

CAPE LIGHT COMPACT JPE
RFP FOR ENERGY RELATED SERVICES

Energy Efficiency and Forward Capacity Market Technical Services

I. GENERAL OVERVIEW

A. Background

The Cape Light Compact JPE (the “Compact”) is a regional energy services governmental organization comprised of and serving its twenty-one towns of Cape Cod and Martha’s Vineyard. The Compact is a joint powers entity and municipal aggregator pursuant to Massachusetts General Laws Chapter 40, §4A ½ and G.L. c. 164, §134. More information about the Compact is available at <https://www.capelightcompact.org>.

The Compact’s mission is to serve its 205,000 customers through the delivery of proven energy efficiency programs, effective consumer advocacy and renewable competitive electricity supply.

The Compact is operating an Energy Efficiency Plan which is periodically updated and approved by the Massachusetts Department of Public Utilities.

The Compact seeks energy related services related to implementation of its energy efficiency programs.

B. Project Overview/Scope of Work

The Compact’s Chief Procurement Officer hereby requests the submittal of proposals from qualified professionals to provide Energy Efficiency and Forward Capacity Market technical support services related to the Energy Efficiency program as well as related participation in the ISO New England Forward Capacity Market (the “Project”).

See Attachment A to this RFP for more details on the Project and scope of the work requested.

The Compact is strongly committed to ensuring that the Project provides opportunities for businesses and individuals who historically have been underrepresented in the energy efficiency contracting field. In accordance with applicable laws, the Compact seeks proposals that incorporate participation by minority-owned and women-owned business enterprises (M/WBEs) in as many aspects of the Project as possible. In issuing this RFP, the Compact reviewed the state Supplier Diversity Office list of certified businesses to identify potential Proposers.

It is the Compact’s policy to promote equal access and opportunity for diverse-owned businesses as suppliers of goods and services that will drive innovation, increase competition and create a culturally rich supply chain.

II. RFP SCHEDULE AND RELATED MATTERS

A. RFP Schedule

The following is a tentative schedule noting target dates for phases and tasks to be completed:

July 9, 2021	Publication of RFP advertisement
July 9, 2021	RFP issued
July 15, 2021	Informational conference call (Further information to be provided by Compact staff)
July 20, 2021	Written inquiries due
July 23, 2021	Responses to inquiries posted
August 13, 2021	Proposals due
August 20, 2021	Vendor selected
August 23, 2021	Kick-off meeting
January 1, 2022	Project implementation

B. Questions and Clarifications

Questions or clarifications related to this RFP must be submitted to the Chief Procurement Officer in writing prior to the July 20th deadline stated above in order to afford the Compact adequate time to respond with a correction or additional information prior to the deadline for submission of Proposals. Should it be found necessary or useful, a written addendum will be incorporated into this RFP. Parties who have received a copy of this RFP will be notified of issuance of an addendum.

C. Contract Award

All Proposers will be notified of the contract award decision within ten days of the date Proposals are due to the Compact unless otherwise notified by the Compact. In no case will the award be made beyond forty-five (45) days unless Proposer agrees to extend the period of time in which its Proposal is valid.

If a contract is not executed by the chosen Proposer by September 30, 2021, the Compact reserves the right to negotiate with alternative Proposer(s) in order to execute contracts by November 4, 2021.

III. GENERAL QUALIFICATIONS

The following general qualifications apply to all vendors engaged by the Compact and Proposers who cannot meet these requirements should not submit Proposals:

A. The Proposer must be organized or registered to do business in Massachusetts, and in good standing with the Secretary of the Commonwealth.

B. The Proposer must be an individual or established business, corporation, partnership, sole proprietorship, limited liability company, joint venture, firm, agency, or other entity engaged in the regular practice of providing such services as the principal business for which the entity was organized.

C. The Proposer must have all necessary current licenses and registrations required to perform the requested services.

D. The Proposer cannot be debarred under M.G.L. c. 149, § 44C, or disqualified under M.G.L. c. 7, § 38H, as applicable.

E. The Proposer must be able to demonstrate that it is financially solvent.

IV. SPECIFIC QUALIFICATIONS

The Compact has identified the following specific qualifications that are unique to the Project. Proposers who cannot meet these requirements should not submit proposals

- Proposer must have a minimum of two (2) similar projects or equivalent experience during the past five (5) years in Massachusetts.
- Proposer must have a thorough working knowledge of the Massachusetts statewide Three-Year Energy Efficiency Plan, the Massachusetts TRM (Technical Reference Manual),¹ and the ISO- NE Forward Capacity Market.

V. CONTRACT

The Compact’s standard form of agreement is set forth as Attachment B to the RFP (the “Contract”). The Compact reserves the right during Contract negotiations to expand, modify, supplement and/or add to the form of agreement.

The Contract has a term of 3 years or until December 31, 2024, with an option to renew for 3 additional years or until December 31, 2027.

The following Contract terms are considered to be material and are generally non-negotiable:

- 1.2 Termination
- 1.3 Termination or Suspension Due to Changes in Funding
- 2.5 Conflicts of Interest
- 2.7 Safety
- 3.1 Prevailing Wage (applicable sentences)
- 3.6 Bonds (to be determined by Compact staff)

¹ The Massachusetts TRM is a digital library, also known as the Technical Reference Library (TRL).

- 7 Indemnification
- 8 Choice of Law and Dispute Resolution
- 11.7 Solicitation

If a Proposer believes that a mandatory Contract term will affect its liability risk, it should adjust its contract price accordingly.

Non-mandatory Contract terms may be modified and expanded through negotiations. Proposer must identify the specific language in the Compact's form of agreement that it would like to modify, and submit with its Proposal all requested edits to the form of agreement.

Proposers may not submit its own standard contract form as a response to this RFP.

VI. PROPOSAL FORMAT AND CONTENTS

A. Cover Letter

Proposer must submit a cover letter which includes its business name(s), address and telephone number, signed in ink by someone authorized to sign such documents. Proposer must acknowledge any addenda, if any. All responses must include a statement that the Proposal is in accordance with this RFP and that Proposer has read and understands all sections and provisions herein.

B. General Background Information

Proposer must provide its full official business name, any other names that it uses to conduct its business, tax identification number, and its main office address. Proposer must provide a company profile including length of time in business and core competencies.

Proposer must provide the following statements: (i) statement as to whether business or affiliate has commenced, or been forced into, any insolvency proceeding within the last five (5) years; (ii) statement as to whether business or affiliate has been subject to any litigation in the last five (5) years; (iii) statement as to whether business or affiliate has been subject to any investigation by a state or federal agency within the last five (5) years; and (iv) statement as to the number, if any, of consumer complaints filed with a state, federal, or local agency, against the business or affiliate within the last five (5) years.

C. Staffing Requirements

1. Proposer should identify the Project managers, and all individuals to be assigned to Project. Describe what each individual's role will be, their duties and responsibilities.
2. Proposer must provide resumes for specific key staff to be assigned to the Project that include education, relevant past experiences, qualifications,

licenses, current projects being worked on and any other pertinent information that will assist the Compact in making the selection.

3. Proposer must briefly describe its organizational capacity to provide the services to be rendered in connection with the Project. More specifically, it should briefly describe the percentage of staff that would work on these services relative to its entire staff (using full time equivalents). For example, if Proposer would use one full time staffer on the Project and Proposer has a staff of ten (10), the percentage would be ten percent (10%).
4. The Proposal must include resumes, experience, and qualifications of any proposed subcontractors or consultants that would be utilized by Proposer in the performance of the Contract.
5. Proposer must provide a schematic diagram showing organizational overview including identification of key staff and any supporting vendors or sub-contractors, if applicable.

