

Legal Notice

Town of Tyngsborough, MA
Request for proposals
Municipal Electric Aggregation Consultant

The Town of Tyngsborough (Town) as the Awarding Authority, through its Board of Selectmen, issues a Request for Proposals (RFP) seeking proposals from qualified consultants or companies to develop a plan to aggregate the electrical load of electricity users within the Town, both residential and commercial, and, in consultations with the Department of Energy Resources (DOER) and the Department of Public Utilities (DPU), develop, prepare, implement, secure regulatory approval and perform all services related to administering the Town's Energy Aggregation Plan. Proposals are due to: Matt Hanson, Assistant Town Administrator, Town Hall, 25 Bryants Lane, Tyngsborough, MA 01879, no later than **11:00 a.m. on Thursday, March 31, 2016**. Separately sealed proposals, including the proposer's name and address, shall be clearly identified on the proposal **envelopes** as **PRICE PROPOSAL: AGGREGATION CONSULTANT** and **NON-PRICE (TECHNICAL) PROPOSAL: AGGREGATION CONSULTANT**. Please submit questions or requests for clarification in writing to Matt Hanson via e-mail: mhanson@tyngsboroughma.gov on or before 4:00 p.m. on Monday, March 21, 2016. The Town reserves the right to reject any or all proposals if it is deemed in the public's interest to do so. The Town encourages MBE/WBE firms to apply and is an Equal Employment Opportunity Employer. The Town intends to select and enter into an agreement with a highly qualified proposer for a term of three (3) years.

BOARD OF SELECTMEN

By _____
Matt Hanson
Assistant Town Administrator

Town of Tyngsborough

Request for Proposals

Municipal Electric Aggregation Program Consultant

Proposal Due Date: Thursday, March 31, 2016,
11:00 A.M.

Town of Tyngsborough
25 Bryants Lane
Tyngsborough, MA 01879
Telephone: (978) 649 - 2300
Facsimile: (978) 649 - 2320

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TOWN OF TYNGSBOROUGH, MASSACHUSETTS

REQUEST FOR PROPOSALS

CONSULTANT FOR MUNICIPAL ELECTRIC AGGREGATION SERVICES

SECTION I. INSTRUCTIONS TO PROPOSERS AND GENERAL CONDITIONS

Article 1. Acceptance or Rejection of Proposals

- a. The Town of Tyngsborough (Town), acting through its Board of Selectmen (Board) seeks Proposals from qualified consultants to develop a plan to aggregate the electrical load of electricity users within the Town, both residential and commercial, and, in consultation with the Department of Energy Resources (“DOER”) and the Department of Public Utilities (“DPU”), develop, prepare, implement, secure regulatory approval and perform all services related to administering the Town’s Aggregation Program as defined by and in compliance with all applicable provisions of §134 of Chapter 164 of the General Laws, as amended, and any other applicable statute or regulation related to this process, including 220 CMR 11.00, MA D.T.E. 06-102, MA D.T.E. 06-104 and the policies and procedures of both the DPU and DOER.
- b. The Town intends to select and enter into an agreement with the most highly qualified Proposer for a term of three (3) years commencing as of April 1, 2016 and terminating March 31, 2019.
- c. The Town, acting through its Assistant Town Administrator, reserves the right in its absolute and sole discretion, to reject any or all Proposals and to accept any Proposal or waive any minor informality which it considers to serve the best interest of the Town.
- d. Any Proposal which is not completed according to the prescribed form, is not properly signed, or is otherwise contrary to instruction may be rejected by the Town.
- e. More than one Proposal from the same Proposer, whether or not the same or different names appear on the signature page, shall not be considered. Reasonable proof for believing that any Proposer is interested in more than one Proposal shall cause the rejection of such Proposals made by such Proposer directly or indirectly.
- f. Any or all Proposals shall be rejected if there is reason to believe that collusion exists among the Proposers.

Article 2. Mailing or Delivery of Proposals

- a. Proposals which are mailed or delivered shall be addressed to Matt Hanson, Assistant Town Administrator, Town Hall, 25 Bryants Lane, Tyngsborough, Massachusetts 01879.
- b. Regardless of the cause of delay, no Proposals received by the Town after the terminal time shall be given any consideration. The Proposer is responsible for filing the Proposal before 11:00 A.M., on March 31, 2016, the terminal time.

