



**CAPE LIGHT COMPACT
REQUEST FOR QUALIFICATIONS (RFQ)
FOR
STREET LIGHT ENERGY MANAGEMENT
SERVICES**

Under
Massachusetts General Laws, Chapter 25A, Section 11I
A Guaranteed Energy Savings Contract

JULY 12, 2013

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1 Introduction

Awarding Authority: Cape Light Compact (through its agent Barnstable County)
 Address: 3195 Main St., P.O. Box 427, SCH, Barnstable, MA 02630
 Chief Procurement Officer: Margaret T. Downey, Compact Administrator
 Email: mdowney@barnstablecounty.org
 Telephone: (508) 375-6636
 Fax: (508) 362-4136
 RFQ Contact: Kevin Galligan, Program Manager
 Email: kgalligan@capelightcompact.org

The Cape Light Compact, on behalf of the Participating Municipalities listed below, (the “Compact” or the “Awarding Authority”) issues this Request for Qualifications (“RFQ”), pursuant to M.G.L. c. 25A, §11I from qualified energy management service companies (individually a “Respondent” and collectively the “Respondents”) with one or more ultimately selected to serve as a contractor (“Contractor”), to provide comprehensive, performance-based, Street Light Energy Management Services (the “Project”) with guaranteed energy savings for street lighting systems within the jurisdiction of the Participating Municipalities who have elected to be included in this RFQ. Each location will be considered a “Facility” for purposes of this RFQ.

The following Municipalities are participating in this RFQ. Such participation does not commit or bind any individual Municipality to enter into any agreement with the selected Contractor(s).

| Participating Municipalities | | |
|-----------------------------------|---------------------------|-----------------------|
| Barnstable ¹ | Barnstable Fire District | Bourne |
| Brewster | Chatham | Chilmark ¹ |
| C-O-MM Fire District ¹ | Cotuit Fire District | Dennis |
| Edgartown | Falmouth | Harwich |
| Hyannis Fire District | Mashpee | Oak Bluffs |
| Orleans | Provincetown | Sandwich |
| Tisbury ¹ | Truro | Wellfleet |
| West Barnstable Fire District | West Tisbury ¹ | Yarmouth |

Respondents to this RFQ are required to demonstrate qualifications in identifying, assessing, planning, designing, financing, installing, operating and maintaining energy efficient light emitting diode (“LED”) street lighting Facilities. Respondent shall also be required to submit qualifications for any entity it intends to subcontract any work associated with the Project.

Respondents shall be evaluated on criteria set forth in this RFQ. The Compact intends to select and enter into an Energy Management Services Agreement (“EMS Agreement”) with the most highly qualified Respondent(s) per the evaluation criteria herein.

¹ Phase II participant.

The Compact may cancel this RFQ, or may reject in whole or in part any and all responses if the Compact determines that cancellation or rejection is in its best interest or in the best interest of the Participating Municipalities.

1.1 Projected Selection Timeline

| | |
|---|--|
| Notification to the DOER: | JUNE 11, 2013 |
| Published in Central Register: | JULY 3, 2013 |
| Published in: | CAPE COD TIMES & COMPACT WEBSITE ² |
| RFQ available: | JULY 12, 2013 |
| Mandatory Pre-Qualification Conference: | JULY 30, 2013 |
| Facility Tour: | JULY 29 AND/OR JULY 30, 2013 |
| Final Inquiry Date: | AUGUST 1, 2013 |
| Responses Due: | AUGUST 9, 2013 BY 4:00 P.M. |
| Location: | COMPACT OFFICES, 3195 MAIN STREET, BARNSTABLE, MA 02630 |
| Anticipated Evaluation Complete: | AUGUST 14, 2013 |
| Anticipated Interviews: | AUGUST 15-16, 2013 |
| Anticipated Selection for Negotiations: | SEPTEMBER 6, 2013 |

2 SOLICITATION AND QUALIFICATION PROCESS

2.1 STAGE ONE: DCAM Contractor Certification Process

Respondents are advised that advance certification by Massachusetts Division of Capital Asset Management and Maintenance (DCAM) is required pursuant to M.G.L. c. 149 § 44. Certification application forms are available from DCAM Contractor Certification Office at (617) 727-9320.

2.2 STAGE TWO: Pre-Qualifications Conference and Facility Tour

A mandatory pre-qualification conference will be held at the offices of the Compact on the Barnstable County complex, 3195 Main St, Rt. 6A, Barnstable, MA 02630 on Tuesday, July 30, 2013 from 3:00 p.m. to 4:00 p.m. Optional tour(s) of the Facility(ies) will be held Monday, July 29, 2013 and Tuesday, July 30, 2013. Interested Respondents will meet at the offices of the Compact at 8:30 p.m. and proceed to tour the selected Facility(ies). All prospective Respondents must attend the mandatory pre-qualifications conference; failure to attend will result in rejection of a Respondent's submittal. Respondents interested in attending must confirm attendance at the mandatory pre-qualifications conference and choice of optional tour date(s) by contacting Kevin Galligan, Compact Program

² www.capelightcompact.org/resources/request-for-proposal/

Manager at kgalligan@capelightcompact.org. Respondents must provide the number of attendees (up to 3) and the full contact information for the key person attending the pre-qualification conference.

All questions and inquiries concerning this RFQ must be submitted in writing no later than 5:00 p.m. on August 1, 2013 via email to mdowney@barnstablecounty.org. Inquiries will not be answered directly. The Compact will issue an addendum to address the written questions submitted by the deadline and will post it to the Compact website. It is the responsibility of each Respondent to visit the Compact website by the responses due deadline to ensure that it has received all addenda issued by the Compact.

The Compact reserves the right to amend this RFQ based on questions and issues raised prior to and at the pre-qualification conference.

2.3 STAGE THREE: Submission of Qualifications

Any qualified Respondent who wishes to submit a statement of qualifications (“Response”) to this RFQ shall submit one (1) original, seven (7) hard copies, as well as one (1) single-file electronic copy (on a portable media, with any separate working spreadsheet files as applicable) of the Response on or before the date and time of responses due deadline per the Projected Selection Timeline.

Each Response will be reviewed for completeness, and incomplete Responses may be rejected without further consideration. Respondents shall use the prescribed format as set forth in Appendix 6.7 to indicate their experience, qualifications, describe their approach to the Project and fully explain their Responses.

The Compact reserves the right to waive any irregularities and formalities in the selection of the Contractor for this Project. While Respondents are required to submit Responses that fully comply with the requirements set forth in this RFQ, alternative Responses may also be proposed if the Respondent feels such Responses provide measureable value and/or a more cost-effective approach for the Compact and Participating Municipalities. Such alternative Responses must meet the requirements set forth in this RFQ.

2.4 STAGE FOUR: Selection of Vendor and Contract Execution

The Compact, along with a procurement advisory group comprised of representatives from some of the Participating Municipalities, will evaluate and rank all Responses based upon the criteria listed in this RFQ, and reserves the right to waive any minor informalities. Top Respondents will be selected based on written Responses as well as answers to additional clarifying questions as requested by the Compact. The Compact and the procurement advisory group will hold interviews of one or more top Respondents.

NOTE: The Compact may select more than one Contractor.

Following selection of the top-ranked Responses, the Compact and Contractor(s) will enter into an agreement for a Technical Street Light Investment Grade Energy Audit & Project Development

Agreement to verify the proposed energy efficiency approach, strategy and cost-effectiveness. Based upon the results of the energy audit, the Compact may negotiate an EMS Agreement with the selected Contractor(s) and the Participating Municipalities may negotiate an Operations & Maintenance Contract with the selected Contractor(s). If an acceptable contract cannot be reached, the Awarding Authority may initiate negotiations with the second ranked Contractor.

3 RFQ Procedures

- A. Modification or Withdrawal of RFQ: Any response may be withdrawn or modified by written request of the Contractor, provided such request is received by the Compact at the above e-mail address prior to the due date for Responses.
- B. Cost of Response Preparation: Neither the Compact nor the Participating Municipalities assumes any liability and will not reimburse Contractor(s) for any costs incurred, including but not limited to: site visits or preliminary engineering analyses, in preparing Responses to this RFQ.
- C. References, Disclosure of Information and Public Record: Submission of a Response shall be deemed permission by the Compact to make inquiries concerning the Respondent to any persons or firms deemed appropriate by the Compact. The Contractor's submission of a Response shall be deemed acknowledgement that it is familiar with the Commonwealth of Massachusetts Public Records Law, M.G.L. c. 66 § 10 and is bound thereby. Disclosure of any information provided by the Contractor in connection with this RFQ shall be in strict accordance with the laws and regulations regarding such disclosure pursuant to M.G.L. c. 66 § 10.

To review a copy of Responses submitted to the Compact after the EMS Agreement has been awarded, submit a written request in compliance with the Commonwealth of Massachusetts Public Records Act to the RFQ Contact Person identified above.

4 General Information

4.1 Project Description

Through this RFQ, the Compact seeks responses from qualified providers interested in implementing a comprehensive, performance-based Energy Management Services Project at the municipal owned street light Facilities identified in Appendix 6.5 Site Information Attachment – Existing Street Light Facilities including any Special Terms & Conditions identified in Appendix 6.5.1 specific to certain Participating Municipalities. The Compact and each Participating Municipality seeks to maximize energy cost savings and minimize life cycle costs of the municipal owned street lighting systems by contracting for the full scope of street lighting operation services, including but not limited to: a technical street light investment grade energy audit, design, procurement, installation and modification of existing and new equipment that will reduce energy and operating costs associated with the street

lighting system; and a long-term operating, maintenance and capital improvement service to guarantee the system reliability. The selected Contractor(s) shall assist each Participating Municipality with the review of their street lighting system in order to assist with the identification, design and implementation of capital improvements to reduce energy and related costs in the street lighting system, and will provide warranty for the improvements and ongoing system operation and maintenance for the warranty period and separate operation and maintenance services in addition to the warranty.

The Contractor(s) shall prepare all required incentive documentation required by the Awarding Authority including confirmation of the guaranteed energy savings. The Contractor(s) will coordinate and submit all required information to NSTAR Electric to effectuate street light billing revisions for each Participating Municipality.

This Project will upgrade roadway street light Facilities and optimize utility and operating budgets through a comprehensive infrastructure renewal process. It will ensure continued and/or improved peak efficiency through proactive maintenance and service programs and training, customized for the Compact and the Participating Municipalities staff and Facilities. The Compact intends to leverage energy savings to fund the cost of the Project to the greatest extent possible so the cost of implementing cost-effective efficiency measures is paid for in whole or in part by the energy savings guaranteed from the project by the chosen Contractor(s).

The Compact intends to use this Project to address, meet, or exceed several of the goals, objectives, strategies, and actions identified in the Three-Year 2013-2015 Cape Light Compact Energy Efficiency Plan (“EEP”) approved by the Massachusetts Department of Public Utilities on January 31, 2013 (MA D.P.U. 12-107). Specifically, the Compact’s MA DPU approved EEP includes the following specific to the LED Municipal Owned Streetlight Retrofit Initiative within the Commercial and Industrial Programs: *“This cost-effective initiative will cover retrofitting approximately 14,542 streetlights and is expected to yield an estimated savings of 2,555,700 kWh annually. Consistent with the Compact’s specialized municipal incentive structure, there will be no co-pay for participating municipalities. It is anticipated that this program should be completed within calendar year 2014.”* (D.P.U. 12-107, Exhibit Compact-2, Page 14 of 33, October 31, 2012).

4.2 Site Information

Profiles of each Participating Municipalities existing street lighting Facilities to be evaluated pursuant to this RFQ are included as Appendix 6.5 of this RFQ. An inventory list by route/pole number, account, address, town, lumens and type (i.e, sodium, incandescent, merc, cfl) will be made available to DCAM Certified providers upon request.

Respondents shall identify a plan and approach to any Exhibit A Special Terms and Conditions of the Participation Agreements (also included as Appendix 6.5.1 of this RFQ) executed by the Participating Municipalities in their Responses.

The selected Contractor(s) shall identify a plan for improvements that maximizes energy savings and minimizes life-cycle costs upon completion of the Technical Street Light Investment Grade Energy Audit (“IGA”). The final list of upgrades to be implemented through the EMS Agreement with the

Compact shall be stipulated in the EMS scope of work that will include and rely on the IGA Report and through a separate operation and maintenance (O&M) contracts with the Participating Municipalities.

4.3 Options and Alternatives

The Compact and the Participating Municipalities may consider additional improvements resulting in an overall Project that ensures a comprehensive renewal of roadway street light Facilities. Options may include, but not limited to: adaptive control and remote monitoring capability of LED roadway luminaires.

4.4 Contractual Terms

Appended to this RFP are three forms of contract -- the IGA, the EMS Agreement and the O&M Agreement (collectively, the "Contracts"). Each Respondent in its Response shall agree to conform to the terms and conditions of each of the Contracts. Any proposed amendments to the Contracts shall be specifically identified and explained in the Response. The Compact reserves the right to amend or substitute the Contracts in its sole discretion should it determine that such amendment or substitution is in the best interest of the Compact or the Participating Municipalities.

As a general matter, Respondents submitting Responses with no or limited amendments to the form of the Contracts will be preferred to Responses conditioned upon more extensive amendments to the Contracts.

The Compact will negotiate the form of amendments to the Contracts, if any, with each of the selected Contractor(s). The Compact, in its sole discretion, will select the winning Contractor(s) based on the evaluation criteria, the terms of the modified Contracts, if any, and other factors described in this RFP.

DOER's and the Compact's mandatory contract terms as highlighted in the EMS Agreement are not negotiable.

In accordance with G.L. c.71, §38R, the Compact may request and obtain all available criminal offender record information (CORI) from the Criminal History Systems Board of any contractor "who may have direct and unmonitored contact with children." As a condition of the award of any contract and prior to commencement of any work, the successful Contractor(s) shall complete and sign a Request Form to obtain CORI. The Contractor(s) shall be responsible to have all of its contractors complete and sign the form.

4.5 Minimum Technical Specifications

Contractors shall refer to the Minimum Technical Specifications and related product specifications, roadway safety and industry standards included in this RFQ. These specifications are required for each Facility when negotiating the scope of work in the Contracts and should be fully considered when preparing a Response to this RFQ.

4.6 Role of the Compact and Participating Municipalities

To facilitate the Contractor(s) in the execution of the Project, the Compact and Participating Municipalities will endeavor in their best ability to:

- Provide a dedicated Cape Light Compact Program Manager to coordinate the retrofit schedule with each Participating Municipality's DPW Director or designee.
- Provide reasonable access to municipally-owned facilities to obtain data (whether required or reasonably requested by the Contractor).
- Grant the Contractor sufficient access and occupancy rights to undertake the Project at the Facilities. In this context, the Compact and Participating Municipalities will require the Contractor to enter into the Technical Street Light IGA & Project Development Agreement, followed by the EMS Agreement and O&M Contract(s) that will further define roles and responsibilities.
- Provide access for the assessment of the Facilities and, for those Facilities to be retrofit, the installation, maintenance and ongoing operation of the Facilities.
- To the extent reasonable and appropriate, provide information and/or assistance to the Contractor in securing any remaining permits for the Project, including but not limited to any local board approvals. Provided, however, any local and/or regional/state historic district approvals are the lead responsibility of the Participating Municipality with Compact and Contractor support limited to project and Facility information as may be available.
- Cooperate with the Contractor to the extent reasonable and appropriate on remaining issues with respect to Facility assessment, access and Facility retrofit, maintenance and operation.
- Each Participating Municipality shall be responsible for providing and paying for any required police and/or safety detail during installation.
- Each Participating Municipality understands the following requirements of the Project:
 - The new LED fixtures will replace existing operating fixtures only.
 - The new LED fixtures will replace comparable, or lower, lumen size only.
 - The installations will be performed on all town-owned street lights.
 - Each Participating Municipality will elect to (i) remove, (ii) relocate, or (iii) replace LED fixtures installed as part of the prior Demonstration Project³ and further identify any special terms and conditions in the Exhibit A to their Participation Agreements (included in Appendix 6.5, Site Information Attachment to this RFQ and Appendix 6.5.1 Special Terms and Conditions)

³ Potential respondents are encouraged to review the information on the LED Demonstration Project including approach, installation schedule, community feedback and FAQs by visiting www.capelightcompact.org/ledstreetlights/

5 Terms of Response

5.1 Evaluation Criteria

Responses shall be submitted in the format outline in Appendix 6.7 Response Format Template. Each Response will be reviewed to determine if it is complete. The Compact will review each Response prior to the selection process for completeness and adherence to format. A Response will be considered complete if all requested section and information are included and are in proper order.