D. Proposed Scope of Work and Related Experience

1. Scope of Work.

Proposer should provide a general explanation of its proposed plan/approach to each of the services requested by the Compact in this RFP related to the Project.

A draft Scope of Work is attached to this RFP as Attachment A. Proposer must submit its proposed edits to the Scope of Work. Proposers may include enhancements, improvements and additions to the Scope of Work. This proposed Scope of Work will be used as the basis for negotiating the final scope for inclusion in Exhibit A of the Contract, Attachment B to this RFP.

Questions on the draft Scope of Work shall be submitted in accordance with Article II(B) above.

2. Related Experience.

Proposers should submit statements regarding the following to evidence its experience delivering services to those similar in the Scope of Work:

- a. Complete description of Proposer's technological capabilities in the areas of Information Management Systems hardware and software, electronic data transfer, proficiency with Microsoft Excel;

- b. List other similar contracts in force in Massachusetts and/or nationally along with the names or references to be contacted regarding performance for programs of similar size and complexity;
- c. Assurances that the Proposer will be fully staffed and available at the appropriate start up time given the proposed service(s), such that Compact's anticipated regulatory reporting requirements will not be adversely delayed;

E. Pricing

Proposals must include a pricing schedule for each service being proposed, with all labor, overhead, travel, other direct costs associated with the services. All general and administrative costs must be included in hourly labor rates and direct expenses. These terms apply to subcontractor costs as well. Proposals should also state if the same hourly rates would apply for out-of-scope work relating to the requested services which may be contracted for during the original Contract term.

F. References

Proposer must provide a list of clients that is has performed similar work for in the past three (3) years and any other relevant references with the names and telephone numbers of contact persons for each client.

G. Redlined Contract or Contract Acceptance Letter

Proposer must provide a redlined Microsoft Word version of any requested changes to the form of Contract set forth in Attachment B. It may not request changes to the non-negotiable provisions listed in Article V. If Proposer is not requesting any changes to the form of Contract, it should submit a letter to the Compact with its Proposal stating that it accepts all of the terms and conditions of the Contract as set forth in this RFP.

H. Supplier Diversity

The Compact encourages supplier diversity among its vendors. Proposers should provide information on its effort to encourage supplier diversity in its workforce and in the selection of subcontractors when permitted. Proposers that have workforce or supplier diversity, equity and inclusion plans should include them as part of their Proposals.

Proposers are encouraged to submit Business Diversity Certification information in their Proposals. This certification may be from the Commonwealth of Massachusetts, regionally or nationally based organizations and industry sources, including, but not limited to:

- National Minority Supplier Development Council (NMSDC) <http://www.nmsdc.org/nmsdc/>
- Small Business Administration 8(a) or Small Disadvantaged Business (SDB) Programs(SBA) <http://www.sba.gov/>
- Women’s Business Enterprise National Council (WBENC) <http://wbenc.org/>
- National Women’s Business Owners Corporation (NWBOC) <http://www.nwboc.org/>
- The National Gay and Lesbian Chamber of Commerce (NGLCC) <http://www.nglcc.org/>
- US Department of Veteran Affairs (VA) <http://www.va.gov/OSDBU/veteran/verification.asp>
- National Veteran Business Development Council (NVBDC) <http://www.nvbdc.org/>
- Massachusetts Minority Contractors Association 100 Hallet St, Dorchester Center, MA02124 1 617-287-2400 <http://www.massmca.org/>

I. Ancillary Documents

Proposer must have signed the Certificate of Non-Collusion (see Attachment C) and all other required Proposal forms (including the Proposal Checklist set forth in Attachment D), and have included them in the Proposal submittal.

J. Other

Any other information that Proposer considers relevant for the purpose of evaluating its qualifications for the Project.

K. Signature Requirements

The Proposal must be signed by an officer or authorized representative who has authority to bind the Proposer to a firm price.

VII. SUBMISSION PROCEDURES

A. Number of Copies and Format

Proposer must submit one (1) electronic, one (1) original and three (3) copies of the proposal. Proposals must be typewritten on 8 ½” x 11” paper and each page must be numbered.

B. Proposal Due Date and Labeling

The Proposal must be signed and delivered to the Compact within the time set forth in Article II of this RFP. Proposals must be enclosed in sealed envelopes and marked as follows:

RFP Title: Energy Efficiency & Forward Capacity Market Technical Support Services
Proposer's Name: Phil Moffitt
Delivered to: Cape Light Compact JPE
261 Whites Path, #4
South Yarmouth, MA 02664
Attention: Margaret Downey
mdowney@capelightcompact.org
Cape Light Compact JPE Chief Procurement Officer

C. Modification or Withdrawal of Proposals

A Proposer may correct, modify or withdraw its original Proposal on or before the date and time set forth in Article II. Corrections or modifications must be in sealed envelopes, clearly marked to indicate the contents, with the name and address of Proposer. Any late correction or modification to the Proposal will not be accepted. Proposers who wish to withdraw a Proposal must make a request in writing.

D. Late Proposals

Any Proposal received after the due date and time stated in Article II will be deemed non-responsive and will not be opened. Unopened Proposals will be returned to Proposer.

E. Offer to Provide Services

Proposer understands and agrees that its Proposal to the Compact to provide services will remain valid for forty-five (45) days past the submission deadline.

VIII. SELECTION PROCESS

The final selection of the winning Proposer will be based on the following set of minimum evaluation criteria:

1. Responsiveness to the Project goals and desired outcomes as set forth in this RFP.
2. Satisfaction of all qualifications set forth in Articles III and IV.
3. Proposed plan/approach to manage and perform the requested services.
4. Team qualifications and experience.
5. Quality of references.
6. Proposed edits to the form of Contract.
7. Proposed edits and enhancements to the Scope of Work.

8. Submission of all required documentation and certifications detailed in Article VI (Proposal Contents).
9. A minimum of five (5) years related experience in the energy efficiency field, and the ISO-New England forward capacity market.

The Chief Procurement Officer will review all Proposals to make sure minimum requirements are met. Proposals that meet all of the minimum requirements set forth in this RFP, and are determined to be both responsive (those that offer all of the services requested in the RFP and contain all of the required information and completed forms) and those that are responsible (those with the capability, integrity, and reliability to perform under the Contract) will be further reviewed by the Chief Procurement Officer.

The Chief Procurement Officer will make a preliminary determination of the most advantageous proposal from a responsible and responsive Proposer taking into consideration price and the evaluation criteria set forth above. Proposals will be evaluated on each criteria set forth above; each criterion will be assigned a rating of “highly advantageous,” “advantageous,” “not advantageous” or “unacceptable. The Chief Procurement Officer may negotiate all terms of the Contract not deemed mandatory or non-negotiable with such Proposer. If after negotiation with such Proposer the Chief Procurement Officer determines that it is in the best interest of the Compact, the Chief Procurement Officer may determine the proposal which is the next most advantageous proposal from a responsible and responsive Proposer taking into consideration price and the evaluation criteria set forth above, and may negotiate all terms of the Contract with such Proposer. The Chief Procurement Officer will award the Contract to the Proposer who submitted the most advantageous proposal taking into consideration price, the evaluation criteria set forth above, and the terms of the negotiated Contract.

Proposals which are incomplete, conditional or obscure, will be rejected. No award will be made to any Proposer who cannot satisfy the Compact that it has sufficient ability and resources to enable it to meet the requirements of this RFP. The Compact’s decision or judgment on these matters shall be final, conclusive and binding.