Article 3. Identification of Sealed Envelopes

- a. The Proposal and the Price Proposal Form shall be placed in separate sealed envelopes that are marked appropriately on the outside with the name and address of the Proposer, the title of the Proposal, and the scheduled date for the opening of the Proposals. No responsibility will be attached to the Town for the premature opening of Proposals that are not properly identified. After the terminal time, Proposals become the property of the Town.

Article 4. Price Proposal Forms

- a. The Price Proposal shall be submitted on the Price Proposal Form prepared by the Town in order to avoid errors, misconceptions, or ambiguities.

Article 5. Price Proposal

- a. A Proposal submitted on the Price Proposal Form shall remain firm for a period of 90 days after the time set for the opening of Proposals. A Proposal award will be made by the Town within 90 days of the Proposal opening.
- b. The Price Proposal shall be written both in numbers and words.

Article 6. Signatures on the Proposal and Price Proposal Form

- a. If a Proposal is submitted by an individual, the full name and post office address of this person shall be designated.
- b. If a Proposal is submitted by a firm or partnership, it shall be signed by a person having the legal authority to execute such a document on behalf of the Proposer. The person signing the Proposal and the Price Proposal Form shall indicate his or her title or position, in addition to the full name and address of the firm or partnership.
- c. If a Proposal is submitted by a corporation, it shall state the name and title of the official or officials of the corporation, by whom the Agreement can be legally signed, and be accompanied by a copy of the corporate vote granting such authority, certified by the clerk of the corporation.

Article 7. Modification of Proposal

- a. No modification of any Proposal will be considered by the Town unless received by the Town prior to the terminal time.

Article 8. Withdrawal of Proposal

- a. Any Proposal may be withdrawn on written request dispatched by a Proposer in time for delivery in the normal course of business prior to the terminal time.

Article 9. Subletting of Award

- a. No assignment of the award shall be made without written consent of the Town.

Article 10. Breach of Agreement

- a. Where the successful Proposer fails to comply with these specifications and/or the Agreement, the Town reserves the right to terminate the Agreement and enter into other agreements to complete the program.

Article 11. Examination

- a. Each Proposer shall carefully examine the information available and all conditions which may affect proper execution of the written Agreement.

Article 12. Proposer Responsibility

- a. Each Proposer shall indicate that the Proposer has carefully examined the specifications and that the Proposer agrees to enter into a written Agreement with the Town to provide the services.
- b. The successful Proposer shall be responsible for the preparation and filing of any documents required by the laws of the Commonwealth and federal government.

Article 13. Compliance with Other Laws and Regulations

- a. The successful Proposer must comply with all federal, state and local laws and regulations pertaining to Consultant Services for Municipal Electric Aggregation (Aggregation Program).

Article 14. Certification of Tax Compliance Pursuant to M.G.L. c. 62C, § 49A, and Certificate Good Faith and Non-Collusion.

- a. Each Proposer shall submit a Certification of Tax Compliance and a Certificate of Non-Collusion which shall be attached with the Proposal.

Article 15. Basis for Determining Award

- a. Award shall be made to the eligible Proposer based on the Proposer's qualifications and Price Proposal after the opening and review of the Proposals.

Article 16. Forms to be Attached and Submitted

- a. Non-Price (Technical) Proposal,
- b. Price Proposal Form,
- c. Certification of Good Faith and Non-Collusion,
- d. Certification of Tax Compliance,
- e. References, and
- f. Certification of Foreign Corporation, if applicable.

Article 17. Agreement

- a. The successful Proposer shall execute an Agreement with the Town within fourteen (14) days of notice by the Town of the Award. The Town reserves the right to waive or extend this deadline. In the event that the successful Proposer (hereafter also “Consultant”) fails, through no fault of the Town, to meet all requirements of the Request for Proposals (“RFP”) , or enter into the attached sample Agreement.