5.2 Evaluation Form

Each section or subsection of the Response will be evaluated, using the Response Evaluation Form (Attached as Appendix 6.8 to this RFQ), individually for completeness and to determine the most advantageous option for the Compact and Participating Municipalities. The Compact reserves the right to select the Contractor that provides the most responsive and responsible Response, which best meets the needs of the Compact and Participating Municipalities, taking into account Contractor qualifications, submittal quality and evaluation criteria.

The Compact plans to develop a shortlist of up to three (3) Contractors prior to making a selection. Scoring will be summarized on the Response Evaluation Form. The Compact may adjust scores following interviews as provided in M.G.L. c. 25A, § 11I, and such additional interviews the Compact may deem necessary to evaluate the Respondents.

5.3 General Terms

The Proposal should include:

1. A complete range of conservation services (i.e., auditing, equipment selection and installation, monitoring, verification, operation and maintenance strategy, training of Facility personnel, commissioning, disposal of ballasts with PCBs, disposal of lamps with mercury, recycling of materials, etc.) to provide energy efficiency upgrades at no up-front cost to the Compact and to use the money saved to increase performance and savings to justify the use of energy efficiency incentives in a cost-effective manner.
2. A review of maintenance and operation of each Facility against potential energy saving options.
3. Where applicable, the option for the capability of or installation of integrated energy management systems/advanced control for some or all Facilities.
4. If the respondent is not Massachusetts based, identify and describe the organization, experience, and relationship of the firm that will guarantee the local support services necessary for fulfilling the contract terms.
5. Respondents shall include in their Response information on its past experience installing high-efficiency outdoor roadway lighting systems (serving the Compact's residents and businesses).
6. Proposed amendments to the Contracts, if any.

5.3.1 Respondent's Abilities

1. Please provide the resumes of project team members, including the prime contractor and any subcontractors, and a description of their respective responsibilities. The project team must include a Massachusetts Registered Professional Engineer. Resumes should include each participant's background, specific areas of expertise, and previous experience with projects of this type and size.
2. Provide a copy of a contract recently executed by your company, firm, or organization with a similar organization (City, Town, State or County). Please provide a minimum of three (3) project references for the proposed project team members. These project references should be of the same size and type of project as the Project.

5.3.2 Finance Options

Funding for the Project per this RFQ is contemplated to be funded 100% through the energy efficiency incentives available for cost-effective measures installed under the Cape Light Compact Energy Efficiency Plan. Other financing or outside funding mechanisms, if they become available, may be included in the Response provided they are paid out of energy savings and the Contractor guarantees the savings. The Awarding Authority reserves the right to secure financing from whichever source(s) it determines is in its best interest.

Contractor(s) should include in their Responses (a) information regarding all potential funding sources that could be applied to any or all potential energy management services, (b) description of the applicant's experience(s) in securing such funding, and (c) description of any new sources of funding that may have recently become available but that the Respondent has not yet had experience with. All benefits that stem from the implementation of energy management services under the EMS Agreement and that are deemed to have a monetary or societal value shall be the sole property of the Compact.

The Compact will weigh the merit and value added by any proposed financing source or financing model. The Contractor should note if any part of the Response is conditional upon the Compact utilizing an identified financing source or proposed model and describe any way in which rejection of the financing proposal would change any other part of the Response.

At a minimum, the Contractor must cooperate with the Compact in obtaining any funding support or additional funding/financing. This cooperation may include the provision of backup or supplementary information to support the Compact's funding/financing application, answering questions orally and in writing to one or more prospective financing entities, and providing adequate disclosures in connection with the due diligence of a financing entity.

All applications or requests for financing, grants or other assistance made by the Contractor on the Compact's behalf are subject to review and approval by the Compact prior to submission.

5.3.3 Guaranteed Savings

The guaranteed savings provision shall be fully defined in the EMS Agreement and shall be the measured reduction in energy, operating or maintenance costs resulting from the implementation of the Scope of Services defined in the EMS Agreement. Such guaranteed savings shall be determined when compared with an established baseline of previous energy, operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed pursuant to the EMS Agreement.

The selected Contractor shall provide the Compact with a written guarantee that either the amount of energy savings guaranteed will be achieved on an annual basis or the Contractor shall reimburse the Compact for the full shortfall amount each year for which the shortfall exists. Methods for measurement and verification of guaranteed savings shall conform to the most recent standards established by the Federal Energy Management Program of the U.S. Department of Energy and the most recent International Performance Measurement & Verification Protocol (IPMVP).

The value of guaranteed savings may represent either all or part of annual payments at the discretion of the Compact. The overall term of the EMS Agreement, including the performance term shall not exceed 20 years. The guarantee shall be a first party direct guarantee from the Contractor to the Compact. No third-party guarantee shall be allowed, except however, corporate guarantees from a parent company of the Contractor will be considered. All savings in excess of the guaranteed savings shall be the sole property of the Compact.

$$\text{Savings} = \text{Baseline Energy} - \text{Post Installation Energy} \pm \text{Adjustments}^4$$

5.3.4 Energy Audit Agreement

In accordance with G.L. c. 25A, Sec. 11I, the Compact and the selected most qualified Contractor will negotiate the scope of work for an Investment Grade Energy Audit (IGA Agreement), by which the Contractor will conduct an energy audit of Facilities and energy systems at the Facilities to substantiate its ability to achieve energy and cost savings for the Facilities

5.3.4.1 Audit Agreement

The IGA Agreement shall use the Model Energy Audit Agreement (Appendix 6.0, Form of Technical Street Light IGA & Project Development Agreement), and include, but not be limited to:

- A Facilities and maintenance assessment
- A written investment quality comprehensive energy audit report for a comprehensive and sustainable conservation program

⁴ FEMP M&V Guidelines: Measurement and Verification for Federal Energy Projects, Version 3.0, U.S. Department of Energy

- A detailed proposed technical scope of work for construction/implementation of the Contractor's recommendations including Facility improvements and maintenance and/or owner training programs
- Proposed methods of measurement and verification of guaranteed savings that conform to the most recent standards established by the Federal Energy Management Program of the United States Department of Energy.
- A proposed Guaranteed Energy Savings provision.

5.3.4.2 Audit Report

Upon completion of the Energy Audit, the Contractor(s) will provide the Compact with a detailed written report (the Audit Report) containing:

1. Facility profile of characteristics and energy use including accurate energy consumption data for the most recent 2-year period.
2. Determination of the total annual cost to operate and maintain the existing energy systems in including the energy rate/cost per unit of energy usage, the demand cost and its basis.
3. The methodology used for the lighting system component of the audit shall be as follows:
 - a. To ensure consistency in the lighting system component of the audit, the abbreviations for lighting systems shown below should be used.

| | | | |
|----------|---------------------------|-------|---------------------------|
| C | Compact fluorescent | EE | Energy efficient lamp |
| HW | Hard wired fixture | HO | High output lamp |
| LV | Low voltage | VHO | Very high output lamp |
| FIXT | Fixture | STD | Standard Ballast |
| BX | Biax/Twin tube lamp | NEW | New fixture |
| R | Reflector | SI | Screw in lamp |
| T/TW | Tandem wire | PAR/P | Parabolic lens |
| MV | Mercury vapor lamp | WRAP | Wrap style fixture |
| MH | Metal halide lamp | T8 | T8 Lamp/Elect. ballast |
| Lens/Rep | Lens replacement | HPS | High pressure sodium lamp |
| EEMAG | Energy efficient magnetic | LED | Light Emitting Diode |

- b. To insure accuracy regarding the type of ballast or lamp type, a percentage of each fixture type must be opened to determine the manufacture and model of number of the ballast, and the number of lamps and lamp type. A random sample of at least 30 fixtures of each type must be opened.
4. Allocation of total energy among end uses including:
 - Lighting, outdoor
 - Equipment

Allocation must be reconciled with actual usage. The allocation must be based on at least a bin⁵ calculation and consider:

- Documented hourly use profiles/patterns
 - Equipment performance
5. List of recommendations. For each of the proposed improvements, the Contractor shall provide costs and annual savings, the source of energy saving, the amount and type of energy saved, the cost savings, the implementation cost and a pay-back analysis (including any major assumptions made in the analysis).
 6. The savings shall be calculated using the same method described above and shall consider the interactions among measures. The total annual cost to operate and maintain the proposed conservation measures in each Facility shall be determined.
 7. Exploration of appropriateness of current utility rates and application of the 100% incentive/rebate program.
 8. Energy usage for the last two years (to be provided per Facility).
 9. The audit must be stamped by a Massachusetts Registered Professional Engineer.
 10. The Contractor's proposed baseline and proposed annual adjustments. Inventory of all energy using equipment and appliances during base year including ratings and capacities.
 11. The method utilized for determining actual energy and water savings by the Contractor that agree, if applicable, with the most recent version of the Federal Energy Management Program ("FEMP") Guidelines.

5.3.4.3 Acceptance of the Audit Report

As part of its consideration of the Audit Report and the recommendations of the successful Contractor, the Compact may, in its sole discretion and prior to the execution of the EMS Agreement, elect to proceed with all or any portion of the Response. The Awarding Authority may also elect to proceed with certain improvements on a "phased" basis, whether over a period of months or years if it determines that proceeding with all of the selected improvements simultaneously is not in the best interests of the Compact and Participating Municipalities.

If the Compact decides not to enter into an EMS Agreement with the Contractor after the Energy Audit, even though the proposed contract terms meet all the conditions set forth in the RFQ, the Compact will pay the fixed price break up fee, if any, for the IGA Energy Audit if the IGA Energy Audit is completed in accordance with the IGA Agreement. However, the Compact may refuse payment for the Audit Report if (a) the savings identified in the Response vary more than 15% from

⁵ As used in the Federal Energy Management Program, a bin is an energy estimating technique wherein energy usage for different temperature intervals and time periods is evaluated separately.

the proposed savings identified in the audit, (b) the projected value of the net benefit to the Compact set forth in the Response differs by more than ten percent (10%) of the corresponding purchase option price provided in the Energy Audit, or (c) any purchased option price set forth in Energy Audit is greater than one hundred and ten percent (110%) of the corresponding purchase option price provided in the Response.

6 Appendices

6.1 Cover Letter & Respondent Information Form

The following information should be typed on Respondent's letterhead. Fill in all bracketed sections and delete or re-format all brackets, italics, and instructions. Black line or otherwise indicate all changes in wording, additions or deletions.

Margaret T. Downey, Compact Administrator
Cape Light Compact
3195 Main St, Rt 6A – P.O. Box 427
Barnstable, MA 02630
e-mail: mdowney@barnstablecounty.org

RE: Respondent Information Form & Cover Letter for Street Light Energy Management Services

Dear Ms. Downey:

In response to your Request for Qualifications ("RFQ"), we [insert name of Respondent] (the Respondent) hereby submit our Statement of Qualifications ("Response") to implement a comprehensive, performance-based, street light retrofit project to LED with guaranteed energy savings at [some or all] of the Facilities included in your RFQ for the Participating Municipalities. [Indicate any preference for specific types of or location of Facilities, if applicable to include options or recommendations beyond the minimum requirements of the RFQ.]

We offer the following commitments and representations to the Cape Light Compact and its Participating Municipalities ("Compact"):

- 1) The undersigned is authorized to submit this Statement of Qualifications on behalf of the Respondent and to bind the Respondent to its terms. We have fully reviewed the RFQ and any and all addenda thereto, and we fully understand the scope and nature of the project and contractual arrangements for which Responses are being requested.
- 2) Our Response has been prepared and is submitted without collusion, fraud or any other action taken in restraint of free and open competition for the response to the RFQ. Neither the Respondent nor any member of the Respondent's project team is currently suspended or debarred from doing business with any governmental entity.
- 3) We certify that all of the information provided in our Response is true and accurate and that the Compact may rely on such information in evaluation of our Response. We have read and understand the evaluation criteria in the RFQ. We accept that the Compact reserves the right to waive informalities and to reject in whole or in part any and all Responses. We accept that the Compact reserves the right to select the Response that it views as most advantageous on the basis of the evaluation criteria listed in the RFQ.

- 4) We acknowledge that the work to be performed under any O&M contract negotiated with an Participating Municipality (as defined in the RFQ) including work by subcontractors, must comply with the provisions of the Massachusetts General Laws pertaining to prevailing wage.
- 5) We agree to take full responsibility for all costs of preparing this Response. We waive any and all claims against the Compact and its employees, representatives and agents related to the cost of preparing, submitting and having the Compact review and evaluate this Response.
- 6) We have read and understand the common technical specifications for the Project in the RFQ, and agree to meet or exceed such specifications in accordance with the provisions therein.
- 7) We have included the following required items as part of our Response:

| Minimum Required Items | Check if included: |
|---|---------------------------|
| DCAM Contractor Certification & Update Statement | |
| Certificate of Non-Collusion (Appendix 6.2) | |
| Attestation Regarding Filing of Tax Returns (Appendix 6.3) | |
| Acceptance of Contract Terms (Appendix 6.4) | |
| Response in format of Response Form Template (Appendix 6.7) | |

Sincerely,

[Insert name of proposer]

By: [Insert authorized representative]

[Print or type name]

[Street address, P.O. Box]

[City, State, Zip]

[Telephone]

[E-mail]

[Date]

Respondent Information Form

Contractor Point of Contact: _____

Name of Company: _____

Address: _____

City, State, Zip Code: _____

Phone: _____ Fax: _____ E-mail _____

Federal tax id# (SSN for individuals): _____

Organizational structure: Corporation: _____ Partnership: _____ Joint venture: _____

Individual/Proprietorship _____ Other: _____

Ownership: Public stock: _____ Privately owned: _____ Non-profit: _____

Minority and women business enterprise information (check as appropriate):

Minority owned: _____ Women owned: _____ Owned by person with disability: _____

Small Business: _____ SOMWBA Certified: _____

I have read, understand, and agree to comply with the terms and conditions for providing Energy Management Services to the Awarding Authority as stated in the Awarding Authority's Request for Qualifications. Furthermore, I hereby certify, under penalties of perjury, that this Proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Signature

Date

If applicable, please complete the following:

I acknowledge receipt of Addendum No(s). _____, dated _____.

Signature

Date

6.2 Certificate of Non-Collusion

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

(Signature)

(Name of person signing proposal)

(Date)

6.3 Attestation Regarding Filing of Tax Returns

Please complete this form for each participating company on this proposal.

To: Cape Light Compact

Pursuant to M.G.L. ch. 62C, § 49A, I certify under the penalties of perjury that the undersigned offeror, to the best of his/her knowledge and belief, has filed all state tax returns and paid all state taxes required under law.

Social Security Number or Federal Identification Number

Signature of Individual or Officer

Date

Name of Corporation

6.4 ACCEPTANCE OF CONTRACT TERMS

Each Respondent in its Response shall agree to conform to the terms and conditions of each of the Contracts. Any proposed amendments to the Contracts shall be specifically identified and explained in the Response.

