



LANCASTER SELECT BOARD
Regular Meeting Agenda via ZOOM™
Monday, October 18, 2021
6:00 P.M. – 9:00 P.M.

In accordance with the Open Meeting Law, please be advised that this meeting is being recorded and broadcast over Sterling-Lancaster Community TV

I. CALL TO ORDER

Chairman Jason A. Allison will call the meeting to Order at 6:00 P.M. via ZOOM™

Join Zoom Meeting

<https://us02web.zoom.us/j/89409606926>

Meeting ID: 894 0960 6926

One tap mobile

+13126266799,,89409606926# US (Chicago)

+16465588656,,89409606926# US (New York)

Dial by your location

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Washington DC)

+1 346 248 7799 US (Houston)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 894 0960 6926

Find your local number: <https://us02web.zoom.us/j/89409606926>

II. PUBLIC COMMENT PERIOD

6:00 P.M. - Opportunity for the public to address their concerns, make comment and offer

6:10 P.M. suggestions on operations or programs, except personnel matters. Complaints or criticism directed at staff, volunteers, or other officials shall not be permitted.

III. APPROVAL OF MEETING MINUTES

Review and take action on Special Meeting Minutes September 29, 2021.

IV. SCHEDULED APPEARANCES & PUBLIC HEARINGS

6:10PM Public Hearing Special Permit to Remove Earth Products

Notice is hereby given that a Public Hearing will be held on Monday, October 18, 2021 at 6:10 P.M. via ZOOM, to consider the application of James Simpson, dba LLEC Inc., 139 Greenland Road, Sterling, MA for renewal of a Special Permit To Remove Earth Products (Sand and Gravel) from a parcel of land located westerly of I-90, Easterly of Jungle Road, identified on the Lancaster Assessors' Maps as Map 23, Parcels 7, location approximately 700 feet Easterly from the intersection with Jungle Road. A copy of the Application and Engineering Plans may be viewed in the Select Board's Office, Prescott Building, 701 Main Street, Suite 1, Lancaster, MA between the hours of 9:00 a.m. and 4:00 p.m. Monday through Thursday. All persons interested in providing comment should attend and be heard. – Select Board



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V. BOARDS, COMMITTEES AND DEPARTMENTS REPORTS

- Nashoba Regional School District Superintendent Kevin Downing and School Committee Chair Joe Gleason
- Board of Assessors to discuss Atlantic Union College tax abatement resolution

VI. TOWN ADMINISTRATOR REPORT

Town Administrator Orlando Pacheco will update the Board on the status of current projects pending.

- American Rescue Plan Act (ARPA) Plan
- Regional Agreement Amendment Advisory Committee
- Cemetery Survey Planning Grant
- 70/117 Intersection Appraisals
- Building Inspector Appointment

VII. ADMINISTRATION, BUDGET, AND POLICY

1. Discussion on incentivizing vaccines for Town Employees (Allison)
2. Discussion on resuming in person meetings (Allison)
3. Discussion on moving agenda item "Public Comment" to the end of the Select Board Agenda (Allison)
4. Discussion on the existing Select Board Policy and application regarding Nepotism Pertaining to Service on Board and Commissions (Allison)
5. Discussion to make the Economic Development Committee a permanent committee. Vote may be taken (Moody)
6. Discussion - Electric Aggregation Agreement (Moody)
7. Site Walk – Keating (Moody)
8. Landfill mowing (Moody)

VIII. APPOINTMENTS AND RESIGNATIONS

Resignations

Finance Committee – David DiTullio effective immediately.

IX. LICENSES AND PERMITS

1. Town of Lancaster Application for use of Town Green/Gazebo
 - Annual Halloween on the Green Event to be held on October 31, 2021, from 4:00pm-8:00pm
2. Temporary Mobile Home Permit
 - 207 White Pond Road



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X. OTHER/UNFINISHED BUSINESS

- **Code of Conduct Policy**

The HR Director is currently compiling comments received into a document for the Select Board. This should be available for the Board's review in a couple of weeks.

- **North Lancaster Settlement**

The Board has received a letter from the Capital Group outlining the North Lancaster settlement and requesting a meeting. Mr. Allison suggests assigning a liaison to Capital Group to meet with the landowner(s) and the developer who could be a facilitator, and who could engage with all parties on a regular basis. Ms. Turner expressed frustration that the project has taken so long to get to this point. Mr. Allison would like to be considered for the liaison role. Mr. Moody discussed how well the Affordable Housing Trust has worked with the Capital Group to jointly plan for the residents of Lancaster to bring about items from dog walking areas and playgrounds to lower rates on affordability. No conclusion was reached; Mr. Allison asks that this item is left on the agenda, but he will not bring it up again.

- **Division of Capital Asset Management and Maintenance (DCAMM)**

Addressed in earlier presentation

- **Aggregation**

The Select Board has received a memo from the Energy Commission following their meeting with Colonial. Mr. Pacheco reports that he is expecting official pricing from various suppliers to service the aggregation load tomorrow. Mr. Pacheco advises that the best approach right now is a 12-month contract, at which point we could evaluate the impact of additional renewables. He noted there will be some "sticker shock" with the electric bills.

- **Gazebo Ramp**

Materials have been ordered and the goal is to have this completed by Halloween is on target. Mr. Pacheco reported that Dig Safe will need to be called for this project.

- **Status Barrett Planning Group**

Mr. Allison directed the Board's attention to a memo from Mr. Pacheco on this topic. He notes that Mr. Pacheco is "trying to make it work" and that he was displeased with the way that the Planning Board Chairman had spoken to the Town Administrator. Ms. Turner asked that this discussion be continued at the next meeting so that she has an opportunity to review the material.

- **Audit Services**

Powers & Sullivan is under contract for the FY22 Audit. Mr. Pacheco reported that this is an exempt service but can do a quote. Ms. Turner would like to assemble an Audit Committee.

XI. NEW BUSINESS *

**This item is included to acknowledge that there may be matters not reasonably anticipated by the Chair*

XII. COMMUNICATIONS

Select Board's next regular meeting will be held via Zoom on November 1, 2021 at 6:00pm

XIII. ADJOURNMENT



Town of Lancaster

701 Main Street, Suite 1
Lancaster, MA 01523

PUBLIC MEETING REMOTE PARTICIPATION GUIDELINES

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c.30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in place, the various Boards and Committees representing the Town of Lancaster will conduct their public meetings and hearings via remote participation. No in-person attendance of members of the public will be permitted.

In Advance of Meetings:

- All non-emergency items are still required to be properly posted at least 48 hours in advance of the meeting. This is still done by contacting the Town Clerk's office.
- All members should receive the same documents for the meeting electronically.
- Supporting documents should be posted on the Town's website and be available for members of the public.

Essential Components for Remote Meetings:

- Access to participate for a quorum of committee members at the time of the meeting.
- Ability to take minutes which accurately reflect the meeting and the votes taken.
- Ability to record meeting for playback (this is not required under the order, but is preferred)
- Ability to allow for real-time public participation/comments (this is not required under the order, but is preferred)
- Meeting with public hearings must provide access for third party participation to all members of the committee.

Identifying the Proper Medium to Conduct Meetings:

While we are suspending use of the Nashaway Meeting Room and Conference Room in the Prescott Building, and the ability to live stream through Sterling-Lancaster Cable, there are alternatives for Boards and Committees to consider. Below are a few options available to Committees. There may be alternatives that members are more comfortable using which will be permitted so long as the essential components for all meetings are met through use of that medium.

- *Town of Lancaster ZOOM account with Webinar Functions* – this account was purchased by the Town Administrator's office for hosting meetings that requires public participation/third party access for participation. This method is currently the preferred method and should be used by Boards and Committees that have hearings and require third party participation through public comments of from applicants seeking permits. (includes but is not limited to: Board of Selectmen, Planning Board, Board of Appeals and Conservation Commission)
 - At this time, the town only has one executive ZOOM account. If you wish to use the ZOOM account, you may need to schedule meetings at different times/days than your board typically meets to ensure no conflict with other meetings.
- *Standard/Free Zoom Accounts* – Anyone can access a free Zoom account with up to 100 participants for a maximum 40-minute meeting. This function will allow Boards and Committees to record their meetings for future playback and the ability to share screens. Please note there are

T: 978-365-3326 F: 978-368-8486

E-Mail: opachecco@lancasterma.net or krocco@lancasterma.net

several systems available that offer similar abilities and any of them can be used for this purpose. (ex. Google Meet, Skype for Business, Microsoft Teams, etc.)

- *Local Cable Access* – Currently, the Town does not allow for local cable access broadcast through the Nashaway Meeting Room. However, to the extent possible, local cable will be used if it is accessible and safe for staff, committee members, and members of the public.

Use of ZOOM for Remote Access to Public Meetings

Zoom Video Communications, Inc. (ZOOM) can be used for remote conferencing services to allow for remote access for public meetings. Access numbers and web addresses will be provided as part of each meeting's agenda posted to the town calendar on the homepage of Lancaster's website, www.ci.lancaster.ma.us.

Meetings can be accessed from your personal computer, cellphone and/or telephone. It is anticipated that most Board and Committee meetings will continue to be broadcast by Sterling-Lancaster Cable through ZOOM's "Record" feature.

Protocols for Remote Public Meetings Using the Webinar Feature

- All participants entering the meeting via a personal computer ("computer participants") are to mute themselves to limit background noise and interference with the meeting.
- Computer participants are encouraged to click on the "Participants" feature in ZOOM to view all participants and to view/use the "Q&A" function to pose questions on the bottom on the screen.
- Computer participants may "Pin" to a particular video screen.
 - It is recommended to "Pin" to the staff member associated with the committee or in the case there is no staff member, to the Chairperson. This can be done by right clicking over the three (3) dots symbol in the top right corner of the staff/chair's video screen.
- The Chair or present support staff should adhere to the script provided as an attachment to this document for the purpose of properly recognizing members and providing information to the public. (This script is a draft/guide and should be tailored to your needs)
- The Chairperson will identify himself or herself.
- The Chairperson will conduct the roll call of the Board
- The Chairperson will call the meeting to order
- All participants (excluding the Board members) will be muted throughout the meeting and should use the raise hand feature (or chat room) to ask a question or point of information.
- All participants are required to include their name and address when asking a question or participating regardless of screen name to insure meeting minutes and public records are accurately recorded.
- All documents displayed throughout the meeting will be controlled by the present staff member or Chairperson.
 - Only computer participants will be able to view documents.
- If and when the Chairperson allows for public comments/questions, it will be conducted the following sequence:
 1. The Chairperson will read public comments/questions received in advance of the meeting followed by real-time Board and/or applicant response.
 2. The Chairperson will ask if any other participants accessing the meeting comments/questions; additional questions will be asked using the "Raise Hand" feature
- Board members needing to be recused at any point of during the course of a meeting will be placed in a virtual "Waiting Room" by the staff person or Chairperson.

Directions to access meeting will be posted on agendas for the public when available.

III. APPROVAL OF MEETING MINUTES



LANCASTER BOARD OF SELECTMEN
Special Meeting Minutes
Of Monday, September 29, 2021

I. CALL TO ORDER

Chairman Jason Allison called the meeting to Order at 6:00 P.M. via Zoom. He noted that the meeting was being recorded.

Join Zoom Meeting

<https://us02web.zoom.us/j/88480680293>

Meeting ID: 884 8068 0293

Roll call was taken, Alexandra W. Turner, present, Jay M. Moody, present, Jason A. Allison present.

II. PUBLIC COMMENT PERIOD

6:00 P.M. Opportunity for the public to address their concerns, make comment and offer
6:10 P.M. suggestions on operations or programs, except personnel matters. Complaints or
criticism directed at staff, volunteers, or other officials shall not be permitted.

Chairman Allison read into the record one public comment received from Deb D'Eramo, resident of Harvard Road, "Hello, I'd like to voice my strong support of the town's COVID vaccine mandate policy for town employees. I'd like to know if that if that also includes town contractors and hourly workers. Thank you."

III. APPROVAL OF MEETING MINUTES - NONE

IV. SCHEDULED APPEARANCES & PUBLIC HEARINGS – NONE

V. BOARDS, COMMITTEES AND DEPARTMENTS REPORTS - NONE

VI. TOWN ADMINISTRATOR REPORT - NONE

VII. ADMINISTRATION, BUDGET, AND POLICY

Mr. Allison asked the Select Board if they would be okay with taking agenda items out of order to quickly deal with Item 3, COVID Vaccine Mandate policy. Ms. Turner stated that she did not receive a packet for this meeting and saw that the agenda had been revised. Mr. Allison stated that

the revised agenda had been sent via email and that there was no packet for this meeting. Ms. Turner would like to talk at some other time about better ways to distribute materials. The Board agreed to discuss vaccine policy; (notes below under Item 3 although taken out of order.)

1. Division of Capital Asset Management and Maintenance (DCAMM)

• **Discussion on Land Sale Partnership Agreement**

Mr. Allison asked Ms. Turner to take the lead on this discussion because she is the DCAMM liaison. She welcomed Lisa Verrochi, Stephen Andrews, and Paul Crowley (Deputy Commissioner of Real Estate for DCAMM) from DCAMM and cautioned the Board that this is a very preliminary discussion meant to set expectations and next steps. The ongoing discussion will need to involve the legislative delegation, and interested citizens such as neighbors and the Historic Commission. Ms. Turner requested that Mr. Pacheco enable a Zoom feature allowing anyone to record the meeting.

Ms. Verrochi explained that every deal done by DCAMM is different and that they are excited about some ideas for Lancaster.

See attached for Ms. Verrochi's presentation. DCAMM recommends filing disposition legislation that would authorize sale partnership model conveyance to Lancaster.

Ms. Turner questioned how the property would be valued for municipal use, such as affordable housing or a playing field. Ms. Verrochi's answered that this happens when the municipal use is determined, and typically comes through at a much lower appraisal than a market rate appraisal. It was noted that DCAMM does not have the power to approve the Proposal, that this power is entirely Lancaster's. In response to another question, the Town could use some of the property and sell the balance, a "hybrid" model.

Ms. Turner recalled that in the past if the State had taken property for whatever use and then sold back to the Town for \$1. Ms. Verrochi explained that while the town would have to pay the "sunk cost" for expenses occurred by the State in managing the property.

Mr. Allison recognized resident Victoria Petracca from the Lancaster Affordable Housing Trust (LAHT). She asked for clarification as to whether the appraisal would be for the land in its existing condition or for when it is operational. Ms. Verrochi explained that the appraisal would be based on the use. Mr. Andrews noted that a restricted use such as affordable housing would probably result in a low value restricted appraisal.

Ms. Petracca's follow up question to that is in order to consider a plan for moving forward, we have to have some ballpark numbers to know if there is a huge difference between buying one of those buildings in existing shape versus completely rehabbed energy efficient affordable housing with 30 units. Ms. Verrochi concurred that they would not be appraising the finished product.

Mr. Allison recognized resident Deb D'Eramo of Harvard Road. Ms. D'Eramo who had questions as to the usage of agricultural land and possibly a water pump or municipal well. It was confirmed that the DCAMM site in question included land that has been discussed as a possibility for a well location. Ms. Verrochi and Mr. Andrews will consider how this usage might impact the plan.

Mr. Andrews recapped. He explained that DCAMM's value here is a collaborative effort to get this property back into productive use on the tax rolls, and to do something production with the land. Mr. Andrews offered to provide tonight's presentation so that it could be posted on the Select Board website. Ms. Turner would like the Select Board to establish a small team to help work on this project.

Mr. Allison recognized resident Frank Streeter. Mr. Streeter noted that the property will need to be extensively documented and asked how much of this will be done by DCAMM. Ms. Verrochi explained that DCAMM would not handle that part of the model. Mr. Streeter is particularly concerned about the big brick buildings. Mr. Streeter stated that the LAHT did convene a meeting with the neighbors about the design project that was previously presented and the reaction to redevelopment of the site was very positive.

Ms. Turner wrapped up, verifying that the next step is for the Select Board to meet with the legislative delegation and to get back to DCAMM if, indeed, the Board is interested. Ms. Verrochi explained that at this stage appraisals are not needed. DCAMM would transfer the land to the Town at a nominal cost, and the Town wouldn't owe any money until the property is developed.

2. Discussion on status of the Economic Development Committee (EDC)

Mr. Allison brought this topic forward. He is concerned that the EDC may be not working in accordance with their defined charge and mission statement. He stated that he is not sure that the EDC is "being a good listener" and representing all parties. Speaking about the North Lancaster development, Mr. Allison stated, "I believe there are members who are against this project... and that's not okay, we have a landowner in town who wants to work with the town, who wants to figure out a path forward."