Article 18. Other Conditions

- a. Prospective Proposers who have any questions regarding the RFP may contact Matt Hanson, Assistant Town Administrator’s Office by telephone at (978) 649-2314.
- b. If any changes are made to this RFP, an addendum will be posted on the Town’s website at <http://www.tyngsboroughma.gov/government/departments/administration/bids-and-rfps/>. The Proposer is solely responsible to ascertain the existence of any addenda and/or modifications issued by the Town. The Town accepts no liability for and will provide no accommodations to the Proposers who fail to check for amendments and/or modifications to this RFP and subsequently submit inadequate or incorrect responses. Proposers may not alter (manually or electronically) the RFP language or any RFP component files. Modifications to the body of the RFP, Scope of Work, terms and conditions or which change the intent of this RFP are prohibited and may disqualify a response.
- c. Proposers are not to communicate directly with any employee of the Town except as specified in this RFP, and no other individual employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFP.
- d. Proposers may contact Matt Hanson in the event this RFP is incomplete or the Proposer is having difficulty obtaining any part of the RFP electronically through the Town website (www.tyngsboroughma.gov), including, and without limitation, the forms and attachments.
- e. Proposers with disabilities or hardships that seek reasonable accommodations, which may include the receipt of RFP information and/or addenda and/or modifications in an alternative format, shall communicate such requests in writing to Matt Hanson; and reasonable accommodation may be made by agreement.

SECTION II. SCOPE OF SERVICES

Preparation and Issuance of RFP's For Supply of Power

When necessary, the Consultant shall develop a Request for Proposals (“RFP”) for power supply for review and approval by the Board or its designee. In general, the procurement document shall include several components:

- a. A description of the load aggregation (potential size of the aggregated load, and the Number of customers and/or accounts);
- b. The services and features desired by the Town (also, “Community”);
- c. The qualification criteria required in order to have a Proposal considered;
- d. The criteria used to select the supplier; and
- e. The essential provisions of the standard contract between the chosen supplier and the Community on behalf of participating eligible consumers; and the term of service.

The Consultant shall ensure when accepting Proposals from suppliers, that each Proposer has included with its responses a Certificate of Non-Collusion, signed by a Proposer, stating his/her Proposal is made freely without consultation with any other Proposer and a signed State Taxes Certification form demonstrating compliance with the Commonwealth of Massachusetts tax laws.

The Consultant shall assist the Town with the review and analysis of all responsive and responsible proposals from suppliers, and shall be responsible for recommending the proposal that is in the best interests of the Town and meets the goals of the Town’s Aggregation Program. Proposals 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 Community’s needs, supplier’s past relationship with the Community, and previous work experience with governmental agencies. Nothing shall preclude the Town from having its legal counsel review such a recommendation.

The Consultant shall obtain and verify references for similar supply contracts, if available.

Broker Services and Negotiations for Supply Contract

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

No contract negotiated by the Consultant shall allow the pass-through of any additional cost or the assessment of any incremental charges for volumetric related adjustments, the impact of congestion charges, capacity charges or any other ancillary costs, fees or charges without the express, written approval of the Town. Any negotiations shall include a requirement that billing for the provider shall be included in the electric bill from National Grid (the “local distributor”) or its successors. Nothing shall preclude the Town from having its legal counsel review the terms and conditions of any negotiated contract.

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 have established procedures to respond to:

- a. Consumer queries and problems;
- b. Power supplier problems;
- c. Distribution consumer problems;
- e. Media queries; and
- f. Governmental shifts and proposed changes in policy.

Public Education

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

Legal Assistance

The Consultant shall prepare all required filings for the DOER, the DPU, or any other state agency if applicable to contracts executed by the Community on behalf of its residents.

Management of Aggregation Program

The Consultant will administer and provide technical oversight of the Aggregation Program including:

- a. Monitoring and reporting on compliance by the supplier with all contract terms and conditions;
- b. Resolution of contract issues;

- c. Transition administration of the “opt-out” process for customers;
- d. Participation in negotiations with the competitive suppliers and the distribution company serving the Community as it relates to the procurement of the Aggregation Program;
- e. Preparation of written reports on the ongoing operations of the Aggregation Program to be submitted on a quarterly basis to the Town.