IX. CONFIDENTIALITY/RETENTION OF RFP SUBMITTALS

Each Proposal will be held confidential by the Compact until such time as the evaluation and selection process has been completed.

If any proprietary information is contained in the Proposal and Proposer wishes that the Compact treat such information as confidential, it should be clearly identified. The Compact will take commercially reasonable efforts to protect such information. Under Massachusetts law, the Compact cannot assure the confidentiality of any material or information that may be submitted by a Proposer in response to this RFP.

Proposers who choose to submit confidential material or proprietary information do so at their own risk. The Compact is not liable for any action taken or omitted to be taken related to such proprietary information.

In general, Proposals are public documents available for inspection by interested parties after the completion of this procurement. Upon completion of the evaluation and the award of the Contract, all Proposals and information submitted in response to this RFP are subject to the Massachusetts Public Records Law, M.G.L. c. 66, § 10, and to M.G.L. c. 4, § 7, cl. 26. Any statements in submitted responses that are inconsistent with these statutes will be disregarded.

Further, as the Compact is a public entity it may become necessary to provide Proposer or Contract information to regulatory agencies for review. At Proposer's specific request, and if commercially reasonable, the Compact will request that such information be treated confidentially by the regulatory agencies.

X. MISCELLANEOUS

A. Supplementary Information

The Compact may request that supplementary information be furnished to assure the Compact that a Proposer has the technical competence, and the business and financial resources adequate to successfully perform the requested services.

B. Proposal Costs

All costs involved in preparing the Proposal will be borne by Proposer. Proposer must be familiar with all state, local and other laws relating to these services and must obtain all permits required and must pay all expenses for same.

C. Cancellation

The Compact may cancel this RFP, in whole or in part, or may reject all Proposals, or may procure only some goods and/or services outlined in this RFP whenever such action is determined to be fiscally advantageous to the Compact, or if it is otherwise in the best interest of the Compact.

ATTACHMENTS

- A Scope of Work
- B Form of Contract
- C Certification of Non-collusion
- D Proposal Checklist

ATTACHMENT A

SCOPE OF WORK

1. **Program Description.** The Compact's Technical Support Services EE Vendor shall assist the Compact with a variety of tasks that fall within the general category of program planning, design, development, administration and evaluation and reporting. The EE Vendor assists the Compact with developing the Three-Year Energy Efficiency Plan, developing program budgets, developing program goals, screening programs and measures for cost effectiveness, and assisting with regulatory and reporting requirements of the Energy Efficiency Advisory Council ("EEAC") and the Massachusetts Department of Public Utilities ("DPU"). In addition, the EE Vendor will assist the Compact in its participation in the ISO New England Forward Capacity Market ("FCM") program.

2. **Project Objectives and Expected Outcome.** EE Vendor understands that the Compact's objective is to deliver high quality energy efficiency services to customers in a cost-effective way and agrees to perform the Services in furtherance of this objective. EE Vendor understands that the Compact expects that the EE Vendor will meet all DPU, EEAC and FCM-related reporting requirements and deadlines, and provide accurate and timely analyses over the term of the Agreement.

3. **Services.** EE Vendor will perform the following tasks:

Energy Efficiency Technical Support Services

i) Assist in the Development of the Compact's Three-Year Energy Efficiency Plan

The EE Vendor will assist the Compact with developing its Three-Year Energy Efficiency Plan ("Plan") including, developing program budgets, developing program goals from Compact inputs, screening programs and measures for cost effectiveness, operating the Compact's BCR model, populating Plan tables, and coordinating with Compact managers and staff on content and analyses. The EE Vendor will participate in the regulatory proceedings associated with the filed Energy Efficiency Plan at the DPU.

The EE Vendor will also participate in all Plan updates including Mid-Term Modifications to the DPU.

ii) Manage the Compact's EE Data Reporting Requirements

The EE Vendor will be responsible for providing several sets of reports for the on-going activities of the Compact's efficiency programs. These reports will be provided on a periodic basis in a timely fashion and in a format determined by the Compact. At a minimum, the following reports will be prepared:

- a. *Monthly Program Implementation Reports*, provided to the EEAC, consistent with EEAC requirements.
- b. *Quarterly Program Implementation Reports*, provided to the EEAC, consistent with EEAC requirements.
- c. *Plan Year Efficiency Reports and Three Year Term Reports*, provided to the Department of Public Utilities. The information must be provided in a database format that is consistent with Department of Public Utilities (DPU) requirements. The Consultant shall be responsible for coordinating the development of these annual reports in collaboration with Compact staff.
- d. *Annual Energy Efficiency Reconciliation Reports (EERF)*. The Consultant shall work with Compact staff to develop and submit its annual EERF to the DPU.
- e. *Miscellaneous Internal and External Reports as requested* periodically by the Compact Governing Board, Compact staff members, and regulatory agencies. All reports should be provided in electronic formats (e.g., PDF, Word, Excel, and others as appropriate), so that they can be posted on web sites and exchanged via email if desired.

iii) Representation on Statewide EE Technical Subcommittees

The EE Vendor will, as directed, participate in, and/or represent the Compact on, various statewide technical subcommittees and working groups, as necessary, to support operation of the Compact's BCR model, development of 08-50 tables and any other statewide reporting requirements and filing components, including but not limited to the following venues:

- Tables Group – for common planning and reporting layout;
- Common Assumptions Meetings – for common statewide assumptions in the operation of BCR model and other reporting tools and components;
- Costs Categorization Working Group – for common statewide assumptions in the allocation of costs in reporting;
- Planning and Analysis Working Group;
- Statewide Database Working Group; and
- Other Ad hoc Efforts convened statewide, as necessary, including performing statewide work for the PAs overall on the Compact's behalf.

A. Forward Capacity Market Technical Support Services

The EE Vendor will coordinate the Compact's participation in the New England Forward Capacity Market (FCM), representing the Compact's interests, in coordination with Compact staff, in all communications and submissions to ISO NE for FCM, including but

not limited to the following expert services as required for management of the Compact's position as a participant in the FCM market:

- Development of Annual Shows of Interest (SOI) and New Capacity Qualification submissions for the following year's auction;
- Management of Annual Auction preparation and participation;
- Submission of monthly database uploads of incremental EE installations, including data on installations greater than 10kW;
- Management and submission of Expiring Measures and confirmation of Ex Cap Qual;
- Participation in Monthly and Annual Reconfiguration Auctions, as well as assistance with Bilateral transactions, as needed;
- Submission of data for EE forecast;
- Monthly QC of EE data and DRV sheets;
- Responding to Ad-hoc ISO requests; and
- Representing the Compact's interests at monthly Demand Response Working Group and other related ISO-NE committee meetings.

4. **Compact Responsibilities.** The Compact is responsible for the following:

- Providing a principal Cape Light Compact point of contact for coordination and approvals; and
- Providing access to all Compact energy efficiency and financial data necessary to complete required reports.

ATTACHMENT B
FORM OF CONTRACT

PROFESSIONAL/CONSULTING SERVICES AGREEMENT

This PROFESSIONAL/CONSULTING SERVICES AGREEMENT (“Agreement”) is made by and between the Cape Light Compact JPE, a joint powers entity organized pursuant to G.L. c. 40, §4A½ and the organizational successor to the Cape Light Compact (the “Compact”), and [insert] (“Consultant”). The Compact and Consultant may be referred to herein collectively as the “Parties,” or either singularly as a “Party.” This Agreement is effective as of [insert].

