

**CONSULTANT AGREEMENT  
FOR MANAGEMENT OF  
THE COMMUNITY CHOICE AGGREGATION PROGRAM  
AND ENERGY-RELATED SERVICES FOR  
  
TOWN OF GREENLAND**

This Consultant Agreement is made and entered into this day \_\_\_\_\_, 2023 (“Effective Date”), by and between the **Town of Greenland, New Hampshire** (“Municipality”), a municipal corporation having its principal place of business at 11 Town Square, Greenland, NH 03840 and **Colonial Power Group, Inc.**, having its principal place of business at 5 Mount Royal Avenue, Marlborough, MA 01752 (“Consultant”). It is agreed between the parties hereto as follows:

**TERM:** This Agreement shall commence on the Effective Date and continue for a period of five years. Municipality may renew this Agreement, at its discretion, for a subsequent term of equal duration with thirty (30) days prior written notice. Absent prior notice or termination by either party as described herein, this Agreement shall auto-renew for a period of twelve (12) months.

**SCOPE OF SERVICES:** The scope of services to be performed by the Consultant shall be all of the services required for the Municipality under RSA 53-E to (i) develop and obtain regulatory approval for an aggregation plan (“Aggregation Plan”) and (ii) implement and operate a municipal electric aggregation program (“Program”) and contained in and reasonably inferable from this Agreement, including Attachment A appended hereto and made a part hereof. Consultant shall perform its services using its best efforts, and with reasonable diligence and reasonable care.

The Consultant represents and warrants that it is approved by the Commission as a provider of electric aggregation service (DM 21-086); that it is thoroughly familiar with all laws and regulations of the State of New Hampshire addressing the aggregation of electricity consumers by municipalities; and that it shall perform all services under this Agreement in accordance with all applicable laws and regulations.

**CONTRACTUAL RELATIONSHIP:** The Consultant shall provide services described in the Scope of Services which are incorporated herein and made a part hereto, including all addenda issued prior to execution of this Agreement. While performing the services under this Agreement, the Consultant and the Municipality agree, understand and recognize that the Consultant is an independent contractor, and, therefore: (1) the Consultant is free from the Municipality’s control and direction in connection with the performance of the service, both under this Agreement and in fact; (2) the service is performed outside the usual course of the business of the Municipality; and, (3) the Consultant is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the execution of the services to be performed by Consultant hereunder.

**APPLICABLE LAW:** This Agreement shall be subject to and construed in accordance with all applicable laws and regulations, which are incorporated herein by reference and shall control in

the event of a direct, irreconcilable conflict between the provisions of such laws and regulations and the provisions of this Agreement.

**PAYMENT TERMS AND SCHEDULE:** The Consultant shall, during the term of this Agreement, receive a price of **\$0.001 per kilowatt hour (kWh)** for each kWh purchased by a participating consumer under the Municipality's Aggregation Program ("Consulting Fee"). The Consulting Fee shall be the complete price for all services furnished and all expenses incurred by the Consultant and shall be paid directly to the Consultant by the supplier providing power supply service to the Aggregation Program ("Competitive Supplier") pursuant to an electric services agreement ("ESA"). The Municipality shall not have any liability with respect to such payment, including without limitation in the event of any failure of the Competitive Supplier to make such payments. Consultant shall be paid the Consulting Fee by Municipality's selected Competitive Supplier(s) for the duration of any ESA(s) entered into by the Municipality during the term of this Agreement, regardless of whether Consultant's services have been terminated in the interim. Notwithstanding the foregoing, the Municipality may, before the execution of any ESA with any Competitive Supplier, and in its sole discretion, elect to discontinue, at any time and for any reason, its Aggregation Program, and in such event, terminate this Agreement without any liability. In the event the Municipality enters into an ESA with a Competitive Supplier, nothing in this Agreement shall prevent the Municipality from terminating such ESA with the Competitive Supplier and, thereafter, this Agreement without any liability.

**DEBARMENT; NON-COLLUSION:** The Consultant certifies under penalty of perjury that it is not presently debarred from entering into a public contract in the state of New Hampshire; and that its bid or proposal, if any, submitted in response to any solicitation culminating in this Agreement was made and submitted in good faith and without collusion or fraud with any other person (as used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals).