Ms. Turner stated that she has watched the last couple of EDC meetings, and that while they were "difficult" and not very productive, she did not view them as obstructionist.

Mr. Moody thinks there are some problems, noting that from the beginning the EDC wanted one person to be Chair and to take all the minutes; as a result minutes were not posted for a long time. He, however, does not think that the Select Board should interfere with the working of a committee that is in the middle of projects.

Mr. Allison would like the Board members to think about this and to continue discussion at the October 4, 2021 meeting. He asked them to think about resizing the committee from the current seven members to five or less to make the committee more streamlined. He suggested that another option would be to dissolve the EDC and rethink it. Ms. Turner is

concerned that the EDC seem to be solely focused on the North Lancaster Capital Group project.

3. COVID Vaccine Mandate policy

Mr. Allison moved to table this discussion to a future meeting after the Board has received feedback from Labor Counsel. Ms. Turner seconded.

Discussion: Ms. Turner recalls that the Board at prior meeting passed a vaccine mandate subject to review from the Board of Health and review from Town Counsel. Mr. Allison states that this is not his recollection, but that he recalls that the Board asked Town Administrator Orlando Pacheco and HR Director Sandi Charton to put together a proposal for the Board's review. Mr. Allison requested that Mr. Pacheco keep the Board of Health apprised of the status of this mandate.

Vote taken, Jason A. Allison vote Aye; Jay M. Moody vote Aye; Alexandra W. Turner vote Aye. Motion passed. [3-0-0]

VIII. APPOINTMENTS AND RESIGNATIONS - NONE

IX. LICENSES AND PERMITS - NONE

X. OTHER/UNFINISHED BUSINESS

- **Annual Town Report**

Estimated due date for the Annual Town Report will be December 2021. Mr. Pacheco reported that some of the reports are now in and can now start compiling them sooner therefore may be able to accelerate the December date.

- **Code of Conduct Policy**

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- **North Lancaster Settlement**

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Addressed in earlier presentation.

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Materials have been ordered and the goal is to have this completed by Halloween is on target. Mr. Pacheco reported that Dig Safe will need to be called for this project.

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Mr. Allison directed the Board’s attention to a memo from Mr. Pacheco on this topic. He notes that Mr. Pacheco is “trying to make it work” and that he was displeased with the way that the Planning Board Chairman had spoken to the Town Administrator. Ms. Turner asked that this be discussed and continued at the next meeting so that she has an opportunity to review the material.

- **Audit Services**

Powers & Sullivan is under contract for the FY22 Audit. Mr. Pacheco reported that this is an exempt service but can do a quote. Ms. Turner would like to assemble an Audit Committee.

- **0 Hardy Street**

Value has been re-adjusted to \$1,100.00. Property was listed as buildable but is a non-buildable land locked parcel. Town Administrator would like to look into the title work on this parcel and the town’s tax attorney Jim Coppola look into it. Mr. Pacheco reported that there have been some ambiguities in the town records for this property. He is planning to meet with the Assessors to clear this up and will report back to the Board. He notes that the Board’s mandate is to get full cash value for property sold, so the Board will continue to work on this but will not rush through.

XI. NEW BUSINESS

**This item is included to acknowledge that there may be matters not reasonably anticipated by the Chair*

Ms. Turner expressed concern about money paid by the Town for legal bills and asked Mr. Pacheco the status of the RFP for Legal Services. He reported this will close November 4 at 4:00 pm.

Mr. Allison asked the board if they would like to schedule interviews for Building Inspector. He suggested that the HR Director schedule them for the October 4 meeting. The Board agreed and

told Ms. Charton that the interviews could be scheduled for the beginning of the meeting.

XII. COMMUNICATIONS

- Select Board's next regular meeting will be held via Zoom on Monday, October 4, 2021 at 6:00pm

XIII. ADJOURNMENT

Select Board member Alix Turner offered a motion to adjourn the meeting; seconded by Mr. Moody. Jason A. Allison, Aye, Jay A. Moody, Aye, Alexandra W. Turner, Aye. [3-0-0]

Respectfully submitted

Kathleen Rocco
Executive Assistant

Jay M. Moody Clerk
Approved and accepted:

SCHEDULED APPEARANCES & PUBLIC HEARINGS

**TOWN OF LANCASTER
NOTICE OF PUBLIC HEARING
APPLICATION FOR SPECIAL PERMIT
TO REMOVE EARTH PRODUCTS RENEWAL**

Notice is hereby given that a Public Hearing will be held on Monday, October 18, 2021 at 6:10 P.M. via ZOOM, to consider the application of James Simpson, dba LLEC Inc., 139 Greenland Road, Sterling, MA for renewal of a Special Permit To Remove Earth Products (Sand and Gravel) from a parcel of land located westerly of I-90, Easterly of Jungle Road, identified on the Lancaster Assessors' Maps as Map 23, Parcels 7, location approximately 700 feet Easterly from the intersection with Jungle Road. A copy of the Application and Engineering Plans may be viewed in the Select Board's Office, Prescott Building, 701 Main Street, Suite 1, Lancaster, MA between the hours of 9:00 a.m. and 4:00 p.m. Monday through Thursday. All persons interested in providing comment should attend and be heard.

LANCASTER SELECT BOARD

Jason A. Allison, Chairman

Jay M. Moody, Clerk

Alexandra W. Turner, Member

The Item – 9/24/2021 & 10/01/2021 (2x)



TOWN OF LANCASTER
OFFICE OF THE
SELECT BOARD

Jason A. Allison, Chairman
Jay M. Moody, Clerk
Alexandra W. Turner, Member

Orlando Pacheco, Town Administrator
Kathleen A. Rocco, Executive Assistant

MEMORANDUM

TO: BOARD OF APPEALS, BOARD OF ASSESSORS, BOARD OF HEALTH,
BUILDING COMMISSIONER, COLLECTOR-TREASURER,
CONSERVATION COMMISSION, DEPARTMENT OF PUBLIC WORKS,
FIRE DEPARTMENT, PLANNING BOARD, POLICE DEPARTMENT, TOWN
CLERK

FROM: Kathleen Rocco, Executive Assistant

CC: Select Board

DATE: September 28, 2021

RE: Notice of Public Hearing –Special Permit Removal of Earth Products Renewal

The Board is in the process of reviewing LLEC, Inc.'s application for the above –referenced. Our office would appreciate your cooperation by assisting us in this process. Attached please find the following:

- Application for Special Permit Removal of Earth Products Renewal (Maps may be viewed on the Selectmen's office);
- Town of Lancaster Notice of Public Hearing; and
- Department Comment Sheet.

Please complete the Department Comment Form, with any comments you feel appropriate on said License Application.

Please return the form(s) to the Selectmen's Office **no later than Wednesday, October 13, 2021.**

Thank you for your assistance in this matter.

Enclosures



TOWN OF LANCASTER, MASSACHUSETTS
BOARD OF SELECTMEN
Town Hall, 695 Main Street, P.O. Box 293
Lancaster, MA 01523-0293
Tel: 978-365-3326 Fax: 978-368-8486

Town Clerk's Office
Date & Time Received

RECEIVED

SEP 29 2011

Board of Selectmen

**APPLICATION FOR SPECIAL PERMIT
REMOVAL OF EARTH PRODUCTS**

1. Applicant's Name: James Simpson
2. Applicant's Address: 139 Greenland Rd. Sterling, Ma. 01564
3. Name of Business or Concern (If operating other than individual): L.L.E.C. Inc.
4. Business Address (If different than address listed under Question 2): same
5. Location of Property (Street Address): Jungle Rd.
6. Assessors' Atlas: Map/Sheet No. 23 Parcel No. 7 Lot No.
7. Location approximately 2000 feet ☐ N ☒ S ☐ E ☐ W from the intersection with Rte 117
8. Evidence of Property Ownership (Attach Deed, Lease, other): Deedbook 32432 page 312
9. Name and Address of Engineer or Firm Responsible for plans, specifications, compliance, etc? Andrysick Land Surveying, P.O. box 97 Princeton, Ma. 01541
10. Engineering plans and specifications prepared (date): January 2015

SCOPE OF WORK

11. Cubic yards to be excavated/removed from site: 180,000 Area: 5 Acres + 5 Acres Acres
12. Type of earth product(s): Peat ☐ Loam ☐ Gravel ☒ Rock ☐ Other ☐
13. Proposed date of completion of excavation: Of Removal on going
14. Duration of Request (Minimum of 6 months; maximum of 24 months): 2 years
15. Reason for Request: earth removal / site preparation
renewal of existing permit

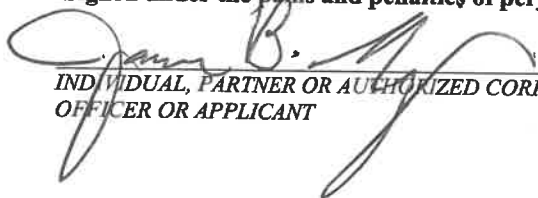
16. Estimated cost for erosion control, grading, seeding, or reclamation: \$ 3,050
17. Bond Required: bond is in place
(To be determined by the Town)
18. Have you been issued a Special Permit for earth products removal before? Yes ☒ No ☐
If yes, when was it last issued? 8/2018 For what period? 8/2020

THE FOLLOWING MUST BE SUBMITTED AS PART OF THIS APPLICATION:

1. Three (3) copies of a registered, engineered plot plan of the area showing existing grades and proposed finished grades and the distances from the excavation to the side and rear property lines.
2. Three (3) copies of the registered, engineered plot plan reduced to 11" x 17" on white paper.
3. Three (3) sets of engineering specifications.
4. Evidence of Property Ownership as required under Question 8.
5. Check for Permit Application Fee (\$250 for one (1) year; \$500 for two (2) years).
6. Check for \$1,000 for Professional Engineering Review Fees. The Applicant shall be required to forward to the Town any engineering costs exceeding the \$1,000 review fee estimate.

The applicant certifies that it has filed all state tax returns and paid all state and local taxes required by law and agrees to comply with the terms of its permit and applicable law, and all rules and regulations promulgated thereto. I further certify that the information contained in this application is true and accurate and also authorize the Permitting Authority or its agents to conduct whatever investigation is necessary to verify the information contained in this application.

Signed under the pains and penalties of perjury.


INDIVIDUAL, PARTNER OR AUTHORIZED CORPORATE
OFFICER OR APPLICANT

DATE SIGNED

9.16.21

NOTE: The filing of this application does not permit the Applicant to remove earth products. Removal of earth products may not commence until the Board of Selectmen issues a special permit.

BOND NUMBER: 107514403

KNOW ALL MEN BY THESE PRESENTS, That, LLEC CORP
of 139 GREENLAND RD STERLING, MA 01564-2607
called the Principal, and Travelers Casualty and Surety Company of America, a corporation
organized and existing under the laws of the State of Connecticut, called the Surety, are holden
and stand firmly bound unto the **Town of** LANCASTER, MA called the Obligee, in
the full and just sum of Fifty Thousand (\$50,000.00) Dollars for the
payment whereof said Principal and Surety bind themselves, their successors and assigns and
their heirs, executors and administrators, jointly and severally by these presents.

WHEREAS, the Principal has been granted a permit to remove **Earth** from the property of
Town of Lancaster.

NOW THEREFORE, if the Principal shall well and truly keep and perform, during said period all
the terms and conditions and restrictions set forth in the permit in connection with the removal of
Earth then this obligation to be void; otherwise it shall remain in full force and effect.

IT IS FURTHER UNDERSTOOD AND AGREED that the period of this bond shall be from
September 30, 2021 to September 30, 2022.

The Surety may cancel this bond at any time by filing with the Obligee fifteen (15) days written
notice sent by Certified Mail, Return Receipt Requested, of its desire to be relieved of liability.
The Surety's liability is limited to claims made during the terms of the bond.

IN WITNESS WHEREOF, the said Principal and Surety have caused these presents to be
signed and their seals affixed hereunto this 28 day of September, 2021.

LLEC CORP

Michelle Cournoyer

(Witness)

By:

James Simpson

Travelers Casualty and Surety Company of America



By:

Russell E. Vance

, Attorney-in-Fact

TRAVELERS

Travelers Casualty and Surety Company of America
 Travelers Casualty and Surety Company
 St. Paul Fire and Marine Insurance Company
 Farmington Casualty Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, St. Paul Fire and Marine Insurance Company, and Farmington Casualty Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Russell E. Vance**, of Hartford, CT, their true and lawful Attorney(s)-in-Fact, to sign, execute, seal and acknowledge the following bond:

Surety Bond No.: 107514403**Principal: LLEC CORP**

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this **21st** day of **April, 2021**.



State of Connecticut

City of Hartford ss.

By:

Robert L. Raney, Senior Vice President

On this the **21st** day of **April, 2021**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June, 2026**

Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **28** day of **September, 2021**.

Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.



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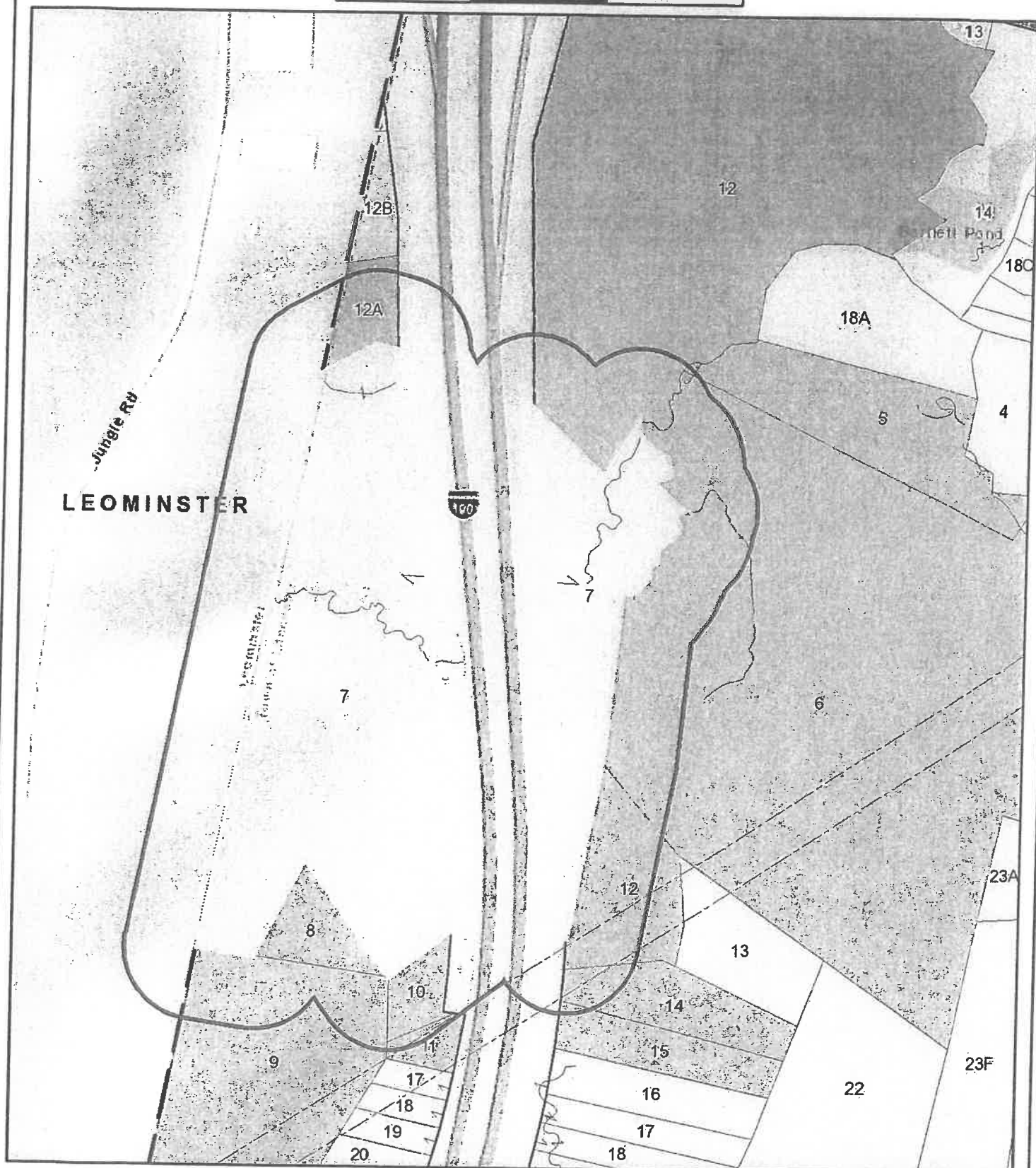
Lancaster, MA



July 13, 2021

1 inch = 555 Feet

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TOWN OF LANCASTER
OFFICE OF THE Select Board

DEPARTMENT COMMENT FORM

DEPARTMENT/BOARD NAME: Treasurer / Collector.

