data to any third-party that has not executed a non-disclosure certificate or agreement in a form mutually acceptable to the Parties, and Competitive Supplier shall take Commercially Reasonable measures to protect Eligible Consumer data from access by, or beneficial use for, any third-party. Notwithstanding the foregoing, the Parties agree that contract employees and entities with which Supplier contracts to provide contract employees shall not be deemed third parties for purposes of this Section 2.5. To the extent that the provision of All-Requirements Power Supply or other services under this ESA requires that Competitive Supplier have access to or make use of any Eligible Consumer data, Competitive Supplier shall treat such Eligible Consumer data as confidential information. Competitive Supplier may use Eligible Consumer data to engage in direct marketing only during the term of this ESA and subject to the terms set forth in Article 18.2. A violation of this Article 2.5 shall be grounds for termination under Article 4.2(a). Competitive Supplier agrees violation of this Article 2.5 shall constitute irreparable harm.

## **ARTICLE 3 CONSUMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT**

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### **3.1 CONSUMER CHOICE**

The Parties acknowledge and agree that all Participating Consumers have the right, pursuant to M.G.L. c. 164, § 134 and the Program, to change their source of electricity supply, as set forth in Article 2.1. The Parties represent and warrant to each other that they shall not unreasonably interfere with the right of Participating Consumers to opt-out of the Program, and shall comply with any rules, regulations or policies of the Department, the Local Distributor and/or other lawful Governmental Authority regarding the procedures for opting out or of switching from one source of electric supply to another. Notwithstanding the foregoing, however, the Parties may take Commercially Reasonable measures to encourage Participating Consumers to affirmatively agree to remain in the Program, consistent with any Governmental Rules.

### **3.2 NOTIFICATION TO NEW CONSUMERS OF OPT-OUT RIGHTS**

Consistent with the requirements of any applicable Governmental Rules, and within a reasonable time after the Local Distributor notifies Competitive Supplier of the existence of a New Consumer and has provided to Competitive Supplier such New Consumer's account number, service and billing address, and other pertinent contact information, Competitive Supplier shall notify such New Consumer (i) of the date on which such New Consumer will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing All-Requirements Power Supply to such New Consumer as of the same date, subject to the opt-out provisions of the M.G.L. c. 164, § 134, the Plan, and the Program ("Opt-Out Notice"). The Opt-Out Notice shall be mailed to each such New Consumer prior to the date of automatic enrollment. The Competitive Supplier, in its discretion as to form and content shall: (i) prominently state all charges to be assessed by the Competitive Supplier; (ii) provide a summary of the prices and terms included in Exhibit A as well as fully disclose the prices and terms then being offered for Basic Service by the Local Distributor; (iii) state how such New Consumer may opt-out of the Program prior to enrollment and remain on Basic Service from the Local Distributor; and (iv) state how all Participating Consumers, subsequent to enrollment, will also have the right to opt-out at any time and return to Basic Service or choose a new Competitive Supplier without paying a fee or penalty to Competitive Supplier. All such notices must be approved in advance by the Town, such approval not to be unreasonably withheld.

The above procedures also apply to New Consumers that are subsequent to the initial enrollment; however, it is the responsibility of the Competitive Supplier to request the subsequent New Consumer's pertinent information from the Local Distributor on a quarterly basis.

The Competitive Supplier is responsible for all mailings and mailing costs associated with consumer notification whether it be for the initial enrollment or subsequent enrollments. The Competitive Supplier will maintain a complete list of opt-outs throughout the life of the contract whether received prior to the initial enrollment or after accounts have been enrolled. Upon request, the Competitive Supplier will make this opt-out list available to the Town or its agent. The Competitive Supplier will conduct the initial opt-out mailing in a timeframe necessary for service to commence as early as the Participants' \_\_\_\_\_ meter readings.

In providing the notifications set forth in this Article 3.2, and in otherwise conducting the activities in Article 3.4 below, the Competitive Supplier must rely upon information provided to it by the Local Distributor for the purpose of performing its obligations. Competitive Supplier will not be responsible for any errors or omissions in connection with its notification of Eligible Consumers resulting from errors or omissions in the information provided to it by the Local Distributor.

### **3.3 CONSUMER AWARENESS**

Upon mutual agreement concerning the content and method, either the Competitive Supplier or Colonial Power Group, Inc. (CPG) may conduct consumer awareness efforts at its sole expense.

### **3.4 ENROLLMENT**

**3.4.1 Participating Consumers** - All Participating Consumers as of the Effective Date will continue to be enrolled in the Program under the terms of this ESA unless they opt-out. Within one (1) day after the Effective Date, the Town shall provide to Competitive Supplier a list of Participating Consumers as of the Effective Date, as well as such Participating Consumers' service and billing addresses, and any other information necessary for Competitive Supplier to commence All-Requirements Power Supply to such Participating Consumers as of the Service Commencement Date.

**3.4.2 New Consumers** - If New Consumers elect not to opt-out of the Program as provided in Article 3.2, such New Consumers will be automatically enrolled by Competitive Supplier in the Program. Competitive Supplier shall enroll such New Consumers in accordance with applicable Local Distributor rules.

**3.4.3 Eligible Consumers Opting Out** - At any time during this ESA, Eligible Consumers who have previously opted out of the Program may request that they be re-enrolled in the Program. Competitive Supplier may provide All-Requirements Power Supply to such Eligible Consumers at Competitive Supplier's discretion, at the aggregation rate. Besides accurately and promptly transmitting information provided by such Eligible Consumers to the Local Distributor and following any procedural or other steps which may be mutually agreed to, the Competitive Supplier shall be responsible for enrolling all Eligible Customers through EDI transactions submitted to the Local Distributor for initial enrollment in the aggregation and all enrollments thereafter.

**3.4.4 Consumers Served by Third-Parties** - Consumers being served under other competitive supply programs offered by third-parties will not be automatically enrolled as Participating Consumers under this ESA when such program terminates or is otherwise completed. Competitive Supplier agrees that consumers under such third-party competitive supply programs may affirmatively opt-in and receive All-Requirements Power Supply at the Competitive Supplier's discretion, at the aggregation rate.

## **ARTICLE 4 TERM OF CONTRACT AND TERMINATION**

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### **4.1 TERM**

This ESA shall commence on the Effective Date, *provided, however*, that Competitive Supplier's obligation to provide All-Requirements Power Supply shall commence on the Service Commencement Date, and shall terminate with the Participating Consumers' first meter read dates for the month of \_\_\_\_\_, unless terminated earlier under Article 4.2 below ("Term").

### **4.2 TERMINATION**

This ESA may be terminated at any time upon written notice:

- a) by the Town, or the Competitive Supplier, if either Party fails to remedy or cure any breach of any material provision or condition of this ESA (including, but not limited to, Article 2.5 and Article 9, but excluding the failure to provide or arrange for All-Requirements Power Supply, which is addressed in Article 4.2(c)), within sixty (60) days following written notice to do so by the non-breaching party; or
- b) by the Town, or the Competitive Supplier, if any material provision or condition of this ESA be finally adjudged invalid by any court of competent jurisdiction, or if the Department exercises any lawful jurisdiction so as to invalidate or disapprove this ESA in whole or in significant part; or
- c) by the Town in the event of the failure of the Competitive Supplier to provide or arrange for All-Requirements Power Supply to Participating Consumers, in the absence of *Force Majeure* or the Town's failure to perform and without the benefit of any cure period; *provided, however*, that the Town shall not be permitted to terminate this ESA if the Competitive Supplier's failure to provide or arrange All-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Local Distributor, or the ISO-NE.

#### **4.3 OBLIGATIONS UPON TERMINATION**

Following termination of this ESA, the Parties shall each discharge by performance all obligations due to any other Party that arose up to the date of termination of the ESA. Upon the effective date of termination of the ESA, all rights and privileges granted to, and obligations imposed on, the Competitive Supplier shall cease, with the exception of the right to collect all monies due for services rendered to that date.

The Competitive Supplier specifically waives all rights it may have at law to claim that the Town has no standing or otherwise lacks the authority to seek monetary damages on behalf of individual Participating Consumers in the event of a termination of this ESA.

#### **4.4 SPECIFIC PERFORMANCE**

Notwithstanding any other provision herein, the Parties agree that if the Town (i) fails to comply with any material provision of, or obligation under, this ESA, including but not limited to the provisions of Article 6, (ii) seeks to modify, suspend or terminate the Program during the Term, or (iii) seeks to terminate this ESA except as expressly authorized in Article 4.2, Competitive Supplier shall be entitled to specific performance of this ESA. The Parties acknowledge and agree that because monetary damages are not available to Competitive Supplier under this ESA, there is no remedy at law adequate to compensate Competitive Supplier for the Town's actions as described in (i), (ii) and/or (iii), and further agree that Competitive Supplier will suffer irreparable harm if the Town takes any of the actions described in (i), (ii) or (iii) herein.