6.5 PROFILE OF EXISTING STREET LIGHT FACILITIES

An inventory list of route/pole no., address, lumens and type is available to DCAM Certified providers upon request. It is possible that additional Facilities, including those Participating Municipalities identified as a Phase II participant, which were not included in this list may be added later at the discretion of each Municipality. The final list of Facilities to be included in the EMS & O&M Contracts will be stipulated in the Technical Street Light IGA Report and may be negotiated individually with each Municipality and reviewed and approved by MA DOER.

| Appendix 6.5 - Profile of Existing Street Light Facilities | | Type: Watts-Lumens | | | | | | | | | | | | | | TOTALS | | |
|--|--|--------------------------|-------------|--------------|-------------|-------------|------------|-------------|-------------|--------------|---------------|--------------|----------------|---------------|---------------|-----------|---------------|---------------|
| | | INC-100-1000 | GH-100-1100 | MA-100-3500 | HP-500-4000 | MH-100-5100 | HP-70-5800 | MA-316-8500 | HP-510-9500 | MA-3100-9500 | MA-3100-12100 | HP-510-16000 | MA-1000-121500 | HP-5400-17500 | MA-1000-17500 | | HP-5500-50000 | MA-1000-50000 |
| Participating Town or Fire District | Key: INC- Incandescent; CFL- Compact Fluorescent; MV- Mercury Vapor; HPS- Sodium Vapor; MH- Metal Halide; HLD- Flood | | | | | | | | | | | | | | | | | |
| | | Barnstable Fire District | | | | 101 | 25 | 2 | 10 | 3 | | | | | | | | |
| Bourne | | | 1,072 | 69 | 27 | 11 | 35 | 1 | | | | | | | | | | 1,215 |
| Brewster | | | 76 | 14 | 7 | 8 | | | | | | | | | | | | 106 |
| Chatham | | | 456 | 56 | 48 | 33 | | | | | | | | | | | | 593 |
| Chilmark | | | | | | | | | | | | | | | | | | - |
| Centerville, Osterville, Marston Mills Fire District | | | | | | | | | | | | | | | | | | - |
| Coduit Fire District | | | 261 | 10 | 12 | 20 | | | | | | | | | | | | 303 |
| Dennis | | | 1,869 | 262 | 53 | 29 | | | | | | | | | | | | 2,232 |
| Edgartown | | | 6 | 12 | 1 | 2 | | | | | | | | | | | | 297 |
| Falmouth | 3 | 203 | 2,314 | 53 | 99 | 32 | | | | | | | | | | | | 2,705 |
| Harwich | 2 | 10 | 1,180 | 58 | 33 | 1 | 44 | | | | | | | | | | | 1,395 |
| Hyannis Fire District | | | 389 | 24 | 144 | 257 | | | | | | | | | | | | 1,855 |
| Mashpee | 1 | 22 | 322 | 31 | 5 | 31 | 2 | 2 | | | | | | | | | | 580 |
| Oak Bluffs | | | 417 | 8 | 53 | 12 | | | | | | | | | | | | 492 |
| Orleans | | | 172 | 89 | 34 | 9 | | | | | | | | | | | | 307 |
| Provincetown | | | 31 | 195 | 196 | 9 | | | | | | | | | | | | 436 |
| Sandwich | | | 168 | 50 | 12 | 1 | 31 | 4 | | | | | | | | | | 271 |
| Tisbury | | | | | | | | | | | | | | | | | | - |
| Truro | | | 23 | 5 | 6 | 6 | | | | | | | | | | | | 40 |
| Wellfleet | | | 5 | 155 | 74 | 29 | 1 | | | | | | | | | | | 264 |
| West Barnstable Fire District | | | 88 | 3 | | | | | | | | | | | | | | 91 |
| West Tisbury | | | | | | | | | | | | | | | | | | - |
| Yarmouth | | | 1,770 | 149 | 44 | 122 | | | | | | | | | | | | 2,098 |
| TOTALS | 6 | 203 | 268 | 2,220 | 6 | 959 | 4 | 693 | 3 | 6 | 8 | 154 | 33 | 16 | 2 | 76 | 15,421 | |

6.5.1 SPECIAL TERMS AND CONDITIONS

8

Barnstable Fire District
EXHIBIT A

SPECIAL TERMS AND CONDITIONS

Please change out the existing Sodium Vapor to
Comparable lumen output LED lights.

Independence Drive
Pole # 1400/12, 13, 18, 34.

Rte 132 (Tynmouth Rd) & Attucks Ln Intersection
Pole # 150/90

Rte 132 & Shoot & Tyne Hill Rd Intersection
Pole # 150/90

Phinneys Lane & Attucks Ln Intersection
Pole # 918/4 (180/29)

Phinneys Ln Pole # 180A/2 (Kidd's Hill intersection)

Note: EXISTING LED lights, some or all MAY be
changed back to Ordinary fixtures presently
in storage.

Future lighting changes to LED MAY
OCCUR AFTER REVIEW of lower color temp
LEDs to be installed for further DISTRICT
REVIEW

Town of Brewster

8

EXHIBIT A

SPECIAL TERMS AND CONDITIONS

For the Town of Brewster's Participation in the Cape Light Compact's
LED STREET LIGHT RETROFIT FULL CONVERSION PROJECT

The Town of Brewster intends to have the demonstration fixtures that CLC installed at The Brewster Town Office Building and the Fire Station/COA Complex replaced with "warmer color" (more yellow, more closely mimicking the light of an incandescent bulb or the light of a candle) lamps with CCT of 3,500 Kelvin (+/- 500 K) similar to the light emitted from the demo fixture installed in Provincetown on pole #3/1. HOWEVER, we are seeking a fixture that more closely resembles Brewster's existing fixtures in style and we are seeking fixtures that have either a diffusing lens, or shield, that will eliminate the appearance of the individual LEDs and the grid-like pattern of the light that is apparent when looking up at the fixture.

It is the intent of the Town to have all existing streetlights listed on the attached DPRS Detail sheet for Account # 1376-874-0014 replaced with lamps that emit a warmer color light and lamp fixtures that meet the specification/description provided in the above paragraph.

Cotuit Fire District

EXHIBIT A

SPECIAL TERMS AND CONDITIONS

- ① Respectfully Request THAT THE TEST LIGHTS ON Poles 3 Poles # 92-10, 9, 7 AND 6 BE INSTALLED FROM 976 MAIN ST (92-10) TO 737 MAIN (Pole # 80-8) WITH THE SAME BULBS, THIS WOULD INCLUDE Pole # 92-18, 92-14, 92-12, 80-1, 80-4, 80-6, 80-8
- ② THERE HAVE BEEN SOME COMPLAINTS REGARDING THE BRIGHTNESS OF THE LIGHTS IN THE RESIDENTIAL AREAS AND WE WOULD REQUEST LIGHTS THAT ARE LESS BRIGHT THAN THE TEST LIGHTS ON SCHOOL ST AT Poles 80-1, 80-2, 80-3 and 80-4. WE WOULD ALSO REQUEST THE TEST LIGHTS ON SCHOOL ST BE DIMMED OR CHANGED. THIS REQUEST IS FOR ALL LIGHTS IN THE VILLAGE EXCEPT THE ONES LISTED ABOVE FOR MAIN ST LISTED IN ITEM #1 ABOVE
- ③ ON OLD SHORE ROAD THERE IS A LIGHT NEXT TO THE BOAT RAMP THAT SHINES INTO JAMES GOULD'S HOUSE LOCATED AT 24 OLD SHORE RD. THE POLE IS ABOUTING 31 OLD SHORE EAST OF DRIVEWAY AND HAS NO POLE #. WE RESPECTFULLY REQUEST THAT THE LIGHT HAVE A DEFLECTOR INSTALLED TO PREVENT THE LIGHT FROM SHINING INTO THE GOULD RESIDENCE LOCATED AT 24 OLD SHORE RD.

Cotuit Fire District DOES NOT HAVE A DEPT OF PUBLIC WORKS SO ANY QUESTIONS SHOULD BE DIRECTED TO RICHARD BARRY, CHAIRMAN OF PUDERIAL COMMITTEE, AT 774-238-6126 OR EMAIL rickbarr@comcast.net

Town of Edgartown

8

EXHIBIT A

SPECIAL TERMS AND CONDITIONS

Edgartown

Increase light output on Upper Main Street
at the following nine lights, by 50%

| | | |
|---------|------|------|
| Pole #s | 5/55 | 5/48 |
| | 5/54 | 5/47 |
| | 5/52 | 5/46 |
| | 5/51 | 5/45 |
| | 5/50 | |

In the summer of 2011, there was
a serious accident where a vehicle struck a
pedestrian at night. The State Police report cited
low levels of light as a contributing cause of
the accident and recommended that street light intensity
be increased in this area.

Also, install new light on Upper Main St, at
Pole 5/60. (Intersection of West Tibury Rd / Cross Walk / Jail)

Town of Falmouth

8

EXHIBIT A

SPECIAL TERMS AND CONDITIONS

As per decision of the Falmouth Board of Selectmen, all residential area streetlights shall be 3,500 degrees Kelvin unless specific safety concerns exist or where high pedestrian traffic will occur.

In Commercial areas (Main Street, Palmer Ave, Scranton Ave (Main St. to Robbins Road), Woods Hole Road (Depot Ave to Wood Lumber), Brick Kiln Road (at crosswalks), school zones, hospital, street intersections, and where crosswalks exist, the streetlights shall be 5,000 degrees Kelvin.

The Town Engineering Division requests that the final streetlight listing be submitted for review prior to installation.

Hyannis Fire District

EXHIBIT A

SPECIAL TERMS AND CONDITIONS

The Hyannis Fire District has had a discussion with the Barnstable Police Department regarding police details for safety purposes. Fire Chief Harold Brunelle will work in coordination with the Police Department to arrange the necessary details when needed.

Since the Hyannis area is very congested during the business day and even more so during the spring and summer months we strongly suggest that LED light fixture replacement take place in Hyannis at the earliest convenience. This schedule will enable us to work cooperatively with the contractors in providing details.

Town of Provincetown

8

EXHIBIT A

SPECIAL TERMS AND CONDITIONS

**SPECIAL TERMS AND CONDITIONS
TOWN OF PROVINCETOWN**

1. The color level to be between 2500 and 3500 kelvins, but in no case higher than 3500 kelvins
2. The maximum brightness be 5500 Lumens for all fixtures unless specified by the Town Manager in consultation with the Recycling and Renewable Energy Committee on a location by location basis
3. All fixtures shall have a Type II head with factory installed backlight shields

Town of Wellfleet

EXHIBIT A

SPECIAL TERMS AND CONDITIONS – TOWN OF WELFLEET

Light color to be white, preferably 3,500 Kelvin or cooler and in no event warmer than 5,000 Kelvin.

Light fixtures shall be primarily down facing and shielded to prevent direct lighting (light trespass) of adjacent property.

The LED light source should not be visible to drivers, bicyclists and pedestrians unless they are directly under the fixture.

Color rendering index must be 80 or greater. See: <http://www.cmu.edu/rci/images/projects/led-updated-web-report.pdf>

West Barnstable Fire District

8

EXHIBIT A

SPECIAL TERMS AND CONDITIONS

West Barnstable Fire District

1. Streetlights should be designed and installed in such a manner as to minimize glare and light trespass onto residential properties.
2. The streetlights at the following locations should be have an extended arm:
 - a. Pole 102 over 37 (Meetinghouse Way/RT 149 in front of West Parish)
 - b. Pole 250 over 5 ½ (Church Street @ Pine Street)
 - c. Pole 35 over 710 (Main Street/RT 6A @ Parker Road)
 - d. Pole 124 over 1 (Oak Street @ Iyanough Road/RT 132)
 - e. Pole 35 over 739 (Main Street/RT 6A @ Iyanough Road/RT 132)
 - f. Pole 3 over 1 (Main Street/RT 6A @ Iyanough Road/RT 132)

6.6 MINIMUM TECHNICAL SPECIFICATIONS

6.6.1 Warranty & Replacements

The selected Contractor shall provide a minimum ten (10) year warranty for all electronic components including the photocell and drivers (power supplies) and a ten (10) year warranty on finish and materials. Replacement material warranty shall include warranty against defective or non-starting LED source assemblies, and luminaires exhibiting inadequate lumen maintenance at end of warranty period. Finish warranty shall include warranty against failure or substantial deterioration such as blistering, cracking, peeling, chalking, or fading.

The selected Contractor shall be responsible for replacement of all failed products due to warranty issues, to include the labor and materials, shipping of failed materials to supplier for replacement, and maintaining sufficient stock on hand to ensure prompt repairs to failed units. Additionally, the participating Municipalities wish to engage the services of the Contractor under a separate O&M Agreement (see Appendix 6.11 Form of O&M Agreement) for all minor repairs outside of warranty issues to the street lighting system for the full term of the warranty period. Such repairs will require the prior approval of each Municipality. Warranty period shall begin on date of possession. The supplier will provide the site Owner with appropriate signed warranty certificates. The site Owner shall receive certificates prior to final payment.

The selected Contractor shall be required to provide a monthly report on any failures or repairs completed to include the nature of the repair, the date of notice and the date the repair was completed. Such report may be in the form of an online posting accessible to local staff, an electronic report or a written report provided to the Municipalities. The Contractor shall provide a cost-free method (such as a web-based application) for residents to report outages or problems.

6.6.2 Quality Assurance

Before bulk purchase, a participating Municipality may request standard production model luminaire samples identical (including LED package) to product proposed to be installed for inspection. A Municipality may request independent testing of sample luminaires to verify luminaire performance and compliance with the specifications.

After installation, a Municipality may perform field measurements and/or send luminaires off for independent laboratory testing to enforce warranty provisions for lumen maintenance.

6.6.3 Technical Specifications

Luminaires shall conform to the requirements shown in the following tables and must be listed by Design Lights Consortium (for more information, see www.designlights.org). Luminaires furnished

under this contract shall be LED and shall be from the same manufacturer for any wattage/lumens to be furnished.

LED Luminaire Requirements

| | |
|------------------------------------|--|
| Correlated Color Temperature (CCT) | CCT shall be 4,300 +/- 300 nominal CCT. Color shift during L70 period shall be less than 5%. Acceptable LM80 test results must be provided. |
| Color Rendering Index (CRI) | Luminaires shall have a minimum CRI of 70. |
| Off-state Power Consumption | The power draw of the luminaire (included PE or remote control devices) shall not exceed 0.50 (one half) watts when in the off state. |
| On-state Power Consumption | The LM79 test shall exceed 69 lumens per watt at ~700mA, 75 lumens per watt at ~525 mA, and 78 lumens per watt at ~350 mA. |
| Warranty | The warranty shall provide for the full replacement of the entire lamp (LED) system exclusive of lamp post due to any failure for a minimum of ten (10) years. Warranties shall include all labor up to \$50 per unit, materials and equipment necessary to address the deficiency, including field replacement. |
| Operating Environment | Luminaire shall be able to operate normally in temperatures from -20°C to 50°C, and have a documented history of successful trials in a climate similar to that of Boston, Massachusetts. |
| Cooling System | Shall consist of a heat sink with no fans, pumps, or liquids, and shall be tested for heat management with debris to ensure buildup does not degrade heat dissipation such that the light operates outside of its design life performance parameters. |
| Dimensions (Approx.) | For fixtures to be mounted on mast arms longer than 5 feet long, when any single dimension is more than 10 percent greater than the fixture being replaced, a Wind Load analysis, stamped by an appropriately registered Engineer, shall be provided to prove the existing pole can accommodate the Wind Loading of the proposed fixture. |
| Housing | Shall be primarily constructed of metal. Finish shall be gray in color, powder coated and rust resistant. Finish shall have a warranty of not less than 7 years. Fixture shall be self-cleaning. Driver must be mounted internally and be replaceable. Driver must be accessible without tools. All screws shall be stainless steel. Captive screws are needed on any components that require maintenance after installation. No housing parts shall be constructed of polycarbonate (not this does not include optical components but does include all other housing components). Driver and optical systems will be IP rated to not less than 66. Housing must have a rating of 54 (small drain holes on the bottom of the fixture are acceptable) or better and the mounting point must have an installed barrier to restrict entry of birds and bugs. A roadway visible label identifying the luminaire |

| | |
|---|---|
| | type/wattage/lumens shall be proposed. |
| Dark Sky Compliance | Fixtures shall comply with International Dark Sky Association guidelines, and have a BUG rating B1-U1-G1 per IES Addendum TM 15-07. Fixtures shall be fully shielded and installed in such a way that no light is emitted above a horizontal plane running through the lowest part of the fixture. |
| Certification | Entire fixture including internal components, and as a whole unit, shall be UL certified, CSA International certified, or equivalent. |
| Mounting Arm Connection | Cobrahead fixtures shall mount on 1 5/8 to 2 3/8 O.D. horizontal tenon with no more than four 9/16-in hex bolts and two piece clamp with vertical tilt adjustment range of +/- 5%. Effective Projected Area (EPA) of luminaire shall not exceed 1.6 and shall withstand 100 MPH wind gusts when mounted on a standard 6' steel mounting bracket arm without additional reinforcement. |
| PE Cell Receptacle | Luminaires shall have a 3-prong twist-lock photo-control receptacle in accordance with ANSI C136.10 such as the Fischer Dark to Light (DTL). The PE socket shall be able to rotate so that the PE window can be positioned to face the north direction. Photocells will be supplied with units. |
| House Shield | Shall provide option for house side light control, both field installable and manufacturer installed. |
| Experience | Manufacturer of fixture must have shipped a minimum of 5,000 units similar to the ones being sold within the past year and must provide shipping documents including where from and to and contact information. Company must have been in business for not less than ten years and have a financial strength and business history that in the sole opinion of the Awarding Authority indicates their ability to be in business and to honor the warranty through its full term. The Compact reserves the right to require a warranty bond be posted for the full value of the contract. |
| LED Module/Array Requirements | |
| Lumen Depreciation of LED Light Sources | LED module(s)/array(s) shall deliver at least 70% of initial lumens, when installed for a minimum of 70,000 hours. Submit lumen depreciation (operating life) data for each luminaire supported by the LED chip manufacturers' IESNA LM80 test data that directly correlates to luminaire level performance. Submit certified photometric reports per IESNA LM79 from an approved Department of Energy Independent testing laboratory to validate manufacturer's photometric performance claims for each luminaire. |
| Power Factor | Shall have a minimum Power Factor of 0.90 |

| | |
|---|--|
| Input Voltage | Shall be standard for multi voltage input from 120 volts to 277 volts. |
| Max amperage at LED | Shall conform to the following: 1) Step increments on current to the driver: ~350 mA (with option of ~525 mA and ~700 mA) OR 2) Driver adjustment for multi-current input operation: Standard factory for Equivalent Replacement of 70 W HPS and 100 W HPS shall be 350 mA, 525 mA, and 700 mA as delivered from the factory. Adjustment shall not exceed 1000 mA. L70 shall not be below 70,000 for the highest operating forward current OR 3) Fixtures using the smaller chip and operating at lower forward currents or alternate step currents will also be considered so long as the output requirements are met for equivalent light on the roadway. |
| Transient Protection | Per IEEE C.62.41-1991, Class A operation. The line transient shall consist of seven strikes of a 100K HZ ring wave, 6 kV level, for both common mode and differential mode. |
| Operating Temperature | Power Supply shall operate between -20°C and 50°C. |
| Frequency | Output operating frequency must be ≥ 120 Hz (to avoid visible flicker) and input operating frequency of 60 Hz. |
| Interference | Power supplies shall meet FCC 47 CFR Part 15/18 (Consumer Emission Limits). |
| Noise | Power Supply shall have a Class A sound rating per ANSI Standard C63.4. |
| Terminal Block | Shall be capable of #12 to #6 AWG. |
| LED Roadway Application Requirements | |
| Minimum Light Output | The 0.2 fc contour line, measured parallel to the luminaire arm on the street side of the fixture, shall fall within +/- 10 percent from the equivalent fixture selected for each location in the lighting plan. The 0.2 fc contour line, measured parallel to the luminaire arm on the house side of the fixture, shall fall no less than 20 percent nor more than 5 percent from the equivalent fixture selected for each location in the lighting plan. |
| Luminaire Efficacy | Luminaire Light Output (includes fixture efficiency and thermal effects), Luminaire Input Power shall meet DOE Energy Star Criteria. |
| Minimum Luminaire Efficacy | 72 lm/W at 350 mA and 62 lm/W at all operating temperatures and forward currents. |