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

**INSURANCE:** The Consultant shall maintain, during the full term of this Agreement, the insurance set forth below. Such insurance shall be written on an occurrence basis, be primary and non-contributory, and shall provide by endorsement that the Municipality is added as an additional insured to the General Liability policy, that Consultant waives rights of subrogation, and that the Municipality shall receive advance written notice of any cancellation of any such insurance policy.

General Liability

\$2,000,000 per occurrence

\$4,000,000 aggregate

Workers' Compensation Insurance

\$1,000,000 employer's liability limit

Professional Liability Insurance

Minimum Coverage \$1,000,000 per occurrence

Prior to commencement of any work under this Agreement, the Consultant shall provide the Municipality, at its request, with Certificates of Insurance which include the Municipality as an additional named insured and which include a thirty-day notice of cancellation to the Municipality.

**ASSIGNMENT PROHIBITED:** The Consultant agrees that it will not be permitted to assign, subcontract or underlet the Agreement without the previous written consent of the Municipality's governing body or its designee.

**AMENDMENTS OR CHANGES:** Any amendments or changes to this Agreement must be in writing and signed by officials with authority to bind the Consultant and the Municipality.

**ABANDONMENT OF WORK OR OTHER DEFAULT:** The Consultant agrees that any failure of the Consultant to perform, timely and properly, all services required by this Agreement, such as, without limitation, Consultant's abandonment or delay of services, or Consultant's failure to supply required reports after the date of execution of this Agreement, shall be a breach of this Agreement for which the Municipality may terminate the Agreement under the provision for termination below. The Municipality may, in the event of such termination, or in lieu of termination but without waiver of its right to terminate the Agreement, and by whatever legal remedies are available to it, complete or cause to be completed, the work or services not performed (or not properly or timely performed) by Consultant, and the Consultant shall be responsible for the entire cost of the Municipality's completion of such work or services. Consultant shall forthwith pay such costs to the Municipality, as well as any and all losses, damages, costs and expenses, including attorney's fees, sustained or incurred by the Municipality by reason of completing such work or services. In such event, except as may be required by law, the Municipality shall have no obligation to have such work and services performed at the lowest price.

**PROCUREMENT ERRORS:** If errors in the procurement or bidding laws or regulations of the state, whether said errors were made by the Consultant or the Municipality, are found to exist by any agency of the state or by any court of competent jurisdiction, this Agreement may be voided

by the Municipality without liability. The Municipality makes no representations concerning the applicability or inapplicability of any procurement or bidding laws to this Agreement.

**TERMINATION:** The Municipality may terminate this Agreement without penalty upon one hundred eighty (180) days notice during the initial term set out above or during any subsequent renewal term, or in accordance with any other provision of this Agreement allowing for termination, or as may otherwise be permitted by law. It is further agreed by the Consultant that any breach by the Consultant of the provisions of this Agreement shall be sufficient cause for the Municipality to terminate this Agreement five (5) calendar days after the date of a written notice to the Consultant, which five-day period shall not constitute a cure period.

**SEVERABILITY:** The provisions of this Agreement are severable. If any provision of this Agreement is held invalid or if any court of competent jurisdiction holds any provision unlawful or not legal, the remaining provisions shall remain in effect, unless such invalidity materially and adversely affects an essential purpose of this Agreement, in which event the entire Agreement shall be deemed invalid.

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

**IN WITNESS WHEREOF,** the Consultant and the Municipality have each executed this Agreement as of the dates written below.

**FOR: COLONIAL POWER GROUP, INC.**  
**BY:**

\_\_\_\_\_  
Mark Cappadona, President

**Date:** \_\_\_\_\_

**FOR: TOWN OF GREENLAND**  
**BY:**

\_\_\_\_\_  
Paul Sanderson, Town Administrator

**Date:** \_\_\_\_\_

## **ATTACHMENT A**

### **SCOPE OF SERVICES**

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#### **1. DEVELOPMENT OF AGGREGATION PLAN**

The Consultant shall fully cooperate with and assist the Municipality and its agents in connection with the preparation of an electric aggregation plan pursuant to RSA 53-E ("Aggregation Plan"). The Aggregation Plan shall describe in sufficient detail the structure, operations, objectives, rate setting, and policies and procedures of a municipal aggregation program for the benefit of consumers located in the Municipality ("Program").