Maintenance of Effort

The Consultant, as the administrator of the electricity supply contract shall, after a contract is executed between the Town and an electricity supplier, ensure supplier’s compliance with the contract, 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 Aggregation Program. The Consultant shall provide reports as directed by the Town in addition to any reporting requirements outlined in this RFP.

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

- a. Supplier’s compliance with all terms and conditions of contract;
- b. Contract issues and resolutions, if any;
- c. Whether supplier’s contract milestones have been met;
- d. Administration customer service, defaults, litigation and penalties in order to ascertain compliance with DPU regulatory standards and procedures, as well as additional standards and procedures employed by the supplier;
- e. Customer participation review;
- f. Changes in the financial stability of the supplier if any; and
- g. Changes in organizational structure of the supplier if any.

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

- a. Assessment on achievement of contract milestones;
- b. Possible revision or upgrading of goals;

- c. Market assessment or new feasibility study if conditions in the service area or operations have changed significantly;
- d. Public process to affirm goals and evaluation;
- e. Proposals and negotiation process;
- f. Formulation of new contract; and
- g. Service transition process, if needed.

Summary of Responsibilities

- a. The Consultant shall, if not above required, provide the following services:
- b. Obtain and analyze the electrical load data for all consumers of electricity in the Town;
- c. Provide broker services including preparing Request for Proposals for a competitive supplier of electricity, if necessary;
- d. Prepare and implement a public education plan and consumer outreach program;
- e. Prepare and submit, with the approval of the Town, all filings with the DPU, DOER, or any other state agency, if applicable;
- f. Prepare and negotiate agreements with competitive providers on terms favorable to the Town;
- g. Monitor all aspects of the Aggregation Program and any resulting contractual agreements with supplier(s);
- h. Continually analyze the development of market and regulatory issues, and advise the Town on any proposed changes in law or regulation, including those offered by ISO and any pending changes at the Federal Energy Regulatory Commission (“FERC”) which may affect the Aggregation Program or the Town.

Nothing shall preclude the Town from having its legal counsel review the terms and conditions of any agreement and/or filing and/or performance under same.

Management Fee for Aggregation Program Services

The Consultant shall offer a management fee per kilowatt hour (“kWh”) that the Town will consider in making an award for the Contract. The 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 supplier of electric power. No Proposal shall require the payment by the Town or the Town of any costs, expenses or expenditures.

Any consultant agreement shall not impose an obligation upon the Town to execute any contract with any electric supplier, or to operate, execute or maintain the Aggregation Program. Compensation shall only be paid to the Consultant by a supplier to the extent the Town elects, in the Town' sole discretion, to execute a supply contract that is procured or negotiated on behalf of the Community, as part of an aggregation program.

SECTION III. MINIMUM QUALITY REQUIREMENTS:

Proposers must have previous experience in the energy industry and in consulting on the development and implementation of a plan for municipal aggregation for retail customers, pursuant to M.G.L. c. 164, §134.

Proposers must be equipped to undertake and commence the services specified upon the execution of the Contract. Proposers shall include a brief schedule for the completion of the above services and the deliverables, including the proposed start and end dates and intermediate delivery dates. Describe projected resource availability for the anticipated duration of the project.

Proposers must possess the following qualifications to perform the services, and must attach information demonstrating such qualifications titled "Description of Proposer's Qualifications" Non-Price (Technical) Proposal:

- a. Location of the offices from which the services will be managed;
- b. At least one member of the firm or the consultant has detailed knowledge of M.G.L. Chapter 164, § 134;
- c. Detailed knowledge of MA DTE 06-102;
- d. Must have competent legal resources with experience in the deregulation of electricity in Massachusetts;
- e. Must be or have on staff a broker licensed by the DPU to do business in the area served by the local distributor.

Proposers must possess any necessary licenses and/or approvals required to act as the Town's agent for Municipal Aggregation to be eligible to submit a Proposal.

Proposer shall not be owned or be a subsidiary of the any energy supplier.

SECTION IV. COMPARATIVE EVALUATION CRITERIA

All responsive and responsible Non-Price (Technical) Proposals will be evaluated and rated on the basis of the following comparative criteria.