WHEREAS, pursuant to G.L. c. 40, §4A, in 1997, the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County entered into an inter-governmental agreement, as amended from time to time, to act together as the Compact;

WHEREAS, in 2017, the Compact undertook a reorganization and began fully operating as a joint powers entity as of July 1, 2017;

WHEREAS, the purposes of the Compact include protecting and advancing the interests of residential, commercial and industrial customers in a competitive electric supply market, and administering an energy efficiency plan that advances consumer awareness and the adoption of a wide variety of energy efficiency measures and that also utilizes and encourages demand side management;

WHEREAS, the Compact is operating an Energy Efficiency Plan which is periodically updated and approved by the Massachusetts Department of Public Utilities;

WHEREAS, the Compact issued a request for proposals on [insert date] for the performance of [insert program name];

WHEREAS, the Compact seeks to enter into an agreement with Consultant for certain services which are defined in Section 2.1 in connection with the energy efficiency programs that it operates or will operate under the Energy Efficiency Plan; and

WHEREAS, Consultant has the expertise required to provide the Compact with the services required pursuant to this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, Consultant and the Compact do hereby agree as follows:

SECTION 1 TERM OF AGREEMENT AND TERMINATION

1.1 **Term.** This Agreement is effective as of the date set forth above and shall continue in force and effect until [insert], unless this Agreement is terminated before such date under the provisions of Section 1.2. In addition, the Compact may, in its sole discretion, extend the term of this Agreement for an additional [insert] year(s).

1.2 **Termination.** The Compact shall have the right to terminate or suspend this Agreement for any reason, including, but not limited to, in the event that the Consultant is in default under another consulting or installation services agreement between Consultant and the Compact, or for convenience. Consultant may terminate this Agreement only if the Compact materially breaches its obligations under this Agreement. The terminating Party shall provide written notice to the other Party of any such termination or suspension, specifying the effective date thereof. If the terminating Party is the Compact, such notice shall be given at least fifteen (15) calendar days before such effective date; if the terminating Party is Consultant, such notice shall be given at least ninety (90) calendar days before such effective date. In addition, if the Compact terminates this Agreement for cause, the Compact shall be entitled to deduct and/or be reimbursed any costs of cure and transition costs (including reasonable attorneys' fees) that it, a Member² or a Customer (as defined herein) incurs related to engagement of a substitute Consultant.

1.3 **Termination or Suspension Due to Changes in Funding.** This Agreement is subject to the receipt of funds from various sources to support the Energy Efficiency Plan. If for any reason such funding is terminated, suspended, or restricted, this Agreement will become null and void, effective immediately upon notice to Consultant. The Compact shall provide written notice of such termination or suspension to Consultant. In the event of such termination or suspension, Consultant shall be paid for all authorized, satisfactory (in the reasonable discretion of the Compact) Services performed up to and including the date of termination or suspension.

1.4 **Obligations upon Termination.** Following termination of this Agreement, the Parties shall each discharge by performance all obligations due to the other Party that arose up to the date of termination of this Agreement.

SECTION 2 SCOPE OF SERVICES AND RELATED MATTERS

2.1 **Services.** Consultant agrees to provide the expertise, labor, materials and supplies necessary to perform the services and deliverables described in Exhibit A attached hereto from time to time and such other services as may be specifically requested by the Compact from time

² For the purposes of this Agreement, the term "Member" means the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, Yarmouth, Dukes County, and any other governmental unit that becomes a member of the Compact during the term of this Agreement.

to time (the “Services”). All such Services and deliverables shall be designed to achieve the anticipated outcomes specified in the description of Services and shall be provided in accordance with the terms and conditions of this Agreement.

2.2 **Changes.** The Compact may, from time to time, require changes in the scope of the Services to be performed hereunder. Such changes must be evidenced in written amendments to this Agreement. Any Services performed or proposed by Consultant shall not be reimbursed unless they are approved in writing by the Compact prior to their rendering.

2.3 **Timing of Performance.** Consultant shall commence and complete the Services in accordance with the project milestone schedule incorporated into Exhibit A. If no schedule is incorporated, Consultant shall begin to render the Services on the effective date of this Agreement and shall continue to render the Services in a prompt and timely manner.

2.4 **Staffing; Background Check Requirements.** The Compact may require Consultant to remove from its project team such employees of Consultant or subcontractors of Consultant as the Compact, in its reasonable discretion, deems objectionable, or whose continued employment in connection with the Services is deemed by the Compact, in its reasonable discretion, to be contrary to the best interests of the Compact.

Upon request by the Compact, Consultant shall comply with the Compact’s written requirements for employee background checks, as set forth in Exhibit B, and as may be amended from time to time by the Compact.

[] required [] not required

2.5 **Conflicts of Interest.** Consultant covenants that it presently has no interest, and shall not acquire any interest, directly or indirectly that would conflict in any manner or degree with the performance of the Services. Consultant agrees to diligently serve and endeavor to further the best interests of the Compact, as known or made known to Consultant. Consultant further agrees not to undertake activities that conflict, or are not in accordance with, the best interests of the Compact, and will disclose any other employment or engagements that could conflict with its obligations under this Agreement. Consultant further covenants that it shall comply with all relevant provisions of G.L. c. 268A.

2.6 **Points of Contact.** Consultant names [insert], as the day-to-day point of contact for the Compact for all issues arising under this Agreement and the person responsible for ensuring over the entire term of this Agreement that the Services are performed and completed in a manner satisfactory to the Compact and in accordance with the terms of this Agreement. The Compact names [insert] to be the day-to-day point of contact for Consultant for all issues arising under this Agreement.

SECTION 3 COMPENSATION AND RELATED MATTERS

3.1 **Rates of Compensation.** Consultant shall be compensated by the Compact for the Services in accordance with the terms and rates set forth in Exhibit C hereto. The Compact

may reject any invoices using billing rates that are not consistent with Exhibit C, unless the Compact has previously accepted such substitute rates in a written amendment to this Agreement.

3.2 Invoicing and Payment. Consultant shall submit monthly invoices to the Compact by the 10th day of each month, unless otherwise authorized in writing by the Compact. The Compact will remit payment within forty-five (45) calendar days of the Compact's receipt of each monthly invoice in accordance with applicable municipal finance laws. Payment may be contingent upon final inspection and/or acceptance of the Services. Upon request, Consultant shall provide to the Compact all backup documentation required to establish the value of the Services performed to date as represented by Consultant's monthly invoices.

3.3 Effect of Payment. The Compact shall not be deemed to have accepted any improper Services, materials or performance by virtue of any payment made to Consultant. Payments shall be deemed advances and are subject to adjustment for errors, overpayments, or the Compact's good faith determination that the remaining balance of payments may be insufficient to ensure completion of the Services.

3.4 Withholding. The Compact may withhold a payment of all or a part of any invoice to the extent as may be necessary to protect itself from loss caused by: (i) defective Services not remedied; (ii) claims filed or reasonable evidence indicating probable filing of claims by other parties against Consultant or the Compact in connection with the Services; (iii) Consultant's failure to make payments properly to subcontractors for materials, labor or equipment; (iv) unsatisfactory performance of the Services; (v) Consultant's failure to pay any amounts due to the Compact; or (vi) Consultant's failure to perform any of its obligations under this Agreement. In addition, if the Compact has a reasonable indication that the unpaid balance will be insufficient to cover the cost to complete the Services or that the Services will not be completed within the project milestone schedule (if any), the Compact may withhold payment of all or a part of any invoice to the extent as may be necessary to protect itself from such anticipated losses. The Compact shall notify Consultant of the grounds for any withholding. When Consultant provides performance assurance satisfactory to the Compact that will protect the Compact for the amount withheld, payment will be made. When deemed reasonable by the Compact, the Compact may use such withheld funds to undertake remedial measures.