Consultant's services to support development of the Aggregation Plan shall include meeting with representatives of the Municipality and the Municipality's consumers at such times and with such frequency as reasonably necessary; preparing the Aggregation Plan in consultation with the Municipality; soliciting approval of the Aggregation Plan from the New Hampshire Public Utilities Commission ("Commission") and the Municipality's governing body or its designees; and preparing and helping to disseminate public education materials regarding the Aggregation Plan for the Municipality's consumers.

#### **2. PROCUREMENT AND PRODUCT STRATEGIES**

After obtaining all necessary approvals for the Aggregation Plan, the Consultant shall obtain and analyze the electrical load data for all consumers of electricity in the Municipality. The Consultant will evaluate market conditions and advise the Municipality on the timing of Program launch. The Consultant will continually monitor market conditions and make recommendations on supply and energy service decisions (timing, product options) following initial launch. The Consultant will consult with and advise the Municipality on options and strategies for formulating Program product offerings.

#### **3. PREPARATION AND ISSUANCE OF RFP's FOR POWER SUPPLY**

The Consultant shall develop Requests for Proposals ("RFPs") for all power supply solicitations for review and approval by the Municipality. In general, such RFPs will include several components:

1. consumer account information, including historical kWh usage and ICAP Tag if provided by local distributor;
2. services, products, and potential term lengths desired by the Municipality;
3. qualification criteria for supplier selection;
4. standard form energy services agreement between the chosen supplier and the Municipality on behalf of eligible and participating consumers; and
5. such other information as required by the Municipality.

The Consultant shall assist the Municipality with the review and analysis of all responsive bids from suppliers and shall recommend any bid(s) that best meet the goals and objectives of the

Aggregation Program. The Consultant will evaluate each supplier's bid based on price, the supplier's modifications to the Aggregation Plan's standard and preferred contract terms and conditions, reputation of supplier, previous experience serving municipal aggregation programs, demonstrated ability to accurately and responsively manage a program with large numbers of consumers and consumer accounts, and such other criteria set forth in the RFP. The Consultant shall conduct a reasonable investigation of the qualifications and responsibility of each bidder, including verifying references for similar supply contracts, if available.

#### **4. BROKER SERVICES AND CONTRACT NEGOTIATIONS**

The Consultant shall, in consultation with the Municipality, act as the Municipality's broker during any procurement process. The Consultant shall, at the direction of the Municipality, negotiate final terms and conditions of any contract with prospective suppliers.

#### **5. CUSTOMER ENROLLMENTS AND TRANSITIONS**

After approval and execution of an energy services agreement between the Municipality and a supplier, the Consultant shall take all measures necessary to effectuate a seamless consumer enrollment into the program or transfer between suppliers, as applicable. In the case of initial Program launch, the Consultant will obtain requisite customer data from the local distributor for consumer enrollment. In cases where the Municipality selects a new supplier for its Program, the Consultant shall facilitate a seamless transition from one supplier to another. Whenever applicable, the Consultant shall, lead and manage any consumer opt-out and enrollment process in coordination with the Municipality's supplier.

The Consultant shall have established procedures to promptly respond to:

1. consumer queries and problems;
2. supplier problems;
3. local distributor problems; and
4. media queries.

#### **6. PUBLIC EDUCATION**

The Consultant shall, in consultation with the Municipality, prepare or cause to be prepared all informational and educational materials to be made available to all prospective Program participants, and to the media if applicable.

#### **7. LEGAL ASSISTANCE**

The Consultant shall prepare all reports and filings as may be required by the Commission, and any other state agency if applicable.

#### **8. PROGRAM MANAGEMENT**

The Consultant will administer and provide oversight of the Aggregation Program including, without limitation:

1. monitor suppliers' compliance with all contract terms and conditions;
2. resolution of contract issues;
3. oversee and coordinate consumer opt-ins and opt-outs with Municipality's supplier(s);
4. help to resolve any issues between suppliers and the Local Distributor;
5. prepare and submit to the Municipality written quarterly updates on Program operations;
6. provide a toll-free phone number and host a website where consumers of the Municipality can seek information about the Program; and
7. provide updates to and attend meetings with Municipality officials, Municipality Committees, and the public as needed.