6.6.4 Referenced Standards

The publications listed below form a part of this specification to the extent referenced. Publications are referenced within the text by their basic designation only.

| |
|---|
| 1. American National Standards Institute (ANSI) |
| i. ANSI C63.4-2001. Standards for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the range of 9kHz to 40GHz |
| ii. ANSI C136.2-2004 (R2009), American National Standard for Roadway and Area Lighting Equipment—Luminaire Voltage Classification |
| iii. ANSI C136.3-2005, American National Standard for Roadway and Area Lighting Equipment—Luminaire Attachments |
| iv. ANSI C136.10-2006, American National Standard for Roadway Lighting Equipment - Locking-Type Photocontrol Devices and Mating Receptacle Physical and Electrical Interchangeability and Testing |
| v. ANSI C136.13-2004, Roadway and Area Lighting Equipment - Metal Brackets for Wood Poles |
| vi. ANSI C136.14-2004, American National Standard for Roadway and Area Lighting Equipment - Elliptically Shaped, Enclosed Side-Mounted Luminaires for Horizontal-Burning High-Intensity Discharge (HID) Lamps |
| vii. ANSI C136.16-2009, American National Standard for Roadway and Area Lighting Equipment—Enclosed Post Top-mounted Luminaires |
| viii. ANSI C136.21-2004, American National Standard for Roadway and Area Lighting Equipment—Vertical Tenons Used with Post Top-mounted Luminaires |
| ix. ANSI C136.25-2009, American National Standard for Roadway and Area Lighting Equipment – Ingress Protection (Resistance to Dust, Solid Objects and Moisture) for Luminaire Enclosures |
| x. ANSI C136.31-2001, American National Standard for Roadway Lighting Equipment – Luminaire Vibration |
| xi. ANSI C136.32-2006, American National Standard for Roadway and area lighting equipment - enclosed setback luminaires and directional floodlights for high-intensity discharge lamps |
| |
| 2. American Society for Testing and Materials International (ASTM) |
| i. ASTM B117-97 – Standard Practice for Operating Salt Spray (Fog) Apparatus |
| ii. ASTM G53 – Standard Practice for Operating Light and Water Exposure Apparatus (Fluorescent UV – Condensation Type) for Exposure of Nonmetallic Materials |
| |
| 3. Illuminating Engineering Society of North America (IESNA) |
| i. DG-4-03, Design Guide for Roadway Lighting Maintenance |
| ii. LM-63-1995. IESNA Established Test Procedure for Equivalence. |
| iii. LM-79-08, IESNA Approved Method for the Electrical and Photometric Measurements of Solid-State Lighting Products |
| iv. LM-80-08, IESNA Approved Method for Measuring Lumen Maintenance of LED Light Sources |
| v. RP-8-00, ANSI / IESNA American National Standard Practice for Roadway Lighting |
| vi. RP-16-05 and addenda, “Nomenclature and Definitions for Illuminating Engineering” |
| vii. TM-3-95, A Discussion of Appendix E - "Classification of Luminaire Lighting Distribution," from ANSI/IESNA RP-8-83 |
| viii. TM-15-07, “Luminaire Classification System for Outdoor Luminaires” |
| ix. TM-15-07 Addendum A, “Backlight, Uplight, and Glare (BUG) Ratings” |
| x. RP-27, “Recommended Practice for Photobiological Safety for Lamps and Lamp Systems” |
| 4. National Electrical Manufacturers Association (NEMA) |

| |
|---|
| i. ANSI/NEMA/ANSI C78.377-2008 – American National Standard for the Chromaticity of Solid State Lighting Products |
| 5. National Fire Protection Association (NFPA) |
| i. NFPA 70 – National Electrical Code (NEC) |
| 6. Underwriters Laboratories (UL) |
| i. UL 1012 Power Units Other Than Class 2 |
| ii. UL 1310 Class 2 Power Units |
| iii. UL 1449, Surge Protective Devices |
| iv. UL 1598, Luminaires |
| v. UL 2108 Low Voltage Lighting Systems |
| vi. UL 8750 Light-Emitting Diode (LED) Light Sources for Use in Lighting Products |
| 7. IP Rating |
| 8. FCC 47 CFR (Consumer Emission Limit) |

6.7 RESPONSE FORMAT TEMPLATE

Respondents are encouraged to provide a response that specifically addresses each of the items as outlined below. The Compact looks favorably upon responses that provide thorough, detailed responses and follow the format as outlined below. The Compact may reject from further consideration any Response that does not follow the format or is deemed non-responsive.

TABLE OF CONTENTS

Statements of Qualifications shall include a table of contents properly indicating the section and page numbers of the information included.

1. CONTRACTOR QUALIFICATIONS DATA

A. Minimum Required Items

1. Proposal completeness and adherence to format. Substantial conformity with the specifications and other conditions set forth in the request for qualifications.
2. References of other energy savings contracts performed by the qualified providers.
3. Department of Capital Asset Management (DCAM) Certificate of Eligibility (DCAM Form CQ7) and Update Statement (DCAM Form CQ3)
4. Quality of the products proposed
5. Methodology of determining energy savings
6. Time specified in the qualifications for the performance of the contract.
7. General reputation and performance capabilities of the qualified providers.

B. Other Required Items

1. Evidence of bond capability of at least five (5) million dollars from a surety company licensed to do business in the Commonwealth and whose name appears on United States Treasury Department Circular 570. Please provide the cost or fee your firm will charge for the performance and payment bonds as a percentage of the construction costs.
2. Form of legal entity and year entity was established.
3. Describe any changes in ownership status over the past ten (10) years.
4. Other entity names, if any.
5. Ultimate parent company, if applicable.
6. Federal Tax Identification Number for Respondent
7. Please submit a detailed financial report prepared in accordance with generally accepted accounting principles (GAAP) reflecting the current (as of the most recent financial statement date) financial condition of the Respondent. Such report must include a balance sheet, income statement and statement of cash flows, along with applicable footnotes, dated concurrently for at least each of the last preceding three years ending on the most recent fiscal quarter such statements were prepared. Public entities or subsidiaries should attach SEC Form 10-K along with, as applicable, detailed unaudited statements for the Submitting Entity. Non-public entities

may attach either unaudited financial statements or copies of tax forms and schedules that are filed with the Internal Revenue Service where applicable.

8. Performance Guarantee. Describe the form of guarantee that the Respondent will be providing in respect of the Project, and its associated cost. If a corporate guarantee backstop by a parent company or credit enhancement by a financial institution is anticipated, please provide a letter from the parent company or financial institution, indicating that such credit enhancement is available, the terms of such credit enhancement and the credit rating of the guarantor.
9. Describe any other factors which would strengthen the credibility of the Respondent's financial capacity to undertake the construction and guarantees proposed in this Response. "Other factors" could include corporate strategies which establish and fund reserves for contingent liabilities accruing from a growing portfolio of performance contracts, escrows, energy hedging, letters of credit or other financial tools. "We have never had to fund a shortfall" is inadequate to strengthen the Respondent's financial credibility.
10. Lawsuits and Disputes. Discuss whether your firm has ever been involved in a lawsuit or dispute regarding a performance contract. If so, please provide all such incidents and describe the circumstances and outcomes of such lawsuit or litigation. Further, please discuss whether your firm has been barred from providing performance contracting or other services in any states.

C. General Reputation and Performance Capabilities

1. Describe the general reputation and performance capabilities of the firm and explain how these characteristics translate to optimizing results for the Compact.
2. Provide the number of years Respondent has been engaged in providing EMSP services.
3. Describe the experience the Respondent has had with municipalities and public school systems, particularly in the Northeast and specifically in Massachusetts. Respondents shall demonstrate by example its experience working in facilities similar to the facilities included in this RFQ. Please list at least five (5) examples of EMSP projects in the Northeast, and if possible, specifically in Massachusetts, which included varying types of mixed-use facilities.
4. Provide the number of projects and aggregate dollar value of EMSP projects implemented by Respondent each year for the past five (5) years, including the value of the guarantees related to such projects and any shortfall in savings related to such projects.
5. Provide the number of full-time personnel employed by the Respondent. Please segment the data, as appropriate, into categories of personnel providing EMSP services, Non-EMSP Operations/Maintenance Services and Non-EMSP Equipment Installation Services.
6. Provide the number of full-time EMSP personnel located in any applicable local or branch office to be utilized for the Compact's project, and the site address of that local or branch office.
7. Discuss any accreditations or pre-qualifications for EMSP work, describing the relevance or importance of such qualifications to the project.

D. Experience and Project References

1. Fully describe five (5) EMSP that Respondent has implemented within the last five (5) years. Matrix of Performance Contracting Projects – Insert in Tab 4 a table summarizing Respondent's performance contracting or related projects and indicate the services performed in connection with each. A table similar to the following would be preferred:

| Project name/ type of property | Yr | Location | Audit | Financ'g | Constr. | Monitor | G'tees | Other |
|-----------------------------------|----|----------|-------|----------|---------|---------|--------|-------|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

2. Identify projects that involve facilities similar in type, size or scope to the Compact's facilities.
3. Identify projects that have been managed by individuals who Respondent anticipates will be assigned to the Project. Discuss the level of technical/economic expertise of the staff. Provide resumes of the project team members and indicate which branch office each project team member is assigned. For each project team personnel, please list the current projects such employee is currently involved with and the status of the project. Please provide an organizational chart.
4. Provide detailed project information for all five (5) including: customer name, project dates, total project cost at proposal stage, total final project cost, projected annual energy and water cost savings from IGA, projected annual operations and maintenance cost savings, actual realized annual cost savings to date, and any annual savings shortfalls. Respondent must also indicate whether the project was completed on schedule and on budget, and if not, explain the reasons for such delay or budget noncompliance.
5. Provide a list of technologies implemented for each of the five (5) reference projects. For each technology, Respondents must provide the specific measurement and verification protocol implemented (FEMP Option A, B, C, D) along with the rationale Respondent used in selecting the specific FEMP Option.
6. Provide references for the Respondent and references for each key person proposed in the submittal to be part of the project team, including the proposed role for each such individual. Please include the names, addresses, email addresses and telephone numbers for reference. It is understood that the Compact may contact any or all of the above references regarding the project and personnel performance as part of the RFQ submittal review process.

E. Investment Grade Audit

1. Describe Respondent's general approach to conducting an IGA. Specifically, what is the process? How will the Compact be involved? Detail the level and depth of the information and resources that will be required of the Compact?
2. Describe Respondent's approach to the technical design of the project including the methodology Respondent normally uses to compute the baseline(s) of energy use, as well as the performance of improvements.
3. Describe the method(s) used to adjust the energy and O&M baseline due to such factors as facility use changes and other changes. Describe factors that would necessitate adjustment.
4. List all procedures, formulas and methodologies including special metering or equipment, which Respondent would use to calculate energy and O&M savings.
5. Does your firm use multiple baselines for different ECMs? If so, please discuss approach.
6. Discuss the frequency of baseline adjustments over the course of the ESMC, define the drivers that influence such adjustments and how frequently such data is collected.
7. Provide an example of a comprehensive IGA developed by Respondent for a project where the specific project team proposed to this RFQ was involved and completed similar work as

contemplated for this project. Provide a sample bound copy of the IGA as an attachment. This IGA must include energy and economic methodologies and engineering approaches.

8. Discuss Respondent's approach to relying on energy and non-energy related operational savings in the savings calculation supported by the guarantee.
9. Discuss Respondent's application of applying a "risk factor" to ECM-specific annual energy savings. Does Respondent's firm guarantee an annual level of savings less than the projected savings? Discuss how this "risk factor" is determined, whether it is ECM specific and if O&M activities contracted to the ESCO (rather than performed by the Compact) has any impact on such "risk factor".
10. Describe the procedure to assign dollar values to the savings. Include energy savings as well as maintenance or capital savings.
11. Provide a detailed schedule and timeline for the IGA from signed IGA Agreement to final IGA Report. Please assume a notice to proceed date for the IGA of September 12, 2013.

F. Installation and Commissioning

1. Describe protocols related to management of critical path schedule to ensure timely completion, including willingness to post liquidated damages for delays and performance shortfalls. Discuss Respondent's project management protocols to ensure schedule adherence.
2. Describe Respondent's reporting and client liaison protocols to be employed throughout the construction process.
3. Describe how Respondent would work with current Compact, Participating Municipalities DPW & Highway personnel to coordinate installation activities. Discuss in detail Respondent's protocols to avoid conflicts with the facilities' operation and use, and Respondent's conflict resolution process.
4. Discuss Respondent's perspective on integrating customer contractors into the ESMC. If desired by the Compact, is Respondent willing to solicit qualifications and expertise from local area contractors provided such contractors meet Respondent's requirements?
5. Describe standards of comfort and functionality that Respondent would propose for light levels, light color temperature, color rendering index, light trespass, glare, etc. in the facilities. Specifically discuss the application of these standards in the municipal environment. Also describe how Respondent anticipates those standards would be maintained throughout the term of the ESMC.
6. Discuss how Respondent will ensure that the Compact is not exposed to "margin pancaking" by using specialty subcontractors (defined as those subcontractors that provide full turnkey services including engineering, design, and installation). Will Respondent reduce its overhead markup on those services provided by specialty subcontractors to mitigate against the margin pancaking issue?
7. Discuss the role Respondent takes in managing subcontractors. Will Respondent oversee all work performed by subcontractors, including any work performed during occupied and unoccupied times?
8. For any design work conducted by third-party experts, please identify whether Respondent takes engineering risk including stamping engineering submittals.
9. Discuss Respondent's approach to commissioning ECMs and describe any differences in commissioning Respondent employs on an ECM basis. Please provide a copy of a commissioning plan previously executed for one of the five (5) reference customers.

10. Discuss Respondent's approach to the timing of commissioning and training with respect to the commencement of the warranty.

G. Methodology of Determining and Guaranteeing Energy Savings

M.G.L. c.25A, §11I requires that methods for monitoring, measurement, and verification of guaranteed energy and water savings shall conform to the most recent Performance Measurement & Verification Protocol (IPMVP) and standards established by the Federal Energy Management Program of the U.S. Department of Energy.