#### **4.5 EXTENSION**

The ESA may be extended beyond the termination date established in Article 4.1 by mutual, written agreement of the Parties. Any new pricing terms shall be added to and replace Exhibit A as Exhibit A-1. Upon any such extension, this ESA shall continue to be in effect, and all



provisions of the ESA shall retain the same force and effect as before the extension, unless it is terminated by either Party pursuant to the provisions of Article 4.2 or until the date stated in such extension.

## **ARTICLE 5 CONTINUING COVENANTS**

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The Competitive Supplier agrees and covenants to perform each of the following obligations during the term of this ESA.

### **5.1 STANDARDS OF MANAGEMENT AND OPERATIONS**

In performing its obligations hereunder, during the term of this ESA, the Competitive Supplier shall exercise reasonable care to assure that its facilities are prudently and efficiently managed; that it employs an adequate number of competently trained and experienced personnel to carry out its responsibilities; that it delivers or arranges to deliver a safe and reliable supply of such amounts of electricity to the Point of Delivery as are required under this ESA; that it complies with all relevant industry standards and practices for the supply of electricity to Participating Consumers; and that, at all times with respect to Participating Consumers, it exercises good practice for a Competitive Supplier and employs Commercially Reasonable skills, systems and methods available to it.

### **5.2 CUSTOMER SERVICE ACCESS**

The Competitive Supplier agrees to provide, or cause to be provided, certain customer services to Participating Consumers. Such services shall be reasonably accessible to all Participating Consumers, shall be available during normal working hours, shall allow Participating Consumers to transact business they may have with the Competitive Supplier, and shall serve as a communications liaison among the Competitive Supplier, the Town, and the Local Distributor. A toll-free telephone number will be established by Competitive Supplier and be available for Participating Consumers to contact Competitive Supplier during normal business hours (9:00 A.M.- 5:00 P.M., Monday through Friday) to resolve concerns, answer questions and transact business with respect to the service received from Competitive Supplier. The Town will post program-related information on the Town's website which will be available to Participating Consumers for general information, product and service information, and other purposes.

### **5.3 RESPONDING TO REQUESTS FOR INFORMATION**

To the extent authorized by the Participating Consumer(s) and to the extent such individual permission is required by law, the Competitive Supplier shall, during normal business hours (as set forth above), respond promptly and without charge therefore to reasonable requests of the Town for information or explanation regarding the matters covered by this ESA and the supply of electricity to Participating Consumers. Competitive Supplier agrees to designate a service representative or representatives (the "Service Contacts") who shall be available for these purposes, and shall identify the office address and telephone number of such representative(s). Whenever necessary to comply with this Article 5.3, the Service Contacts shall call upon other employees or agents of the Competitive Supplier to obtain such information or explanation as

may be reasonably requested. Nothing in this Article 5.3 shall be interpreted as limiting the obligation of the Competitive Supplier to respond to complaints or inquiries from Participating Consumers, or to comply with any regulation of the Department or AG regarding customer service.

#### **5.4 ARRANGING FOR FIRM ALL-REQUIREMENTS POWER SUPPLY**

Competitive Supplier shall participate in or make appropriate arrangements with the ISO-NE, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of reliable, safe, firm, All-Requirements Power Supply to the Local Distributor for delivery to Participating Consumers, and take Commercially Reasonable steps to cooperate with the NEPOOL, the ISO-NE or any other entity to ensure a source of back-up power in the event that the facilities owned or controlled by Competitive Supplier's affiliates or other sources of power supply are unable to generate and/or deliver All-Requirements Power Supply to the Point of Delivery. In the event the Competitive Supplier is unable to deliver sufficient electricity to the grid to serve Participating Consumers, the Competitive Supplier shall utilize such arrangements as may be necessary to continue to serve Participating Consumers under the terms of this ESA, and shall bear any costs it may incur in carrying out these obligations. Competitive Supplier shall not be responsible to the Town or any Participating Consumers in the event the Local Distributor disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by the ISO-NE) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Local Distributor's facilities, to maintain the safety and reliability of the Local Distributor's electrical system, or due to any other reason, including emergencies, forced outages, potential overloading of the Local Distributor's transmission and/or distribution circuits, *Force Majeure* or the non-payment of any distribution service costs or other such costs due for services provided by the Local Distributor to a Participating Consumer.

#### **5.5 NON-DISCRIMINATORY PROVISION OF SERVICE**

Competitive Supplier shall supply electric energy to the Point of Delivery to all Participating Consumers on a non-discriminatory basis; provided, however, that those prices and other terms may vary in accordance with reasonably established rate classifications (e.g., residential, commercial, municipal, industrial) or by such other categories as appear in Exhibit A. To the extent applicable, Competitive Supplier's prices, terms and conditions shall be in accordance with the Massachusetts General Laws, the regulations of the Department, and other applicable provision of law. To the extent required by law and/or the conditions of any Department approval of this ESA, the Competitive Supplier may not deny service to an Eligible Consumer for failure to pay the bills of any other electric company (whether engaged in the distribution, transmission, or generation of electricity) or of any other aggregator, marketer or broker of electricity, but may reasonably deny or condition new service, or terminate existing service, based upon any Participating Consumer's failure to pay bills from the Competitive Supplier, subject to any provisions of law. Provision of electric energy supply shall be subject to Competitive Supplier's standard credit policies, to the extent permitted by law, as described in Exhibit A.

## **5.6 APPROVAL OF GENERAL COMMUNICATIONS**

Competitive Supplier shall cooperate with the Town in the drafting and sending of messages and information to Eligible Consumers concerning the Program or any matter arising under or related to this ESA. Competitive Supplier shall, prior to sending any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, “General Communications”) to Participating Consumers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual consumer), provide a copy of such General Communication to the Town for its review to determine whether it is consistent with the purposes and goals of the Town. The Town shall have the right to disapprove such General Communications and suggest revisions if it finds the communication inconsistent with the purposes and goals of the Town, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Town fails to respond within seven (7) calendar days (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; (b) which has been approved by the Department, the DOER, or any other Governmental Authority; or (c) in the nature of routine monthly or periodic bills, or collection notices, except that any bill insert or message included at the bottom of such bill not within the scope of (a) or (b) above shall require approval. If the Town objects to any General Communication on the grounds it is inconsistent with the purposes and goals of the Town, the Competitive Supplier, after consultation as provided in this Article 5.6, may nevertheless elect to send such General Communication provided that it: (i) clearly indicates on such mailing that it has not been endorsed by the Town, (ii) has previously provided all Participating Consumers a meaningful chance to opt not to receive such General Communications, (iii) has stated in connection with such chance to opt not to receive such communications that “the Town wants to protect Eligible Consumers from receiving marketing materials if you do not wish to do so,” and (iv) has otherwise sought input from the Town as to the means by which Eligible Consumers are given a chance to remove their names from any list which may receive General Communications. The Town may reject or exclude any proposed General Communication that, in its reasonable judgment, is contrary to the interests and objectives of the Program or the Town.

## **5.7 COMMUNICATION OF INSERTS AND MESSAGES**

Competitive Supplier agrees that if it communicates with Participating Consumers directly, and unless prevented for regulatory or other such reasons from doing so, it shall allow the Town to include no less than three (3) inserts per year into such communications, provided that the Town pays the cost of printing and reproducing such insert and any incremental postage or handling costs the Competitive Supplier may incur as a result of including such insert. Competitive Supplier shall have the right to disapprove such General Communications (that is communications other than those pertaining to the Town’s demand-side management, energy efficiency programs and technology, and renewable energy programs, if applicable) and suggest revisions if it finds the communication inconsistent with its business interests, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Competitive Supplier fails to respond within seven (7) calendar days after receipt (not including weekends and holidays); and (ii) that no approval shall be necessary for any

communication which has been ordered by the Department, the DOER, or any other Governmental Authority to be so communicated.

## **5.8 PARTICIPATING CONSUMER LISTS**

To the extent not prohibited by any Governmental Rule or expressly by any Participating Consumer(s), the Competitive Supplier shall, upon request of the Town, provide a list of the Participating Consumers being served by the Competitive Supplier, including such reasonable identifying and aggregate consumption information as the Town may also request to the extent such information is available to Competitive Supplier. Competitive Supplier shall provide such Participating Consumer lists in an electronic format reasonably acceptable to both Parties and with no more frequency than once a month.