3.5 Credits. Consultant may not claim any governmental or other energy efficiency credits, tax credits, forward capacity payments, carbon offsets, rebates or incentives of any kind as a result of or in connection with the Services performed under this Agreement (collectively, the "Credits") without the written consent of the Compact in its sole discretion. To the extent any Credits are allocated to the Compact, a Compact project or to a Compact customer/program participant ("Customer"), by operation of law or regulation, Consultant shall, upon request and without charge, cooperate fully with the Compact to disclaim any rights to such Credits and to assign or allocate all such Credits, and the value thereof to the party designated by the Compact.

SECTION 4 PERFORMANCE STANDARDS

4.1 General Performance Standard and Warranty. Consultant assumes professional and technical responsibility for the performance of the Services in accordance with the terms of this Agreement and Good Industry Practice, and any additional guarantee or warranty specified in the description of Services set forth in Exhibit A. If, during the performance of the Services or within one (1) year following completion thereof, the Services fail to meet such standards, Consultant shall promptly and timely (no more than five business days) furnish all remedial services and materials necessary to correct such deficiencies at Consultant's sole cost and expense. Consultant shall also be responsible for reimbursement of the Compact's losses related to such defective Services during the warranty period. For purposes of this Section 4.1, the term "Good Industry Practice" means the practices, methods and acts (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the energy efficiency industry in the performance of consulting services) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition. Good Industry Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.

4.2 Representations, Warranties and Continuing Covenants. In performing its obligations hereunder during the term of this Agreement, Consultant represents and warrants that it shall: (i) exercise reasonable care to assure that its operations are prudently and efficiently managed; (ii) employ an adequate number of competently trained and experienced personnel to carry out the Services; (iii) spend such time in performing the Services as is reasonable and necessary to fulfill effectively its obligations under this Agreement; (iv) comply with all relevant industry standards and practices for the delivery of Services to the Compact; (v) comply with applicable laws and professional licensing requirements; (vi) ensure that it validly owns or licenses all intellectual property used in the performance of the Services, with a right to sublicense to the extent necessary, and that such licenses are maintained at all times during the term of this Agreement; and (vii) provide the required notice under Section 7.5 (Notice of Claims) of this Agreement.

4.3 Correction of the Services. Consultant is required to correct in a prompt and timely fashion any Services rejected by the Compact. Consultant shall correct at its own cost and bear the expense of additional services performed to correct non-conforming Services. If Consultant fails to cure the default or produce a plan acceptable to the Compact (in its reasonable discretion) to cure the default in a prompt and timely fashion, the Compact may take over the Services or any separable part thereof, and complete the same or have the same completed at Consultant's expense. In taking over, the Compact shall have the right, for the purpose of completing the Services, to take possession of all equipment, supplies and materials belonging to Consultant and purchased or leased for the performance of the Services. For such purpose, this Agreement shall be construed as an assignment by Consultant to the Compact of said equipment, supplies and materials.

4.4 Periodic Reporting. Upon the request of the Compact, the Consultant shall promptly submit a report detailing the status of the Services including the progress toward achieving

completion of any deliverables or project milestones. Additional reporting requirements may be set forth in Exhibit A.

SECTION 5 INTELLECTUAL PROPERTY MATTERS

5.1 Intellectual Property Rights; Work for Hire. Consultant agrees that any work of authorship created or developed by Consultant during performance or delivery of services to the Compact, either individually or jointly with others, in the course of the rendering the Services to the Compact shall be deemed a “work for hire,” and the exclusive property of the Compact. To the extent not deemed a “work for hire” by operation of law, with respect to any invention, trade secret, or work of authorship created or developed in the course of the rendition of services to the Compact, Consultant hereby irrevocably assigns, transfers, and conveys to the Compact all of Consultant’s right, title and interest in such property, including but not limited to, all rights of patent, copyright, trade secret or other proprietary right in such property. Further, Consultant agrees to execute any documents or take any action reasonably requested by the Compact to perfect the Compact’s ownership of any such property. Consultant further agrees that, to the best of its knowledge, all work created or developed by Consultant will be original and non-infringing.

5.2 Dissemination of Information. Consultant shall not disseminate any information, reports, information, data, etc., created, prepared, assembled or obtained in performance or delivery of Services to any third party without the prior written consent of the Compact. Consultant shall not issue publicity, advertising, news releases, grant press interviews or create or distribute social media regarding the Services or the Compact during or after the performance or delivery of the Services without the prior written consent of the Compact.

SECTION 6 INSURANCE

Unless waived by the Compact in writing, upon a finding under special circumstances giving rise to minimal liability under this Agreement and risk to the Compact, Consultant shall, at its sole expense, procure and maintain the following insurance:

- (a) Until completion of the Services:
 - i. Workers’ Compensation and Employers’ Liability Insurance covering *each and every worker employed in, about or upon the Services*, as provided for in each and every statute applicable to the Workers’ Compensation and Employers’ Liability Insurance.
 - ii. Commercial General Liability Insurance, written on an occurrence form including coverages for Bodily Injury, Broad Form Property Damage, Personal Injury, Products/Completed Operations, Liability arising out of Subcontractors, Contractual Liability (to specifically include coverage for the indemnification clause of this Agreement), and so-called Explosion, Collapse and Underground Hazards, with minimum limits of \$1,000,000 per

occurrence/\$2,000,000 per project general aggregate; \$1,000,000 aggregate for products and completed operations.

iii. Automobile Liability Insurance covering all owned, non-owned and/or hired motor vehicles to be used in connection with the Services with a minimum combined single limit of \$1,000,000 bodily injury and property damage, including Form MCS-90 and Broadened Pollution Coverage via ISO form CA9948 or its equivalent.

iv. Umbrella Liability Insurance covering over underlying General Liability, Auto Liability and Employers' Liability Insurance with a minimum limit of \$5,000,000.

v. Professional Liability Insurance covering Consultant's errors and omissions relating to the Services if the Services involve rendering of professional advice or consultation, including designs, surveys, drawings, approval of maps, etc. Such insurance shall be provided at a limit of at least \$1,000,000. Such insurance may be maintained on a "claims made" basis but in such case it shall always be subject to a retroactive date that is effective prior to the effective date of this Agreement.

vi. Network Security and Privacy Liability (a/k/a Cyber Liability) Insurance including coverage for liability arising from loss or disclosure of business data; system or privacy breach; denial or loss of service; introduction, implantation or spread of malicious software code; and unauthorized access to or use of computer systems or business data with minimum coverage limits of \$1,000,000 each occurrence/claim. If coverages are provided on a claims-made basis, any applicable coverage retroactive date shall always be the effective date of this Agreement.

(b) After the Services are complete:

i. Products and Completed Operations for limits of \$1,000,000/occurrence; \$1,000,000 aggregate as provided by the Commercial General Liability Insurance form for three years.

ii. Professional Liability Insurance if the Services involves rendering of professional advice or consultation, including designs, surveys, drawings, approval of maps, etc. with a limit of at least \$1,000,000 for three years.

The Compact reserves the right to refuse any exception to the standard limits and coverages if it is determined that the exception is not in the best interest of the Compact. Consultant's insurance companies are to be licensed as "admitted" carriers in Massachusetts with minimum acceptable A.M. Best ratings of "A" and size Class VIII, or as otherwise acceptable to the Compact, in its discretion. The Compact reserves the right of final approval of Consultant's insurance companies.

Consultant agrees to waive any rights of subrogation against the Compact, the Compact's Customers, Members, and their respective employees, subcontractors, engineers, workers and agents. Consultant shall name the Compact and its officials and employees as additional

insureds on its commercial general liability insurance, automobile liability insurance and umbrella liability insurance policies.