1. Describe in detail the firm's methodology to determine energy savings and explain how this approach will minimize risk and maximize return for the Compact over the course of up to 20 years. Include in the description, the firm's approach to verifying energy savings and addressing changes based on past experience and changes in use of municipal buildings and facilities over time.
2. Discuss Respondent's general approach to identifying the appropriate M&V protocol on an ECM specific basis. Please provide a listing by ECM category of the anticipated FEMP protocol for each ECM.
3. Describe how excess savings is documented, and how Respondent treats excess annual savings. Do excess annual savings accrue to the benefit of the Compact? (Annual savings must stand alone in the year they are realized and cannot be carried over or credited to another year.)
4. How does Respondent treat savings realized during installation? Are those savings included in the guarantee and credited to the project or are those savings treated as excess savings to the Compact?
5. Describe Respondent's standard measurement and verification procedures, including reporting frequency, reconciliation methods and timing.
6. Provide a sample measurement and verification report from one of the five reference projects together with an explanation of how Respondent demonstrated, with respect to such report, whether the guaranteed savings level was met and if not, the mechanics of how the customer would be compensated. Redacted copies protecting confidential information will be accepted.

H. Service and Maintenance and/or Owner Training

In your responses to the following, include a description of Respondent's experience with ensuring that equipment warranties, operation & maintenance records are maintained and the requirements of the performance guarantee for savings is met.

1. Provide detailed information on any proposed training programs for Compact and Participating Municipalities DPW and Highway maintenance personnel and staff.
2. Describe Respondent's capability to provide ongoing operations and maintenance with the Participating Municipalities with in-house personnel and with third party contractors selected by the Compact.
3. Provide the numbers of accessible truck based service and maintenance professionals and describe their level of training and experience.
4. Provide a call-center for reporting street light outages, during regular business hours, seven days per week.
5. Provide a web based application for reporting street light outages.

6. Provide form of reports to be provided, frequency and method of access/delivery of routine and ad hoc reports.
7. State Respondent's general recommendations as to benefits of contracted service of operations and maintenance vs. training of DPW and Highway maintenance personnel.

I. Pricing Structure

1. Describe Respondent's approach and preference to project pricing including: (a) Open Book/Open Book with contracted mark-ups, (b) Open Book/Closed Book/Guaranteed Maximum Price and (c) Closed Book/Guaranteed Maximum Price. Please note that the Compact will determine its final preferred approach.
2. For each of the pricing scenarios above, please discuss the Change Order process Respondent employs, including specifically how the pricing is developed and presented, and the risk controls the Compact should expect.
3. Under a Guaranteed Maximum Price contract, what level (percentage) does your firm include as a contingency to contractually eliminate any Change Orders?
4. Under an ESMC, will Respondent accept a ten percentage hold-back Retainage on all progress payments until final completion?
5. Respondents must complete the chart in Attachment 4 for contracted mark ups. If other categories are to be considered, please provide such additional information. Please also note that mark-ups not included by the Respondent in this response will not be considered in the development of the IGA Report, project development and the ESMC negotiations. ESCOs are encouraged to provide additional detail on mark-up categories as needed.
6. The Compact desires pricing for the IGA Agreement. Provide a schedule of fees for the IGA Report based on a tiered unit cost per street light fixture using the following tiers:
 - a) Under 1,000
 - b) $1,001 \geq 5,000$
 - c) $5,001 \geq 10,000$
 - d) $10,001 \geq 15,000$
 - e) Over 15,001 fixtures
7. Provide a fixed price break up fee for the IGA if the IGA is completed in accordance with the IGA Agreement and the Compact does not proceed with an ESMC. Please provide a fixed price break up fee for each of the tiered levels above.

J. Other Factors

1. Provide specific information regarding experience and expertise with the various types and uses of the facilities under consideration in this Project, including but not limited to the particular needs of commercial, residential and historic neighborhoods. Provide a list of municipal streetlight retrofit projects in Massachusetts for which Respondent has furnished comprehensive services valued at \$500,000 or greater.
2. Describe the services your firm will provide to identify, abate, recycle and otherwise address hazardous materials that may be present in facilities under consideration for this Project. Materials may include but not be limited to asbestos and lead.
3. Describe the type, method, formatting, and frequency of the Project reporting recommended and required. The selected Contractor shall provide access to records and preserve them for a period of six (6) years after final payment.

4. Describe any financing or outside funding options that could be provided by the firm directly or through a third party. The Compact, however, expects the Project will be eligible for 100% energy efficiency incentive for cost-effective measures and reserves the right to secure financing or outside funding from whichever other source(s) the Compact determines is in its best interest.
5. Describe all potential funding sources that could be applied to any or all potential energy management services, including the firm's experience(s) in securing such funding, and describe any new sources of funding that may have recently become available but that the respondent has not yet had experience with.

K. Completeness

The Compact will review each Response prior to the selection process for completeness and adherence to format. A Response will be considered complete if all requested sections and information are included in the proper order.

L. Final Decisions

The decision of the Compact regarding the selection of a qualified provider shall be final and, to the fullest extent allowed by law, shall not be subject to appeal except on the grounds of fraud or collusion.

6.8 RESPONSE EVALUATION FORM

Respondent Name: _____

Date: _____

To determine the most advantageous response, the Compact will evaluate each section and sub-section individually for completeness.

Section 1: Minimum Evaluation Criteria

If a response receives a negative "(No)" rating to any requirement in Section 1, it will be deemed non-responsive and given no further consideration.

| | No | Yes |
|---|----|-----|
| 1. Title page | | |
| 2. DCAM Contractor Certification & Update Statement | | |
| 3. Debarment Statement | | |
| 4. Adhered to format and is complete | | |
| 5. Evidence of bond capability | | |
| 6. Form of legal entity | | |
| 7. Changes in ownership | | |
| 8. Other entity names | | |
| 9. Parent company | | |
| 10. Federal Tax Identification Number | | |
| 11. Financial statements | | |
| 12. Form of performance guarantee | | |
| 13. No lawsuits and/or disputes | | |
| 14. References of other EMS projects | | |
| 15. Substantial acceptance of terms of Contracts | | |
| 16. Massachusetts licensed professional engineer | | |

Section 2: Skill and Experience

1= Unacceptable 2= Disadvantageous 3= Advantageous 4= Highly Advantageous

| | | |
|-----|---|--|
| 1. | Project team has extensive record of highly successful performance contracting experience with facilities similar in type, size, and scope. | |
| 2. | Capacity to staff the project team with the requisite skills and expertise throughout the term of the contract. | |
| 3. | Familiarity with using specific measurement and verification protocols (FEMP Option A, B, C, D) to track the performance of ECMs that demonstrates a reasonable balances between risk and cost that is most advantageous to the client. | |
| 4. | History of working smoothly with client staff to collect data necessary for successful completion of the project with the least interruption to staff's other responsibilities. | |
| 5. | Extensive experience in performing Investment Grade Audits (IGAs) including establishing energy use baselines and baseline adjustments, identifying opportunities, estimating performance of improvements, and proposing reasonable M&V strategies. | |
| 6. | Shows commitment to completing projects on time and to expected level of performance. | |
| 7. | History of establishing good working relationships with clients throughout the whole project including the audit, installation, and M&V phases. | |
| 8. | Protocols used for working with subcontractors resulted in smooth, timely, and full completion of past projects at fair and equitable levels of cost and risk to the client. | |
| 9. | Level of experience and understanding of M&V, including annual savings reconciliation and payment of shortfalls that has demonstrably minimized risk and maximized return for past clients. | |
| 10. | History of developing a balance of contracted services and operations & maintenance work that minimized clients costs, maximized the use of resources already available to the client, and produced quality service and maintenance programs over the term of the contract. | |
| 11. | History of identifying creative opportunities to employ energy efficiency solutions to the client's advantage. | |
| 12. | History of working with clients to identify pricing structures that minimizes risk and maximizes return for the client. | |

13. History of understanding client's goals and developing effective strategies to achieve them.

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14. Demonstrates good project execution & commissioning practices.

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Section 3: Comparative Evaluation Criteria

| RATING CATEGORY | WEIGHT |
|--|--------|
| <p>Relevant Company Experience</p> <ul style="list-style-type: none"> • Company-wide Experience and Capability • State & Local Experience and Capability • Technical Approach and Capability • Experience of Similar Projects • Record of Satisfactory Performance • Financial Soundness | 10% |
| <p>Project References</p> <ul style="list-style-type: none"> • Five (5) Relevant Complete References • Proven Success with Similar Projects in Massachusetts • Proven Success with Similar Projects in New England • Demonstration of Savings and Project Performance • Proven Success in Meeting Client Goals | 25% |
| <p>Personnel Experience</p> <ul style="list-style-type: none"> • Qualifications of Assigned Management Personnel • Qualifications of Assigned Technical Personnel • Qualifications of Assigned Construction/Site Personnel • Qualifications of Assigned Commissioning Personnel • Qualifications of M&V Staff | 10% |
| <p>Project Approach</p> <ul style="list-style-type: none"> • Comprehensiveness of Overall Proposed Approach • Comprehensiveness of Scoping Audit • Technical and Engineering Approach • Construction Management Approach • Operations and Maintenance Approach • Training Approach • Commissioning Approach | 25% |
| <p>Method for Savings Guarantee/Measurement and Verification</p> <ul style="list-style-type: none"> • Comprehensiveness of Overall Proposed M&V Approach • Demonstration of Achieving Savings Guarantees • Approach to M&V Reporting, Reconciliation and Shortfall Payment • Approach to M&V Leads to Reasonable Balance of Risk and Cost | 15% |
| <p>Cost and Pricing</p> <ul style="list-style-type: none"> • Cost of the IGA • Approach to Pricing (Open/Closed/Hybrid) • Competitiveness of Markups • Margin Pancaking • Approach to Rebates, Incentives and Grants | 15% |

6.9 *Form of Technical Street Light IGA & Project Development Agreement*

6.10 Form of EMS Contract

6.11 Form of O&M Contract

MODEL AUDIT AGREEMENT FOR EMS

6.9 Form of Technical Street Light IGA & Project Development Agreement for Energy Management Services

**MODEL IGA FOR
ENERGY MANAGEMENT SERVICES**

MODEL AUDIT AGREEMENT FOR EMS

This Energy Audit Agreement (“Agreement”) is made and entered into this _____, 20__ by and between _____ (“CONTRACTOR”) and _____ (“Compact”) for the purpose of an investment grade technical Energy Audit (IGA) and project development services to identify economically feasible energy and water conservation measures to improve thermal efficiency, conserve energy and water, reduce waste water (“ECM”), and, when specified, generate electrical power at Compact properties.

This Agreement is entered pursuant to a Request for Proposal or Request for Qualifications (“RFP/RFQ”) issued by the Compact dated _____, 20__, and any changes thereto, and CONTRACTOR’s response to said RFP/RFQ and any revisions thereto (“Response”). A product of this Agreement shall be an energy audit and report, which, together with all related drawings, plans and revisions shall become the specifications for work to be performed by the CONTRACTOR under a separate energy management services contract (“Contract”) to be executed *after* the acceptance by the Compact of the Energy Audit.

This Agreement is coterminous with the Contract unless otherwise agreed to in writing.

1. SERVICES

- A. CONTRACTOR agrees to provide an “IGA” for the projects at the facility in accordance with Exhibit A: Scope of Audit. The services shall include a detailed energy audit presenting the optimized project including long-term sustainable energy efficiency and infrastructure upgrades commercially acceptable to the Compact
- B. Compact agrees to assist the CONTRACTOR in its performance of the IGA services and provide full and accurate information. The CONTRACTOR will assess the validity of the information provided and confirm or correct the information as needed
- C. In the determination of ECMs, the CONTRACTOR agrees to assume full responsibility to identify all requirements to execute such ECMs.

2. PROVISIONS

A. Price

Within one hundred and twenty (120) days after submission of the Final Energy Audit Report, the Compact will compensate the CONTRACTOR, as payment for the Energy Audit, the sum of _____ dollars (\$), subject to the following conditions:

1. The Energy Audit is accepted by the Compact, and
2. A Contract is not executed between the CONTRACTOR and the Compact.

The compensation provided by this Agreement is subject to the continued availability of the Agreed Price and annual appropriations.

The Compact reserves the right to reject the Energy Audit Report, 1) if the energy or water savings cannot be attained or do not meet the Compact’s terms in the solicitation; 2) if the project does not contain a package of ECMs which, if implemented, will be able to provide the Compact with cash

MODEL AUDIT AGREEMENT FOR EMS

savings sufficient to fund payments of all annual costs and fees associated with the contract, including any annual fees to the CONTRACTORS (less any third-party rebates or incentives or cash payment the Compact may choose to contribute); or, 3) the Compact, upon review of the Energy Audit, finds it deficient or unacceptable, provided CONTRACTOR shall have fifteen (15) business days to revise the Energy Audit to the satisfaction of the Compact.

Analysis will be based on CONTRACTOR or other third-party proposed financing terms over a period not to exceed twenty years or less, with a fixed rate of interest actually available to the Compact.

B. Terms

1. All recommended conservation measures shall meet all current codes including the State Sanitary Code, Plumbing and Fuel Gas Codes, Fire Prevention Regulations, Massachusetts Electrical Code, State Building Code and any other applicable requirements of federal, state, and local government. The CONTRACTOR will not be expected to resolve any existing code violations but shall make a best effort to report to the Authority if any such violations are found.
2. The CONTRACTOR and its subcontractors, employees, and agents shall secure and maintain in force any permits and licenses required by law in furnishing the audit services.
3. The CONTRACTOR shall furnish competent personnel consistent with CONTRACTOR's Response to the RFP/RFQ to assure professional and technical accuracy and to obviate a detailed review by the Authority.
4. The CONTRACTOR shall not specify equipment that will require additional personnel to be hired by the Authority for operation or maintenance. CONTRACTOR, to the maximum extent feasible and consistent with the optimization of conservation measures, shall specify similar or comparable equipment of the same manufacturer at each building and property in order to achieve as much standardization of equipment as possible throughout the Authority.
5. The CONTRACTOR shall explore and report alternative utility rate options such as peak or master metering, commodity purchases or other more favorable rate possibilities and ascertain any needed capital improvements and costs and determine the economic and operating feasibility.
6. The Compact may retain an energy consultant to assist in the technical, financial and commercial management of the audit service. The CONTRACTOR will work collaboratively with the energy consultant as directed and shall provide all necessary documentation, in a form satisfactory to the consultant (such as MS Excel) in support of the review of the services. The CONTRACTOR may require consultant to execute a confidentiality agreement to protect proprietary material or information
7. The CONTRACTOR agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, handicap, marital status, veteran status, age, sexual orientation, or sex.

MODEL AUDIT AGREEMENT FOR EMS

8. The laws of the Commonwealth of Massachusetts shall govern the terms and conditions of this Agreement. If any term, condition, or provision of the Agreement is held invalid, void, or unenforceable, the remaining provisions will continue in full force and effect.

C. Schedule

Within one (1) week of the date of execution of this Agreement, the CONTRACTOR shall submit an audit project schedule with the following milestones:

- 1) Pre-audit review kickoff meeting date;
- 2) Site visit dates;
- 3) Preliminary recommendations and optimization presentation; and,
- 4) Final audit submittal date.

3. PATENT AND COPYRIGHT RESPONSIBILITY

The CONTRACTOR agrees that any material or design specified by the CONTRACTOR or supplied by the CONTRACTOR pursuant to this Agreement shall not knowingly infringe any patent or copyright, and the CONTRACTOR shall be solely responsible for securing any necessary licenses required for patented or copyrighted material utilized by the CONTRACTOR in the performance of the Energy Audit and preparation of the Report

4. OWNERSHIP AND REUSE OF DOCUMENTS

- A. The original of all documents, drawings, calculations, test results, recommendations, technical specifications, renderings, exhibits, models, prints, photographs, or other materials prepared by the CONTRACTOR shall be and remain the property of the customer, provided the CONTRACTOR is compensated under this agreement (the cost of the audit is paid or an EMS contract is reached).
- B. To the extent that use of Intellectual Property is required for the Compact to receive the benefits of the audit services, the CONTRACTOR will grant a perpetual, royalty-free and fully paid, irrevocable license to use such property. Any use by the Compact or its energy consultant without the CONTRACTOR's involvement is prohibited.

5. TERMINATION

- A. The Compact may terminate this Agreement with or without cause upon 10 days written notice. In the event of such termination without cause the Compact shall pay the CONTRACTOR, within 30 days, the full reasonable value of its services (including direct and indirect cost, expenses, overhead, and profit) not to exceed \$_____. Upon receipt of the notice, the CONTRACTOR shall stop all work.
- B. The CONTRACTOR may terminate this Agreement with or without cause upon 30 days written notice. The Compact will not compensate the CONTRACTOR for any services and the CONTRACTOR is not obligated to provide the Compact with any audit services.