Relevant experience of Proposer and/or proposed staff: Highly Advantageous: The Proposer has at least five (5) years or more of experience consulting with municipalities on municipal aggregation services of similar size and scope to this contract. Advantageous: The Proposer

has at least three (3) years but less than five (5) of experience consulting with municipalities on municipal aggregation services of similar size and scope to this contract.

Non Advantageous: The Proposer has one (1) but less than three (3) years of experience consulting with municipalities on municipal aggregation services of similar size and scope to this contract.

Proposer's demonstrated ability to develop and complete an electrical or municipal aggregation process on a timely basis: Highly Advantageous: All of the Proposer's references indicate that the process was completed on schedule or with minimal, insignificant delays. Advantageous: Only one of the Proposer's references indicates that the process was completed with delays attributable to the Proposer, and no current process or process completed in the last three years experienced substantial delays attributable to the Proposer. Not Advantageous: Two of the Proposer's references indicate that the process was completed with substantial delays attributable to the Proposer, and no current process or process completed in the last year experienced substantial delays attributable to the Proposer.

Proposer has the qualifications and resources necessary to perform the service objectives stated in the RFP for administering and monitoring energy related contracts for the Aggregation Program: Highly Advantageous: The Proposer possesses all of the qualifications necessary to meet all of the Town' objectives stated in the RFP. Advantageous: The Proposer possesses most of the qualifications necessary to meet all of the Town' objectives stated in the RFP. Non Advantageous: The Proposer possesses few of the qualifications necessary to meet all of the Town' objectives stated in the RFP.

The Town reserves the right to conduct finalist interviews of one or more Proposers, if the Town feels, in its sole discretion, to be necessary.

SECTION V. REFERENCES

Proposers must submit a complete list of current clients for which they provide services similar in size and scope to the services requested by the Town. References must include firm names, contact persons and contact numbers.

Poor references may be a basis for a determination that the Proposer is not a responsible Proposer.

SECTION VI. RULE FOR AWARD

The Contract will be awarded to the responsive and responsible Proposer offering the most advantageous Proposal, taking into consideration all evaluation criteria.

The Contract price will remain firm for the term of the Contract, including any extension option term which is exercised by the Town in its sole discretion.

The award of the Contract will be made by the Town. To be eligible to receive a contract award, a Proposer must be equipped to undertake and perform all the services specified in the Proposal documents, and must satisfy all other requirements of this RFP.

The selected consultant will be required to execute a contract in substantially the same form as provided in Appendix D.

SECTION VII. ADDITIONAL TERMS AND CONDITIONS

General Laws Compliance: The Consultant will comply with all federal, state and municipal laws, by-laws, rules and/or regulations as amended which are applicable to the Consultant's obligations pursuant to this contract for services.

Fair Employment Practices: The Consultant shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion or physical or mental handicap.

The Consultant agrees to comply with all applicable federal and state statutes, rules and regulations prohibiting discrimination in employment including: Title VII of the Civil Rights Act of 1964; The Age Discrimination in Employment Act of 1967; The Americans with Disabilities Act of 1991; Massachusetts General Laws Chapter 151B Section 4 (and all relevant subsections); and all relevant Administrative Orders and Executive Orders (including Executive Order No. 227).

Forms to be Included in the Technical Proposal Package

All Proposers shall submit Proposals in strict accordance with the submission requirements listed below. Any Proposer failing to provide all of the following submission requirements will be considered "not responsive" and their Proposal may be rejected without further consideration.

The information submitted must include the following items:

- a. Cover letter: A letter and a Non-Price (Technical) Proposal signed by an officer, proprietor, or partner of the firm, binding the firm to all comments made and a brief statement of the Consultant's understanding of the project and services to be performed is required.
- b. Firm/Individual History including length of time the firm/individual has been in business, legal form (sole proprietorship, partnership, corporation and State of incorporation), number and location of offices, number of employees, and other pertinent data. Please describe any parent/subsidiary/affiliate relationships.
- c. Submit the name and telephone number of the person who will be the main contact from the Proposer for this contract.
- d. Resumes of all personnel that will support and service this account. Describe what each individual's role will be and what services they will perform.