## **5.9 COMPLIANCE WITH LAWS**

The Parties shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this ESA.

## **5.10 CONSENT**

Whenever performance of an obligation of any Party hereto requires the consent or approval of any Governmental Authority, such Party shall make Commercially Reasonable efforts to obtain such consent or approval. In the event the Competitive Supplier requests the Town's assistance in obtaining such consent or approval and the Town anticipates that it will incur costs in fulfilling the Competitive Supplier's request, it shall give the Competitive Supplier an estimate of such costs. Upon receiving the estimate, Competitive Supplier shall determine whether it will continue to request the Town's assistance, and if so, the Competitive Supplier shall reimburse the Town for all costs, up to the estimated dollar amount, reasonably incurred by the Town in connection with such efforts.

# **ARTICLE 6 ROLE OF THE TOWN**

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Under this ESA, the Town shall not actually receive, take title to, or be liable for the supply or delivery of All-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the Town is to i) set the terms and conditions under which All-Requirements Power Supply will be provided by the Competitive Supplier under this ESA and to ensure that the Competitive Supplier complies with those terms and conditions, and ii) act as agent for Eligible Consumers with respect to the matters addressed in this ESA. It is the sole obligation of the Competitive Supplier to arrange for delivery of All-Requirements Power Supply to Participating Consumers. The Parties agree that Town is not a "distribution company", "electric company", "generation company" or "transmission company" within the meaning of M.G.L. c. 164, § 1 as a result of this ESA, unless a court, the Department, or other lawful authority shall adjudicate to the contrary; provided, however, that the Town may be considered to be operating a municipal load aggregation plan pursuant to M.G.L. c. 164, § 134. The Competitive Supplier hereby agrees that it will take no action that would make the Town liable

to any Participating Consumer due to any act or failure to act on the part of the Competitive Supplier relating to the delivery or supply of All-Requirements Power Supply.

## **ARTICLE 7 PRICES AND SERVICES; BILLING**

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### **7.1 SCHEDULE OF PRICES AND TERMS**

Competitive Supplier agrees to provide All-Requirements Power Supply and other related services as expressly set forth herein in accordance with the prices and terms included in Exhibit A to this ESA, which Exhibit is hereby incorporated by reference into this ESA.

### **7.2 OBLIGATION TO SERVE**

As between the Parties, Competitive Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide All-Requirements Power Supply for all of the Participating Consumers under the Program. Competitive Supplier, except as explicitly limited by the terms included in Exhibit A, shall be obligated to accept all Participating Consumers, regardless of their location or energy needs, subject to Competitive Supplier's standard credit policies (to the extent permitted by law), Article 5.5 hereof, Exhibit A hereof and the terms of any approval or other order of the Department with respect to this ESA.

### **7.3 METERING**

In accordance with the Local Distributor's Terms and Conditions for Competitive Suppliers Sections 3B(6) and 7A, the Local Distributor will be responsible for any metering which may be required to bill Participating Consumers.

### **7.4 TERMS AND CONDITIONS PERTAINING TO INDIVIDUAL ACCOUNT SERVICE**

#### **7.4.1 Title**

Title to All-Requirements Power Supply will transfer from Competitive Supplier to Participating Consumers at the Point of Sale. In accordance with the Local Distributor's Terms and Conditions for Municipal Aggregators (M.D.P.U. No. 1202) and Terms and Conditions for Competitive Suppliers (M.D.P.U. No. 1201) the Competitive Supplier will be responsible for any and all losses incurred on the local network transmission systems and distribution systems, as determined by the Local Distributor.

#### **7.4.2 Billing and Payment**

Unless otherwise specified in an Exhibit to this ESA, all billing under this ESA shall be based on the meter readings of each Participating Consumer's meter(s) performed by the Local Distributor. Competitive Supplier shall, or shall cause the Local Distributor or any other entity, to prepare and mail bills to Participating Consumers monthly. If the Competitive Supplier

arranges for the Local Distributor to perform billing services, the Competitive Supplier shall adopt the billing and payment terms offered by the Local Distributor to its Eligible Consumers on Basic Service unless the Competitive Supplier and Local Distributor otherwise agree. Any over-charge or under-charge will be accounted for in the next billing period for which actual meter data is available.

### **7.4.3 Regional and Local Transmission**

The prices quoted in Exhibit A do not include current and future charges for distribution service costs collected by the Local Distributor under its distribution service tariff or local transmission costs as may be imposed by the regional power pool, ISO-NE, or individual electric utilities that have FERC transmission tariffs. Its Competitive Supplier understands that these costs will be collected by the Local Distributor. If, in the future, Competitive Supplier becomes responsible for such distribution or transmission costs, Competitive Supplier shall be entitled to collect such costs from Participating Consumers to the extent permitted by any Governmental Rules. These costs are “pass through” costs as determined by the appropriate regulatory agencies.

### **7.4.4 Taxes**

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of All-Requirements Power Supply shall be included on the Participating Consumer’s bill and shall be remitted to the appropriate taxing authority by Competitive Supplier. Participating Consumers shall be responsible for all taxes (except for taxes on Competitive Supplier’s income) associated with sales under the ESA. Participating Consumers shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Competitive Supplier.

## **ARTICLE 8 DEVELOPMENT OR OFFERING OF RENEWABLE ENERGY SOURCES**

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Competitive Supplier agrees that it will comply with the applicable provisions of M.G.L. c. 25A, § 11F, § 11 F1/2, and any regulations, orders or policies adopted pursuant thereto.

## **ARTICLE 9 SERVICE PROTECTIONS FOR RESIDENTIAL CONSUMERS**

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Competitive Supplier agrees that it shall comply with the provisions of 220 C.M.R. 25.00, 27.00, 28.00 and 29.00, as applicable to Competitive Suppliers, and any amendments thereto, and any code of conduct or policies the Department may adopt in accordance with M.G.L. c. 164, § 1F(7). The Competitive Supplier shall, on or before \_\_\_\_\_, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Town (which approval shall not be unreasonably withheld). Such written description shall also include the Competitive Supplier’s plans for maintaining “service quality standards”, as that phrase is used in § 1F(7); for complying with the “affirmative choice” requirements of § 1F(7); and for handling consumer complaints, including any arbitration procedures. If the Participating Consumer(s) so permit(s) to the extent

such permission is required by law or the terms of any Department order with respect to this ESA, the Competitive Supplier agrees to provide notice to the Town of any consumer complaints received from a Participating Consumer, and to grant the Town the right to participate in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by Department regulations and other applicable law. The failure to timely submit such written description, or the submission of practices and procedures which materially fail to comply with Department regulations and policies, shall be deemed grounds for termination of this ESA, at the discretion of the Town after providing written notice of such failure to the Competitive Supplier and allowing the Competitive Supplier sixty (60) days to cure such failure.

In addition, and in accordance with M.G.L. c. 164, § 1F(2) and 220 CMR 11.05(2)(b)19, in the event of a dispute regarding an invoice or Competitive Supplier's service under this ESA, a Participating Consumer may contact the Department, which may refer the dispute to the Massachusetts Office for Dispute Resolution for mediation of such dispute, if the amount in dispute is greater than one hundred dollars (\$100.00) and the subject of the dispute is within the Department's statutory and regulatory authority.

## **ARTICLE 10 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT**

Competitive Supplier agrees to conduct its operations and activities under this ESA in accordance with all applicable state and federal laws regarding non-discrimination in hiring and employment of employees.

## **ARTICLE 11 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION**

### **11.1 POWER SUPPLY INFORMATION**

#### **11.1.1 Monthly/Quarterly Report of Usage**

**Monthly Report of Usage** – Competitive Supplier shall provide the Town or its agent with a monthly report of Usage which will contain:

- a. Town Name
- b. Account Number
- c. Rate Code
- d. Rate Code Classification (Residential, Sm Commercial, Med Commercial, Industrial)
- e. Bill Date
- f. Contracted Unit Rate
- g. Bill Usage

The monthly report will be due to the Town or its agent within five (5) days following the close of each month. The information shall be listed in the report as shown on Exhibit B attached hereto. This information shall be provided in electronic format.

**Quarterly Report of Usage** – Competitive Supplier shall provide the Town or its agent with a quarterly report of Usage which will contain: (i) actual kWh Usage for all meter reads of the reporting period and (ii) number of Participating Consumer accounts active in all meter reads of the reporting period. The kWh Usage and number of Participating Consumer accounts shall be listed in the report by Rate Code Classification.

The quarterly report will be due to the Town or its agent within forty-five (45) days following the close of each calendar quarter (March 31, June 30, September 30 and December 31). This information shall be provided in electronic format.