Applicant: LLEC, Inc.

Requests: Application for Special Permit Removal of Earth Products Renewal

Location: 139 Greenland Road, Sterling, MA 01566

COMMENTS: None - taxes paid in full to date

DATE: 9-29-21


DEPARTMENT HEAD SIGNATURE

NOTE: IF A CODE VIOLATION EXISTS, PLEASE CITE THE RULE OR REGULATION.



**TOWN OF LANCASTER
OFFICE OF THE Select Board**

DEPARTMENT COMMENT FORM

DEPARTMENT/BOARD NAME: _____

Applicant: LLEC, Inc.

Requests: Application for Special Permit Removal of Earth Products Renewal

Location: 139 Greenland Road, Sterling, MA 01566

COMMENTS: No Comments

DATE: 10/8/21

Thomas J. Christopher
DEPARTMENT HEAD SIGNATURE

NOTE: IF A CODE VIOLATION EXISTS, PLEASE CITE THE RULE OR REGULATION.



**TOWN OF LANCASTER
OFFICE OF THE Select Board**

DEPARTMENT COMMENT FORM

DEPARTMENT/BOARD NAME: Fire Dept

Applicant: LLEC, Inc.

Requests: Application for Special Permit Removal of Earth Products Renewal

Location: 139 Greenland Road, Sterling, MA 01566

COMMENTS: NO CONCERNS

DATE: 10.4.21

[Signature]

DEPARTMENT HEAD SIGNATURE

NOTE: IF A CODE VIOLATION EXISTS, PLEASE CITE THE RULE OR REGULATION.



**TOWN OF LANCASTER
OFFICE OF THE Select Board**

DEPARTMENT COMMENT FORM

DEPARTMENT/BOARD NAME:

D.P.W.

Applicant: LLEC, Inc.

Requests: Application for Special Permit Removal of Earth Products Renewal

Location: 139 Greenland Road, Sterling, MA 01566

COMMENTS: None

DATE:

10/5/2021

DEPARTMENT HEAD SIGNATURE

Kevin D. Bartlett

NOTE: IF A CODE VIOLATION EXISTS, PLEASE CITE THE RULE OR REGULATION.

V. BOARDS, COMMITTEES & DEPARTMENT REPORTS

Rec Oct 17, 2018

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ATLANTIC UNION COLLEGE

v.

BOARD OF ASSESSORS OF
THE TOWN OF LANCASTER

Docket Nos. F324281-F324292,
F326402-F326413,
F329370-F329381

Promulgated:
October 12, 2018

These are appeals heard under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Lancaster ("appellee" or "assessors") to abate taxes on certain parcels of real estate located in Lancaster owned by and assessed to Atlantic Union College ("appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal years 2014, 2015, and 2016 ("fiscal years at issue").

Commissioner Rose heard these appeals. Chairman Hammond and Commissioners Scharaffa and Good joined him in the decisions for the appellant. Commissioner Chmielinski dissented.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

David G. Saliba, Esq. for the appellant.

Ellen M. Hutchinson, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of testimony and exhibits offered into evidence at the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2013, January 1, 2014, and January 1, 2015, the relevant valuation and assessment dates for the fiscal years at issue, the appellant was the assessed owner of the 12 parcels of real estate at issue in these appeals (collectively "subject property").

For each of the fiscal years at issue, the appellant timely filed Forms 3 ABC and abatement applications for the subject property, which the assessors denied or deemed denied. The appellant seasonably filed Petitions Under Formal Procedure with the Board for the subject property for each of the fiscal years at issue. On the basis of its findings, the Board found and ruled that it had jurisdiction over the appeals for the fiscal years at issue.

The appellant presented its case through the testimony of the following witnesses: Dr. Carlyle Simmons, Trustee of the appellant; Dr. Avis Hendrickson, President of the appellant; Milton Montague, Security Director of the appellant; Leslie Aho, Physical Plant Manager of the appellant; and Silas McKinney, Chief Financial Officer and Vice President of Finance of the appellant.

At all times relevant to this appeal, the appellant was a private liberal arts college affiliated with the Seventh-day Adventist Church. The appellant's entire campus consisted of about 30 parcels, including the subject property. The subject property was used as follows: 2 parcels were parking lot or storage areas; 1 parcel was a combination of classrooms, a cafeteria, and residences; and the remaining 9 parcels were student and faculty housing. The appellant was incorporated in 1883 and has had a lengthy history of exemption from taxation pursuant to G.L. c. 59, § 5, Clause Third ("Clause Third"). In May of 2011, the appellant suspended its bachelor of arts degree program at the subject property after losing its accreditation because of financial hardship. The appellee began to tax the subject property in fiscal year 2013. Other parcels within the Atlantic Union College campus remain exempt.

Dr. Simmons testified that the appellant never lost its charter during the relevant time periods, and that college administration and facilities departments worked towards regaining accreditation during the suspension period between May of 2011 and August of 2015, when the appellant resumed its degree program at the subject property. Dr. Simmons testified that, after the suspension, he and the other members of the Board of Trustees immediately began communicating with the Massachusetts Department of Education ("MDOE") and the New

England Association of Schools and Colleges ("NEASC") to discern the specific steps required for the college to regain accreditation. He further testified that the appellant, in fact, hired a consultant to assist in the process of regaining accreditation. According to Dr. Simmons, the appellant "maintained constant administrative structure for the institution" through monthly administrative meetings with the subject property's caretakers, the financial director of the college, and the officers of the appellant's employees' union. The Board of Trustees also continued to meet quarterly, and Dr. Simmons testified that at those meetings, the officers discussed the financial state of the appellant, the maintenance and security measures in place to ensure the subject property's upkeep, "and of course . . . efforts to regain our accreditation."

Furthermore, Dr. Simmons testified, the appellant continued to provide certain programs at the subject property during its loss of accreditation period. First, the Thayer Performing Arts Center ("TPAC") continued to accept students into its music and performing arts programs under the auspices of the college. The Northeast Evangelism Training School ("NETS"), a certificate program designed to teach students the techniques and strategies of conducting Bible studies, evangelism, and healthy-living education, which began operating at the subject property in

2013, also continued to operate during the relevant time periods. The Adult Education Program also continued operating during this time. Finally, the Teach Out Program, which began shortly after accreditation ceased at the college, enabled nursing students who were in the process of completing their degrees to continue their studies at neighboring Wachusett Community College while some of them continued to live at the subject property. The appellant also provided some professors and others who were employed by the appellant, as well as some students engaged in the Teach Out Program, with continued living quarters at the subject property during the relevant time periods.

Moreover, Dr. Simmons and Dr. Hendrickson both testified that the appellant's academic office was in continual operation to assist current students by providing housing, distributing transcripts, and providing other business functions. The appellant also continued to maintain the entire campus by paying all taxes, utilities, and insurance fees, and providing landscaping, maintenance, and repairs to the subject property. Dr. Hendrickson testified that when she began her employment with the appellant, on January 1, 2015, that the subject property was being continuously occupied by the appellant, despite the suspension of granting degrees. She further testified that the suspension of admitting new students was

temporary, and that the appellant never intended to cease its operations at the subject property during the relevant time periods. The appellant began admitting new students again in August of 2015.

Mr. Montague, Security Director of the appellant, corroborated the testimony of Dr. Simmons and Dr. Hendrickson that the college continued to maintain the campus, and he further testified that the appellant continued to patrol and provide security to all major parts of the campus during the relevant time periods. He also testified that employees of the appellant continued to live on campus during the relevant time periods, including the groundskeeper and the chief financial officer of the college, and that some students also continued to live on campus even during the suspension of degree-granting authority. Even with respect to the parts of campus where students were not residing during the suspension, the college continued to secure the buildings and to provide heating and electrical service to the campus as well as landscaping and snow removal and tending to issues with the subject property as they occurred. Mr. Aho, the Physical Plant Manager of the appellant, also corroborated the testimony regarding the upkeep and repairs made to the subject property at all relevant time periods, and he further testified to the proactive steps that he and the maintenance department took to respond to specific issues,

including suspected mold in the basement area of one of the buildings located on the subject property. Finally, Mr. McKinney, the Chief Financial Officer and Vice President of Finance of the appellant, also testified that the appellant continued to maintain and secure the subject property during the relevant time periods.

The appellee presented as a witness Debra Sanders, the principal assessor for the appellee. She testified to the rationale behind assessing the subject property, explaining that by the start of fiscal year 2013, the appellant still had not regained accreditation, and the board of assessors "wanting to be as fair as possible" reviewed the exemption as follows:

So the board looked at it in two ways. They looked at the educational buildings, and then they looked at the residential buildings. They felt that the educational buildings should be exempt, but as far as the residential buildings, they felt that because there was no students in those buildings that they needed to be taxed.

On the basis of the evidence of record, the Board found that the appellant continued to operate in furtherance of its charitable purpose during the relevant time periods, despite the suspension of its ability to confer academic degrees. The TPAC, NETS, and Adult Education programs continued to operate on campus, as the appellant continued to provide housing to those students participating in the Teach Out Program in conjunction with neighboring Wachusett Community College. Moreover, the

appellant's academic offices remained open to assist students with finding housing and other academic support during the suspension period. Furthermore, the appellant regarded its loss of accreditation as a temporary phase. The appellant continually strove to reopen and took active steps towards that goal, including communications with MDOE and NEASC as well as monthly Board of Trustees meetings. These active steps included maintenance of the subject property; during the relevant time, the appellant continued to maintain the subject property by providing repairs, security, and snow removal services, as well as housing to professors, employees, and students. The Board found it illogical that the appellee concedes that the academic portions of the campus should continue to be exempt during the accreditation suspension and yet taxed the residential portions that were no less utilized or maintained during the relevant time periods.

The Board found and ruled that the appellant's occupancy of the subject property was in furtherance of its educational purpose, which is a traditionally charitable purpose. Therefore, the Board found and ruled that the subject property was entitled to exemption.

Accordingly, the Board issued decisions abating the taxes at issue.

OPINION

Clause Third provides that real estate owned by a "charitable organization and occupied by it or its officers for the purposes for which it is organized" is exempt from taxation. Clause Third defines a charitable organization as "a literary, benevolent, charitable or scientific institution or temperance society incorporated in the commonwealth." "For purposes of the local property tax exemption, the term 'charity' includes more than almsgiving and assistance to the needy." *New England Legal Found. v. Boston*, 423 Mass. 602, 609 (1996). "A charity, in the legal sense, may be more fully defined as a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government." *Boston Symphony Orchestra, Inc. v. Assessors of Boston*, 294 Mass. 248, 254-55 (1936) (quoting *Jackson v. Phillips*, 14 Allen 539, 556 (1867)).

As observed by the Appeals Court, the Supreme Judicial Court in *New Habitat, Inc. v. Tax Collector of Cambridge*, 451 Mass. 729 (2008) provided "an interpretive lens through which we now view" charitable exemption cases. *Mary Ann Morse*

Healthcare Corp. v. Assessors of Framingham, 74 Mass. App. Ct. 701, 703 (2009). As the Appeals Court explained,

[t]he number of individuals receiving services, whether they are from diverse walks of life, the fees charged to those individuals, and the relationship between the service fees and the cost of those services to the provider - all these are factors that inform a decision under the community benefit test; where however an organization is found to be traditionally charitable in nature, these factors play "a less significant role in our determination of its charitable status" for purposes of property tax exemption.

Id. at 704 (quoting *New Habitat*, 451 Mass. at 737).

The Supreme Judicial Court has long recognized that "bringing [recipients'] minds or hearts under the influence of education" is a traditionally charitable purpose. *Boston Symphony Orchestra*, 294 Mass. at 254-55; *Assessors of Boston v. Garland Sch. of Home Making*, 296 Mass. 378 (1937). Therefore, because education is a traditionally charitable purpose, factors like fees and the number of people benefitted by the appellant's programs are less important in determining the appellant's charitable status. See *New Habitat*, 451 Mass. at 736-37 (finding an organization to be charitable where it had small number of beneficiaries but traditionally charitable purposes and methods) (citing *Dover v. Dominican Fathers Province of St. Joseph*, 334 Mass. 530, 539 (1956)). Instead, a court should "consider whether the number of an organization's beneficiaries helps to advance the organization's charitable purpose." *New*

Habitat, 451 Mass. at 737 (citing *New England Legal Found.*, 423 Mass. at 612 ("at any given moment an organization may serve only a relatively small number of persons" but still be found to be charitable if operating according to its stated charitable purpose"))).

In the instant appeal, the appellant had lost its accreditation prior to the start of the fiscal years at issue, and so the majority of its students had sought other academic opportunities. However, the Board found credible the witnesses' testimony regarding the appellant's efforts to regain its accreditation, including meetings with the MDOE and NEASC as well as monthly Board of Trustees meetings. The appellant never lost its charter during the relevant time periods, and it kept its academic offices open to continue to assist students during the suspension period. Some employees and students of the appellant continued to reside in campus housing, the former continuing to maintain the subject property and the latter furthering their academic careers through initiatives like Teach Out with a neighboring college. Moreover, the appellant continued to offer and teach students in its non-degree and certificate education programs, specifically TPAC, NETS, and the Adult Education Program. The Board thus found and ruled that the subject property was still being operated as part of an educational institution, a traditionally charitable endeavor,

and that the subject property was being no less utilized and maintained than the other campus parcels, which the appellee concedes were exempt. The fact that a small number of students were served during the suspension period is not of concern when the organization is traditionally charitable in nature. See *New Habitat*, 451 Mass. at 737.

When the property at issue involves a residential facility owned by a charitable organization, a determination must be made as to whether the property is occupied by the residents in their individual capacities or by the organization itself. *Mary Ann Morse Healthcare Corp.*, 74 Mass. App. Ct. at 704. The Supreme Judicial Court has specifically found that the occupation of dormitories is not by the individual students but by the charitable organization. "Dormitories, dining halls and boarding houses intended primarily for and actually devoted to the use and benefit of students attending incorporated institutions of learning are exempt from taxation." *Springfield YMCA v. Assessors of Springfield*, 284 Mass. 1, 6 (1933) (citing *Phillips Academy v. Andover*, 175 Mass. 118, 125 (1900)). See also *M.I.T. Student House, Inc. v. Assessors of Boston*, 350 Mass. 539, 542 (1966) (finding that a "student house" that was occupied by needy students who paid a small rental fee to the taxpayer was like "a 'dormitory or boarding house'" and that the occupation of such is by the corporation itself and not the residents, "just as the

occupation of a college dormitory [] is that of the institution of learning"); *Franklin Square House v. Boston*, 188 Mass. 409, 411 (1905) ("The occupation of the property is that of the corporation itself, and not of those to whom it affords a home, just as the occupation of a college dormitory or refectory is that of the institution of learning rather than that of its students.").

So long as a property is occupied by the charitable organization for the purpose for which it was organized, the occupancy will satisfy Clause Third. See *Mary Ann Morse Healthcare Corp.*, 74 Mass. App. Ct. at 706 (ruling that the provision of housing to elderly residents was consistent with organization's charitable purpose). The Board found that the use of the subject property to house employees of the appellant who were continuing to maintain the subject property while the administration was working towards regaining accreditation, and by students who were continuing to pursue their academic degrees at another institution while their degrees from the appellant were on hold, was consistent with and in furtherance of the appellant's charitable purposes. The endeavors of the employees and the students contributed to the promotion of the academic program and therefore the charitable purpose of the appellant. See, e.g., *The Sterling and Francine Clark Art Institute, Inc. v. Assessors of the Town of Williamstown*, Mass. ATB Findings of Fact and Reports 2015-581, 591.

On the basis of its findings, the Board ruled that the appellant continued to operate the subject property in furtherance of its charitable purpose of education. Therefore, the Board found that the subject property satisfied Clause Third during the relevant time periods.

Accordingly, the Board issued decisions for the appellant in these appeals.

THE APPELLATE TAX BOARD

By:

Thomas W. Hammond, Jr., Chairman

A true copy,

Attest:

Clerk of the Board

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-142

ATLANTIC UNION COLLEGE

vs.

BOARD OF ASSESSORS OF LANCASTER.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The board of assessors of Lancaster (assessors) appeals from a decision of the Appellate Tax Board (board), which granted charitable tax exemptions on twelve different parcels owned by Atlantic Union College (Atlantic Union) for fiscal years 2014-2016.¹ The issue on appeal is whether the board was required to consider each of the twelve parcels separately from Atlantic Union's campus as a whole. We remand for further consideration consistent with this memorandum and order.