Consultant shall not begin rendering Services without first submitting to the Compact the insurance certificate(s) that indicate the coverages required by this Agreement. The insurance certificate(s) shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Consultant and Consultant shall in turn provide at least (thirty) 30 days advance notice of cancellation to the Compact. If the policy expires prior to completion of the Services, Consultant must submit replacement insurance certificate(s) prior to the policy expiration date. Failure to submit new certificates shall result in withholding payments and/or may lead to the termination of this Agreement. Consultant shall be solely responsible for tracking and reporting to the Compact the expiration of the policies shown on the insurance certificate(s) provided.

SECTION 7 INDEMNIFICATION BY CONSULTANT³ AND DAMAGES FOR BREACH

7.1 Indemnification. To the fullest extent allowed by law, Consultant (and its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) shall indemnify, defend, and hold harmless the Compact, the Members (and all of the respective officials, officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns of the Compact and each Member), and all Customers from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, and/or judgments caused by, arising out of, or related to any act or failure to act of Consultant (and/or its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) related to this Agreement, including, but not limited to, any failure on the part of Consultant (and/or its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) to perform or comply with any of the covenants, agreements, terms, or conditions contained in this Agreement on its part to be performed or complied with. Consultant's indemnification obligation includes claims related to the unauthorized use of any trade secrets, patent infringement, or trademark or copyright violation. Consultant's indemnification obligation is not limited in any way by the amount or type of damages or compensation payable by the Compact. Consultant agrees to pay all costs relating to indemnification claims, including reasonable attorneys' fees incurred in investigating and responding to claims, within thirty (30) days of receipt of a payment request.

7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

7.3 Limitations. NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL,

³ Note to Consultant: In accordance with guidance issued by the Massachusetts Office of Attorney General, the Compact cannot indemnify private parties.

INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. Notwithstanding the foregoing, Consultant acknowledges that the preceding sentence shall not limit the Compact's rights to seek indemnification from Consultant for consequential, punitive, or incidental damages or other such losses claimed by third parties.

7.4 **No Cap on Consultant's Liability.**⁴ Consultant's liability under this Agreement shall not be limited to the value of the Services rendered under this Agreement; further, Consultant's liability shall not be limited by the availability of its insurance coverage.

7.5 **Notice of Claims.** Consultant will provide formal written notice to the Compact in the event that Consultant receives notice of pending or threatened litigation, claims or assessments against the Consultant or the Compact in connection with the Services rendered by the Consultant under this Agreement.

7.6 **Acknowledgment of JPE Status.** Consultant understands that the Compact is a governmental entity, specifically a joint powers entity, and that its members are the governmental units set forth in footnote 1 of this Agreement. Consultant understands and agrees that the Members assume no liability whatsoever for any of the debts and liabilities of the Compact, including, but not limited to, any obligations under this Agreement. Consultant further agrees and covenants that it will not sue or otherwise make any claim against any of the Members for any obligations, debts or liabilities of the Compact that may exist or accrue as a result of its obligations under this Agreement, or any acts or omissions related to the performance of such obligations.

7.7 **Governmental Immunities.** Consultant understands that the Compact is a governmental entity, and certain legal privileges, defenses and remedies are available to it. Nothing in this Agreement shall be construed to waive any of these privileges, defenses or remedies.

SECTION 8 CHOICE OF LAW AND DISPUTE RESOLUTION

This Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts, without regard to its rules regarding choice of laws. Any dispute that arises regarding this Agreement that cannot be resolved by informal negotiations shall be submitted to nonbinding mediation. If the Parties cannot agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. Each Party shall bear its own mediation costs. Injunctive relief may be sought by either Party without resorting to mediation to prevent irreparable harm. Exclusive venue for any judicial proceeding involving a dispute arising from this Agreement shall be Barnstable County Superior Court, Massachusetts. In any judicial action, the "Prevailing Party" shall be entitled to payment from the opposing party of its reasonable costs and fees,

⁴ Note to Consultants: The Compact does not accept liability caps as a matter of public policy, and the constitutional prohibition on providing private parties with indemnification rights may also apply.

including, but not limited to, attorneys' fees arising from the civil action. "Prevailing Party" means the Party who most substantially prevails in its claims or defenses in the civil action. Consultant shall diligently carry on the Services and maintain the project milestone schedule during any dispute resolution proceedings, unless otherwise agreed to by the Compact in writing.

SECTION 9 ASSIGNMENT AND SUBCONTRACTING

Except as expressly permitted in Exhibit D, none of the Services shall be subcontracted or assigned, in whole or in part, without the prior written approval of the Compact, in its sole discretion. No subcontract or assignment shall relieve or discharge Consultant from any obligation or liability under this Agreement except as specifically set forth in the instrument of approval, and Consultant shall continue to be liable, jointly and severally, with the assignee for the fulfillment of all of the terms and conditions arising under this Agreement subsequent to the assignment. Consultant shall provide prompt notice to the Compact of any such permitted subcontract or assignment, together with the name and address of the assignee, and a copy of the subcontract or assignment instrument.

Consultant agrees that it retains full liability for the acts and omissions of its subcontractors (regardless of whether such subcontractors have been approved by the Compact). In addition, Consultant must ensure that any subcontractor who has been subcontracted, assigned or delegated thirty percent (30%) or more of the Services must abide by all of the terms and conditions of this Agreement, including, but not limited to, insurance requirements. The Compact reserves the right to impose these requirements on subcontractors performing less than thirty percent (30%) of the Services.

SECTION 10 CONFIDENTIALITY AND CUSTOMER INFORMATION

10.1 Confidentiality. Through the term of this Agreement, the Parties may share certain confidential or proprietary information with each other. The Parties agree not to use this information for any purposes other than as needed to meet their respective obligations under this Agreement and to protect such information to the same standards as each Party holds its own confidential or proprietary information. The disclosure and use of such information shall also be governed by the Non-Disclosure Agreement entered into by the Compact and the Commonwealth Electric Company d/b/a NSTAR Electric dated May 10, 2001 (attached hereto as Exhibit E), and any subsequent non-disclosure agreements in which the Compact is a party and that involves the Services or obligations under this Agreement. Consultant agrees to submit the acknowledgment form set forth as Exhibit E concurrently with execution of this Agreement.

10.2 Customer Information. To the extent Consultant (or its subcontractors or any other party acting by or on behalf of Consultant) is provided or has access to Customer information, the following provisions apply: Consultant warrants and represents that the Consultant and its subcontractors and all other persons or entities having access to the Customer information by or through the Consultant have the appropriate safeguards in place to prevent the disclosure or use of any Customer information received from the Compact or its Customers, and further agrees to use such information solely for the purpose of performing Services for the Compact under this

Agreement. Such safeguards shall include, without limitation, security policies, tools and processes restricting access to such Customer information to persons on a need-to-know basis, adequately training and notifying its employees and contractors of the restrictions associated with such information, identifying and correcting any impermissible use or disclosure, and immediately reporting any such use or disclosure. Consultant also agrees to comply with all applicable state, federal and local laws, regulations, codes and policies regarding the protection of Customer information, and the avoidance of theft or fraud through the improper use or disclosure of such information, including, without limitation, G.L. c. 93H and the regulations promulgated thereunder (including, without limitation, the maintenance of a Written Information Security Program in accordance with 201 C.M.R 17.00 et seq.). Upon the request of the Compact, the Consultant shall provide the Compact with detailed information and documentation regarding such safeguards, and with certifications regarding the same by an authorized officer of the Consultant, and the Compact shall have the right to monitor and audit the compliance of the Consultant at any time with the requirements of this provision. All such Customer information shall be returned to the Compact upon the Compact's request (or destroyed if so directed by the Compact), and the Consultant shall retain no copy or other record thereof. Consultant shall give immediate notice to the Compact of any incident that may cause such Customer information to be disclosed or otherwise used in an unauthorized manner. Such notice shall set forth all relevant information regarding the incident, including the specific nature and extent of the disclosure/use, the measures taken and to be taken to retrieve and restore the Customer information and/or to otherwise prevent the unauthorized use or disclosure of the Customer information. Consultant shall, at its sole cost, cooperate fully with the Compact and, as necessary, any law enforcement, regulatory authority, insurance carrier, auditors, attorneys and other parties in the investigation and evaluation of such incident, and shall implement at its sole cost any remedial measures recommended by any such parties as approved by the Compact. The Customer information shall remain confidential in all circumstances.