#### **11.1.2 Consumer-Related Data**

On and after the Service Commencement Date, Competitive Supplier will maintain consumer-related data in electronic form including utility account number, billing name, billing address, service address historical usage, demand, and ICAP data. Competitive Supplier will make such data available to the Town or its agent upon a Commercially Reasonable request by the Town or its agent.

#### **11.1.3 Standard of Care**

Competitive Supplier shall use Commercially Reasonable practice in preparing and providing any information or data required under the ESA. To the extent that Competitive Supplier determines that any information or data provided hereunder is in error, it shall provide such information or data to the Town or its agent within a Commercially Reasonable time.

### **11.2 DISCLOSURE LABEL**

Within fifteen (15) days of the end of the quarter, Competitive Supplier shall present a copy of the current “Disclosure Label” required by the Department of all Competitive Suppliers to be disclosed to their Participating Consumers which includes information pertaining to Competitive Supplier’s power supply and a reasonably detailed description of the sources of Competitive Supplier’s power supply used to serve Participating Consumers pursuant to this ESA, except to the extent such disclosure would violate any confidentiality obligations of Competitive Supplier.

### **11.3 BOOKS AND RECORDS**

Competitive Supplier shall keep its books and records in accordance with any applicable regulations or guidelines of the Department, the FERC, and any other Governmental Authority. The Town will have access to any reports mandated by the Securities and Exchange Commission which are available on the Internet “EDGAR” system. Upon a Commercially Reasonable request by the Town and at the Town’s expense, Competitive Supplier shall provide back-up for any charge under this ESA questioned by the Town.



## **11.4 COPIES OF REGULATORY REPORTS AND FILINGS**

Upon reasonable request, Competitive Supplier shall provide to the Town a copy of each public periodic or incident-related report or record relating to this ESA which it files with any Massachusetts or federal agency regulating rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements, unless the Competitive Supplier is required by law or regulation to keep such reports confidential. The Town shall treat any reports and/or filings received from Competitive Supplier as confidential information subject to the terms of Article 16. Competitive Supplier shall be reimbursed its reasonable costs of providing such copies.

## **ARTICLE 12 RESOLUTION OF DISPUTES; CHOICE OF LAW**

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### **12.1 CHOICE OF LAW**

This ESA and the rights of the Parties shall be interpreted and determined in accordance with the laws of the Commonwealth of Massachusetts.

### **12.2 DISPUTE RESOLUTION**

Unless otherwise provided for in this ESA, the dispute resolution procedures of this Article 12.2 shall be the exclusive mechanism to resolve disputes arising under this ESA. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this ESA. Any dispute that arises under or with respect to this ESA that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party(ies) involved in the dispute a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time is modified by written agreement of the Parties involved in the dispute. In the event that the parties involved in the dispute cannot resolve a dispute by informal negotiations, the Parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association (AAA), Boston, Massachusetts, appoint a mediator and the mediation will be held in Boston, Massachusetts or other mutually agreed to venue. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by all parties involved in the dispute.

In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the Parties agree to submit such dispute to arbitration and agree that the arbitration process provided for in this Article 12.2 shall be the exclusive means for resolving disputes which the Parties cannot otherwise resolve through informal negotiation or mediation as described above. Any arbitration hereunder shall be conducted under the Commercial Rules of the AAA as modified

herein. Arbitration proceedings shall take place in Boston, Massachusetts, before a single arbitrator who shall be an attorney with at least 20 years of experience in the energy industry, to be jointly selected by the Parties. If the Parties fail to agree upon an arbitrator within thirty (30) days, then either Party may apply to the American Arbitration Association's office in Washington, D. C. to select the arbitrator who must be an attorney at least twenty (20) years of experience in the energy industry. Unless otherwise agreed by the Parties, the dispute must be submitted to the arbitrator for determination within ninety (90) days from the date the arbitrator is selected and the arbitrator shall render his or her decision within thirty (30) days after such submission. Each Party shall use its best efforts and cooperation in order that the dispute is fully submitted to the arbitrator within such ninety (90) day period. All arbitration proceedings shall be confidential. Neither Party shall disclose any information about the evidence produced by the other Party in the arbitration proceedings, except in the course of judicial, regulatory, or arbitration proceeding, or as may be demanded by government authority or otherwise required by law or the rules of a national securities exchange. Before making any disclosure permitted by the preceding sentence, a Party shall give the other Party reasonable advance written notice of the intended disclosure and an opportunity to prevent disclosure. In connection with any arbitration provisions hereunder, each Party shall have the right to take the depositions of individuals including any expert witness retained by the other Party. Additional discovery may be had where the arbitrator so orders, upon a showing of need. Each Party bears the burden of persuasion of any claim or counterclaim raised by that Party. The arbitration provisions of this ESA shall not prevent any Party from obtaining injunctive or other equitable relief from a court of competent jurisdiction to enforce the obligations for which such Party may obtain provisional relief pending a decision on the merits by the arbitrator. Each of the Parties hereby consents to the jurisdiction of Massachusetts courts for such purpose. The arbitrator shall apply Massachusetts law as required under Article 12.1 and shall have authority to award any remedy or relief that a court of the State of Massachusetts could grant in accordance with applicable law and the terms of this ESA, except that the arbitrator shall have no authority to award punitive damages. All attorney's fees and costs of the arbitration shall be borne by the Party incurring such costs or fees except that upon application by the Prevailing Party, the arbitration shall award the Prevailing Party its attorney's fees and expenses to be paid by the other Party. Prevailing Party shall be defined for purpose of this Article 12.2 as the party to which the arbitrator issues an award of monetary damages or otherwise determines substantially prevailed on the merits in the arbitration. Any arbitration award shall be accompanied by a written statement containing a summary of the issues in controversy, a description of the award, and an explanation of the reasons for the award. The arbitrator's award shall be final, binding and non-appealable and judgment may be entered upon such award by any court of competent jurisdiction.

## **ARTICLE 13 INDEMNIFICATION**

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### **13.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER**

Competitive Supplier shall indemnify, defend and hold harmless the Town ("Indemnified Party") and the Indemnified Party's officers, employees, agents, representatives and independent contractors, 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 foregoing parties to the extent arising directly from or in connection

with (i) any material breach by Competitive Supplier of its obligations, covenants, representations or warranties contained in this ESA and not resulting from the actions of the Local Distributor, the Town or its employees or agents, or (ii) Competitive Supplier's actions or omissions taken or made in connection with Competitive Supplier's performance of this ESA that were not Commercially Reasonable. Competitive Supplier further agrees, if requested by the Town, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article 13.1.

### **13.2 NOTICE OF INDEMNIFICATION CLAIMS**

If the Town seeks indemnification pursuant to this Article 13.2, it shall notify Competitive Supplier of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. Upon written acknowledgment by the Competitive Supplier that it will assume the defense and indemnification of such claim, the Competitive Supplier may assert any defenses which are or would otherwise be available to the Town.

### **13.3 SURVIVAL**

Notwithstanding any provision contained herein, the provisions of this Article 13.3 shall survive the termination of this ESA for a period of three (3) years with respect to (i) any claims which occurred or arose prior to such termination and (ii) any losses occurring as a result of the termination.

### **13.4 DUTY TO MITIGATE**

All Parties agree that they have a duty to mitigate damages and covenant that they will use Commercially Reasonable efforts to minimize any damages they may incur as a result of any other Party's performance or non-performance of this ESA.

## **ARTICLE 14 REPRESENTATIONS AND WARRANTIES**

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### **14.1 BY THE COMPETITIVE SUPPLIER**

As a material inducement to entering into this ESA, the Competitive Supplier hereby represents and warrants to the Town as of the Effective Date of this ESA as follows:

- a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this ESA;
- b) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- c) the execution, delivery and performance of this ESA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or

- conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;
- d) subject to the conditions set forth in Article 2.4, this ESA constitutes a legal, valid and binding obligation of the Competitive Supplier enforceable against it in accordance with its terms, and the Competitive Supplier has all rights such that it can and will perform its obligations to the Town in conformance with the terms and conditions of this ESA, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;
  - e) no Bankruptcy is pending against it or to its knowledge threatened against it;
  - f) none of the documents or other written information furnished by or on behalf of Competitive Supplier to the Town pursuant to this ESA, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and
  - g) all information furnished by Competitive Supplier in response to the Request for Proposals for competitive electric supply services is true and accurate.