MODEL AUDIT AGREEMENT FOR EMS

- C. If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement in a timely manner and with such diligence as will ensure its completion within the time specified in this contract, the Compact shall notify the CONTRACTOR in writing of the non-performance, and if not promptly corrected within 15 days, the Agreement will terminate.
- D. If after notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued.

6. LIABILITY AND INDEMNIFICATION

- A. The CONTRACTOR hereby assumes the entire responsibility and liability for injury to or death of any person and for property damage caused by neglect on the part of the CONTRACTOR or any of the CONTRACTOR's subcontractors, consultants, agents or anyone directly or indirectly employed by any one of them whose acts may be answerable. Such liability shall not extend to injuries or death caused by neglect on the part of the Compact. The CONTRACTOR is responsible for any property damage resulting from neglect, misconduct, non-execution of the work, defective work or materials in the execution of the audit.
- B. The CONTRACTOR agrees to indemnify and hold harmless the Compact, including its agents, employees, and representatives against claims, damages, losses, and expenses (including attorney fees) caused by performance of the work. The indemnification shall not be limited on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or subcontractor under the Worker's Compensation Acts, disability benefit acts or other employee benefit acts.
- C. The Compact shall not transfer the audit report to others, use the report, or permit the report to be used for any other project or purpose.
- D. The failure of the Compact or the CONTRACTOR to seek redress for violation of, or to insist upon, the strict performance of any terms or condition of this Agreement shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent act from constituting a violation of such term or condition.

7. CORI CLEARANCE REQUIREMENTS

In accordance with M.G.L. c.71, §38R, the Compact may request and obtain all available criminal offender information ("CORI") from the Criminal History Systems Board of any contractor, subcontractor, agent, employee, or consultant who may have direct contact with children. The CONTRACTOR shall require all individuals involved in the provision of audit services to complete and sign a Request Form to obtain CORI.

MODEL AUDIT AGREEMENT FOR EMS

8. ENTIRE AGREEMENT

This Agreement, the CONTRACTOR proposal, and any Exhibits attached constitute the entire agreement among the parties and may be amended only by a written amendment executed by both parties. In the event of any conflict between this Agreement and any attachments or referenced documents, this Agreement shall control.

THIS AGREEMENT IS ENTERED INTO THIS _____

[CONTRACTOR]

[MUNICIPALITY]

By: _____

by: _____

Title: _____

Title: _____

Date _____

Date _____

[MUNICIPAL AGENCY]

By _____

Title _____

Date _____

Approved as to Form:

Office of General Counsel

MODEL AUDIT AGREEMENT FOR EMS

EXHIBIT A: SCOPE OF WORK

The purpose of the IGA is to provide an investment-grade audit that quantifies the size, scope, payback, and firm cost for each ECM that may be funded and/or financed through the Contract. Execution and approval by the Compact of this Agreement shall serve as a Notice to Proceed. The CONTRACTOR shall commence preparation of the Energy Audit in sufficient time to meet the following schedule:

| | |
|-----------------------------------|--------------------------------------|
| Site visits | As needed and scheduled with Compact |
| Draft Energy Audit submitted | |
| Authority review draft | |
| Energy Audit submitted | |
| Energy Audit accepted or rejected | |

The deadline for an acceptable Energy Audit shall be no later than **4:00 PM**, on _____, **20__**. After this date, the Compact may terminate this Agreement upon written notice to CONTRACTOR, and all drafts, plans, materials, calculations, specifications and draft Energy Audits may be retained by the Authority as liquidated damages.

1. GENERAL SCOPE

The CONTRACTOR will:

- A. Conduct and report on detailed site surveys of all property listed in RFP/RFQ Facility Profile, including all utilities identified for conservation measures and all energy and water systems and identify the size, scope and payback of energy conservation measures by a documented analysis of various conservation opportunities.
- B. Inspect a random sampling of items (e.g. toilets, lamps, or other equipment) in sufficient detail to ensure a statistical level of confidence to guarantee the capital cost and performance of the work. CONTRACTOR shall utilize all available resources such as construction documents, equipment manuals, maintenance records, and interviews of persons familiar with each property and its operations.
- C. Examine all utility data to check for accuracy against actual bills and data printouts in order to confirm that baseline data is accurate & complete; document baseline and projected utility data for use in the performance guarantee of the Contract. The accuracy of the baseline consumption, savings projections and capital budget are of the essence of this Agreement and the subsequent Contract.
- D. Present a thorough description of each recommended conservation measure including, but not limited to, conceptual summary, equipment and material specifications, plans, schematics or detail sketches as appropriate, cost, useful life, savings in utility consumption and expense, maintenance and operating expenses, assurances that the original design performance shall be maintained throughout the useful life of the equipment and systems installed, monitoring requirements, impact, if any, of each measure on the buildings, other building systems and occupants, and payback. This information shall be prepared consistent

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with the RFP/RFQ and with Facility Profile.

- E. Summarize any conservation measures that are rejected and state the reasons for rejection. The CONTRACTOR shall be prepared to provide backup data, calculations and other information as requested by the Authority but need not include this detail in the Energy Audit.
- F. Prepare a detailed operational plan showing the sequence of operations for the work to be performed.
- G. Prepare sufficient design, plans, equipment, material and other detail suitable as specifications for work to be performed under the subsequent Contract, and,

2. GUARANTEED SAVINGS CALCULATIONS

- A. Annual guaranteed energy and cost savings is required for the entire financing term. The guarantee is based on cost savings attributable to all energy saving measures, and must equal or exceed all project costs each year during the contract period. Annual project costs include debt service, CONTRACTOR fees, maintenance services, monitoring services, and other services.
- B. Excess savings or annual cost savings beyond the guaranteed minimum savings will be retained by Compact, and will not be allocated to shortfalls in other years.
- C. The annual savings for all measures must be estimated for each year during the contract period.

3. ALLOWABLE COST AND SAVINGS FACTORS

A. Allowable payment sources:

- 1) Energy cost savings.
- 2) Material/commodity savings, including scheduled replacement of parts.
- 3) Outside labor cost savings, including maintenance contracts. Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented.

B. Negotiable payment sources:

- 1) Offset of Compact future capital cost
- 2) Outside incentive funds (energy efficiency incentives, grants, etc.)
- 3) Escalation rates for natural gas, electricity, water and material/commodity cost savings. These are rates to be used in cash flow projections for project development purposes. *NOTE: Use*

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historical data and/or federal government guidelines on utility escalation rates to ensure reasonableness.

- 4) Interest rates (municipal tax-exempt rates for public institutions)
- 5) Compact cash outlay (at Compact's sole discretion)

The markup costs presented in Exhibit B will be used in the Technical Energy Audit and subsequent Contract.

4. EXISTING CONDITIONS

The CONTRACTOR will document the existing conditions of the facilities, as applicable, including the following information itemized for each building included in the project:

- A. Building physical condition;
- B. Hours of use or occupancy;
- C. Square footage by facility including area of conditioned space; area of unconditioned space;
- D. Inventory of energy consuming equipment or systems;
- E. Energy consuming equipment operating conditions and loads;
- F. Standards of service and comfort observed (e.g. light levels, ventilation, and temperatures);
- G. Utility company invoices;
- H. Current practices that unnecessarily increase energy use or impact baseline;
- I. Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels);
- J. Operating engineer logs, maintenance work orders, etc., as available;
- K. Records of maintenance expenditures on energy-using equipment, including service contracts;
- L. Description of energy management procedures utilized on the premises;
- M. Description of any energy-related improvements made or currently being implemented;
- N. Description of any changes in the structure of the facility or energy-using or water-using equipment;
- O. Description of future plans regarding building modifications or equipment modifications and replacements;

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- P. Original construction submittals and factory data (specifications, pump curves, etc.), as available;

The Compact agrees to work diligently to furnish the CONTRACTOR accurate and complete data and information as available. Where information is not available the CONTRACTOR will make a diligent effort to collect such information through the facility inspection, staff interviews, and utility companies.

The CONTRACTOR agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

5. FACILITY INSPECTIONS

- A. Interview the facility manager, maintenance staff, and occupants of each facility, as applicable, regarding:

- 1) Facility operation, including energy management procedures;
- 2) Equipment maintenance problems;
- 3) Comfort problems and requirements;
- 4) Equipment reliability;
- 5) Projected equipment needs;
- 6) Occupancy and use schedules for the facility and specific equipment; and,
- 7) Facility improvements past and planned.

- B. Survey major energy-using equipment, including;

- 1) Street Lighting ();

- C. Perform "late-night" surveys outside of normal business hours or on weekends to confirm facility performance, if deemed necessary.

- D. Develop a preliminary list of potential energy saving measures, with consideration of the following for each system:

- 1) Comfort and maintenance problems;
- 2) Energy use, loads, proper sizing, efficiencies and hours of operation;
- 3) Current operating condition;

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- 4) Remaining useful life;
- 5) Feasibility of system replacement;
- 6) Hazardous materials and other environmental concerns;
- 7) Compact's future plans for equipment replacement;
- 8) Facility operation and maintenance procedures that could be affected; and,

The Compact will allow the CONTRACTOR reasonable access to facility staff to ensure understanding of existing systems and opportunities. The CONTRACTOR will work diligently to assess validity of information provided and confirm or correct the information as needed.

6. ESTABLISH BASELINE CONSUMPTION

- A. The CONTRACTOR will establish base year consumption by examining utility bills for the past three years for electricity, gas, steam, water, etc. Present base year consumption in terms of energy units (kWh, kW, CCF, Therms, gallons, or other units used in bills), in terms of dollars, and in terms of dollars per square foot. Describe the process used to determine the base year (averaging, selecting most representative contiguous 12 months, etc.). Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the base year representation. The CONTRACTOR will account for periods of time when equipment was broken or malfunctioning in calculating the base year.
- B. The CONTRACTOR will estimate loading, usage and/or hours of operation for all major end uses of total facility consumption including, but not limited to:
 - 1) Street Lighting

Where loading or usage are highly uncertain (including variable loads such as cooling), the CONTRACTOR will use its best judgment, spot measurements or short-term monitoring. The CONTRACTOR should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

- C. The CONTRACTOR will reconcile annual end-use estimated consumption with the annual base year consumption. This reconciliation will place reasonable "real-world" limits on potential savings.
- D. The CONTRACTOR will propose adjustments to the baseline for energy and water saving measures that will be implemented in the future.

7. DEVELOP PRELIMINARY AUDIT ANALYSIS

- A. List all potential opportunities, whether cost-effective or not;

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- B. Identify measures that seem likely to be cost effective and therefore warrant detailed analysis. Present ECM's in the order that interactions are considered;
- C. For each measure, prepare a preliminary estimate of energy cost savings including description of analysis methodology, supporting calculations and assumptions used to estimate savings.

Present preliminary findings prior to thorough analysis. Describe how the projected project economics meet the Compact's terms for completing the Technical Energy Audit and Contract. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an energy performance contract. Develop a list of recommended measures for further analysis. The Compact shall have the option to reject calculations of savings, potential savings allowed, or project recommendations.

8. CONDUCT COMPREHENSIVE DETAILED ENERGY AUDIT ANALYSIS

In analyzing the savings and costs for each energy and water measure, the CONTRACTOR will:

- A. Follow the engineering principle(s) and methodologies to calculate energy and water savings consistent with ASHRAE or other nationally-recognized authority;
- B. Consider technologies in a comprehensive approach including, but not limited to: lighting systems as requested by the Compact;
- C. Utilize assumptions, projections, and baselines that best represent the true value of future energy or operational savings, including: accurate marginal costs for each unit of savings at the time the audit is performed; documentation of material and labor cost savings; adjustments to the baseline to reflect current conditions at the facility; and, calculations that account for the interactive effects of the recommended measures;
- D. Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use; and,
- E. Develop a preliminary measurement and verification plan for each measure based on the Compact's preference.

9. PREPARE A DRAFT TECHNICAL ENERGY AUDIT REPORT.

To provide an engineering and economic basis for negotiating a Contract between the Compact and the CONTRACTOR, the report shall include:

D. Overview

- 1) Summary table of recommended energy saving measures, with itemization for each measure of total design and construction cost, annual maintenance costs, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life;
- 2) Summary of annual energy use by fuel type and costs of existing or base year condition;

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- 3) Calculation of cost savings expected if all recommended measures are implemented, and total percentage savings of total facility energy cost;
- 4) Description of the existing facility, mechanical and electrical systems;
- 5) Summary description of measures, including estimated costs and savings for each;
- 6) Discussion of measures considered but not investigated in detail;
- 7) Discussion of energy efficiency incentives or other funding and incentive options; and,
- 8) Conclusions and recommendations

E. Facility Profile

- 1) Description of facilities;
- 2) Size of each facility;
- 3) Facility use;
- 4) Occupancy schedule;
- 5) Original construction date;
- 6)
- 7) Controls; and,
- 8) Other major equipment.

F. Base year energy use

- 1) Description and itemization of current billing rates, including;
 - a) Schedules;
 - b) Energy type;
 - c) Native units (kWh, gals, etc.);
 - d) Average price per unit;
 - e) Marginal price per unit, if applicable;
 - f) Effective date of prices; and,
 - g) Monthly listing for rates that vary.
- 2) Summary of all utility bills for all fuel types and water;
- 3) Base year consumption and description of how established;
- 4) Reconciliation of estimated end use consumption (i.e. lighting,) with base year (include discussion of any unusual findings);

G. Full description of each energy and water saving measure including:

- 1) Existing conditions;
- 2) Recommended equipment and how it will function;
- 3) Operation and maintenance procedures affected by installation/implementation;
- 4) The plan for installing or implementing the recommendation;

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- 5) Savings calculations
 - a) Base year energy use and cost;
 - b) Post-retrofit energy use and cost;
 - c) Savings estimates including analysis methodology, supporting calculations and assumptions used;
 - d) Annual savings estimates (the cost savings for all energy saving measures must be estimated for each year during the contract period and savings must be achieved each year, not reported as average annual savings over the term of the contract);
 - e) Percent cost-avoidance projected;
 - f) Description and calculations for any proposed rate changes
 - g) Explanation of how savings interactions between ECMs is calculated;
 - h) Operation and maintenance savings, including detailed calculations and description;
 - i) If using computer simulation, include a short description and state key input data. The Compact will require a hardcopy of printouts and electronic documentation of the analysis conducted; and,
 - j) If using manual calculations, formulas, assumptions and key data shall be stated. The Compact will require a hardcopy of printouts and electronic documentation of the analysis conducted.

- 6) Cost estimates and avoided costs

The CONTRACTOR will provide a detailed scope of the construction work needed, suitable for cost estimating. Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting fixture counts.

- a) Engineering/design costs;
 - b) Contractor/vendor estimates for labor, materials, and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities;
 - c) Permit costs;
 - d) Construction management fees;
 - e) Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.);
 - f) Financing costs; and,
 - g) Avoided costs including energy efficiency program rebates, subsidies, and or third-party aid.

- 7) Other
 - a) Estimate of average useful service life of equipment
 - b) Preliminary commissioning plan
 - c) Impacts that the facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc.; and,
 - d) Compatibility with existing systems.

- 8) Subsidies, and Incentives

Provide a detailed discussion of the CONTRACTOR's plan to secure on behalf of, or in conjunction with the Compact, all available incentives, subsidies and third-party aid for each ECM and the over

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project. Discuss which incentives, subsidies and/or third-party aid the CONTRACTOR will guarantee and whether any additional incentives, subsidies and/or third-party aid will accrue to the benefit of the Compact.

9) Measurement and Verification Plan

Provide a detailed description of the measurement and verification plan (following the Federal Energy Management Measurement and Verification Guidelines) and the approach employed for each ECM to demonstrate realized savings that are sustainable over the useful life of the ECM. The plan shall include definitions of terminology and the methods and procedures for reconciling the verified saving to the guaranteed savings.

10) Financial Summary

Provide a cash flow analysis listing the annual energy, and O&M savings, , and the annual M&V, maintenance, and other costs, any rebates and/or third-party aid, and the net annual cash flow. List interest rate and applicable energy cost escalation rates.

11) Appendices

Complete appendices that document the data used to prepare the analyses, including a description of how data were collected.

H. Optimize IGA

The CONTRACTOR will meet with the Compact and present the technical and economic findings of the IGA. Such meeting will enable the Compact to collaborate on optimizing the ECM selection based on its requirements and preferences. Upon completion of the optimization process, the CONTRACTOR shall update and revise the IGA to reflect the optimized EMS project, including an updated financial summary as described above.