SECTION 11 MISCELLANEOUS

11.1 **Notices.** All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and

if to Consultant to:

[insert]

if to the Compact to:

Margaret T. Downey
Cape Light Compact JPE Administrator
Cape Light Compact JPE
261 Whites Path, Unit 4
South Yarmouth, MA 02664
mdowney@capelightcompact.org (email)

Except for any notice required by law to be given in another manner, all notices, waivers, demands, or other communications required or permitted by this Agreement to be effective shall be in writing, properly addressed, and shall be given by: (i) personal delivery; (ii) established overnight commercial courier delivery service with charges prepaid or duly charged by the sender; or (iii) registered or certified mail, return receipt requested, first class, postage prepaid.

Notices given hereunder shall be deemed sufficiently given on: (i) the date of personal delivery if so delivered; (ii) the day after sending if sent by established overnight commercial courier delivery service; or (iii) the fifth day after sending if sent by registered or certified mail. Either Party may additionally provide notice by electronic mail, facsimile, or telephone communication, but this shall not relieve the Party of the obligation to provide notice as specified above.

11.2 Entire Agreement; Amendments. This Agreement constitutes 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. To the extent any of the exhibits to this Agreement contain terms that conflict with the terms set forth in the main body of this Agreement or impose additional obligations on the Compact, the language in the exhibits shall be disregarded and shall be of no force and effect. This Agreement may only be amended or modified by a written instrument signed by both Parties hereto.

11.3 Independent Contractor; No Joint Venture. Consultant will perform all Services under this Agreement as an independent contractor. Consultant understands and agrees that none of its employees are Compact employees by virtue of entering into this Agreement. Nothing herein contained shall be deemed to constitute either 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 Compact and Consultant hereunder are individual and neither collective nor joint in nature.

11.4 Joint Workproduct; Independent Counsel. This Agreement shall be considered the workproduct of both Parties hereto. Each Party acknowledges that it has been represented by independent counsel or has had the opportunity to seek counsel in connection with this Agreement and all matters pertinent to it, and each Party waives the benefit of the rules of construction providing that an agreement should be construed against its drafter. Notwithstanding the foregoing, Consultant agrees that if Exhibit A (Services) is primarily drafted by Consultant, any ambiguous terms contained therein shall be construed against Consultant.

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

11.6 **Records; Audit.** Consultant shall maintain books, records, and other compilations of data pertaining to the requirements of this Agreement to the extent and in such detail as shall properly substantiate claims for payment under this Agreement. Consultant agrees that the Compact may audit Consultant's books, records, and other compilations of data associated with the performance of this Agreement to ascertain that the payments requested by Consultant represent the value of the Services. All records shall be kept for a period of six (6) years commencing on the first day after final payment under this Agreement. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the retention period, all records shall be retained until the completion of the action and resolution of all issues resulting therefrom, or until the end of the retention period, whichever is later.

11.7 **Solicitation.** Consultant shall not solicit work from a Customer for two (2) years following termination of this Agreement for any reason, unless Consultant can prove that it has a pre-existing relationship with such Customer. For purposes of this section, "pre-existing relationship" means a relationship pursuant to which Consultant performed services for the Customer prior to performing services for that Customer under an energy efficiency services program run by the Compact, the Commonwealth Electric Company d/b/a Eversource Energy, or any other utility. Consultant may directly perform services for a Customer if such Customer has solicited Consultant. Consultant shall not engage in targeted solicitations using Customer information obtained as a result of its performance of the Services or otherwise related to this Agreement. The prohibitions in this section shall not apply to general marketing campaigns of Consultant.

11.8 **Headings and Captions.** The headings and captions appearing in this Agreement are intended for reference only, and are not to be considered in construing this Agreement.

11.9 **Political Activity Prohibited.** None of the services to be provided by Consultant hereunder shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or in connection with any referendum question or legislative or grass-roots lobbying activities.

11.10 **Anti-Boycott Warranty.** Consultant hereby warrants that, during the term of this Agreement, neither it nor any "affiliate of the Consultant," as hereafter defined, shall participate in or cooperate with an international boycott, as defined in 26 U.S.C.A. §999 (b) (3) and (4), or engage in conduct declared unlawful by G.L. c. 151E, §2. An "affiliate of the Consultant" shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by Consultant, or by a person or persons or business entity or entities that directly or indirectly own at least 51% of the ownership interests of Consultant.

11.11 Non-Discrimination in Employment and Affirmative Action. Consultant shall take affirmative action to ensure that its employees, and any member of the public eligible for service under the Energy Efficiency Plan, are treated without regard to race, color, sex, marital status, sexual orientation, age, religion, national origin, ancestry, handicap, disability, or veteran status. Consultant agrees to comply with all applicable federal, state, and local laws, rules, and regulations prohibiting discrimination in employment and in public accommodations.

11.12 Procurement Process. In entering into the Agreement, the Parties complied with the competitive procurement procedures required under G.L. c. 30B. If this Agreement was procured under G.L. c. 30B, Consultant represents that it has executed all certifications required by such statute, or will provide them concurrently with execution of this Agreement, including the certificates set forth in Exhibit F and G attached hereto.

11.13 Third-Party Beneficiaries. Each Member is an intended third-party beneficiary of this Agreement, entitled to the full rights of this Agreement.

11.14 Savings Clause. If any section, sentence, clause, or other portion of this Agreement is for any reason held invalid or unconstitutional by any court, federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

11.15 Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other in order to effectuate the purposes and to carry out the terms of this Agreement.

11.16 Survival of Obligations. Termination of this Agreement for any reason shall not relieve either Party of any obligation accrued or accruing prior to such termination. In addition, the terms of Section 7 (Indemnification) and Section 8 (Dispute Resolution) and any other term that by its nature should survive, shall survive the expiration of termination of this Agreement.

11.17 Diversity, Equity and Inclusion. Consultant acknowledges that the Compact is strongly committed to ensuring that its programs provide contracting/supplier opportunities for businesses and individuals who historically have been underrepresented in the energy efficiency contracting field. Consultant understands that the Compact is in the process of developing formal diversity, equity, and inclusion policies for its vendors and suppliers, and agrees to implement any such policies that are finalized by the Compact during the term of this Agreement.

11.18 Counterpart Execution; Scanned Copy. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The Parties agree that a scanned or

electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the effective date first above written.