## **14.2 BY THE TOWN**

As a material inducement to entering into this ESA, the Town hereby represents and warrants to Competitive Supplier as of the effective date of this ESA as follows:

- a) this ESA constitutes the legal, valid and binding obligation of the Town enforceable in accordance with its terms;
- b) the execution, delivery and performance of this ESA are within the Town's powers, have been or will be duly authorized by all necessary action;
- c) the Town has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- d) all Participating Consumers are bound as principals to this ESA; and
- e) no Bankruptcy is pending or threatened against the Town.

## **ARTICLE 15 INSURANCE AND OTHER FINANCIAL GUARANTEES**

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### **15.1 INSURANCE**

In order to help support the indemnifications provided in Article 13, and its other promises and covenants stated herein, Competitive Supplier shall secure and maintain, at its own expense, throughout the term of this ESA, comprehensive commercial general liability insurance of at least \$1,000,000 combined single limit and excess liability coverage of at least \$3,000,000 with insurers and with the Town named as additional insured. Competitive Supplier shall provide the Town with evidence, reasonably satisfactory to the Town, of its required insurance hereunder, upon request.

## **15.2 ADDITIONAL FINANCIAL GUARANTEES**

In addition to the insurance set forth in Article 15.1, above, the Competitive Supplier shall, within ten (10) Business Days after the Effective Date, provide the Town with a guaranty issued by Competitive Supplier's Guarantor substantially in the form attached hereto as Exhibit \_ (the "Guaranty") and in the amount of two million US dollars (\$2,000,000). Such Guaranty shall guarantee the obligations of Competitive Supplier to the Town contained in this ESA, and shall establish the limit on Competitive Supplier's liability under this ESA. Such Guaranty shall become issued within ten (10) Business Days after the Effective Date but shall be in effect as of the Effective Date, and shall continue in effect during the entire Term of ESA.

Competitive Supplier may, without the consent of the Town, replace the financial security provided hereunder with cash or a letter of credit substantially in the form attached hereto as Exhibit X ("Letter of Credit"), provided such replacement financial security is in the same amount previously provided by the Guaranty. Competitive Supplier may also replace the financial security provided hereunder with another form of financial security, or otherwise change the amount of its financial security, with the consent of the Town, such consent not to be unreasonably withheld.

Upon reasonable request during the Term of this ESA and on a continuing basis, Competitive Supplier will provide the Town with a copy of Competitive Supplier's annual report, and the annual report of its ultimate parent, \_\_\_\_\_. Competitive Supplier also agrees to notify the Town in the event that Competitive Supplier's Guarantor's Credit Rating is less than BBB- by Standard & Poor's Rating Group or less than Baa3 by Moody's ("Downgrade Event"). Should a Downgrade Event occur, the Town may request that Competitive Supplier provide cash or a Letter of Credit as a substitute form of security in the same amount previously provided by the Guaranty. Upon receipt of such notice, Competitive Supplier shall have three (3) business days in which to provide such cash or Letter of Credit to the Town.

## **ARTICLE 16 CONFIDENTIALITY**

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Competitive Supplier acknowledges that the Town is subject to public records laws, including without limitation, M.G.L. c. 4, § 7, cl. 26 and M.G.L. c. 66, § 10. To the extent not prohibited by such laws, each Party shall keep confidential, and shall not disseminate to any third party (other than such Party's affiliates) or use for any other purpose (except with written authorization, such authorization not to be unreasonably withheld), any information received from the other that is confidential or proprietary in nature unless legally compelled (by deposition, inquiry, request for production of documents, subpoena, civil investigative demand or similar process, or by order of a court or tribunal of competent jurisdiction, or in order to comply with applicable rules or requirements of any stock exchange, government department or agency or other Governmental Authority, or by requirements of any securities law or regulation or other Governmental Rule) or as necessary to enforce the terms of this ESA. The Party receiving confidential or proprietary information shall have no obligation with respect to such information which: (i) is or becomes generally available to the public other than as a result of disclosure by the receiving Party; (ii) was in its possession prior to disclosure hereunder and which was not acquired directly or, to the Party's knowledge, indirectly from the disclosing

Party; (iii) was received from a non-party to this ESA who to the receiving Party's knowledge, was not subject to a confidentiality agreement or fiduciary obligation regarding information; (iv) was independently developed by the receiving Party without reference to the information.

Either Party may disclose the terms of this ESA to its affiliates, and to its and officers, directors, employees, attorneys, accountants and third party vendors as reasonably necessary to accommodate Competitive Supplier's provision of All-Requirements Power Supply or other performance pursuant to this ESA, and otherwise to entities that have executed a non-disclosure certificate or agreement in a form mutually acceptable to the Parties. This Article 16 shall survive the termination of this ESA for a period of two (2) years.

If either Party is compelled to disclose any confidential information of the other Party, such Party shall request that such disclosure be protected and maintained in confidence to the extent reasonable under the circumstances and use Commercially Reasonable efforts to protect or limit disclosure with respect to commercially sensitive terms. In addition, notwithstanding the public records laws referenced above, such Party shall provide the other Party with prompt notice of the requirement to disclose confidential information in order to enable the other Party to seek an appropriate protective order or other remedy, and such Party shall consult with the other Party with respect to the other Party taking steps to resolve the scope of any required disclosure. In the event the Competitive Supplier requests the Town's assistance in protecting the confidentiality of information and the Town anticipates that it will incur costs in fulfilling the Competitive Supplier's request, it shall give the Competitive Supplier an estimate of such costs. Upon receiving the estimate, Competitive Supplier shall determine if it continues to request the Town's assistance, and if so, the Competitive Supplier shall reimburse the Town for all costs, up to the estimated amount, reasonably incurred by the Town in connection with such efforts.

For the avoidance of doubt, the information related to this ESA that is considered confidential and proprietary in nature shall include the following:

- a) any account information related to the Participating Consumers including, without limitation, historic usage data, metering, and billing and payment information;
- b) any information regarding transactions entered into by Competitive Supplier and any third parties in connection with the provision of All-Requirements Power Supply;
- c) any list of Participating Consumers;
- d) any information disclosed by a Party during any settlement discussions;
- e) Competitive Supplier's insurance certificates;
- f) any financial security instrument(s) provided by Competitive Supplier;
- g) any non-public information provided by Competitive Supplier; and
- h) any information which either Party should reasonably understand to be confidential and proprietary by virtue of the sensitive nature of the information.

## **ARTICLE 17 REGULATORY EVENT/NEW TAXES**

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### **17.1 REGULATORY EVENT**

If a Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If a Regulatory Event affects Competitive Supplier and Competitive Supplier incurs excess costs as a result thereof, such amount shall be allocated to and collected from Participating Consumers on a per kWh basis through applicable monthly invoice(s).

### **17.2 NEW TAXES**

If any New Taxes are imposed for which Competitive Supplier is responsible, the amount of such New Taxes shall be allocated to and collected from Participating Consumers through applicable monthly invoice(s).

## **ARTICLE 18 MISCELLANEOUS**

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### **18.1 NO ASSIGNMENT WITHOUT PERMISSION**

Competitive Supplier shall not assign its rights and privileges under this ESA without the prior written approval of the Town. Such approval may be denied at the reasonable discretion of the Town if it determines that the proposed assignee does not have at least the same financial ability as the assigning Competitive Supplier. Notwithstanding the foregoing, the Town may not unreasonably withhold its consent to an assignment to an affiliated entity under common control or management with Competitive Supplier or Competitive Supplier's corporate parent. Competitive Supplier's assignee shall agree in writing to be bound by the terms and conditions of this ESA. The Town may assign this ESA without the prior consent of Competitive Supplier provided that the proposed assignee has at least the same financial ability as the Town and such assignment would not in any way impair the rights and interests of Competitive Supplier under this ESA. The rights and obligations created by this ESA shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

### **18.2 DIRECT MARKETING**

Prior to the introduction of any new product or service which Competitive Supplier may wish to make available to Participating Consumers or other Eligible Consumers located within the Town, Competitive Supplier agrees to (i) give the Town written notice of such new product or service and (ii) subject to the entry into reasonable confidentiality terms to the extent permitted by law and mutually acceptable to the Parties, discuss with the Town the possible inclusion of such new product or service in this aggregation program. The Parties agree to negotiate in good faith the terms, conditions, and prices for such products and services which the Parties agree should be included in a Town aggregation program.

Competitive Supplier also agrees not to engage in any direct marketing to any Participating Consumer that relies upon Competitive Supplier's unique knowledge of, or access to,

Participating Consumers gained as a result of this ESA. For the purposes of this provision, “direct marketing” shall include any telephone call, mailing, electronic mail, or other contact between the Competitive Supplier and the Consumer. Broad-based programs of the Competitive Supplier that do not rely on unique knowledge or access gained through this ESA will not constitute such “direct marketing.”