I. ECM Installation Schedule

For each ECM provide a proposed implementation schedule. Include the following milestones:

- 1) Design completed;
- 2) Permits;
- 3) Submittals (plans and specifications);
- 4) Equipment/Material acquisition;
- 5) Mobilization;
- 6) Installation;

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- 7) Clean up;
- 8) Startup/Testing;
- 9) Final inspection
- 10) Post installation submittals; and,
- 11) Training.

J. Prepare Contract Terms

Using the Department of Energy Resources Model Contract, the CONTRACTOR will provide a listing of Contract terms necessary to facilitate Compact approval, including;

- 1) A list of energy conservation measures. Include a list of services that will be provided as related to each cost;
- 2) Expected term of the Contract.
- 3) Analysis of annual cash flow for the Compact during the Contract term;
- 4) Description of how the project will be financed including available interest rates and financing terms, based on interest rates likely available to Institution at this time, and based on a 60-day and 90-day lock option.
- 5) Explanation of how the savings will be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors. Monitoring and verification methods must be consistent with the International Performance Monitoring and Verification Protocol 2000.

Nothing herein obligates the Compact to enter into the Contract.

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Exhibit B: Pricing and Cost

Project cost is the total amount the Compact will pay for the project and CONTRACTOR’s services. Costs must be competitive, reasonable, and consistent with maximum markups and fees. Costs may include but are not limited to: engineering, designing, packaging, procuring, installing (from Technical Energy Audit Report results); performance and payment bond costs; construction management fees; commissioning costs; maintenance fees; monitoring fees; training fees; legal services; overhead and profit; other markups. Responses to this section only will remain proprietary except to fulfill DOER filing requirements.

Maximum rates were established for in the initial response. Propose rates for this specific project that are equal to the stated maximum rates. All other guidelines presented in the RFP/RFQ for markups and fees shall apply.

Table 1: Energy Efficiency Measure Summary

Company Name: _____

Building or Facility Name: _____

(Aggregate data from summary sheets)

| ECM No. | Energy Conservation Measure (ECM) | Electricity Savings (kWh/yr.) | Peak Demand Reduction (kW) | Fuel Savings (include units) | Energy Cost Savings (\$/yr.) | Estimated Measure Cost (\$) from Table 2 | Estimated Life of Measure (years) | Refer to Page(s) |
|---------|-----------------------------------|-------------------------------|----------------------------|------------------------------|------------------------------|--|-----------------------------------|------------------|
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| | | | | | | | | |
| | Totals | | | | | | | |

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**Table 2
Summary Sheet for ECM Number _____**

Building: _____

Name of ECM: _____

1. Description (include quantities, types, sizes, locations, etc.)

a) Existing Conditions: _____

b) Proposed Conditions with ECM: _____

2. Net First Year Energy Savings

| Fuel Type (electric, gas, oil) | Fuel Units (kWh, Therms, CCF, KW, gallons) | First Year Fuel Savings (kWh, Therms, CCF, KW, gallons) | Unit Cost for the Fuel | Cost Savings |
|--------------------------------------|--|---|---------------------------|--------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Totals | | | | |

3. Cost Estimate Summary of Measure

Materials \$ _____

Labor \$ _____

Contingency \$ _____

Other (Specify) \$ _____

Total \$ _____

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- 4. Expected useful life: _____ years.
- 5. The measure interacts with ECM No(s) _____
- 6. The measure impacts ECM No(s) _____
- 6. Impact on standards of service and comfort.

Table 4: Price Formula

For each item, enter the proposed price as a lump sum and as a percentage of construction cost.

| | | | | | |
|------|---|----------|----|---------|------------------------|
| 4.1 | Energy Study Fee | \$ _____ | | | |
| 4.2 | Engineering, Design and Spec Services | \$ _____ | OR | _____ % | % of Construction Cost |
| 4.3 | Project Management Services | \$ _____ | OR | _____ % | % of Construction Cost |
| 4.4 | On-Site Construction Management | \$ _____ | OR | _____ % | % of Construction Cost |
| 4.5 | Commissioning | \$ _____ | OR | _____ % | % of Construction Cost |
| 4.6 | Training | \$ _____ | OR | _____ % | % of Construction Cost |
| 4.7 | Commissioning | \$ _____ | OR | _____ % | % of Construction Cost |
| 4.8 | Interest During Construction | \$ _____ | AT | _____ % | |
| 4.10 | P & P Bond | \$ _____ | OR | _____ % | % of Construction Cost |
| 4.11 | Miscellaneous Fees and Permits | \$ _____ | OR | _____ % | % of Construction Cost |
| 4.12 | Term Financing Interest Rate | | | _____ % | % of Principal (APR) |
| 4.13 | Monitoring, Verification, and Savings Guarantee Total | \$ _____ | OR | _____ % | % of Energy Savings |
| 4.14 | Overhead Profit | | | | |
| 4.15 | | | | | |

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**Table 5
Project Cost**

| | | |
|--|-------|---------|
| Installed Measure Cost | _____ | |
| Energy Study Cost | _____ | |
| Design Services | _____ | |
| Construction/Project Management Services | _____ | |
| General CONTRACTOR Overhead and Profit | _____ | |
| Commissioning and Initial Training | _____ | |
| Interest During Construction | _____ | |
| Bond Fees | _____ | |
| Miscellaneous Fees and Permits | _____ | |
| Other | _____ | Specify |
| | | |
| Less Utility Rebate | _____ | |
| | | |
| TOTAL Project | _____ | |

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**Table 6
Calculation of Cost Savings**

| Year | Annual Energy Cost Savings {A} | Total Payments {B} | Net Savings (C)={A}-{B} |
|-------------|---|-------------------------------|------------------------------------|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |
| 7 | | | |
| 8 | | | |
| 9 | | | |
| 10 | | | |
| Total | | | |

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**Table 7
Payment Schedule and Termination Value**

| Year | Contract Payments | Total Payments |
|-------------|--------------------------|-----------------------|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | | |
| 7 | | |
| 8 | | |
| 9 | | |
| 10 | | |
| Total | | |

| <u>Year</u> | Termination Value | Total Payments from Above | |
|-------------|--------------------------|----------------------------------|---------------|
| | | Date | Amount |
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |
| 7 | | | |
| 8 | | | |

Notes: Enter the date and amount of each payment. Show additional payments on another sheet if necessary. "Termination Value" is the lump sum payment required to buy out of the contract and receive title to all equipment in each year. If this option is not proposed in any year(s), indicate by "NA."

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Form of Energy Audit Report

1. Cover

A. The cover page should provide the following information:

- 1) The words "Energy study for (the facility's name)"
- 2) Name(s) and address(es) of the building(s) analyzed in the study
- 3) Name of the firm producing study
- 4) Date

2. Table of Contents

Provide a table of contents with page numbers and descriptive title for each section, table, exhibit, attachment, etc. Tables, charts, attachments, and exhibits should be listed separately by number, title and page number.

3. Page Numbers and Revisions

Each page should be numbered and dated. Should revisions be requested, a listing of original pages and replacement pages should be provided. Each revised page should indicate at bottom right corner "Revised--date."

4. Executive Summary

Provide a short (one or two page) narrative summary of the project, including discussion of the project's energy savings and financing.

A. The following tables must be included:

- 1) A summary of ECM measures for the project ([Table 1](#));
- 2) A summary of the project cost ([Table 2](#));
- 3) Maintenance services provided by equipment covered, scope, frequency ([Table 3](#));
- 4) A cost savings calculation ([Table 4](#)); and
- 5) A payment schedule ([Table 5](#))

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Exhibit C: Insurance

The CONTRACTOR shall, at all times during the agreement, maintain in full force and effect adequate commercial general liability insurance and property damage insurance, as well as workmen's compensation and employer's liability insurance pursuant to the State insurance requirements as defined below. Before commencing any work under this agreement, the CONTRACTOR shall file with the Compact certificates of insurance evidencing the coverage's as specified below. The certificates shall contain the following express obligation:

This is to certify that the policies of insurance described herein have been issued to the insured for which this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice will be given the certificate holder.

COVERAGE LIMITS OF LIABILITY

| | |
|---------------------------------|--|
| Standard Workers' Compensation: | Statutory |
| Employers' Liability: | \$500,000 |
| Bodily Injury: | \$2,000,000 each occurrence (except automobile) \$4,000,000 aggregate |
| Property Damage: | \$2,000,000 each occurrence (except automobile) \$4,000,000 aggregate |
| Automobile Bodily Injury: | \$2,000,000 each person \$4,000,000 each occurrence |
| Automobile Property Damage | \$2,000,000 each occurrence |
| Excess Umbrella | \$2,000,000 each occurrence |

The Compact shall be named as an additional insured under the liability and automobile insurance. The general liability insurance policy should contain a broad form general liability endorsement. The insurance shall include provisions preventing cancellation without 30 calendar day prior written notice, by certified mail to the Principal Representative

The CONTRACTOR shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from the performance of the services contemplated in this agreement, provided that any such claim, damage, loss or expense is caused by any negligent act, error or omission of the CONTRACTOR, any CONTRACTOR or associate thereof, or anyone directly or indirectly employed by the CONTRACTOR.

[Note to Readers: Yellow highlighted text is DOER's mandatory contract language (modified to conform to contract definitions.)]

**FORM OF
ENERGY MANAGEMENT SERVICES AGREEMENT**

This Energy Management Services Agreement (the "Agreement") is entered into this ___ day of _____, 2013 by and between is by and between Barnstable County, Massachusetts (the "County"), on behalf of the Cape Light Compact as described further below, and [_____] (the "Contractor"). The Contractor and the County may be referred to herein collectively as the "Parties," or either singularly as a "Party."

WHEREAS, pursuant to G. L. c. 40, § 4A, 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 Cape Light Compact (the "Compact");

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 promoting energy efficiency and the reduction of energy bills;

WHEREAS, the Compact is operating an Energy Efficiency Plan approved by the Massachusetts Department of Public Utilities on January 29, 2010, DPU 09-119, for plan years 2010 through 2012;

WHEREAS, the County provides fiscal and administrative services to the Compact, pursuant to an Administrative Services Agreement dated April, 2000, as amended from time to time;

WHEREAS, the County seeks to enter into a contract with the Contractor for energy management services in connection with the energy efficiency programs that the Compact will operate under the Energy Efficiency Plan;

WHEREAS, the Contractor was selected by the Compact pursuant to a Request for Qualifications issued in July of 2013 seeking energy management services pursuant to G.L. c. 25A and operation and maintenance services (the "RFQ");

WHEREAS, the Contractor is experienced in the energy management services field and can provide the Compact with the services required pursuant to this Agreement;

WHEREAS, the County and the Compact have acted and will continue to act as agents for the Participating Municipalities with respect to certain matters pertaining to this EMS Agreement; and

WHEREAS, the Compact and the Participating Municipalities are intended third-party beneficiaries of this Agreement.

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

ARTICLE I - DEFINITIONS

Unless the context indicates otherwise, the capitalized terms set forth below shall have the meanings defined as follows:

“Additional Facilities” means such other equipment and fixtures that the County may purchase after the effective date of the P&S Agreements in connection with its municipal street light system.

“Compact” shall have the meaning set forth in the recitals to this EMS Agreement.

“Contractor” shall have the meaning set forth in the recitals to this EMS Agreement.

“County” shall have the meaning set forth in the recitals to this EMS Agreement.

“ECMs” shall have the meaning as referenced in this EMS Agreement and related IGA Report.

“Facilities” means the FERC Account 373 municipal street lighting facilities and equipment, municipal flood lighting and area lighting facilities and equipment purchased by Participating Municipalities under the P&S Agreements and more particularly described in Exhibit A to the P&S Agreements.

“*Force Majeure*” shall mean acts of God; hurricanes; tornadoes; fires; epidemic; landslides; earthquakes; floods; 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; insurrections; prolonged inability of suppliers to provide essential materials; military action; war, whether or not it is declared; sabotage; riots; civil disturbances; explosions; or any cause or event, not reasonably within the control of the party claiming Force Majeure; provided, however, that Force Majeure shall not include the financial inability of the Vendor, whether or not caused by any of the foregoing factors.

“Good Engineering Practice” means any of the practices, methods and acts that, in the exercise of reasonable judgment in light of the facts known or with the exercise of due diligence should have been known at the time the decision was made, would have been expected to accomplish the desired result in a manner consistent with reliability, safety, environmental protection, expedition, project economics and applicable laws, ordinances, rules and regulations for similar facilities. Good Engineering 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.

“Materials” shall have the meaning set forth in Section xx.

“O&M Agreements” means the Form of O&M Contract identified and described in Appendix 6.11 to the RFQ.

“Participation Agreements” means the Participation Agreements identified and described in Exhibit xx attached hereto.

“Participating Municipalities” means the Compact members who have executed Participation Agreements.

“Permits” means all material authorizations from, permits and licenses issued by, consents and approvals of, filings with, notices from, and registrations with, any and all governmental entities, departments or agencies (including all conditions thereof), which may be required to be obtained, from time to time, for or in connection with the operation, maintenance, possession or ownership of a municipal streetlight system.

“P&S Agreements” means the P&S Agreements identified and described in Exhibit xx attached hereto.

“RFQ” shall have the meaning set forth in the recitals to this EMS Agreement.

“Scope of Work” means the energy management services and other services, based upon the Request for Proposals and the final submission of the Contractor, which is attached as Exhibit xx hereto and made a part hereof.

For all capitalized terms not specifically defined in this EMS Agreement, the definitions of such terms contained in the O&M Agreements shall apply and shall be incorporated by reference herein.

ARTICLE II - TERM

Subject to the other provisions hereof, this EMS Agreement shall be effective immediately upon execution by both Parties and shall remain in force until the Scope of Work is completed. **Within two months of execution of this Agreement, the Contractor will begin**

implementation of preliminary operations and procedures to save energy at the Facilities. [DOER – L].

ARTICLE III – SCOPE OF WORK

A. Services. Subject to and without limiting the provisions of Article IV(A) below, the Contractor shall perform the required energy services set forth in the Scope of Work. The Contractor shall perform such duties and obligations for the compensation set forth in Article VI below and without any additional cost or expense to the County.

B. Changes and Extra Work. The County may at any time or from time to time during the progress of the Scope of Work require a deviation from, or an addition to the Scope of Work. In addition, the Contractor may submit a written change order request to [specify representative]. No change will be effective unless in writing and approved by both parties. No such change shall in any manner impair or void this EMS Agreement. The value of any change required by the County shall be determined by agreement of the County and the Contractor. If the parties cannot agree on the amount of such adjustment within ten (10) days from the date that the change is authorized or ordered by the County, the Contractor shall make the change and the dispute will be settled by later agreement or dispute resolution in accordance with Article XI(F) below. The Contractor shall make no claims for extra work unless the same shall be fully agreed upon in writing by the County prior to performance of any extra work. If the Contractor performs extra work without first obtaining a written order from the County, such action is to be construed as a waiver of any and all claims to extra payment.

C. Permits. The Contractor shall, at its own expense, prepare and file applications for all Permits that may be required in connection with the Scope of Work and diligently prosecute such applications with a view to obtaining all Permits that may be so required, from time to time. The Contractor shall, at its own expense, maintain all such Permits, whether new or existing, in full force and effect without interruption and shall not take or omit to take (or permit the taking or omission of) any action that would result in any restriction or encumbrance on, or any violation of, any Permit. Notwithstanding the foregoing two sentences, the County shall bear all expenses directly incurred by the Contractor in fulfilling its obligation to obtain and maintain any local Permits required by the County or any local agency or commission, including expenses related to obtaining necessary police details. To the extent legally required, legally allowed and/or requested by the County, all Permits shall be obtained and maintained (solely or jointly) in the name of the County and current copies thereof shall be provided to the County. A breach of this Article III(C) by the Contractor shall be deemed to be a material default for the purposes of Article IX.

D. Waste Materials. As part of its responsibilities under this EMS Agreement, the Contractor shall be responsible for, and shall bear all costs and expenses incurred in connection with, the disposal of any and all waste material, including, but not limited to, hazardous material, produced or collected in connection with operation and maintenance of the Facilities and

Additional Facilities. Such disposal shall at all times be in accordance with applicable laws and regulations.