Background. The board found the following facts, which are supported by substantial evidence. See Bridgewater State Univ. Found. v. Assessors of Bridgewater, 463 Mass. 154, 156 (2012).

¹ The assessors do not dispute that additional parcels owned by Atlantic Union are eligible for the charitable tax exemption.

Atlantic Union was incorporated in 1883 and had a lengthy history as a private liberal arts college affiliated with the Seventh-Day Adventists. In 2011, however, Atlantic Union lost its accreditation due to financial hardship and suspended its bachelor of arts degree program. While the bachelor of arts degree program was suspended, Atlantic Union actively worked towards regaining accreditation and was able to accomplish that in 2015. In the meantime, Atlantic Union offered a teach out program for its nursing students so they could finish their studies at a neighboring college,² and other nondegree programs were offered on Atlantic Union's campus during the 2011-2015 suspension period.³ In addition, Atlantic Union kept its academic offices open so it could assist former students, allowed some employees and former students to reside in campus housing, and continued to maintain the entire campus.

Atlantic Union's campus comprises about thirty parcels. For most of Atlantic Union's history as a private liberal arts college, the assessors exempted the entire campus from taxation pursuant to G. L. c. 59, § 5, Third, the charitable tax

² The assessors contend that the teach out program ended in 2012, before the fiscal years relevant to this appeal.

³ One such program, the Northeast Evangelism Training School, was designed to teach students the techniques and strategies of conducting Bible studies and evangelism. The assessors contend that this program was offered by the Atlantic Union Conference, an administrative body of the Seventh-Day Adventists, and not by Atlantic Union.

exemption. That changed, however, after Atlantic Union lost its accreditation. While the assessors continued to exempt certain parcels that contained academic buildings for fiscal years 2014-2016, the assessors declined to exempt twelve parcels that were either parking lots or that contained the campus housing in which some employees and former students resided during the fiscal years at issue.

Discussion. The charitable tax exemption under G. L. c. 59, § 5, Third, is available to a charitable organization that owns the property in question and occupies it for the organization's charitable purposes, or allows another charitable organization to occupy it for its charitable purposes. Bridgewater State Univ. Found., 463 Mass. at 157. In the context of the exemption, "occupancy means something more than that which results from simple ownership and possession. It signifies an active appropriation to the immediate uses of the charitable cause for which the owner was organized." Assessors of Boston v. Vincent Club, 351 Mass. 10, 14 (1966), quoting Babcock v. Leopold Morse Home for Infirm Hebrews & Orphanage, 225 Mass. 418, 421 (1917). The burden lies with the charitable organization seeking the exemption to demonstrate that the express terms of the statute, which are strictly construed, apply. See Animal Rescue League of Boston v. Assessors of Bourne, 310 Mass. 330, 332 (1941).

The assessors argue that the board erred in failing to make specific findings with respect to each of the twelve parcels for each fiscal year from 2014-2016, treating Atlantic Union's campus instead as a single property. The assessors further argue that, when analyzing each of the twelve parcels separately, the evidence does not support the conclusion that they were being occupied by Atlantic Union for its charitable purposes for each fiscal year from 2014-2016.⁴ The assessors contend, for example, that the evidence as to some employees and former students residing in campus housing was extremely limited and that, regardless, such use did not further Atlantic Union's charitable purposes.

The difficulty we encounter is that the board did not "state adequate reasons in support of its decision so as to permit meaningful appellate review." Blakely v. Assessors of Boston, 391 Mass. 473, 476 (1984). Primarily, we cannot discern whether the board reviewed each of the twelve parcels separately or whether the board instead reviewed the campus as a whole. The touchstone, as noted above, is the need to discern whether the "property" at issue was occupied for charitable purposes during the tax year in question -- whether there was an "active

⁴ The assessors concede that one parcel located at 366 South Main Street was eligible for the charitable tax exemption in fiscal year 2016 when current Atlantic Union students again began to reside there.

appropriation to the immediate uses of the charitable cause."

Vincent Club, 351 Mass. at 14.

While the board typically reviews exemptions on a parcel by parcel basis, the methodology of treating the property as a whole may be appropriate in this circumstance if the board explains its reasons for doing so.⁵ We recognize that college campuses may be unique in that they are cohesive properties that happen to comprise smaller contiguous parcels. Assuming that it would be appropriate to consider the entire campus as a cohesive property, Atlantic Union's longstanding use of the entire campus and the fact that Atlantic Union continued to maintain and use, at least to some degree, the entire campus while it actively worked towards regaining accreditation, may support the exemptions for these limited number years. See Assessors of Hamilton v. Iron Rail Fund of Girls Clubs of Am., Inc., 367 Mass. 301, 307 (1975) ("even somewhat equivocal expressions of

⁵ The Supreme Judicial Court has on occasion ruled that the exemption can apply to some buildings used by an organization and not others, Shrine of Our Lady of La Salette, Inc. v. Board of Assessor, 476 Mass. 690, 700 (2017), and in cases involving one building, the board may, in certain circumstances, divide the building into sections, some of which are entitled to the exemption and others that are not. See, e.g., Milton Hosp. & Convalescent Home v. Assessors of Milton, 360 Mass. 63, 68-70 (1971); Assessors of Worcester v. Knights of Columbus Religious Educ. Charitable & Benevolent Ass'n of Worcester, 329 Mass. 532, 533-535 (1952). Especially considering this history, if the board reviewed the campus as a whole, some explanation is warranted.

an intention to occupy property for a charitable purpose are entitled to more weight in the case of an organization which has so occupied the property annually for many years"). However, it is unclear which methodology the board applied, and its reasons for doing so.

If, however, the board instead reviewed each of the twelve parcels separately, we cannot discern on what basis the board concluded that each parcel was being occupied by Atlantic Union for its charitable purposes for each fiscal year from 2014-2016. While it appears undisputed that some employees and former students resided in campus housing, if each property were assessed separately, the board did not make specific findings as to which parcels and for which fiscal years.⁶ Nor did the board make findings as to how this use, or any other use of a specific parcel, furthered Atlantic Union's charitable purposes.⁷

⁶ As required by G. L. c. 59, § 5, the determination date for each fiscal year is July 1, and Atlantic Union does not argue otherwise.

⁷ For example, to the extent that the board relied on participants of the teach out program residing in campus housing, the board did not make a finding as to when that program ended. See note 2, supra. Alternatively, to the extent that the board relied on participants of the Northeast Evangelism Training School residing in campus housing, the board did not make any findings as to whether a third party offered this program and why such use made Atlantic Union eligible for the charitable tax exemption. See note 3, supra. While use by a third party does sometimes make an organization eligible for the charitable tax exemption, see Bridgewater State Univ. Found., 463 Mass. at 157-161, the board did not make any findings in support of the conclusion.

Because we have inadequate findings to review, we vacate the board's decision and remand to the board for further consideration consistent with this memorandum and order. See, e.g., Boston Gas Co. v. Assessors of Boston, 458 Mass. 715, 734 (2011).

So ordered.

By the Court (Maldonado,
Singh & Englander, JJ.⁸),

Joseph F. Stanton

Clerk

Entered: August 13, 2020.

⁸ The panelists are listed in order of seniority.

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ATLANTIC UNION COLLEGE

v.

**BOARD OF ASSESSORS OF
THE TOWN OF LANCASTER**

Docket Nos. F324281-F324292,
F326402-F326413,
F329370-F329381

Promulgated:
November 17, 2020

These Revised Findings of Fact and Report are promulgated by the Appellate Tax Board ("Board") simultaneously with its reinstated decisions on remand, pursuant to G.L. c. 58A, § 13 and 831 CMR 1.32. These appeals were originally filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Lancaster ("appellee" or "assessors") to abate taxes on certain parcels of real estate located in Lancaster owned by and assessed to Atlantic Union College ("appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal years 2014, 2015, and 2016 ("fiscal years at issue").

The issue in these appeals was whether twelve parcels of real estate ("subject property") that formed part of the campus of Atlantic Union College were exempt from tax under G.L. c. 59, § 5, Cl. Third ("Clause Third") for the fiscal years at issue. Commissioner Rose heard the original appeals, which were decided in favor of the appellant.

The assessors subsequently appealed to the Massachusetts Appeals Court ("Appeals Court"). After concluding that the Board failed to "'state adequate reasons in support of its decision so as to permit meaningful appellate review,'" the Appeals Court vacated the Board's decisions and remanded these appeals to the Board for additional consideration and explanation. See **Atlantic Union College v. Assessors of Lancaster**, Mass. App. Ct. No. 19-P-142, Memorandum and Order Under Rule 23.0 (August 13, 2020) (quoting **Blakeley v. Assessors of Boston**, 391 Mass. 473, 476 (1984)). Specifically, the Appeals Court directed the Board to explain whether it considered "each of the twelve parcels separately or whether the board instead reviewed the campus as a whole," and to state its basis for using its chosen methodology. **Id.**

Chairman Hammond was joined in the reinstated decisions for the appellant by Commissioners Good, Elliott, Metzger, and DeFrancisco.

David G. Saliba, Esq. for the appellant.

Ellen M. Hutchinson, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

The facts, as summarized below, are based on the record submitted during the hearing of these appeals, and much of the following was stated by the Board in its original Findings of Fact and Report:

At all times relevant to these appeals, the appellant was a private liberal arts college affiliated with the Seventh-day Adventist Church. The appellant's entire campus consisted of about thirty parcels, including the subject property. The subject property was used as follows: two parcels were parking lot or storage areas; one parcel was a combination of classrooms, a cafeteria, and residences; and the remaining nine parcels were student and faculty housing. The appellant was incorporated in 1883 and has had a lengthy history of exemption from taxation pursuant to Clause Third. In May of 2011, the appellant suspended its bachelor of arts degree program after losing its accreditation because of financial hardship. The appellee began to tax the subject property in fiscal year 2013. Other parcels within the Atlantic Union College campus, such as academic buildings, remained exempt during the fiscal years at issue.

The record showed that the appellant continued to provide certain programs during the suspension period. First, the Thayer Performing Arts Center ("TPAC") continued to accept students into its music and performing arts programs under the auspices of the

college. The Northeast Evangelism Training School ("NETS"), a certificate program designed to teach students the techniques and strategies of conducting Bible studies, evangelism, and healthy-living education, which began operating in 2013, also continued to operate during the relevant time periods. The Adult Education Program also continued operating during this time. Finally, the Teach Out Program, which began shortly after accreditation ceased at the college, enabled nursing students who were in the process of completing their degrees to continue their studies at neighboring Wachusett Community College while some of them continued to live on campus. The appellant also provided some professors and others who were employed by the appellant, as well as some students engaged in the Teach Out Program, with continued living quarters on campus during the relevant time periods.

Additionally, the evidence indicated that the appellant's academic office was in continual operation to assist current students by providing housing, distributing transcripts, and providing other business functions. Moreover, the appellant continued to actively maintain the entire campus, including the subject property, by paying for all utilities, insurance, landscaping, security, and other building maintenance issues. In fact, the record showed that the appellant expended more than \$3 million between 2011 and 2015 for building repairs, maintenance, insurance, labor and additional expenses.

Most importantly, however, the evidence showed that the appellant never lost its charter during the relevant time periods, and that college administration and facilities departments, along with its Board of Trustees, actively worked towards regaining accreditation during the suspension period. The appellant continually strove to reopen and took active steps towards that goal, including communications with the Massachusetts Department of Education and the New England Association of Schools and Colleges, as well as holding monthly Board of Trustees meetings. The record showed that in June of 2013, the Massachusetts Department of Education's Board of Higher Education granted conditional approval to the appellant to offer certain bachelor's degree programs. The appellant regained full accreditation and began admitting new students into its bachelor's degree programs in August of 2015.

On the basis of the evidence of record, the Board found, and now reiterates, that the subject property was occupied by the appellant in furtherance of its charitable educational purposes within the meaning of Clause Third during the fiscal years at issue. As directed by the Appeals Court, the Board herein clarifies that it formed this conclusion by looking at the subject property as a whole, rather than making a determination as to the occupancy of each of the twelve parcels individually. The Board selected

this approach as it was not only consistent with the actual use of the subject property, but eminently appropriate for making a determination of charitable exemption in the context of property comprising an integrated part of a college campus, as explained more fully in the Opinion below.

Accordingly, the Board reinstates its decisions for the appellant in these appeals, and grants abatements of the taxes at issue in full.

OPINION

Clause Third provides that real estate owned by a "charitable organization and occupied by it or its officers for the purposes for which it is organized" is exempt from taxation. G.L. c. 59, § 5, cl. Third. In the present appeals, there was no dispute between the parties that the appellant was a charitable organization for purposes of Clause Third or that it owned the subject property, and the Board so found. The primary issue was whether the appellant occupied the subject property in furtherance of its charitable educational purposes during the fiscal years at issue. The mandate of the Appeals Court in remanding these appeals to the Board was for the Board to explain whether, in making its determination as to occupancy, it viewed the twelve parcels comprising the subject property as a whole or individually, and to

state its reasons for so doing. See **Atlantic Union College**, Mass. App. Ct. No. 19-P-142, Memorandum and Order Under Rule 23.0.

As stated above, in making its determination as to occupancy, the Board viewed the subject property as a whole and an integrated part of a college campus, rather than as twelve separate parcels. First, the Board considered this approach to be appropriate as it was consistent with the subject property's actual usage. In **Trustees of Boston College v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports 2010-96, ("**Trustees of Boston College**") the Board considered whether certain parcels of land that had recently been acquired by a university were exempt under Clause Third. In that case, the Board treated contiguous parcels as one where the evidence showed that they were used in the same manner. *Id.* at 113. See also **Superior Realty Company, Inc. v. Assessors of Quincy**, Mass. ATB Findings of Fact and Reports 2016-436, 446-47 (treating two contiguous parcels comprising a parking lot and commercial building as a single economic unit consistent with their actual use).

More important, however, is the unique nature of college campuses, as alluded to by the Appeals Court in issuing its remand. "We recognize that college campuses may be unique in that they are cohesive properties that happen to comprise smaller contiguous parcels." **Atlantic Union College**, Mass. App. Ct. No. 19-P-142, Memorandum and Order Under Rule 23.0. The Board has previously

recognized the same unique attributes of property owned by a college in *Trustees of Boston College*, along with the special considerations that must be made when evaluating such property.

In contrast, Boston College is a university which provides graduate and undergraduate education for some 14,500 students. On its two campuses, Boston College has numerous dormitories, classroom buildings, administrative buildings, dining halls, libraries, and athletic and research facilities. Its operations are necessarily more complex than those of the taxpayer in [the distinguished case], and the scope of uses which support its charitable purpose is correspondingly greater.

Trustees of Boston College, Mass. ATB Findings of Fact and Reports at 2010-125.

In this way, the present appeals are distinguishable from other exemption cases in which Courts or the Board have considered property owned by charitable institutions on an apportioned basis. In both *Milton Hosp. & Convalescent Home v. Assessors of Milton*, 360 Mass. 63, 68-70 (1971), and *Assessors of Worcester v. Knights of Columbus Religious Educ. Charitable and Benevolent Ass'n of Worcester*, 329 Mass. 532, 533-35 (1952), certain portions of property owned by charitable organizations, but privately leased to unrelated third parties, were found not to be "occupied" by the charitable organization for purposes of Clause Third. Notably, neither of these cases involved educational institutions, which have especially "broad discretion to determine the most advantageous uses of [their] property and how best to execute

[their] overall educational mission." *Trustees of Boston College*, Mass. ATB Findings of Fact and Reports at 2010-121 (citing *Emerson v. Trustees of Milton Academy*, 185 Mass. 414, 415 (1904)); see also *Wheaton College v. Town of Norton*, 232 Mass. 141, 146 (1919).

Moreover, here, there was no indication in the record that the appellant was leasing any portion of the subject property to third parties, or otherwise making an apportioned use of any of the twelve parcels comprising the subject property. Instead, the record showed that the subject property continued to be used and maintained as an integrated part of the entire college campus.¹

In sum, in light of the diverse operations that take place on college campuses, which are often sprawling properties comprised of separate parcels but which function as a single, integrated campus, the Board based its determination of occupancy of the subject property by viewing it as a whole rather than twelve separate parcels.