### **18.3 NOTICES**

All notices, demands, requests, consents or other communications required or permitted to be given or made under this ESA shall be in writing and addressed to:

If to Competitive Supplier:

If to Town:

Mr. Mark Cappadona  
Colonial Power Group, Inc.  
277 Main Street  
Marlborough, Massachusetts 01752  
(508) 485-5858 (phone)  
(508) 485-5854 (fax)  
[mark@colonialpowergroup.com](mailto:mark@colonialpowergroup.com)

With a Copy To:

Mr. Jeffrey Nutting, Town Administrator  
Town of Franklin  
355 East Central Street  
Franklin, MA 02038  
(508) 520-4949

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this ESA; (ii) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this ESA; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this ESA. Any party may change its address and contact person for the purposes of this Article 18.3 by giving notice thereof in the manner required herein.

### **18.4 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS**

In the event that the name or telephone number of any emergency or service contact for the Competitive Supplier changes, Competitive Supplier shall give prompt notice to the Town in the manner set forth in Article 18.3. In the event that the name or telephone number of any such



contact person for the Town changes, prompt notice shall be given to the Competitive Supplier in the manner set forth in Article 18.3.

### **18.5 ENTIRE ESA; AMENDMENTS**

This ESA and the Related Documents constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This ESA may only be amended or modified by a written instrument signed by all Parties hereto.

### **18.6 FORCE MAJEURE**

If by reason of *Force Majeure* any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the *Force Majeure*, gives all other Parties hereto written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure*; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If any event of *Force Majeure* continues for a period of one hundred eighty (180) days or longer, either Party may terminate this ESA by sending the other Party a written notice as set forth in Article 4.2; *provided, however*, that the same shall not constitute a default under this ESA and shall not give rise to any damages.

### **18.7 EXPENSES**

Each Party hereto shall pay all expenses incurred by it in connection with its entering into this ESA, including without limitation, all of its attorneys' fees and expenses.

### **18.8 NO JOINT VENTURE**

Competitive Supplier will perform all services under this ESA as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Town and the Competitive Supplier hereunder are individual and neither collective nor joint in nature.

### **18.9 JOINT WORK PRODUCT**

This ESA shall be considered the work product of all Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

## **18.10 COUNTERPARTS**

This ESA may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

## **18.11 THIRD PARTIES**

The parties acknowledge that the Price for energy as described in Exhibit A includes a commission fee equal to \$0.001 (1 mil) per kWh of Participating Consumers' actual usage payable to CPG, the consultant hired by the Town to develop, implement, and administer the Program, as well as an Operational Adder payable to the Town, as set forth in Exhibit A. The Competitive Supplier agrees to include this commission fee in the Price for energy and to make the monthly commission payments on behalf of Participating Consumers, and acknowledges this obligation as a material obligation of this ESA; provided however, that (i) this ESA remains in full force and effect, and (ii) the commission fee shall be paid fifteen (15) business days following the end of each month, based on prior month meter readings of each Participating Consumer's meter(s) performed by the Local Distributor. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties. Except as provided in this provision, there shall be no other third-party beneficiaries to this ESA.

## **18.12 WAIVER**

No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this ESA shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party(ies) so failing. A waiver of any of the provisions of this ESA shall only be effective if made in writing and signed by the Party who is making such waiver.

## **18.13 CO-OPERATION**

Each Party acknowledges that this ESA must be approved by the Department and agree that they shall use Commercially Reasonable efforts to cooperate in seeking to secure such approval.

## **18.14 PLAN**

Competitive Supplier agrees that it has been provided with and had a reasonable opportunity to read the Plan. The Parties agree that the Plan, in the forms as it exists on the Effective Date of this ESA, is incorporated into this ESA by reference, and that it shall be construed harmoniously to the greatest practicable extent; notwithstanding the foregoing, in the event of any conflict between this ESA and the Plan, this ESA shall govern. The Town will provide Competitive Supplier with amendments to the Plan as they are adopted; provided, however, that such amendments are not incorporated into this ESA as a result of such adoption. Any amendments hereto must be made in accordance with Article 18.5 of this ESA.

### **18.15 ADVERTISING LIMITATIONS**

Competitive Supplier agrees not to use the name of the Town, or make any reference to the Town in any advertising or other information to be distributed publicly for marketing or educational purposes, unless the Town expressly agrees to such usage. Any proposed use of the name of the Town must be submitted in writing for agreement and prior approval, which shall not be unreasonably withheld, consistent with Article 5.6 hereof. The Town acknowledges that the Competitive Supplier's corporate affiliates own the exclusive right to the trademarked logo and trade name used by Competitive Supplier. No right, license or interest in this trademark and/or trade name is granted to the Town hereunder, and the Town agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

### **18.16 PRESS RELEASES**

The Parties shall not issue a press release or make any public statement with respect to this ESA without the prior written agreement of the other Party with respect to the form, substance and timing thereof, except either Party may make any such press release or public statement when the releasing Party is advised by its legal counsel that such a press release or public statement is required by law, regulation or stock exchange rules, provided however, in such event, the Parties shall use their reasonably good faith efforts to agree as to the form, substance and timing of such release or statement.

### **18.17 HEADINGS AND CAPTIONS**

The headings and captions appearing in this ESA are intended for reference only, and are not to be considered in construing this ESA.

### **18.18 SURVIVAL OF OBLIGATION**

Termination of this ESA for any reason shall not relieve the Town or the Competitive Supplier of any obligation accrued or accruing prior to such termination.

### **18.19 REMEDIES**

#### **18.19.1 General**

Subject to the limitations set forth in Article 18.19.2 below and Article 4, the Town and the Competitive Supplier reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party hereto under this ESA.

**18.19.2 Limitations**

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. Notwithstanding the foregoing, Competitive Supplier acknowledges that the preceding sentence shall not limit the Town's rights under Article 13.1 to seek indemnification from Competitive Supplier or consequential, punitive, or incidental damages or other such losses claimed by third-parties.

IN WITNESS WHEREOF, the Parties hereto have executed this ESA as of the Effective Date

**COMPETITIVE SUPPLIER**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Dated: \_\_\_\_\_

**TOWN**

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

Name: Jeffrey Nutting

Title: Town Administrator

Address: Town of Franklin  
355 East Central Street  
Franklin, MA 02038

Dated: \_\_\_\_\_

## EXHIBIT A

## PRICES AND TERMS

## Franklin's Community Choice Power Supply Program

Price by Rate Classification

Rate Class	Price for Period 1* \$/kWh	Price for Period 2* \$/kWh
Residential		
Commercial		
Industrial		

*\*Rate includes Operational Adder of \$X.XXX/kWh [TBD; no max].*

*[Final Prices will be determined prior to the beginning of the respective pricing periods]*

### Terms for System Supply Service

**Delivery Term:** as set forth in this Exhibit A for two or more Pricing Periods, extending through the end of the Term as set forth in Article 4.1.

**Period 1 Pricing:** applies to service commencing with the Participating Consumers' first meter read dates for the month of \_\_\_\_\_ (billed in arrears, therefore the \_\_\_\_\_ billing statements) and terminating with the Participating Consumers' first meter read dates for the month of \_\_\_\_\_ (final bill, therefore the \_\_\_\_\_ billing statements).

**Period 2 Pricing:** applies to service commencing with the Participating Consumers' first meter read dates for the month of \_\_\_\_\_ (billed in arrears, therefore the \_\_\_\_\_ billing statements) and terminating with the Participating Consumers' first meter read dates for the month of \_\_\_\_\_ (final bill, therefore the \_\_\_\_\_ billing statements).

The price for All-Requirements Power Supply shall be as stated on this Exhibit A for the applicable Pricing Periods, and shall be fixed for the entire length of each Pricing Period. Prices must include all adders and ancillary charges. However, the Competitive Supplier may offer price reductions to Participating Consumers at any time during the term of this ESA.

**Start-Up Service Date:** All-requirements retail power supply will commence at the prices stated above as of the Participating Consumers' first meter read dates for the month of \_\_\_\_\_.

**Renewable Energy in System Supply:** The Competitive Supplier shall include Renewable Energy in the All Requirements Power Supply mix in an amount equal to Massachusetts' Renewable Portfolio Standards and Alternative Energy Portfolio Standards starting with the year in which load is served on the Start-Up Service Date or pay all penalties imposed by the Department related to Renewable Energy requirements.

**Term:** The period of delivery of All Requirements Power Supply shall be consistent with the provisions of Article 4 and Exhibit A of this ESA.

**Eligible Consumer Opt-Out:** Participating Consumers are free to opt-out of the Program utilizing established EDI drop protocols. Participating Consumers are to provide five (5) days' notice to the Competitive Supplier of such termination. There are no fees or charges for Participating Consumers to opt-out or terminate service.