- e. Indicate whether or not your firm has been dismissed or disqualified from a bid, proposal or contract within the past five years, and if yes, the reason(s) why.
- f. Disclose any conditions (e.g. bankruptcy or other financial problems, pending litigation, planned office closures, impending merger) that may affect your organizations' ability to perform contractually.
- g. Signed and completed Appendix B (Certifications).
- h. References: Provide client references on Appendix C - References.

Acknowledgments of Addenda: Each Proposer shall acknowledge the receipt of any addenda by signing and including it with its Proposal.

Forms to be Included in the Proposal Package

All Proposers shall submit Proposals in strict accordance with the submission requirements listed below. Any Proposer failing to provide all of the following submission requirements may be considered "not responsive" and its Proposal may be rejected without further consideration.

Forms in the Price Proposal must include Appendix A Price Proposal Form.

Forms to be included in the Technical Non-Price Proposal must include a cover letter; the Proposal; Appendix B, Certifications; and Appendix C, References.

APPENDIX A
PRICE PROPOSAL

The Proposer shall offer a management fee per kilowatt hour (“kWh”) that the Town will consider in making an award for the Contract. The price per kWh shall be the complete price for all services and expenses incurred by the Proposer, and shall be paid directly to the Proposer by the supplier of electric power.

Management Fee per Kilo watt hour _____
(In Words)

This RFP contains Addendum \$ _____
(In Numbers)

Name of Proposer _____

Address _____

Signature of Proposer _____

Printed Name & _____
Title of a Company Official _____

Phone number _____

E-Mail _____

Date _____

APPENDIX B
CERTIFICATIONS

NON-COLLUSION

The undersigned certifies under penalties of perjury that this Proposal has been 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 or individuals.

TAX COMPLIANCE

Pursuant to M.G.L. c. 62C, § 49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

CERTIFICATE OF FOREIGN CORPORATION

The undersigned hereby certifies that it has been duly established, organized, or chartered as a corporation under the laws of: _____

(Jurisdiction)

The undersigned further certifies that it has complied with the requirements of M.G.L. c. 30, and 39L, and with the requirements of M. G. L. c. 181 relative to the registration and operation of foreign corporations within the Commonwealth of Massachusetts.

Signature of individual submitting Proposal

Print Name

Name of Business

APPENDIX C
REFERENCES

Proposers must submit a complete list of current clients for which they provide services similar in size and scope to the services requested by the Town.

Municipality	Contact Person	Phone

APPENDIX D
AGREEMENT FOR SERVICES

TOWN OF TYNGSBOROUGH

AGREEMENT between the Town of Tyngsborough, a Massachusetts municipal corporation with a usual place of business at Town Hall, 25 Bryants Lane, Tyngsborough, Massachusetts 01879, acting through its Town Administrator (Town), and _____, a _____ corporation [or sole proprietorship d/b/a _____, doing business at _____, _____, [zip code] (Consultant).

WHEREAS:

- A. The Town solicited submission of formal Proposals for Services, and
- B. The Consultant submitted a Proposal to provide the Services and the Town has decided to award the contract to the Consultant;

NOW THEREFORE, the Town and the Consultant for mutual consideration agree as follows:

- 1. The Consultant shall provide and/or deliver to the Town the following services:

as set forth in the Invitation for Proposal and Specifications [and Proposal, if applicable], as well as all necessary or incidental services.

- 2. Compensation. The Consultant shall receive a price of _____ per kilowatt hour (“kWh”). Said price per kWh shall be the complete price for all services and expenses incurred by the Consultant, and shall be paid directly to the Consultant by the supplier of electric power.
- 3. Invoices. The Consultant shall submit to the Town monthly, [unless otherwise provided by the specifications] invoices for payment for the Services rendered. The Town shall make payments within thirty (30) days after its receipt and approval of the invoice.
- 4. Contract Term. The Consultant agrees to commence its obligations upon the date of execution of this Agreement by the Town and to complete its obligations under this Agreement immediately as set forth in the specifications [or on or before _____], time being of the essence.