In viewing the subject property as a whole, the Board concluded that it was occupied by the appellant in furtherance of

¹ So, too, are these appeals distinguishable from *Shrine of Our Lady of La Salette, Inc. v. Assessors of Attleboro*, 476 Mass. 690, 700 (2017), a case in which certain portions of a sprawling campus owned by a religious charitable organization were held not to be exempt. That case did not involve exemption under Clause Third, but instead the much narrower exemption found in G.L. c. 59, § 5, cl. Eleventh ("Clause Eleventh"), which exempts only "houses of religious worship" to the extent they are used for "religious worship or instruction." As certain portions of the property at issue in that appeal were not being used for the aforementioned purposes, they were found not to be exempt under Clause Eleventh. *Id.*

the appellant's charitable educational purposes for the fiscal years at issue. Although the appellant temporarily lost its accreditation in May of 2011, the record showed that the appellant immediately and actively began efforts to restore its accreditation, ultimately achieving that goal in August of 2015. In addition, the record showed that, during the intervening period, the appellant continued to: house some students and faculty members; provide certain degree programs in conjunction with other charitable organizations; and secure and maintain the subject property along with the rest of the campus, all with an eye toward resuming full operations.

Courts and the Board have had occasion to consider exemption under Clause Third during such transitional periods for the owner-charitable organization. In *Assessors of Hamilton v. Iron Rail Fund of Girls Clubs of America, Inc.*, 367 Mass. 301 (1975), the property under consideration was a charitable summer camp for girls that had been in operation for nearly twenty years prior to suffering a string of hardships, including a fire, that forced it to close temporarily. *Id.* at 304. It thereafter made efforts to secure the resources to resume its annual operations, but ultimately was unable to do so. The Court held that as of the relevant assessment date, the taxpayer intended to and was making active efforts to resume normal operations, and the Court held that the property was still occupied by the charitable organization

in furtherance of its charitable purposes, and thus was entitled to exemption. *Id.* at 307-308.

Similarly, in *Trustees of Boston College*, the property at issue had only recently been acquired by the college, and its long-term use was still being studied. The Board in that case found that the property at issue was exempt as the college occupied it with interim uses, such as passive recreation, overflow parking, and buffer space, and concluded that the "fact that these uses may have been temporary, or that Boston College's future plans for the subject property continued to evolve during the fiscal years at issue, did not warrant a finding to the contrary." *Trustees of Boston College*, Mass. ATB Findings of Fact and Reports at 2010-123.

In contrast, in *Babcock v. Leopold Morse Home for Infirm Hebrews and Orphanage*, 225 Mass. 418, 421 (1917), property owned by a charitable organization that had once been used to house orphaned children and the elderly was found not to be exempt, where, as of the relevant date of assessment, that charitable organization had ceased active operations with no plans to resume them. *Id.* at 422.

The present appeals are much more like the former cases than the latter. It would be illogical, for example, to suggest that exemption under Clause Third would be destroyed if a college dormitory suffered a flood and had to be shuttered temporarily for

repairs, and the Board saw no difference here between those circumstances and the appellant's temporary loss of accreditation. The record showed that the appellant immediately and actively undertook efforts to regain its lost accreditation, first obtaining conditional approval to resume offering bachelor of arts programs in 2013 before ultimately resuming full operations in 2015. Given its longstanding history of exempt use of the subject property, along with its earnest efforts to maintain the subject property and regain the ability to resume full operations, the Board concluded that the appellant's temporary loss of its accreditation did not defeat the exemption for the fiscal years at issue.

[This space intentionally left blank.]

In conclusion, the Board found that, considering the subject property as a whole, and as an integrated part of the appellant's college campus, the appellant continued to occupy the subject property in furtherance of its traditionally charitable educational purposes within the meaning of Clause Third for the fiscal years at issue. Accordingly, the Board reinstates its decision for the appellant in these appeals, and grants full abatement of the taxes at issue.

APPELLATE TAX BOARD

By: /s/ Thomas W. Hammond
Thomas W. Hammond, Jr., Chairman

A true copy:

Attest: /s/ William J. Doherty
Clerk of the Board

SETTLEMENT AGREEMENT

This Settlement Agreement (the Agreement) is made and entered into by the Board of Assessors of the town of Lancaster (Assessors) and the town of Lancaster (Town), the town of Lancaster being a municipal corporation and body politic of the Commonwealth of Massachusetts, having its principal office at 711 Main Street, Lancaster, MA., and Atlantic Union College, (AUC) a not for profit educational corporation organized under the laws of the Commonwealth of Massachusetts with its principal office at 338 So Main, Lancaster MA. The Assessors and the Town, and AUC may be collectively referred to as "the Parties".

RECITALS

WHEREAS, AUC challenged the taxable status of its following properties for the fiscal years 2014, 2015 and 2016, believing that the following parcels (the subject properties) were exempt from real estate taxation pursuant to Massachusetts General Laws Chapter 59, section 5, clause Third:

204 South Main Street	197 South Main Street
217 South Main Street	0 Prescott Street
66 Prescott Street	284 South Main Street/25 Orchard Street
0 Flagg Street	143 George Hill Road
22 Deery Road	366 South Main Street
375 South Main Street	307 South Main Street;

WHEREAS, AUC prevailed at the trial of this matter before the Appellate Tax Board as it ruled that the subject properties were exempt from real estate taxation and ordered the Assessors, in its decision, to refund all real estate taxes assessed on the subject properties to AUC for fiscal years 2014, 2015 and 2016;

WHEREAS, the Assessors believe the Appellate Tax Board committed errors of law in its decision and are appealing the Appellate Tax Board's decision to the Massachusetts Court of Appeals;

WHEREAS, AUC has filed, with the Appellate Tax Board, petitions seeking exemption from real estate taxation for the subject properties for the fiscal years 2017-2020 against the Assessors;

WHEREAS, AUC has filed abatement applications with the Assessors seeking exemption from real estate taxation for the subject properties for the fiscal year 2021;

WHEREAS, AUC has ceased operation of its college and is seeking to sell subject properties and is desirous of ending this litigation between it and the Assessors regarding the tax exempt status of the subject properties for the fiscal years 2014 -2021;

WHEREAS, the Assessors are concerned with the potential impact of ongoing litigation between it and AUC regarding the exempt status of the subject properties, on Town finances and therefore are desirous of ending this litigation between it and the Assessors regarding the tax exempt status of the subject properties for the fiscal years 2014-2021;

WHEREAS, the Parties now wish to set forth their mutual understanding of a full and final resolution of ongoing litigation between them regarding the subject properties for the fiscal years 2014-2021.

NOW THEREFORE, in consideration of the mutual promises and covenants of each, to the other, contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

1. The Assessors, acting through the Town, will pay the sum of four hundred thousand dollars (\$400,000.00) to AUC.
2. The Assessors will withdraw, with prejudice, the appeal it has filed regarding the Appellate Tax Board's decision on the fiscal 2014-2016 cases.
3. AUC agrees to waive any and all statutory interest that would otherwise have been owed on the real estate tax abatements for the fiscal years 2014-2016.

4. AUC agrees to withdraw, with prejudice, the fiscal years 2014-2020 cases involving the subject properties, from the Appellate Tax Board.
5. AUC agrees to not file any appeal of the Assessors' denials of the abatement applications filed on any of its properties for the fiscal year 2021 with the Appellate Tax Board, the County Commissioners or any court within the Commonwealth of Massachusetts.
6. The Assessors, through the Town, will make the aforementioned payment of Four hundred thousand dollars (\$400,000.00) to AUC within forty-five (45) days of the Assessors receiving date stamped copies of AUC's filing of the withdrawals for all the subject properties for the fiscal years 2014-2020 with the Appellate Tax Board.
7. The Town and the Assessors hereby make the following representations and warranties to AUC:
 - a. The Town and the Assessors have taken all necessary action to authorize and approve the execution and delivery of this Agreement.
 - b. The person or persons executing this Agreement on behalf of the Assessors and the Town have the full power and authority to bind them to each and every provision of this Agreement.
 - c. In the event of a dispute over any term or provision of this Agreement, the Town and the Assessors waive any defense or claim that this Agreement is unenforceable as a matter of law.
8. AUC hereby make the following representations and warranties to the Town and the Assessors:
 - a. AUC has taken all necessary action to authorize and approve the execution and delivery of this Agreement.

- b. The person or persons executing this Agreement on behalf of AUC have the full power and authority to bind AUC to each and every provision of this Agreement.
 - c. In the event of a dispute over any term or provision of this Agreement, AUC waives any defense or claim that this Agreement is unenforceable as a matter of law.
- 9. Except as expressly provided herein, this Agreement constitutes the entire and complete agreement of the Parties with respect to the ongoing litigation between the Parties involving the subject properties and their tax exempt status and their valuation, for the fiscal years 2014-2021, exclusive of all prior understandings, arrangements, and commitments, all of which, whether oral or written, have been merged herein, except for contemporaneous or subsequent written understandings, arrangements, or commitments signed by the Parties intended to be bound thereby.
- 10. This Agreement shall bind and insure to the benefit of the Parties to this Agreement and any successor or assignee acquiring an interest hereunder.
- 11. The laws of the Commonwealth of Massachusetts shall govern the validity, interpretation, construction, and performance of this Agreement.
- 12. No amendment to this Agreement shall be effective until reduced to writing and executed and delivered by both Parties.
- 13. This Agreement may be executed in counterparts by the parties hereto and will become binding upon the Parties at such time as the signatories hereto have signed each counterpart of this Agreement. All counterparts executed shall constitute one Agreement binding all Parties hereto, notwithstanding that all Parties are not signatories to the original or same counterpart.

Executed this day of March, 2021.

Attest:

For Board of Assessors

Attest:

For Atlantic Union College

L. Earl Knight

Elias F. Zabala sr

[Signature]
[Signature]

Executed this 24 day of June, 2021.

Attest:

For Board of Assessors

Michael Burke

Michael Burke

Debra A. Sanders

Debra Sanders

Attest:

For Atlantic Union College

Part I ADMINISTRATION OF THE GOVERNMENT

Title IX TAXATION

Chapter ASSESSMENT OF LOCAL TAXES
59

Section 25 ADDITIONAL ASSESSMENTS

Section 25. The assessors of each city or town shall raise by taxation each year a reasonable amount of overlay as the commissioner may approve. The overlay account may be used only for avoiding fractional divisions of the amount to be assessed, for abatements granted on account of property assessed for any fiscal year and for any interest payable on such abatements under section 64 or 69. Any balance in the overlay account in excess of the amount of the warrants remaining to be collected or abated, as certified by the board of assessors, shall be transferred by the board of assessors upon their own initiative or within 10 days of a written request by the chief executive officer, with written notice to the chief executive officer, to a reserve fund to be appropriated for any lawful purpose. Any balance in a reserve fund at the end of the fiscal year shall be closed out to surplus revenue. This section shall apply to fire, water and improvement districts.

Town Administrator Report

TOWN ADMINISTRATOR's REPORT

10/18/2021

ARPA Plan

Attached is a preliminary plan to start the deployment of ARPA funds.

Regional Agreement Amendment Advisory Committee

The School Committee has voted to create a RAAAC to evaluate and recommend revisions to the existing Regional School District Agreement. The School Committee is requesting 1 member of either the Board of Selectmen or Finance Committee from each member community to serve.

Survey & Planning Grant (Cemetery)

The Town is seeking grant funds to hire the appropriate preservation consultants to prepare a plan for submittal for 4 cemeteries to be added to the National Register of Historic Places. The Town was previously successful 3 years ago with an application that led to Middle Cemetery, Old Settler's Burial Ground being approved for designation. The current application will focus on Eastwood Cemetery, Old Common Burial Ground, North Village Cemetery, and North Burial Ground.

If awarded the process will take a year to complete.

70/117 Intersection Appraisals

The Town has solicited 4 firms to conduct the necessary appraisals for the easements related to the re-design of the intersection project(s). We are waiting to obtain 3 quotes for formally make an award.

Building Inspector Hiring

I am still working diligently to come to an agreement with the selected candidate. The anticipated start date is 11/1/21.



Town of Lancaster

Office of the Selectboard

701 Main Street, Suite 1

Lancaster, MA 01523

Jason A. Allison, Chairman
Jay M. Moody, Clerk
Alexandra W. Turner Member

Orlando Pacheco, Town Administrator
Kathleen A. Rocco, Executive Assistant

MEMO

To: Selectboard

From: Orlando Pacheco, Town Administrator

Date: October 14, 2021

Re: American Rescue Plan Act (ARPA) Funds Allocation Strategy

As discussed previously, the Town has been allocated **\$2,364,788.00** as the local share and portion of the Worcester County allotment from the American Rescue Plan Act (ARPA). The US Dept. of the Treasury has issued an Interim Final Rule regarding eligible uses of the funds, and the Town should begin to utilize the funds in order to achieve public benefit.

The guidance has been broken into six (6) categories:

- Premium Pay to Eligible Workers
- Revenue Replacement (subject to calculation within Treasury Guidelines)
- Investments in Water, Sewer, Broadband Infrastructure
- Response to Public Health Emergency and its Negative Economic Consequences
- Support Public Health Expenditures as it relates to the pandemic and the broader health impacts
- Serving the hardest hit communities and Families within the a Qualified Census Tract

I would like to offer the Board an initial plan to start deploying funds.

- \$900,000 to improve Water Infrastructure and Water Quality. The Town has a number of needs within water, specifically replacement of leaking or undersized pipes and/or alleviating discolored water. The Town could utilize more funds in this category later depending on other expenditures. The focus will be to target the most problematic water lines in the separate attachment. The ARPA funds presents will cover the design, engineering and permitting cost of 20,000 linear feet (LF) of pipe.
- \$200,000 for site preparation as part of offsetting the negative economic impacts of the COVID19 pandemic. I would primarily focus these funds on the development and re-use of the 75-acre parcel(s) along Old Common Road/Still River Road (Route 110). This could also be used for the vacant Cumberland Farms or additional parcels that would benefit from pre-development assistance
- Reserve funds to implement a regional social worker or other mental health professional to work alongside police departments in the region through 2024.
- Reserve Funds to maintain the Town's current COVID19 Coordinator in the current capacity through September 30, 2022.
- \$100,000 (or more) to improve outdoor spaces to improve overall health quality within the Town. In my opinion, a re-design of the Town beach area and bathhouse would not only lead to the improvement of an outdoor space, but implement this in a way to improve overall safety and access. Another possibility would be to refurbish the tennis courts for outdoor pickle ball.
- \$10,000 to support the North Central Massachusetts Chamber of Commerce federal tourism matching grant (Visitor Center support).

While I am not suggesting the Board authorize the expenditure of all funds, the Town should start to utilize some funds now to address issues as it will take time to implement, design, procure any uses of ARPA funds.

Proposed Water Main Replacement

Chace Hill Road 3,000 ft

Moffett Street 2,400 ft

Harvard Road 6,000 ft

Neck Road 2,100 ft

Ponakin Road 3,500 ft

Schumacher Road 1,700 ft

Kilbourn Road 850ft

Parker Road 850 ft

Orlando Pacheco

From: Mary McCarthy <mdhmccarthy@comcast.net>
Sent: Thursday, October 7, 2021 9:43 AM
To: Don Lowe; TownAdministrator; Orlando Pacheco
Cc: Leah Vivirito
Subject: Town representatives on Reg. Agreement Amendment Subcommittee

Good morning,

Last night at the School Committee meeting, the SC voted to establish a Regional Agreement Amendment Subcommittee. I have been appointed as the Chair.

We ask for your assistance in finding one volunteer from each town who is a member of the Select Board or Finance?Advisory to serve on the RAAC Subcommittee.

The subcommittee will have 3 members from School Committee, 3 members from town government and 3 members of the public with preference given to School Council members.

I checked and Stow meetings are usually Tuesdays, Lancaster on Mondays and Thursdays for Bolton Select Board.

So the dates we are looking at are mostly Wednesdays: 10/27, 11/10, 11/30 (a Tuesday, but I don't see a Stow meeting), 12/8, 1/5 and 1/19 from 7:00-8:15 for meetings. So 5 or 6 meetings if we get going in October.

There will be some reading of docs between meetings but that shouldn't be overwhelming and with 9 members, if some don't get to their homework, we can work together at the meetings.

We are asking your help in getting out the word to your respective town boards. If we could have one volunteer from each town before the Oct. 20 SC meeting, that would be great, but if not Oct. 20, then by the Nov. 3 SC meeting.

The work will entail changes to the NRSD Regional Agreement beginning with the change of the wording to reflect that the SC now has 11 rather than 8 members. From there we have edits, comments and recommendations from the Department of Elementary and Secondary Education since DESE has already done a preliminary review of our regional agreement. Since the Regional Agreement hasn't been amended since 1994, there are MGL, DESE regulations and SC policies that need to be updated. However, even with these necessary revisions, Christine Lynch at DESE has assured us that our regional agreement is legal and that we are in compliance. (In any regional agreement, current laws and regulations take precedence over what is contained in a regional agreement.)