CONSULTANT

CAPE LIGHT COMPACT JPE

Signature
Print Name: _____
Title: _____

Signature
Margaret T. Downey
Cape Light Compact JPE Administrator &
Chief Procurement Officer

Date

Date

LIST OF EXHIBITS

- Exhibit A - Services
- Exhibit B - Background Check Policy
- Exhibit C - Compensation
- Exhibit D - Pre-approved Subcontractors
- Exhibit E - NDA Acknowledgment and NDA
- Exhibit F - Tax Compliance Certification
- Exhibit G - Certificate of Non-Collusion

EXHIBIT A SERVICES

[The scope of Services developed, negotiated and finalized during the RFP process should be attached as Exhibit A.]

EXHIBIT B
BACKGROUND CHECK POLICY

*REQUIREMENTS FOR CONSULTANT EMPLOYEE
AND SUBCONTRACTOR BACKGROUND CHECKS*

The requirements set forth below shall apply to any services to be performed by Consultant under the Agreement. The individuals who will perform the services under the Agreement, including employees, principals, and subcontractors are referred to herein as “Consultant Employees.”

These requirements for background checks represent the minimum requirements for Consultant, to be undertaken at Consultant’s expense. Additional requirements may be deemed appropriate by the Compact or Consultant, or may be required by law, regulation, or other bodies having jurisdiction over the services or Consultant. Consultant must comply with any such additional requirements as are known or should reasonably be known by it.

To the extent Consultant finds that any background check requirements are in conflict with State or Federal statutes, collective bargaining agreements, or other issues that would prohibit compliance, Consultant should notify the Compact so that Consultant and the Compact may discuss appropriate resolution of the issue.

Consultant must complete a background check before any Consultant Employee begins work under the Agreement, whether brought on at the outset of the Agreement or at any other point in the Agreement term. An Consultant Employee may only begin work under the Agreement in advance of the completion of background checks with the written approval of the Compact setting forth the number of calendar days for such allowance.

Consultant must be able to evidence that it has verified the identification of all Consultant Employees working for the Compact and that all such individuals are legally eligible to work in the country where the services are to be performed.

Consultant must ensure that all Consultant Employees working under the Agreement are subjected to a criminal history background check. Such checks must be conducted on all names, including alias names that are provided or developed, and include County, State and Federal checks based on jurisdictions of work and residence for the past 7 years, as well as international jurisdictions, if available. All checks must include both misdemeanors and felonies. If the Consultant has had a pre-employment criminal history check process in place and can provide documented evidence to the Compact that Consultant Employees working under the Agreement have been subjected to equivalent criminal history check, then additional checks are not necessary. If Consultant Employee has a felony or misdemeanor criminal record, the Compact reserves the right, in accordance with Section 2.4 (Staffing; Background Checks) of the Agreement, to require Consultant to remove such Consultant Employee from the work site. If at any time during the term of the Agreement, Consultant becomes aware of information concerning a criminal conviction of Consultant Employee that would fit the above criteria for

reporting to the Compact, Consultant shall forward this information to the Compact and the Compact shall determine whether to remove the Consultant Employee from the work site.

All Consultant Employees required to operate a motor vehicle in conjunction with services provided to the Compact must be legally licensed and hold a valid driver's license appropriate to the vehicle being driven. This requirement applies to both Consultant-owned or leased vehicles and the Compact's owned/leased vehicles. If applicable, a motor vehicle driving record check to include a commercial driver license search must be annually conducted by Consultant to validate this requirement.

Consultant must maintain a record of all background checks completed in accordance with these requirements and correspondence with the Compact regarding background checks performed during the term of the Agreement and shall make all such records available to the Compact upon reasonable notice.

If it is determined at any time during the term of the Agreement that Consultant Employee performing services for the Compact does not meet the background qualifications set forth above, or has falsified a document that is or was part of the background check, Consultant shall immediately notify the Compact. The Compact will determine if the Consultant Employee should be removed from the work site.

In the event Consultant would like to utilize Consultant Employee to provide services under the Agreement despite adverse findings from any background check performed in accordance with these requirements, Consultant must submit a request in writing to the Compact, or its designee. The Compact shall evaluate all relevant background information and, in its sole discretion, shall make a determination whether the Consultant Employee should be allowed to perform services under the Agreement, and shall provide its determination in writing to Consultant.

The Compact reserves the right to perform, at its sole cost, audits of Consultant's background check program and records for any Consultant Employee performing services under the Agreement.

The Compact reserves the right to revise these requirements at any time during the term of the Agreement, which Consultant must comply with. Any revisions to these requirements will be provided in writing to Consultant.

Upon written request of Consultant, the Compact, in its sole discretion, may provide Consultant with a written modification or waiver of any of any of the background check requirements marked above.

EXHIBIT C
COMPENSATION

EXHIBIT D
PRE-APPROVED SUBCONTRACTORS

EXHIBIT E
NDA ACKNOWLEDGMENT AND NDA

I hereby certify my understanding that the Confidential Information, as that term is defined in the Non-Disclosure Agreement between Barnstable County, Massachusetts and the Cape Light Compact, on the one hand, and Commonwealth Electric Company d/b/a NSTAR Electric, on the other, dated May 10, 2001 (the "NDA"), is being provided to me pursuant to the terms and restrictions of the NDA. I also certify that I have been given a copy of the NDA, have read its terms and conditions, and agree to be bound by them. I understand that the contents of the Confidential Information and any parts of notes, memoranda, or any other form of information that contains such Confidential Information shall not be disclosed to anyone nor copied other than in accordance with the NDA, and shall be used only for the limited purposes stated therein. I also agree to protect the confidential and proprietary nature asserted for the Confidential Information.

I further acknowledge that, in the event that my role as a consultant or contractor of the Cape Light Compact JPE ceases, I shall return all copies of Confidential Information and destroy all parts of notes, memoranda, and other documents that contain such material in accordance with the NDA, and I shall continue to be bound by the terms and conditions of the NDA.

By: _____
Name: _____
Title: _____
Organization: _____

EXHIBIT F
TAX COMPLIANCE CERTIFICATION

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

CONSULTANT

Signature

Print Name: _____

Title: _____

Date

EXHIBIT G
CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that the bid or proposal it submitted in response to the RFP was made and submitted in good faith and without collusion or fraud with any person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

Signature of individual submitting bid or proposal

Consultant Name

ATTACHMENT C

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that the bid or proposal it submitted in response to the RFP was made and submitted in good faith and without collusion or fraud with any person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

Signature of individual submitting bid or proposal/Title:

Proposer Name

**ATTACHMENT D
PROPOSAL CHECKLIST**

Proposer has submitted the following as part of its Proposal:

- ___ 1. Cover letter with signature. [Article VI A and K]
- ___ 2. Statement that the Proposal is submitted in accordance with this RFP, and that Proposer has read and understands all sections of the RFP. [Article VI A]
- ___ 3. General background information. [Article VI B]
- ___ 4. Company profile. [Article VI B]
- ___ 5. Four background statements. [Article VI B]
- ___ 6. Identification of Project staff and assigned roles. [Article VI C]
- ___ 7. Resumes for key staff. [Article VI C]
- ___ 8. Organizational capacity. [Article VI C]
- ___ 9. Resumes and qualifications of subcontractors or consultants. [Article VI C]
- ___ 10. Schematic diagram. [Article VI C]
- ___ 11. Proposed plan/approach. [Article VI D]
- ___ 12. Proposed edits to Scope of Work. [Article VI D]
- ___ 13. Statements regarding related experience. [Article VI D]
- ___ 14. Pricing (including rates for out of scope work). [Article VI E]
- ___ 15. References. [Article VI F]
- ___ 16. Redlined Contract or Contract acceptance letter. [Article VI G]
- ___ 17. Certificate of Non-collusion (Attachment C)
- ___ 18. Checklist (this document).
- N/A 18. Other from Specific Qualifications. [Article IV].