5. Claims. The Consultant shall be responsible for and pay all claims for damages resulting from failure to furnish the Services as provided by the Agreement; and it will conform to the determination of the Town relative to the suitability and quality of the Services provided.
6. Laws. This Agreement is made subject to all applicable laws of the Commonwealth of Massachusetts; and if any provision of this Agreement does not conform to such laws, such provision of the Agreement shall be void and the applicable provision of the General Laws shall be operative. Any suit shall be filed in the Middlesex Superior Court or in the Lowell District Court.
7. Contract Documents. The Contract Documents consist of this Agreement, the Request for Proposals, Exhibit A; Specifications and Proposal, Exhibit B; the Price Proposal, Exhibit C; the Award, Exhibit D; and all addenda issued prior to execution of this Agreement; and the Contract Documents constitute the agreement between the Town and the Consultant, except for modifications issued after execution of this Agreement; and all are as fully a part of this Agreement as if attached. In the event of conflicting provisions, the language of this Agreement shall govern, provided that, if the conflict relates to the quality of the Services, the higher quality specified shall be required.
8. Performance of the Services. The Consultant shall furnish all equipment, staffing, and materials to provide the Services 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 and permits as required for the performance of the Services.
9. Warranties. The Consultant guarantees that the Services provided are fit for the purpose for which they are being purchased and that all the Services will be provided in strict conformity with the Contract Documents.
10. Indemnification of the Town. The Town's liability shall be limited to the amounts due the Consultant for the Services actually rendered. The Consultant shall indemnify, defend, and hold harmless the Town, its officers, boards, agents, and employees from any liability, loss charge, or expense resulting from any employees or third-party contractor or supplier's claim for payment for wages, labor, materials, goods or services rendered to the 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 any investigation, including attorney's fees and expenses. If any such claim is made, the Town may retain out of any payments due to the Consultant a sufficient amount to protect the Town against such claims, costs, and expenses.

11. Consultant's Standard of Care. The Consultant shall provide the Services and perform its obligations in conformity with the standard of professional skill and care applicable to established providers of such Services. The Consultant warrants and represents that it is familiar with the Services specified.
12. Consultant Personnel. The Consultant shall utilize only its employees and shall not utilize any third-party contractors without prior written approval of the Town.
13. Insurance. The Town requires that the Consultant provide a Certificate of Insurance, indicating evidence of General Liability, Automobile Liability with minimum limits of \$1,000,000.00, all as set forth in the Specifications, and Worker's Compensation in accordance with the General Laws. The Town requires the Certificate of Insurance to include naming the Town as an additional insured and thirty (30) days' notice of cancellation.
14. Independent Contractor. The Consultant is an independent contractor 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 plans of the Town.
15. Successors. This Agreement is binding upon the parties and their successors. Neither the Town nor the Consultant shall assign or transfer any interest in the Agreement without the written consent of the other.
16. 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 the Services arising out of its operations under this Agreement during and/or after the termination of the Agreement.
17. Termination.
 - a. For Cause. The Town shall have the right to terminate this Agreement:
 - (i) if the Consultant neglects or fails to perform or observe any of its obligations and a cure is not effected by the Consultant within seven (7) days next following its receipt of a notice of breach, non-performance, or poor performance 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 the 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 the Consultant by the Town or developed by the Consultant in accordance with this Agreement.
18. Notice. Any and all notices or other communications required or permitted under this Agreement shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by 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 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 United States Postal Service or if sent by private overnight or other delivery service.
19. Severability. If any term or condition of this Agreement or its application shall to any extent be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the legality and the enforceability of the remaining terms and conditions of the Contract shall not be deemed affected unless one or both parties would be substantially or materially prejudiced.
20. Other Terms and Conditions:

[If none, so state.]

IN WITNESS WHEREOF, the Town and the Consultant, by authorized officers of the parties, have executed this Agreement this _____, day of _____, 20____.

TOWN OF TYNGSBOROUGH

[THE CONSULTANT]

By: _____

By: _____

Its Town Administrator
By vote of the _____

(Print Name)

Date: _____, 20____

Approved as to availability of funds:

Catherine Gabriel
Town Accountant

Date: _____, 20____

Approved as to form:

Charles J. Zaroulis
Town Counsel

Date: _____, 20____