I am happy to answer any questions that you or board members may have.

We are requesting only one town representative from each town. We look forward to this vital work together with our towns and our community!

Thank you in advance!

Peace,
Mary McCarthy

P.S. In addition to the RAAC subcommittee meetings, the process will include that the draft agreement once the subcommittee is ready, will be available to the public for comments and suggestions before the final RAAC sub meeting when those comments, questions will be addressed. The draft then goes to School Committee for voted approval. Then

The Nashoba Regional Agreement Amendment Advisory Committee Looking for Community Members, one from each town, Bolton, Lancaster and Stow

The Nashoba Regional School Committee is forming the Regional Agreement Amendment Advisory Committee (RAAAC) composed of three (3) School Committee members, three town officials (3) one from each town from the Select Board or Finance/Advisory Committee, and three (3) community members, one from each town with preference given to School Council members. The RAAAC will adhere to Open Meeting Law (OML).

The charge of the RAAAC is to review the current agreement for updates/changes to bring the NRSD Regional Agreement up to date with laws, regulations, policies and changes since the NRSD Regional Agreement was last amended.

The RAAAC will engage in detailed work involving reading documents between meetings, comparing documents, and working with the suggested edits, comments and suggestions provided by the Department of Elementary and Secondary Education and members of the RAAAC. The process will include a public reading of the draft agreement before the last RAAAC meeting in January 2022. The draft agreement then goes to School Committee for approval before being submitted to DESE for review and then to the member towns to be included on the warrants for the Town Meetings and voted by the citizens of the three towns. (The certified voting at Town Meetings with the final document is then submitted to DESE for the signature of the Commissioner of Education.)

The proposed meeting dates are Wednesdays, 10/27, 11/10, Tuesday, 11/30 and Wednesdays, 12/8, 1/5 and 1/19 from 7:00-8:15 for meetings. The meetings are currently planned via Zoom.

If you are interested in serving on the RAAC as a community member. please contact Leah Vivirito, NRSC Chair, lvivirito@nrsc.net, or Dr. Mary McCarthy, RAAAC Chair, mmccarthy@nrsc.net before 10/20/21.



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

June 25, 2018

Heather Lennon
Vice Chair
Lancaster Historical Commission
695 Main Street, Suite #8
Lancaster, MA 01583

RE: Lancaster Cemeteries

Dear Ms. Lennon:

I apologize for the long delay in responding to your request that Massachusetts Historical Commission evaluate Lancaster's historic cemeteries to determine whether, in our opinion, they are eligible for listing in the National Register of Historic Places. I am happy to tell you that we have completed our evaluation, and have the following opinions of eligibility.

Middle Cemetery (LAN.800). **ELIGIBLE**. In the opinion of the MHC, Middle Cemetery retains its integrity and meets criteria A and C, and consideration D for the listing in the National Register of Historic Places with a local level of significance. The Middle Cemetery was the site of Lancaster's First and Second Meeting Houses and later served an important role as a burial site after the cemetery's establishment in 1798 and expansion in 1842. The burial ground displays more than 800 stones, with many examples of nineteenth century funerary art, including slate and marble headstones as well as family plots arranged around a central monument. Other features include tombs, ornamental fencing, and curbing. A National Register nomination should provide a map clearly delineating the cemetery from the surrounding area as well as the nearby Old Settler's Burial Field.

Old Settlers Burial Ground (LAN.801). **ELIGIBLE**. In the opinion of the MHC, Old Settlers Burial Ground retains its integrity and meets criteria A and C, and consideration D for the listing in the National Register of Historic Places with a local level of significance. Old Settlers' Burial Field is the oldest cemetery in Lancaster. Located near the juncture of Route 70 and the Nashua River, this small (1.5 acre) cemetery with approximately 200 markers is separated from Meetinghouse Hill on Route 70 by the tracks of the old B & M railroad. Access is gained on foot through the Middle Cemetery that lies on Route 70, next to Meetinghouse Hill. The cemetery is in the form of an elongated mound, approximately 412 feet long by 100 feet wide. A section to the east was deeded to the Town in 1937 by the Thayer Family and contains that family's burial plots. Noted early gravestone cutters represented include William Codner, John Dwight, the Lamson family, John New, Jonathan Worster, William Park, and James Wilder.

220 Morrissey Boulevard, Boston, Massachusetts 02125
(617) 727-8470 • Fax: (617) 727-5128
www.sec.state.ma.us/mhc

The site is heavily wooded and surrounded by wetlands. Although a boundary fence was present in the 19th Century, this has long since disappeared. A National Register nomination should include a clear map showing the exact boundary of the cemetery.

Old Common Burial Ground (LAN.802). ELIGIBLE In the opinion of the MHC, Old Common Burial Ground retains its integrity and meets criteria A and C, and consideration D for the listing in the National Register of Historic Places with a local level of significance. The Old Common Cemetery encompasses 1.18 acres and is located near the intersection of Route 110, Center Bridge Road, Bolton Road, and Old Common Road, on the north side of Old Common Road, and is trapezoidal in shape. Just inside the western opening is a series of seven earth-covered tombs, facing the stone wall. There are approximately 214 stones, with the earliest burial in 1717 and the latest in 1955. Most of the markers are simple tablets of schist, slate, and marble and display motifs such as winged death heads, willows and urns, coats of arms, and hands holding crucifixes. Recognized grave marker carvers include James Wilder, the Lamson family, Jonathan Worster, Moses Worster, and Paul Colburn. Several family plots are surrounded by granite curbing, and two still have their iron railings. The cemetery also contains three granite stele monuments and a granite table tomb set on sandstone legs.

North Village Cemetery (LAN.804) ELIGIBLE In the opinion of the MHC, North Village Cemetery retains its integrity and meets criteria A and C, and consideration D for the listing in the National Register of Historic Places with a local level of significance. In Lancaster's North Village, this is a 4 acre cemetery, dating to 1807, and still in use (2017 burial). The earliest death date is 1807; but the cemetery was not opened for public use until 1855, suggesting that several families may have moved burials here from other locations or that it was a family cemetery. Polished granite and marble stones predominate, with some in slate. Stones are well spaced and an iron gate with an arch marks the entranceway to the southwest. Several notable Lancaster families are included, with family lots for the Burbanks (family of Luther Burbank), Thayers, and Bigelows (Boston architect). Several Civil War veterans are located here; a granite monument is included. Should a nomination be prepared, a better map of the cemetery will be needed to establish the cemetery boundaries, as will a more thorough accounting of the number of stones (note that it will not be necessary to account for every stone in a nomination).

North Burial Ground (LAN.805). ELIGIBLE In the opinion of the MHC, North Burial Ground retains its integrity and meets criteria A and C, and consideration D for the listing in the National Register of Historic Places with a local level of significance. A small (1.5 acre) rural cemetery at the end of a dead-end road, the North Burial Field is tree-covered and features a loosely built dry stone wall with an unpaved roadway. It is located adjacent to Ft Devens' South Post. Approximately 200 markers remain, including a combination of slate, marble and polished granite, and range from ca. 1790 to 1973. Although the cemetery land was purchased in 1805, it is likely that stones existed prior to that date, and may contain members of the nearby Shaker community dating to ca. 1790. Should a National Register nomination be prepared, a clearer map will be required, likely an assessor's map, to determine the exact boundary, and there will need to be a better accounting of the existing stones. A rudimentary plan of the ground's layout is provided, but an historic map or illustration (if they exist) would assist a nomination.

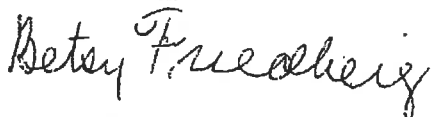
Eastwood Cemetery (LAN.803). MORE INFORMATION NEEDED. As noted previously, we received a draft National Register nomination for the Eastwood Cemetery, located in both

Lancaster and Bolton, from Michael Sczerzen in 2004. The nomination was based on a Preservation Plan prepared by Martha Lyons and her students. Our staff reviewed the draft nomination and found that it needed quite a bit of additional work before it could be considered complete. In 2006, in conversation with Mr. Sczerzen, we learned that the town had decided to put the nomination on hold. We have retained the file for this nomination but have done no further work on it. Please note that the requirements for nomination have changed since 2004, and we can certainly discuss those requirements with you should the Lancaster Historical Commission decide to proceed with the nomination of Eastwood Cemetery. In brief, MHC staff would require considerable additional information in order to edit the final nomination to the standards of the National Register program/National Park Service. We strongly recommend that the services of a professional preservation consultant be procured in order to complete the nomination. Note that if the character-defining features of a rural garden cemetery have been seriously compromised through changes in road patterns, the cemetery may no longer meet the criteria for listing in the National Register.

Shaker Cemetery (LAN.806) The Shaker Cemetery was listed in the National Register in 1976 as part of the Shirley Shaker Village National Register Historic District.

Please let me know if you have further questions.

Sincerely,

A handwritten signature in cursive script that reads "Betsy Friedberg". The ink is dark and the signature is fluid, with the first name "Betsy" and last name "Friedberg" clearly distinguishable.

Betsy Friedberg
National Register Director
Massachusetts Historical Commission

ADMINISTRATION, BUDGET AND POLICY

#1

#2

#3

#4



**TOWN OF LANCASTER
BOARD OF SELECTMEN
POLICIES AND PROCEDURES**
With Amendments (rev. 10/5/2020)

PURPOSE:

The Board of Selectmen of the Town of Lancaster, recognizing the need to codify the traditional and accepted working relationships among the members of the Board, between the Board and the Town Administrator, and between the Board and other Town boards, committees, officials and citizens, and also recognizing the need to systemize and reduce to writing the Town's public policies and procedures, hereby undertake to create operating procedures for the Board of Selectmen.

NATURE OF POLICIES & PROCEDURES:

These policies and procedures shall contain items relating to topics that cannot be addressed elsewhere. Subjects that would more appropriately be addressed in a statute, by-law or regulation shall not be addressed in this format.

PROCEDURE FOR ESTABLISHING POLICIES & PROCEDURES:

Draft policies and procedures shall be placed on the agenda for any regularly scheduled meeting of the Board. Drafts shall be in writing, and may be introduced only by a member of the Board or the Town Administrator. Upon receipt of a draft, the Board may choose to discuss the policy immediately or schedule the discussion for a future meeting. The Board may schedule any hearings or meetings it deems necessary for discussion. The Board may distribute a draft for comment to appropriate officials, as it deems necessary.

The Town Administrator shall be responsible for the maintenance of all policies and procedures.

AUTHORITY:

The Board of Selectmen is an elected Board and derives its authority and responsibilities from the statutes of the Commonwealth of Massachusetts and the by-laws of the Town of Lancaster.

ELECTION AND QUALIFICATION:

The Board shall consist of three duly elected members. Before assuming official duties, each newly elected member shall be sworn to faithful performance of official responsibilities by the Town Clerk.

VACANCIES ON THE BOARD:

When a vacancy occurs in the membership of the Board of Selectmen, the Board or its remaining members shall call a special town election to fill the unexpired term or terms in accordance with the Massachusetts General Laws, Chapter 41, Section 10.



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ROLE OF THE BOARD OF SELECTMEN:

The Board is responsible for policy development and review for compliance. The Board works with the Town Administrator on policy formulation.

The Board is responsible for supervising the departments of the general government that are not supervised by other elected officials. This responsibility is delegated to the Town Administrator, and the Board will refrain from involvement in day-to-day operations. Concerns and questions about the operation of departments, and suggestions for improvements should be addressed to the Town Administrator. The responsibility for addressing these issues is thus carried out through the Town Administrator. Selectmen may be called upon to resolve disputes that are unable to be resolved on the staff level. The Selectmen may follow up on concerns or issues addressing these approved policies.

ROLE OF THE TOWN ADMINISTRATOR:

The Board appoints a Town Administrator who functions as the Town's Chief Administrative Officer. The primary duties of the Town Administrator shall be the day-to-day administration of the general government as outlined in the position's job description. The Town Administrator shall also assist and work under the direction of the Selectmen in the formulation of policy.

The Town Administrator must maintain a close working relationship with all members of the Board. He/she shall regularly brief the Board on all-important issues.

In order to provide the Town with continuity of management and the Town Administrator with job security, the Selectmen are committed to maintaining an employment agreement with the Town Administrator, as permitted by statute.

BOARD ETHICS:

1. A member of the Board of Selectmen, in relation to his or her community should:
 - A. Realize that his or her basic function is to make policy, with administration delegated to the Town Administrator.
 - B. Realize that he or she is one of a team and should abide by, and carry out, all board decisions once they are made.
 - C. Be well informed concerning the duties of a board member on both local and state levels.
 - D. Remember that he or she represents the entire community at all times.
 - E. Accept the office of Selectman as a means of unselfish service, not to benefit personally or politically from his or her board activities.
 - F. In all appointments, avoid political patronage by judging all candidates on



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- merit, experience, and qualifications only.
- G. Abide by the ethics established by the State (MGL, Chapter 268A) and not use the position to obtain inside information on matters that may benefit someone personally.
2. A member of the Board of Selectmen, in his or her relations with administrative officers of the Town, should:
- A. Endeavor to establish sound, clearly defined policies that will direct and support the administration for the benefit of the people of the community.
 - B. Recognize and support the administrative chain of command and refuse to act on complaints as an individual outside the administration.
 - C. Give the Town Administrator full responsibility for discharging his or her disposition and solution.
3. A member of the Board of Selectmen, in his or her relations with fellow board members, should:
- A. Recognize that action at official legal meetings is binding and that he or she alone cannot bind the board outside of such meetings.
 - B. Not make statements or promises of how he or she will vote on matters that will come before the board until there has been an opportunity to hear the pros and cons of the issue.
 - C. Uphold the intent of executive session and respect the privileged communication that exists in executive session.
 - D. Make decisions only after all facts on a question have been presented and discussed.
 - E. Treat with respect the rights of all members of the board despite differences of opinion.

ORGANIZATION OF THE BOARD:

The Chairman shall be elected annually at the first regular meeting following the Annual Town Election. The Board at any time may remove the Chairman. A majority vote shall constitute an election. Nominations require no second. The immediate past Chairman shall preside as Chairman pro tem until the Chairman is elected. If there is no immediate past Chairman, the senior member in terms of current service shall serve as Chairman pro tem. In the case of members with the same amount of seniority, the member receiving more votes in the most recent election shall serve. If a vacancy occurs in the office of Chairman, the Board shall elect a successor. The Board shall further appoint a Clerk under the same provisions stated for the Chairman.



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RESPONSIBILITIES OF THE CHAIRMAN:

The Chairman of the Board shall:

- 1) Preside at all meetings of the Board. In doing so, he/she shall maintain order in the meeting room, recognize speakers, call for votes and preside over the discussion of agenda items.
- 2) Sign official documents that require the signature of the Chairman.
- 3) Call special meetings in accordance with the Open Meeting Law.
- 4) Prepare agendas with the Town Administrator.
- 5) Arrange orientation for new members.
- 6) Represent the Board at meetings, conferences and other gatherings unless otherwise determined by the Board or delegated by the Chairman.
- 7) Serve as spokesman of the Board at Town Meetings and present the Board's position unless otherwise determined by the Board or delegated by the Chairman.
- 8) Make liaison assignments and assign overview responsibilities for project and tasks to Board members unless otherwise determined by the Board.
- 9) The Chairman shall have the same rights as other members to offer motions and resolutions, to discuss questions and to vote thereon.
- 10) The Chairman will follow up with the Town Administrator on a quarterly basis on goals and objectives.

RESPONSIBILITIES OF THE CLERK:

The Clerk of the Board shall act in the place of the Chairman during his/her absence at meetings. Should the Chairman leave office, the Clerk shall assume the duties of Chairman until the Board elects a new Chairman. The Clerk is to sign approved meeting minutes. If the Executive Assistant is absent from Selectmen's meetings, the Clerk shall take notes for the Minutes.

REVIEW OF WARRANTS/EXPENSES

The Board, in accordance with the Chapter 218 of the Acts of 2016, commonly referred to as The Municipal Modernization Act of 2016, shall designate a member who will coordinate with the Town Accountant and review the payment expenses. Review of expenses should occur bi-weekly preferably by Wednesday to ensure payments are processed timely.

The Designee should ensure that the Department Head has properly signed off on the expenses, in the case of expenditures of \$10,000 or more confer with the Town Administrator to make sure appropriate procurement procedures were followed or the expense is exempt, and verify the necessary amount.



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Should an expense look inappropriate or questionable, additional supporting material should be requested and if needed referred to the Town Accountant, Town Administrator or Auditor for additional review.

REGULAR BOARD MEETINGS:

Regular Board Meetings are held generally the first and third Mondays of each month. The Board shall not meet on days designated legal holidays.