**Competitive Supplier's Standard Credit Policy:** The Competitive Supplier will not require a credit review for any consumer participating in the Program, nor does Competitive Supplier require any consumer to post any security deposit as a condition for participation in the Program. The Competitive Supplier may terminate service to a Participating Consumer and return such consumer to Basic Service in the event that the consumer fails to pay to Competitive Supplier amounts past-due greater than sixty (60) days.

**EXHIBIT B**

**MONTHLY REPORTING TEMPLATE**



.Supplier Monthly  
Reporting Template.



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# **TOWN OF FRANKLIN COMMUNITY CHOICE POWER SUPPLY PROGRAM**

## **EDUCATION AND INFORMATION PLAN**

**PREPARED BY**

**COLONIAL POWER GROUP, INC.**

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### **1 OVERVIEW AND PURPOSE**

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M.G.L. c. 164, § 134(a) requires that municipal aggregators “fully inform participating ratepayers in advance of automatic enrollment that they are to be automatically enrolled and that they have the right to opt-out of the aggregated entity without penalty. In addition, such disclosure shall prominently state all charges to be made and shall include full disclosure of the basic service rate, how to access it, and the fact that it is available to them without penalty.”

The Education and Information Plan (“Education Plan”) component of Franklin’s Community Choice Power Supply Program (“Program”) is two-pronged. The first is general education through which Colonial Power Group, Inc. (CPG) will provide information to eligible consumers by way of the media, electronic communications, and public presentations. The second is direct mail notification which will be mailed out to eligible consumers and will contain information regarding participation and rights.

In D.T.E. 00-47 (2000), at 26, the Massachusetts Department of Telecommunications and Energy (DTE) concluded that the education plan component of the Cape Light Compact, which also included general education and direct mail notification, satisfied the aforementioned statutory requirement. Moreover, in D.T.E. 04-32 (2004), the DTE concluded that the education plan component of the Cape Light Compact resulted in eligible consumers being satisfactorily informed of their rights to opt-out of the program, as well as other pertinent program information. Accordingly, the Town of Franklin’s (“Town”) Education Plan closely resembles that of the Cape Light Compact.

The purpose of the Education Plan is to raise awareness and provide eligible consumers with information concerning their opportunities, options and rights for participation in the Program.

The Education Plan consists of two parts:

- a) General Education: This will be conducted through the media, public meetings and presentations, and electronic communications and will inform eligible consumers about the Program.
- b) Direct Mail Notification: This will be mailed out to eligible consumers and will contain information regarding participation and rights, as well as comparative prices and terms.

The general education effort will provide a broad back drop for the direct mail notification, boosting awareness of the mailing and its purpose and providing reinforcement of key information.

## **1.1 GENERAL EDUCATION**

The general education will provide a description of the Program for eligible consumers. It will consist of a public relations effort, advertising outreach, public presentations and electronic information sources (i.e. toll-free telephone number, websites, etc.). The general education will provide specific information about the Program and maximize the impact of the direct mail notification which will create an environment of public awareness.

### **1.1.1 Press Conference**

The initial launch of the Program will be a media event featuring representatives from the Town, its Competitive Supplier, and CPG. This event will be designed to create an understanding of the Program as a whole including consumer rights and benefits. Representatives from local and regional print and broadcast sources will be invited to attend.

A press kit will be assembled to introduce the Program. Materials may include:

- a) news release;
- b) background information;
- c) deregulation and choice information; and
- d) frequently asked questions.

### **1.1.2 Media Outreach**

Following the launch of the Program, media outreach will continue through local cable television shows, newspapers and internet sources to provide greater public education and to describe the Program, the opt-out process and the toll-free telephone number. Outreach will include public service announcements (PSAs), scheduling interviews of Program spokespersons with local media outlets and securing a positive media presence.

A series of news releases will be distributed to achieve the aforementioned goals. Follow-up news releases will update the media on the status of the Program's progress.

#### Sample Media List:

- a) The Milford Daily News
- b) The Country Gazette
- c) Franklin Matters
- d) Local Cable TV – Comcast Channels 8 & 11 Franklin Community TV (FCCA)

### **1.1.3 Notices and Public Postings**

Notices in newspapers and in Town Hall describing the Program, the opt-out process and the toll-free telephone number will further reinforce the Program's details. Postings will be placed in public buildings (i.e. library, Senior Center, etc.) which will create the necessary repetition of messages required to motivate consumer action and build awareness and understanding.

### **1.1.4 Customer Service Center**

CPG will maintain a toll-free telephone number to address eligible consumer's questions regarding the Program, deregulation, the opt-out process, price information and other issues eligible consumers may raise.

### **1.1.5 Website**

All information regarding the Program will be posted on CPG's website, which is linked to the Town's website. The website will note if the Town has chosen to fund personnel costs associated with an Energy Manager position(s) through an Operational Adder. CPG's website will have links to National Grid ("Local Distributor"), the Massachusetts Department of Energy Resources (DOER), the Massachusetts Department of Public Utilities ("Department"), and the Town's Competitive Supplier.

### **1.1.6 Public Presentations**

CPG will provide presentations to the Town Council and to any interested community group (i.e. Chamber of Commerce, Rotary Club, Lions Club, Junior Women's Club, etc.).

## **1.2 DIRECT MAIL NOTIFICATION**

### **1.2.1 Opt-Out**

The opt-out notification will be sent via standard mail to the billing address of each eligible consumer receiving Basic Service. The notification envelope will be clearly marked as containing time sensitive information related to the Program. The notification will contain a letter describing the Program.

The letter will:

- a) introduce and describe the Program and provide information regarding participation and rights;
- b) inform eligible consumers they have the right to opt-out of the aggregated entity without penalty;
- c) prominently state all charges to be made and a comparison of price and primary terms of the Competitive Supplier and Basic Service;
- d) inform eligible consumers if the Town has chosen to fund personnel costs associated with an Energy Manager position(s) through an Operational Adder;
- e) explain the opt-out process; and
- f) include instructions for Spanish/Portuguese speaking consumers (i.e. toll-free telephone number).

The opt-out notification will also contain a pre-addressed postcard with a simple check off and signature line for eligible consumers who do not wish to participate. Eligible consumers will have 30 days from the date of the mailing to return the opt-out postcard. New eligible consumers will be enrolled in the Program in accordance with applicable Local Distributor rules. Upon initiation of service, these new eligible consumers will receive the same opt-out information as all other eligible consumers.

## **2      TIMELINE**

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The schedule below assumes timely preparation of mailing lists as well as space and time availability in the media. Meetings and public presentations will be scheduled upon mutually agreeable schedules. On-going education will continue beyond the 40-day period outlined below through the media and the toll-free telephone number.

- Day 0:      Press conference held announcing the Program and introducing the Competitive Supplier
- Day 1:      Customer service center (i.e. toll-free telephone number) opens
- Day 1:      Press release issued on direct mail notification and start-up of the customer service center
- Day 1:      Program information posted on the following websites: CPG, Town, and Competitive Supplier
- Day 1-7:    Postings placed in public buildings
- Day 1-40:   Public presentations provided informing community groups about the Program and eligible consumer rights
- Day 1-40:   Media interviews conducted with Program representatives, as needed
- Day 10:     Direct mail notification sent to each eligible consumer (see Day 40)
- Day 12-35:   Display ads placed in newspapers describing the Program and the opt-out process and providing the toll-free telephone number
- Day 14:     Local cable television show airs describing the Program and the opt-out process and providing the toll-free telephone number
- Day 16-30:   PSAs air describing the Program and the opt-out process and providing the toll-free telephone number

Day 40: Deadline reached for eligible consumers returning the opt-out postcard  
Day 40+: On-going education continues through the media, the toll-free telephone number and individual opt-out mailings to new eligible Basic Service consumers  
Day 90+: Follow-up news releases issued summarizing the Program's status

### **3 BUDGET**

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<b>Notification Method</b>	<b>Responsible Party</b>	<b>Estimated Cost</b>
Direct Mailing	Competitive Supplier	\$20,200
Press Conference	CPG	\$500
Television Media	CPG	\$500
Newspaper Media	CPG	\$2,000
Electronic Communications	CPG	-----
Public Presentations	CPG	-----

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# **TOWN OF FRANKLIN COMMUNITY CHOICE POWER SUPPLY PROGRAM**

## **IMPLEMENTATION SCHEDULE**

**PREPARED BY**

**COLONIAL POWER GROUP, INC.**

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ESA Executed with Competitive Supplier:	August 15, 2016
Competitive Supplier Receives NGRID Eligible Consumer Data:	August 17, 2016
Submission of ESA to Department, et al.:	August 17, 2016
Press Conference Introducing Competitive Supplier:	August 18, 2016
Customer Service Center Start-Up:	August 19, 2016
Websites Updated (i.e. CPG, Town, Competitive Supplier):	August 22, 2016
Postings Placed in Public Buildings (i.e. Town Hall, etc):	August 22, 2016
Notifications Mailed to Eligible Consumers:	August 22, 2016
Problem Addresses Corrected and Notifications Mailed:	ASAP
New Consumer Addresses Received and Notifications Mailed:	ASAP
Display Ads Placed in Newspapers and PSAs Air on Cable:	August 22 – September 22, 2016
Opt-Out Deadline Reached for Eligible Consumers:	September 22, 2016
Final Opt-Outs Removed from Participating Consumer File:	September 22-23, 2016
Transfer of Participating Consumers to Competitive Supplier:	September 23-26, 2016
Service Started with Competitive Supplier:	October 1, 2016

Implementation Schedule is for representative purposes only.  
Dates are subject to change based on receipt of necessary approvals.