SPECIAL MEETINGS:

A meeting called for any time other than the regular meetings shall be known as a "Special Meeting". The same rules as those established for regular meetings will apply. Special meetings may be called provided that a majority of the members agree to meet and all Board members are notified.

MEETING PROCEDURES:

Meetings are to be conducted in accordance with generally accepted rules of parliamentary procedure and the Open Meeting Law. It is the practice that application of such procedure is on an informal basis, due to the size of the group and the desirability of flexibility in the expression of opinion. Robert's Rule of Order is used as a guide in matters requiring clarification of definition.

A quorum shall consist of two members of the Board. As a practical courtesy, action on critical or controversial matters, the adoption of policy or appointments shall be taken, whenever practicable, with the full Board is in attendance. Actions and decisions shall be by motion, second and vote. Split votes will be identified by name.

The Town Administrator is expected to be in attendance at all meetings of the Board. The Town Administrator shall attend in order to keep the Board informed and advised and recommend in all matters that fall within the jurisdiction of his office. He/she shall carry out the actions of the Board as they relate to the conduct and administration of Town affairs under his jurisdiction.

EXECUTIVE SESSION:

If practical, Executive Sessions, other than a few minutes in duration, will be scheduled only at the end of the open meeting. Only items clearly allowed under the Open Meeting Law shall be included in Executive Session. The mover must specify in the motion to enter Executive Session the reason the session sought. A majority of the members present must vote to enter Executive Session by roll call vote. The Chairman must state whether or not the Board will reconvene into open session.



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AGENDA PROCEDURES:

The responsibility for coordinating and planning the agenda is that of the Town Administrator. Each of the Board Members and the Town Administrator may place items on the agenda. The Town Administrator, in consultation with the Chairman, shall schedule a realistic time period for each appointment, interview, conference or other scheduled item of business.

All items for the agenda must be submitted to the Town Administrator at least seven days preceding the meeting, or not later than 4:00 p.m. on the Monday preceding the meeting. Items of emergency or strictly routine nature that develop after closing of the agenda may be considered under "other business".

Agenda items shall include:

1. Call to Order
2. Public Comment Period
3. Approval of Meeting Minutes
4. Scheduled Appearances & Public Hearings
5. Boards, Committees and Department Reports
6. Town Administrator's Report
7. Administration, Budgets and Policy
8. Appointments and Resignations
9. Licenses and Permits
10. New Business
11. Communications
12. Adjournment

Members of the Board, staff, Town Administrator or others who prepare background material for the meeting should make an effort to have such material available no later than Thursday afternoon. If background information is insufficient or complicated or if complex memos or motions are presented at the meeting which were not in the Board's meeting packet, any member should feel free to request the tabling of the item to allow careful study of the material presented or the motion proposed.

The agenda shall be available to the public and the press at the Selectmen's office the Thursday prior to the meeting date and shall be posted at the Town Office bulletin board that same morning. Copies of the minutes of the previous meeting and all important correspondence, reports and other pertinent background materials shall be forwarded with the agenda to Board members.

The Board shall not begin discussion of or act on an agenda item after 10:00 P.M. of a regularly scheduled meeting. This rule may be waived by a majority vote.



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MINUTES:

The Executive Assistant shall take written notes during the meetings and prepare typewritten minutes for the next meeting's agenda.

Minutes circulated to members of the Board on or before any Friday shall be in order for approval at the next regular meeting of the Board. By unanimous consent, minor corrections may be made to the minutes without advance circulation of such corrections.

Minutes shall contain a full statement of all actions taken by the Board and of the disposition of all proposals for action. Approved minutes shall be recorded in a Minutes Book that shall be bound when filled to capacity. Minutes of Executive Sessions shall be separately kept and recorded in accordance with the above procedures. Minutes (other than of executive sessions) are open for public inspection.

APPOINTMENTS:

The Board makes numerous appointments each year. Appointments are generally made for one or three years in length. In no case shall appointments be made for more than three years unless specifically allowed by Town By-law or State statute. Appointments generally are made the first meeting in June of each year. In the case of appointments, no second to the nomination or motion will be required prior to Board action.

Whenever possible the Board will seek variety in backgrounds, interests, ages, sex and geographic areas of residents, so that a true cross section of the community will be reflected. In order to attract qualified and interested persons, vacancies will be made public thirty (30) days in advance of appointment as practicable. Vacancies could be advertised in the local paper as well as on Cable TV. Appointments should be based on merit and qualifications rather than political merit.

Nepotism Pertaining to Service on Boards and Committees:

Members of an immediate family defined as: spouse, son, daughter, father, mother, sister, brother, grandmother, grandfather, aunt, uncle, niece, nephew and the following in-laws: son, daughter, brother, sister, mother and father shall not serve together on the same Board or committee.

The Town Administrator will:

- a. Provide a list of the appointment vacancies to be filled by the Board at the first regular board meeting following the annual town elections in May.
- b. Notify the chairman of the appropriate board or committee requesting recommendations regarding reappointment or the filling of vacancies.
- c. Notify incumbents and request their statements of availability regarding reappointment.



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All candidates seeking appointment for the first time to a position shall submit a short written statement or resume. This statement/resume shall be included in the Board agenda packet mailed in advance of the meeting. The Board may consider re-appointments to positions at their pleasure. A statement/résumé will only be requested from a candidate seeking reappointment by specific request of a member of the Board.

The Board will interview candidates seeking an appointment for the first time to the following positions as well as all elected positions being filled due to a vacancy:

Agricultural Commission	Animal Control Commission
Board of Appeals	Board of Assessors
Cable TV Advisory Committee	Conservation Commission
Council on Aging	Cultural Council
Disability Commission	Energy Commission
Historical Commission	Recreation Commission
Town Forest Committee	

Elected position being filled due to vacancy require a joint roll call vote of the Board of Selectmen and the remaining Members of said Board/Commission where the vacancy exists.

Notice of candidates being interviewed shall be included in the agenda mailed to the Board. The Board may request that candidates for a position not listed above be interviewed. Those candidates not being interviewed will be considered upon receipt of a resume/statement.

Appointments will normally be made only when all members of the Board of Selectmen are present. Appointments will be made by a majority vote of the Selectmen.

ADVISORY COMMITTEES OF THE BOARD OF SELECTMEN:

The Board may appoint standing or ad hoc advisory committees to aid on matters under the Board's jurisdiction. The use of such advisory committees provides greater expertise and more widespread citizen participation in the operation of government.

Charges to advisory committees shall be in writing and shall include the work to be undertaken, the time in which it is to be accomplished and the procedures for reporting to the Selectmen. Each committee must report in writing at least annually to the Selectmen. The Selectmen's Office shall be sent copies of all committee agendas and minutes. The Board will discharge committees upon the completion of their work. In addition, each Committee shall be provided with a Committee Handbook addressing issues such as conduct and law.



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The charges and membership of standing advisory committees shall be reviewed periodically -- at least annually -- to assess the necessity and desirability of continuing the committee. Re-appointments will be based on an evaluation of the member's contribution, the desirability of widespread citizen involvement and the changing needs of the committee and the town.

It is the policy of the Selectmen to appoint qualified citizens representing all sections of the town to all such advisory committees. The Board will normally appoint no individual to more than one standing advisory committee at any one time.

In order to attract qualified and interested persons, vacancies will be made public as far in advance of an appointment as practicable.

RELATIONS WITH OTHER TOWN BOARDS, COMMITTEES AND COMMISSIONS:

The Board of Selectmen is aware that coordination and cooperation is needed among the town's major boards, committees and commissions not only in the day to day operations of government but also to: 1.) set town-wide goals and priorities, 2.) identify and anticipate major problems and working together towards their resolution, and 3.) develop a process for dealing with state and other governmental entities.

Therefore, as the executive board historically responsible for the overall leadership and coordination of town affairs, the Selectmen will:

1. Regularly schedule meetings with the chairmen of major boards and committees to carry out functions 1-3 listed above. One meeting, shall, if possible, be held between the Annual Town Election and the start of town meeting for the purpose of reviewing the warrant and expediting town meeting.
2. Schedule annual meetings of the Selectmen, Finance Committee and School Committee with Lancaster's State Legislators to discuss legislative issues that affect the Town.
3. The Town Administrator is responsible for inter-office communication in the day-to-day operations of government. The Town Administrator shall develop a process for exchange of information and the provision for advice and recommendations among the boards, committees and commissions with common interest, which shall include but not be limited to the exchange of minutes, the establishment of a central repository for data, studies and reports and the appointment of members or staff of boards, committees or commissions as liaison with one another around common projects.



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RELATIONS WITH CITIZENS:

The Board recognizes that it represents and is accountable to all citizens of the town. It is the Board's policy to make every effort to strengthen communications with citizens. Measures will be instituted to increase citizen participation, encourage citizen input into governmental decisions and to keep citizens informed of all actions contemplated or taken by the Board and the town meeting that will affect them. To this end the following steps will be taken:

1. An individual citizen or group of citizens may request an appointment before the Board by contacting the Town Administrator, stating precisely the reason for the appearance and the action desired and naming a spokesman for the group.

Participants shall be given the opportunity to make a reasonable presentation through the spokesman and to express opinions and ask for pertinent information. Background data shall be prepared by the boards and departments concerned prior to the appointment insofar as possible, so that all parties involved can have a reasonable understanding of the subject matter. Citizens are encouraged to have written materials submitted for the Board's meeting packet.

2. Persons who will be directly affected by proposed Board discussion and/or action will be notified by the Executive Assistant of the date and time of meeting at which the matter will be discussed or acted upon by the Board.
3. If the Board in considering matters of citizen concern at a regular meeting, the public will be allowed to ask questions or make statements relative to the matter under consideration at the discretion of the Chairman or upon request of any member of the Board.
4. All citizen questions and complaints are to be answered promptly. The Chairman shall answer questions and concerns relating solely to the Office of Selectmen promptly after consulting with the Board, or at the discretion of the Chairman, the Town Administrator. Those needing prompt attention by the Board should be referred to the Chairman for inclusion in the next meeting agenda.
5. All other questions and all complaints are to be referred to the Selectmen's Office for action or recommendations. In those instances where common sense dictates that the Board member receiving the complaint deal directly with a department head, the Board member shall inform the Town Administrator of the issue and its disposition.



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EMPLOYEE GRIEVANCES:

These are to be handled as delineated in the Town's Personnel By-law and Policies and Procedures. Under the Personnel Bylaw, the Personnel Board formulates the personnel practices. If employee grievances are brought to the attention of a Board member it shall be Board policy to proceed as follows:

(In absence of a Personnel Board, the Board of Selectmen shall act in lieu of a Personnel Board or appoint a mediator or independent third party).

Selectmen will not intercede or interfere with the process. The employee will be shown the administrative process to be followed. Any employee may request a meeting with the Board; the Board may defer such meeting until other remedies have been exhausted.

HEARINGS BEFORE THE BOARD:

Hearings before the Board of Selectmen generally shall be conducted in accordance with the following procedures. Variations may be necessary to comply with statutory requirements applicable to particular matters. The procedure for conducting dog and utility hearings are hereinafter outlined:

1. Notice: The Executive Assistant will advertise the hearing and notify interested persons, such as abutters, as required by statute or as directed by the Chairman in the absence of statutory requirements.
2. Hearings will be held in open session unless otherwise voted by the Board in compliance with the Open Meeting Law.
3. The Chairman will announce the nature and purpose of the hearing, identify the particular matter, and recite the notice given. Where appropriate, the Chairman will outline the procedure to be followed. All questions shall be addressed to the Chair.
4. The order of presentation will be:
 - a. Presentation by Proponent
 - b. Receipt of recommendations from any Town agency or officer
 - c. Statements by proponents
 - d. Statements of opponents
 - e. Rebuttal statements by proponents and opponents
 - f. Where appropriate, questions may be asked of any person making a statement after the statement is finished. Questions will be accepted first from members of the Board.



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5. The Board may permit persons not desiring to speak to record themselves as in favor or against the proposal. In the discretion of the Board a show of hands may be taken.
6. At the conclusion of the hearing the Board may render its decision or take the matter under advisement, announcing the intended date of decision.

TOWN MEETINGS:

1) Annual Town Meetings

The Town Meeting warrant is, by statute, the Selectmen's warrant. The Selectmen may insert articles in the warrant on their own initiative or by written petition signed by ten (10) registered voters for the Annual Town Meeting. The Town by-law sets the date of the Annual Town Meeting for the first Monday in May. The Selectmen may, however, schedule the Annual Town Meeting for any other date allowed by By-law or Massachusetts General Law.

2) Special Town Meetings

The Selectmen may call a Special Town Meeting when, in their opinion, public necessity or municipal operations requires it. The Selectmen must call a Special Town Meeting if they receive a written request, signed by two hundred (200) registered voters. It shall be the practice of the Town of Lancaster to address major issues at the Annual Town Meeting.

The Selectmen may insert articles in the warrant on their own initiative or by written petition signed by one hundred (100) registered voters for Special Town Meeting. The Selectmen may also insert articles in the warrant upon request of another committee.

Notwithstanding the above, in the interest of economy of operations and imposition on the voters the Selectmen shall strive to limit the calling of Special Town Meetings to the minimum necessary as is otherwise in the Town's best interest. In determining whether to call a Special Town Meeting, the Selectmen may consult with other town committees, officials, and staff as appropriate. It is strongly recommended that the Moderator and Town Clerk be consulted for each Town Meeting.

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#6

COMPETITIVE ELECTRIC SERVICE AGREEMENT

BETWEEN

DYNEGY ENERGY SERVICES (EAST), LLC

AND

TOWN OF LANCASTER

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 Lancaster ("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. 12-39;

WHEREAS, Dynegy Energy Services (East), LLC, a Delaware limited liability company 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

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 – Dynegy Energy Services (East), LLC, a Delaware limited liability company duly authorized to conduct business in the Commonwealth of Massachusetts.

1.6 Competitive Supplier's Guarantor – Vistra Operations Company LLC.

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 or the senior secured rating of Competitive Supplier or Competitive Supplier's Guarantor; *provided, however*, that the standing guaranty of Vistra Operations Company LLC, 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. This includes (1) Basic Service consumers who have indicated that they do not want their contact information shared with Competitive Suppliers for marketing purposes; and (2) consumers receiving Basic Service plus an optional Green Power product that allows concurrent enrollment in either Basic Service or competitive supply. This excludes (1) Basic Service consumers who have asked their Local Distributor to not enroll them in competitive supply; (2) Basic Service consumers enrolled in a Green Power product that prohibits switching to a Competitive Supplier; and (3) consumers receiving competitive supply service.

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 - Lancaster's Community Choice Power Supply Program as adopted or amended by the Town from time to time, and as approved by the Department on September 14, 2012 in D.P.U. 12-39. 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 - Lancaster'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 December 2021.

1.34 Term - As defined in Article 4.1.

ARTICLE 2 RIGHTS GRANTED

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, 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 Competitive 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.

The Competitive Supplier may only communicate with Participating Consumers and/or use the lists of Eligible Consumers and Participating Consumers to send Department-approved educational materials, opt-out notices or other communications essential to the operation of the Program. Such lists may not be used by the Competitive Supplier to market any additional products or services to Eligible Consumers or Participating Consumers.

ARTICLE 3 CONSUMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT

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, using the Opt-Out Notice approved by the Department, 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 or delayed.

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, through the Town or its agent, 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 subsequent opt-out mailings in the timeframe necessary as directed by the Town or its agent.

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 Town or its agent 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 Town or its agent.

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. Any such efforts must be consistent with the Education and Information Plan included in the Department-approved Plan.

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

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 December 2022, 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

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. Eastern Standard Time, 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. 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), Competitive Supplier shall 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.

The Competitive Supplier may only communicate with Participating Consumers and/or use the lists of Eligible Consumers and Participating Consumers to send Department-approved educational materials, opt-out notices or other communications essential to the operation of the Program. Such lists may not be used by the Competitive Supplier to market any additional products or services to Eligible Consumers or Participating Consumers.

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.

The Competitive Supplier may only communicate with Participating Consumers and/or use the lists of Eligible Consumers and Participating Consumers to send Department-approved educational materials, opt-out notices or other communications essential to the operation of the Program. Such lists may not be used by the Competitive Supplier to market any additional products or services to Eligible Consumers or Participating Consumers.

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

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

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. 1421) and Terms and Conditions for Competitive Suppliers (M.D.P.U. No. 1420) 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

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

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 December 2021, 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(8); 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 Reporting

Monthly Commission/Usage Details Report (Exhibit B) – Competitive Supplier shall provide the Town or its agent with a monthly report of usage details, to back up each commission payment made to the agent, which will contain:

Required Information

- a. Aggregation Name
- b. Customer Name
- c. Load Zone (WCMA, NEMA, SEMA)
- d. Utility Name - NGRID, Eversource East (Boston Ed), Eversource East (Commonwealth), Eversource West (WMECO), Unitil
- e. Rate Class Code (R1, R2, G1, G2 S1, etc) at time of billing
- f. Utility Acct#
- g. Service Account# (Eversource West only)
- h. Utility Meter# (Eversource and Unitil only)
- i. Inv#/Bill#
- j. Invoice Date (Period)
- k. Meter Read Cycle
- l. Monthly Usage From/Start Date
- m. Monthly Usage To/End Date
- n. # of kWh's Used
- o. Aggregation Rate (that the utility charged)
- p. Pay Date (Commission Period) (month/year)
- q. Payment/Commission (.001 x kWh)

Not Required but Can Be Helpful

- r. Account Status (Enrolled, Active, Dropped, Cancelled)
- s. Invoice Type (Final Bill, Original, Estimate)
- t. Product Offered (Standard Fixed Rate or Optional Fixed Rate)

Monthly Enrollment Report (Exhibit C) – Competitive Supplier shall provide the Town or its agent with a monthly report of enrollment data broken down by Rate Code Classification (including additional breakout of R2 data; see tabs 3 and 4 of Exhibit C for further clarification) and by Load Zone for Industrial Accounts:

- a. Accounts Enrolled at Start of Month
- b. Number of Accounts that have Moved, Closed or Switched Competitive Supplier
- c. Number of Accounts that have Opted-Out
- d. Number of Accounts that have Opted-In
- e. Accounts Remaining at End of Month

The monthly reports will be due to the Town or its agent within five (5) business days following the close of each month. 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 to CPG 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

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 Commercially Reasonable 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 Commercially Reasonable 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. 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

13.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER

Competitive Supplier shall, at its own expense, 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.

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

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

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. The required limits of insurance can be satisfied by any combination of primary and excess coverage. Competitive Supplier shall provide the Town with evidence, reasonably satisfactory to the Town, of its required insurance hereunder, upon request.

ARTICLE 16 CONFIDENTIALITY

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 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. 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

If, after the Effective Date, a Regulatory Event occurs or New Taxes are imposed, and such event or taxes have a direct, material and adverse effect on the economic benefits to a Party of this ESA, the affected Party shall send written notice to the other Party, setting forth the Regulatory Event or New Taxes and reasonably demonstrating the effect of the same on the affected Party. Upon delivery of such notice, the Parties shall use reasonable efforts to negotiate an amendment to this ESA to mitigate such effect. Alternatively, if as a direct result of such a Regulatory Event or New Taxes, the Competitive Supplier incurs additional, material costs, the Competitive Supplier shall provide a written notice to the Town that documents: a) the effective date of the Regulatory Event or New Taxes; b) a detailed explanation and reasonable demonstration of the material costs incurred as a result of the Regulatory Event or New Taxes; c) the timing of the cost impact to be incurred by the Competitive Supplier; d) the proposed price increase per kWh to be passed on to Participating Consumers; and e) a proposed plan for coordinating with the Local Distributor for an increase in the price per kWh that is billed by the Local Distributor, designed to reimburse the Competitive Supplier for such cost impact. If the Town and the Competitive supplier cannot agree on the amendment to this ESA or reimbursement contemplated by this section, the matter may be subject to dispute resolution in accordance with section 12.2. In no event shall a price change become effective without providing Participating Consumers with a 30-day advance notice of the price change.

ARTICLE 18 MISCELLANEOUS

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, 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. Any new product or service that the Competitive Supplier and/or the Town wish to make available to Participating Consumers is subject to Department approval.

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."

The Competitive Supplier may only communicate with Participating Consumers and/or use the lists of Eligible Consumers and Participating Consumers to send Department-approved educational materials, opt-out notices or other communications essential to the operation of the Program. Such lists may not be used by the Competitive Supplier to market any additional products or services to Eligible Consumers or Participating Consumers.

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:

Dynegy Energy Services (East), LLC
Attn: Mark Fanning, Sr. Director
1500 Eastport Plaza Dr.
Collinsville IL 62234
(618) 343-7734

With a Copy To:

Dynegy Energy Services (East), LLC
Attn: Retail Contract Management
6555 Sierra Drive
Irving TX 75039
ContractLegal12@vistraenergy.com

If to Town:

Mr. Mark Cappadona
Colonial Power Group, Inc.
5 Mount Royal Avenue, Suite 5-350
Marlborough, Massachusetts 01752

With a Copy To:

Mr. Orlando Pacheco, Town Administrator
Town of Lancaster
701 Main Street
Lancaster, MA 01523

(508) 485-5858 ext. 3 (phone)
(508) 485-5854 (fax)
mark@colonialpowergroup.com

(978) 365-3326

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 ninety (90) 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 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, but only to the extent of such third-party claims.

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

COMPETITIVE SUPPLIER

By: *Linda Ponikwia*
Linda Ponikwia (Sep 30, 2021 16:35 EDT)
Name: Linda Ponikwia
Title: Manager, Municipal Aggregations
Address: 312 Walnut St, Suite 1500 Cincinnati, OH 45202
Dated: 9/30/2021

TOWN

By: *Orlando Pacheco*
Name: Orlando Pacheco
Title: Town Administrator
Address: Town of Lancaster
701 Main Street
Lancaster, MA 01523
Dated: 9/30/2021

EXHIBIT A

PRICES AND TERMS Lancaster's Community Choice Power Supply Program

Price by Rate Classification

Rate Class	Price for Period 1 (December 2021 – December 2022) \$/kWh
Residential	\$0.14974
Commercial/Streetlight	\$0.14974
Industrial	\$0.14974

Terms for System Supply Service

Delivery Term: as set forth in this Exhibit A, 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 December 2021 (billed in arrears, therefore the January 2022 billing statements) and terminating with the Participating Consumers' first meter read dates for the month of December 2022 (final bill, therefore the December 2022 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. For the purposes of clarity, the price includes all costs incurred by Competitive Supplier in relation to (a) the Mystic generating station cost of service agreements, as approved by FERC in docket ER18-1639, and (b) ISO-NE Inventoried Energy Program, as approved by FERC June 18, 2020 (ER19-1428-003). 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 Power Supply will commence at the prices stated above as of the Participating Consumers' first meter read dates for the month of December 2021.

Renewable Energy in System Supply: The Competitive Supplier shall include Renewable Energy in the All-Requirements Power Supply mix in an amount equal to the respective requirements of the Massachusetts' (a) Renewable Portfolio Standard, (b) Alternative Energy Portfolio Standard, (c) Clean Energy Standard, and (d) Clean Peak Energy Standard, as each standard is defined as of the date this ESA is entered into and each starting with the year in which load is served on the Start-Up Service Date, or otherwise pay the alternative compliance

payment rate as determined by the relevant Massachusetts regulatory authority. For the purposes of clarity, the Competitive Supplier shall be responsible for the final amendments to the regulations of the Renewable Energy Portfolio Standard ("RPS") as filed by the Department of Energy Resources with the Joint Committee on Telecommunications, Utilities, and Energy on August 16, 2021.

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
[Commission/Usage Details]



Monthly
Commission.Usage I

EXHIBIT C

MONTHLY REPORTING TEMPLATE
[Enrollment]



Monthly Enrollment
Report.xlsx









Dynegy and Town of Lancaster, MA Muni Agg (Q-01461323)

Final Audit Report

2021-09-30

Created:	2021-09-30
By:	Kate Muckensturm (Kate.Muckensturm@vistracorp.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA4U9z_ggALt8qivtkV7IUYNz5EcTIC9h6

"Dynegy and Town of Lancaster, MA Muni Agg (Q-01461323)" History

-  Document created by Kate Muckensturm (Kate.Muckensturm@vistracorp.com)
2021-09-30 - 7:29:08 PM GMT- IP address: 165.225.60.213
-  Document emailed to Shalonda Kenebrew (contractlegal12@txu.com) for signature
2021-09-30 - 7:31:43 PM GMT
-  Email viewed by Shalonda Kenebrew (contractlegal12@txu.com)
2021-09-30 - 7:36:44 PM GMT- IP address: 206.227.152.26
-  Document e-signed by Shalonda Kenebrew (contractlegal12@txu.com)
Signature Date: 2021-09-30 - 8:22:44 PM GMT - Time Source: server- IP address: 165.225.216.253
-  Document emailed to Linda Ponikwia (linda.ponikwia@vistracorp.com) for signature
2021-09-30 - 8:22:45 PM GMT
-  Email viewed by Linda Ponikwia (linda.ponikwia@vistracorp.com)
2021-09-30 - 8:34:39 PM GMT- IP address: 165.225.57.243
-  Document e-signed by Linda Ponikwia (linda.ponikwia@vistracorp.com)
Signature Date: 2021-09-30 - 8:35:03 PM GMT - Time Source: server- IP address: 165.225.57.243
-  Agreement completed.
2021-09-30 - 8:35:03 PM GMT

*******PUBLIC NOTICE*******

**THE TOWN OF LANCASTER'S
COMMUNITY CHOICE POWER SUPPLY PROGRAM
CONSUMER NOTIFICATION**

The Town of Lancaster is pleased to announce that **Dynergy Energy Services** ("Dynergy") has been selected as the supplier for its Community Choice Power Supply Program ("Program"). Dynergy will provide electric power supply for all consumers participating in Lancaster's Program. This notice 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. You will continue to see Dynergy 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.

NEW RATES AND TERMS

	Lancaster's Program* (Supply Services Only)	National Grid Basic Service (Supply Services Only)
Rate Residential Commercial/Streetlight Industrial	\$0.14974 per kWh \$0.14974 per kWh \$0.14974 per kWh	\$0.14821 per kWh \$0.13113 per kWh \$0.16606 per kWh
Renewable Energy Content	Meets Massachusetts renewable energy requirements	Meets Massachusetts renewable energy requirements
Duration	December 2021 – December 2022 <i>[Rates apply to service beginning and ending on the days of the month that your meter is read in your service area.]</i>	November 1, 2021 – April 30, 2022 <i>[Residential and Small Commercial rates change every 6 months. Large Commercial and Industrial rates change every 3 months.]</i>
Exit Terms	NO CHARGE	May receive a reconciliation charge or credit <i>[Industrial G-2 & G-3 only]</i>

*Rate includes Consultant Fee of \$0.001 per kWh to facilitate Lancaster's Community Choice Power Supply Program.

*Rate may increase as a result of a change in law that results in a direct, material increase in costs during the term of the contract.

PARTICIPATING CONSUMERS will start accruing at the aggregation rate beginning on the day of the month in December 2021 that their meter is read. This date varies by service area. Your meter reading date is shown on your bill.

IF YOU ARE A BASIC SERVICE CONSUMER WHO HAS BEEN MAILED A NOTIFICATION you do not need to take any action to participate. You will be automatically enrolled. If you do not wish to participate, please follow the instructions specified.

IF YOU WISH TO JOIN THIS PROGRAM you may OPT-IN at colonialpowergroup.com/lanchester OR call Dynergy at (866) 220-5696 and ask to be enrolled. If you are currently contracted with your own competitive supplier, you should confirm with them that you will not incur any early termination fees or penalties for leaving their supply.

IF YOU DO NOT WISH TO PARTICIPATE you must OPT-OUT at colonialpowergroup.com/lanchester, click the OPT-OUT button and follow the instructions specified OR call Dynergy at (866) 220-5696.

TO ACCESS NATIONAL GRID'S BASIC SERVICE RATES please visit:

- Residential Rates – nationalgridus.com/media/pdfs/billing-payments/electric-rates/ma/resitable.pdf.
- Commercial Rates – nationalgridus.com/media/pdfs/billing-payments/electric-rates/ma/commtable.pdf.
- Industrial Rates – nationalgridus.com/media/pdfs/billing-payments/electric-rates/ma/indtable.pdf.

Basic Service rates change twice a year or more, depending on rate class. As a result, the aggregation rate may not always be higher than the Basic Service rate. The goal of the aggregation is to deliver savings over the life of the Program against National Grid Basic Service. However, such savings and future savings cannot be guaranteed.

Colonial Power Group, Inc. is an energy consulting company chosen on a competitive basis by the Town of Lancaster to facilitate the Community Choice Power Supply Program. For more detailed information, call us toll-free at (866) 485-5858 ext. 1.

#7

#8

VIII. APPOINTMENTS AND RESIGNATIONS

RECEIVED

OCT 1 2021

Board of Selectmen

David DiTullio
473 Parker Road
Lancaster, MA 01523
9/30/21

Michelle
Chair
Lancaster Finance Committee
317 South Meadow Road
Lancaster, MA 01523

Dear Michelle :

Please accept this letter as my formal resignation from the Town of Lancaster Finance Committee. My resignation will be effective immediately as of this day October 1, 2021. This was not an easy decision, but with three children in High School and my work schedule I just don't have the time required to commit to the board going forward.

Sincerely,



David DiTullio

IX. LICENSES AND PERMITS

Kathi Rocco

From: Orlando Pacheco
Sent: Friday, October 8, 2021 11:36 AM
To: Debra Dennis; Kathi Rocco
Subject: RE: 207 White Pond Road

We can put this on the next agenda

From: Debra Dennis <DDennis@lanasterma.net>
Sent: Friday, October 8, 2021 11:17 AM
To: Orlando Pacheco <OPacheco@lanasterma.net>; Kathi Rocco <KRocco@lanasterma.net>
Subject: FW: 207 White Pond Road

Please see email below where he says the Select Board has to approve the temporary mobile home for the owners of 207 White Pond Road who had a fire. Please let me know when they approve this so I can process the permit.

Debra Dennis, Office Manager
Community Development and Planning
701 Main Street, Suite 4
Lancaster, MA 01523
O 978-365-3326 Ext. 1310
F 978-368-4009

ddennis@lanasterma.net

From: Tony Zahariadis <TZahariadis@lanasterma.net>
Sent: Friday, October 8, 2021 10:31 AM
To: Debra Dennis <DDennis@lanasterma.net>
Subject: Re: 207 White Pond Road

Hi Debbie,

This is ok to release after selectmen approval for \$75.00

Tony Zahariadis
Building Commisioner
Zoning Enforcement Officer

On Oct 8, 2021, at 10:00 AM, Debra Dennis <DDennis@lanasterma.net> wrote:

<image001.gif>

Debra Dennis, Office Manager

TOWN OF LANCASTER

APPLICATION FOR USE OF TOWN GREEN/GAZEBO

(Submit to: Executive Assistant, Town of Lancaster, 701 Main Street, Suite 1, Lancaster, MA 01523)

10-12-2021

Date

To the Licensing Authorities:

The undersigned hereby applies for a License/Permit in accordance with the provisions of the Statutes of the Commonwealth of Massachusetts and/or Bylaws of the Town of Lancaster relating thereto:

Date of Activity:

OCT 31, 2021

Time:

Start: 4:00

End: 8:00

Name & Address:

Telephone:

Emergency Contact & Phone:

WIN CLARK 978-660-3374

Business Name (If applicable):

N/A

Address:

Telephone:

Number of People Attending:

200-400

Provisions for Parking:

N/A

Partial or full road closure?

N/A

Structures?

N/A

Tents with sides?

N/A

Cooking?

Food/Refreshments?

TRICK OR TREATING + COMMUNITY CTR

Porta Potty?

NO

Portable Sink Unit?

Email address:

clarkbarb@comcast.net

Clearly explain the purpose for requesting the use of the Town Green/Gazebo:

ANNUAL HALLOWEEN ON THE GREEN EVENT
BUILDINGS + GAZEBO HOST TRICK OR TREATING

A Refundable Deposit of \$100 is required of anyone requesting the use of the Gazebo/Town Common.

Wedding Fees

Residents:

No Charge for Weddings, Rehearsals or Photographs

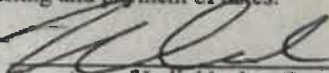
Non-Residents:

Weddings - \$50

Rehearsals - \$25

Photographs - \$25

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 and the Town of Lancaster relating to the filing and payment of taxes.



Signature of Individual or Corporate Officer

Company Name or Individual Name

57-54-1162
Social Security Number or Federal
Identification Number*

* Your Identifying Number will be furnished to the Massachusetts Department of Revenue to determine whether or not you have any tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will be subject to license suspension or revocation. This request is made under the authority of Chapter 62C, Section 49A, of the Massachusetts General Laws and the Bylaws of the Town of Lancaster.

X. OTHER/UNFINISHED BUSINESS