# THE TOWN OF FRANKLIN'S COMMUNITY CHOICE POWER SUPPLY PROGRAM CONSUMER NOTIFICATION FORM

<Month> <Day>, <Year>

Dear Franklin Basic Service Consumer:

The Town of Franklin is pleased to announce that \_\_\_\_\_ has been selected as the supplier for its Community Choice Power Supply Program ("Program"). \_\_\_\_\_ will provide electric power supply for all Basic Service consumers in Franklin. This letter is intended to tell you about this Program for electric power supply. In accordance with state law, it also informs you of your rights and options if you choose not to participate in the Program.

**YOU WILL NOT NOTICE ANY CHANGE IN YOUR ELECTRICITY SERVICE.** The only difference you will see is that \_\_\_\_\_ will be printed under the "Supply Services" section of your monthly bill. You will continue to receive one bill from National Grid. You will continue to send your payments to National Grid for processing. National Grid will continue to respond to emergencies, read meters and maintain the distribution and transmission lines. Reliability and quality of service will remain the same. Furthermore, you will continue to have all existing consumer rights and protections.

## COMPARATIVE RATES AND TERMS

	Franklin's Program (Supply Services Only)	National Grid Basic Service (Supply Services Only)
<b>Rate*</b> Residential Commercial/Streetlight Industrial	 \$X.XX/kWh \$X.XX/kWh \$X.XX/kWh	 \$X.XX/kWh \$X.XX/kWh \$X.XX/kWh
<b>Duration</b>	_____ 2016 – _____ 2016  [Rates apply to service beginning and ending on the days of the month that your meter is read in your service area.]	_____ 2016 – _____ 2016  [Residential and Small Commercial rates change every 6 months. Large Commercial and Industrial rates change every 3 months.]
<b>Exit Terms</b>	<b>NO PENALTY CHARGE</b>	<b>NO PENALTY CHARGE</b>

\*Rate includes Operational Adder of \$X.XXX/kWh to fund personnel costs associated with an Energy Manager position(s).  
[The annotation above will be removed if the Operational Adder is not being utilized.]

**IF YOU HAVE BEEN MAILED THIS NOTIFICATION** you do not need to take any action to participate in the Program.

**ALL BASIC SERVICE CONSUMERS** who have been mailed this notification will automatically be enrolled in the Program and start benefiting from the rate beginning on the day of the month in \_\_\_\_\_ that your meter is read. This date varies by service area. Your meter reading date is shown on your bill.

**BUDGET PLAN OR ELIGIBLE LOW-INCOME DELIVERY RATE CONSUMERS** will continue to receive those benefits from National Grid.

**SOLAR PANEL CONSUMERS** will continue to receive their net metering credits while benefiting from the rate.

**TAX EXEMPT SMALL BUSINESS CONSUMERS** must send or fax a copy of their Energy Exemption Certificate directly to \_\_\_\_ (Supplier) \_\_\_\_ at \_\_\_\_ (Supplier address/fax) \_\_\_\_ in order to maintain their tax exempt status.

**IF YOU HAVE ALREADY CHOSEN A COMPETITIVE SUPPLIER ON YOUR OWN** you must opt-out of this Program. This will ensure you continue to get your electricity from that Competitive Supplier.

**IF YOU HAVE ALREADY CHOSEN A GREEN POWER SUPPLY OPTION ON YOUR OWN** you must opt-out of this Program. This will ensure you continue to get your electricity from that Green Power Supply.

**IF YOU DO NOT WISH TO PARTICIPATE IN THIS PROGRAM** you may: 1) Opt-out and continue paying National Grid's Basic Service rate; or 2) Opt-out and choose your own Competitive Supplier (if one is available to you).

#### **HOW TO OPT-OUT**

Sign and return the enclosed postage paid card **OR** visit [www.colonialpowergroup.com/franklin/](http://www.colonialpowergroup.com/franklin/) and click the opt-out button, then fill out and submit the Opt-Out Form.

**ANY TIME AFTER ENROLLMENT** you can still opt-out with NO PENALTY CHARGE. It may take a couple of billing cycles before you are back on National Grid's Basic Service. If you choose to opt-out after the initial enrollment, you may submit an Opt-Out form at [www.colonialpowergroup.com/franklin/](http://www.colonialpowergroup.com/franklin/) **OR** call \_\_\_\_\_ at \_\_\_\_\_ and ask to be placed on National Grid Basic Service.

**FOR MORE DETAILED INFORMATION** regarding Franklin's Program you can visit [www.colonialpowergroup.com/franklin/](http://www.colonialpowergroup.com/franklin/) or call us toll-free at (866) 485-5858. To learn more about \_\_\_\_\_ you can visit [www.](http://www.)\_\_\_\_\_.

Basic Service consumers in the Town of Franklin will receive further notification of this Program on their \_\_\_\_\_ bill from National Grid.

**IF YOU FAIL TO PAY YOUR BILL IN A TIMELY MANNER** consistent with the requirements of Massachusetts law, you may be switched back to National Grid's Basic Service.

*Colonial Power Group, Inc. is an energy consulting company chosen on a competitive basis by the Town of Franklin to facilitate the Community Choice Power Supply Program.*



FRANKLIN'S COMMUNITY CHOICE POWER SUPPLY PROGRAM  
CUSTOMER NOTIFICATION LETTER ENVELOPE

OFFICIAL TOWN BUSINESS



Town of Franklin  
c/o Competitive Supplier  
1 Supplier Street  
Supplier, MA 00000

John Smith  
1 Main Street  
Franklin, MA 02038

PRESORTED  
FIRST-CLASS  
MAIL  
U.S. POSTAGE  
PAID  
STAMFORD, CT  
PERMIT NO. 102

**DO NOT DISCARD – IMPORTANT Notice Regarding Electricity Rates**

FRANKLIN'S COMMUNITY CHOICE POWER SUPPLY PROGRAM  
CUSTOMER OPT-OUT NOTIFICATION CARD

**BUSINESS REPLY MAIL**

FIRST-CLASS MAIL

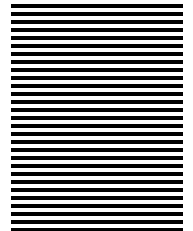
PERMIT NO. 41

MARLBOROUGH, MA

POSTAGE WILL BE PAID BY ADDRESSEE

NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

TOWN OF FRANKLIN  
c/o COMPETITIVE SUPPLIER  
1 SUPPLIER STREET  
SUPPLIER, MA 00000



**FRANKLIN COMMUNITY CHOICE POWER SUPPLY PROGRAM  
OPT-OUT REPLY CARD**

John Smith  
1 Main Street  
Franklin, MA 02038

If you want to participate in the Franklin Community Choice Power Supply Program, you do not need to take any action. You will be automatically enrolled.

**Opt-Out Instructions**

**If you do not want to participate:**

- 1) Sign and date
- 2) Drop in the mail

The card must be signed by the customer of record whose name appears in the address on this card. Please return within 30 days of receiving this Consumer Notification.

X

Signature

Date


COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 16-57

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 CMR 1.05(1) (Department's Rules of Practice and Procedure).

Dated at Boston, Massachusetts this 1<sup>st</sup> day of June, 2016.



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James M. Avery, Esq.  
Pierce Atwood LLP  
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Boston, MA 02110  
Phone: 617.488.8100  
Fax: 617.824.2020  
[javery@pierceatwood.com](mailto:javery@pierceatwood.com)

Of Counsel for:

COLONIAL POWER GROUP, INC.