E. Substitute Materials. The Compact shall determine whether the material or equipment installed is equal to those specified in the RFQ. In the event an article of any class or materials or equipment specified by the trade name of any particular patentee, manufacturer, or dealer, or by reference to the catalog of any such article or articles or materials is to be substituted, the replacement must be equal in quality, finish and durability and equally as serviceable for the purpose for which it is or they are intended as the originally specified article. The Compact shall make the decision as to whether the materials or equipment offered are equal to those specified, and the decision of the Compact shall be final. [DOER – B]

F. Rights of Way. The necessary rights-of-way for any construction to be done across or in private property (if any) will be obtained by the County or Compact. The Contractor shall take due and proper precautions against any injury to adjacent structures and shall hold itself strictly within the rights secured to it by _____ in prosecuting the work on private property. [DOER –D]

G. Approvals. The Compact retains ultimate approval over scope of work, choice of subcontractor, equipment installed, and end use conditions. [DOER – M]

H. Proceeding with Work. No work can proceed without the prior written consent of the Compact. However, such approval shall not be unreasonably withheld. [DOER – M]

I. Modifications to Facilities. The Compact will review all proposed modifications to the building and systems, and must approve of them before commencement of any work. Such approval shall not be unreasonably withheld. [DOER –N]

J. Access to Work. The Compact must have access to inspect both the work conducted at project site(s) during construction and operations phases, and to the books, records, and other compilations of data, which pertain to the performance of the provisions and requirements of this agreement. Records shall be kept on a generally recognized accounting basis, and calculations kept on file in legible form. [DOER –Q]

K. Operation of Equipment. The Contractor will maintain and operate the equipment in a manner that will provide the accepted standards of service and comfort. [DOER – J]

L. Walk-Through Survey. Prior to contract termination, the Contractor will be obligated to perform a walk-through survey of the facility and to prepare an assessment of the condition of the equipment installed as part of the project. The Compact retains the right to hire an independent, certified professional engineer to prepare an assessment of the condition of the equipment installed as part of the contract. [DOER –R]

M. Operation and Maintenance Services. [cross-reference O&M Agreements.]

ARTICLE IV – STANDARDS OF PERFORMANCE

A. Compliance with Laws, Agreements, Etc. The Contractor's performance of its obligations under this EMS Agreement shall be in material compliance with (i) all applicable laws, ordinances, rules and regulations, (ii) any and all applicable orders, decrees, judgments and Permits of any governmental or judicial authority, (iii) the Scope of Work, (iv) Good Engineering Practice and (v) the applicable provisions of the P&S Agreement and the License Agreement. In addition, the Contractor shall not cause, by its actions or failures to act under or in connection with this EMS Agreement, the County or the County's municipal street light system to be in violation of any of the foregoing.

B. Compliance with Standards of Professional Care. The Contractor shall fulfill its obligations hereunder in accordance with Good Engineering Practice and other generally accepted standards of professional care, skill and competence in the field(s) in which it is providing services to the County. The Contractor warrants and represents that it is and shall remain properly licensed in Barnstable County and/or Dukes County, as the case may be. All services of the Contractor shall be performed by qualified personnel. All services, with the exception of the replacement of bulbs and or photocells, shall be performed by licensed electricians or under the direct supervision of a licensed electrician.

C. Performance of Work. The Contractor and its personnel shall perform one hundred percent (100%) of all the services required under this EMS Agreement, except as may be required due to emergency circumstances or as otherwise approved by the County pursuant to this EMS Agreement.

D. Removal of Contractor Personnel. The County may require the Contractor to relieve any of the Contractor's personnel or subcontractors from any further work under this EMS Agreement if, in the County's sole opinion, (i) the individual or subcontractor does not perform at the applicable skill level, as described in the RFQ, the Contractor's responsive proposal and this EMS Agreement, (ii) the individual or subcontractor does not deliver work that conforms to the performance standards stated in the RFQ and the Contractor's proposal an this EMS Agreement, or (iii) personality conflicts with Town personnel hinder effective progress on the services for which the individual or subcontractor is responsible. Employees of the Contractor shall exhibit the utmost courtesy when dealing with the public and or Town personnel. Repeated receipt of complaints shall entitle, but not obligate, the County to require relief under this Article IV(D) or terminate this EMS Agreement for a material default pursuant to Article IX below.

E. No Liens. In connection with the performance of its duties hereunder, the Contractor shall not (i) create, or suffer the creation of, any lien or encumbrance on the Facilities or Additional Facilities, or any interest in or portion thereof, or (ii) take any action that would otherwise cause the County to cease to have good and marketable title to the Facilities or Additional Facilities.

F. The County's Right to Cure the Contractor's Defaults. If the Contractor shall default or neglect to carry out any of its obligations under this EMS Agreement and shall fail

within fifteen (15) days after receipt of written notice from the County to the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the County may, without prejudice to any other remedy or right it may have, make good such deficiencies. In such case, the cost of correcting such deficiencies shall be paid by the Contractor to the County promptly after receipt of an invoice therefor.

G. Time; Coordination; Etc.. The Contractor shall adhere to all time requirements and schedules described in the Scope of Work or elsewhere in this EMS Agreement. The Contractor shall perform its services as expeditiously as is consistent with the standards of professional skill and care required hereby. The Contractor also shall perform its services in coordination with the operations of the County and with any party engaged by the County in connection with this EMS Agreement. It shall be the obligation of the Contractor to request any information necessary for the performance of its services.

H. Preference to Veterans and Citizens; Rate of Wages. The Contractor is required to pay minimum wage rates for all employees involved in providing contract services, as determined by the Division of Occupational Safety. Wage rates are valid only for 90 days from date of issue. Further inquiry and clarification of prevailing wage laws can be obtained from the Massachusetts Division of Occupational Safety. [DOER – O] The Contractor shall comply with the requirements of G.L. c. 149, §§26-27H, to the extent that they apply to the work performed hereunder, as well as any and all other applicable local, state and federal wage laws. When work is performed under prevailing wage rates, the Contractor is required to submit Statements of Compliance and certified payrolls using appropriate state forms or, if a federal project, U.S. Department of Labor Form WH-347 and WH-348 (or similar), for each payroll period. If these forms are not submitted with each invoice, payment will not be made. The Contractor shall keep an accurate record showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed by it in connection with such prevailing wage work, and such records shall be preserved at least two (2) years from the date of payment.

I. Additional DOER Contract Requirements. The Contractor shall obey and abide by all laws of the Commonwealth of Massachusetts relating to the employment of labor and [DOER – E] and all ordinances and requirements of the Compact regulating or applying to public improvements. All work shall meet the minimum standards of ASHRAE and the Massachusetts Building Code. [DOER – P] The Contractor shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, including applicable licensing requirements, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of the Compact relative to the premises. The Contractor shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder. [DOER –U]

J. Compliance with P&S Agreements and License Agreements. [Incorporate by reference and or cross-reference O&M Agreements if necessary.]

ARTICLE V – CONTRACTOR’S CERTIFICATIONS

The Contractor hereby certifies and warrants as follows:

A. The Contractor has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this EMS Agreement.

B. No subcontractor of the Contractor has given, offered or agreed to give any gift, contribution or offer of employment to the Contractor or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the subcontractor of a subcontract by the Contractor.

C. No person, corporation or other entity, other than a *bona fide* full time employee of the Contractor, was retained or hired by the Contractor to solicit for or in any way assist the Contractor in obtaining this EMS Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this EMS Agreement to the Contractor.

D. To the best of the Contractor’s knowledge, none of the documents or other written information furnished by or on behalf of the Contractor to the County or the Compact pursuant to the RFQ, this EMS Agreement, the P&S Agreement or the License Agreement contain any untrue statement of a material fact or omit 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.

E. The Contractor is not aware of any fact peculiar to the Contractor that materially adversely affects or in the future could (so far as the Contractor can now reasonably foresee) materially adversely affect the County’s operation of its municipal street light system and that has not been set forth in this EMS Agreement or in other written material furnished to the County by or on behalf of the Contractor prior to the date hereof in connection with the transactions contemplated hereby.

F. Pursuant to Section 49A of Chapter 62C of the Massachusetts General Laws, the Contractor certifies under the penalties of perjury that it has complied fully with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, withholding and remitting of child support, filed all state tax returns and paid all state and local taxes required under law.

G. The Contractor acknowledges that the County is a county for the purposes of Chapter 268A of the Massachusetts General Laws and agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with obligations of the Contractor based on said statute.

H. The Contractor will file a Disclosure Statement listing all its public contractors, a Truth in Negotiations Certificate as describe in M.G.L. Chapter 7, Section 30I, and a Financial Interest Statement as described in M.G.L. 7, Section 14A. [DOER –T]

ARTICLE VI - PAYMENT

A. Compensation/Rates. The services required under this EMS Agreement shall be rendered at the compensation or rates set forth in Exhibit xx attached hereto. In no event shall the County be liable for additional charges such as interest, penalties, attorneys' fees or any other expense incurred by the Contractor, such as travel, telephone, or duplication expenses, except as may be specifically agreed to in advance by the County.

B. Submission of Invoices. The Contractor shall submit invoices to the County for services rendered under this EMS Agreement on a monthly basis. The Contractor's invoices shall include a description of the services performed in such form and detail, and with such supporting data, sufficient to justify the basis for all charges and to provide an historical record of all work performed under this EMS Agreement, including, but not limited to, the dates of service, a specific description of the activities performed, a list of the equipment serviced, the computational basis for charges, and such other factors as the County may reasonably request. The Contractor shall keep records pertaining to services performed employing sound bookkeeping practices and in accordance with generally accepted accounting principles.

C. Payments. Payments to the Contractor for services performed in accordance with the contract will be made as expeditiously as possible. Payments by the County under this EMS Agreement will be made only to the Contractor. The Contractor shall be responsible for the compensation of its subcontractors, if any. The Contractor shall not be compensated for any services not included in the Scope of Work, including, but not limited to, any services made necessary by the fault or negligence of the Contractor or any of its subcontractors. The Contractor shall be penalized at the rate of \$200 per day for failure to meet the response time applicable to the services at issue, as set forth in the Scope of Work. The County may deduct any such penalty from payments made pursuant to this Article VI.

D. Bonds. The Contractor shall provide a performance and payment bond relating to the Scope of Work including the following:

- (i) Prior to entering into this Agreement, the Contractor shall furnish a certified copy and duplicate of a performance bond, with the County as co-beneficiary along with the Compact;
- (ii) The performance bond shall be in an amount equal to 100% of the total contract value from a surety company licensed to do business in the Commonwealth and whose name appears on U.S. Treasury Dept. Circular 570;

- (iii) The Contractor shall furnish a certified copy and duplicate of a performance bond, with project financier as co-beneficiary along with the Compact. The Contractor shall also furnish a payment bond in duplicate;
- (iv) Unless otherwise specified by the Compact, the performance and payment bonds shall remain in effect during the total implementation period for all ECMs. The ECM implementation period shall include all time required for installation, testing, measuring initial performance, and the Compact acceptance of all installed ECMs;
- (v) The performance bond shall be released upon the Compact acceptance of all ESCO-installed ECMs. The payment bond shall be released upon receipt of satisfactory evidence that all subcontractors, laborers, etc., have been paid in full or final acceptance whichever is later; and
- (vi) The Contractor shall not file any mechanics liens against the Compact for the project and this requirement shall flow down to all subcontractors. Therefore, the payment bond shall secure the Contractor's obligations for payment of laborers, suppliers, and all subcontractors.

[DOER – I]

In addition, such bonds shall fully protect the County and the Compact against any and all breaches by the Contractor, including, but not limited to, payments of salaries, withholdings, union welfare funds and any other union or employee benefits. Performance and payment bonds shall cover the Contractor's work hereunder. Failure to provide the requested bonds, prior to the commencement of the Scope of Work or cancellation of requested bonds during the course of the Scope of Work, shall entitle the County to terminate this EMS Agreement without recourse by the Contractor except as allowed under Article IX below.

The County reserves the right to refuse any exception to the bond requirements if it determines that the exception is not in the best interest of the County and the Compact. The Contractor's surety 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 County, in its discretion. The County reserves the right of final approval of the Contractor's surety company.

E. Guaranteed Savings. Shall be as described and documented by the Technical Street Light IGA & Project Development Agreement and associated IGA Report.

ARTICLE VII – INSURANCE

A. **Workers' Compensation and Employers' Liability Insurance.** The Contractor shall, at its sole expense, procure and maintain Workers' Compensation and Employers' Liability Insurance with limits of \$500,000/\$500,000/\$500,000 covering *each and every worker employed*

in, about or upon the Scope of Work, as provided for in each and every statute applicable to Workers' Compensation and Employers' Liability Insurance. [DOER –G]

B. Commercial General Liability Insurance. The Contractor shall, at its sole expense, procure and maintain Commercial General Liability Insurance, written on an occurrence form including coverages for Bodily Injury, Broad Form Property Damage, Personal Injury, Liability arising out of Subcontractors, Contractual Liability (to specifically include coverage for the indemnification clause of this EMS Agreement), and so-called Explosion, Collapse and Underground Hazards, with minimum limits of \$3,000,000 per occurrence/\$3,000,000 general aggregate. [DOER –H]

C. Automobile Liability Insurance. The Contractor shall, at its sole expense, procure and maintain Automobile Liability Insurance covering all owned, non-owned and/or hired motor vehicles to be used in connection with the Scope of Work with a minimum combined single limit of \$1,000,000 bodily injury and property damage.

D. General Insurance Requirements. The County 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 County. The Contractor'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 County, in its discretion. The County reserves the right of final approval of the Contractor's insurance company.

The Contractor agrees to waive any rights of subrogation against the County and its employees, subcontractors, engineers, consultants and agents. The County, the Compact and the Participating Municipalities shall be named as an additional insureds on the Commercial General Liability Insurance.

The Contractor shall not enter upon any work site or begin rendering services under this EMS Agreement without first submitting to the County insurance certificate(s) that indicate the coverages required hereunder. The insurance certificate(s) shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to the County. If the policy expires prior to completion of the Scope of Work, the Contractor 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 EMS Agreement. The Contractor shall be solely responsible for tracking and reporting to the County the expiration of the policies shown on the insurance certificate(s) provided.

ARTICLE VIII - INDEMNIFICATION

A. General Indemnification. To the fullest extent allowed by law, the Contractor (and its officers, directors, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns) shall indemnify, defend, and hold harmless the County, the Compact and the Participating Municipalities, and each of their officials, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and

assigns (collectively, the “Indemnified Parties”) 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 the Contractor (and/or its officers, directors, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns) related to this EMS Agreement, including, but not limited to, (i) any failure on the part of the Contractor (and/or its officers, directors, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns) to perform or comply with any of the covenants, agreements, terms, or conditions contained in this EMS Agreement or the Scope of Work on its part to be performed or complied with, and (ii) any damage to any public property, private property or utilities co-located on poles supporting the Facilities or Additional Facilities caused by the Contractor’s utility operations. This indemnification obligation is not limited in any way by the amount or type of damages or compensation payable by the Indemnified Parties. Notwithstanding the foregoing, the Contractor (and its officers, directors, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns) shall not be obligated to indemnify, defend, or hold harmless the Indemnified Parties to the extent that the proximate cause of any cost, claim, liability, damage, expense (including reasonable attorneys’ fees and expenses), cause of action, suit and/or judgment is the negligent act, negligent omission or the willful misconduct of the Indemnified Parties subsequent to the execution of this EMS Agreement.

B. Patent Indemnification. The Contractor shall protect and save the Indemnified Parties harmless against all claims, and actions brought against any of the Indemnified Parties by reason of any actual infringement upon patent rights in any material, process, machine or appliance used by the Contractor in the work. [DOER –C]

ARTICLE IX - TERMINATION

A. **The County’s Right to Terminate.** The County may, in its sole discretion, terminate or suspend this Agreement upon thirty (30) days notice without cause, or immediately for cause. Termination or suspension for cause may include, but not be limited to, the Contractor’s failure to remedy an imminent danger situation, failure to remedy any lien or lawful claim against it or related to the Scope of Work that affects or may affect the County, or for any other material breach of this EMS Agreement.

The sole obligation of the County upon termination or suspension will be to pay to the Contractor the *pro rata* actual cost of the services rendered under the Scope of Work as of the time of termination or suspension, as determined by unit price, agreement or audit, less any amount withheld in accordance with the provisions of this EMS Agreement. Under no circumstances shall the Contractor be entitled to compensation for lost profits, anticipated profits, interest, consequential damages, or the like. The Contractor’s rights under this Article IX(A) shall constitute its sole and exclusive remedy under this EMS Agreement.

Termination or suspension for cause shall entitle the County to assess against the Contractor’s account all damages, including, but not limited to, costs required to complete the

outstanding Scope of Work, incurred or to be incurred by the County, for a period not to exceed ninety (90) days following termination or suspension.

B. The Contractor's Right to Terminate. The Contractor may, in its sole discretion, terminate this EMS Agreement upon thirty (30) days written notice to the County for cause.

ARTICLE X – CAPE LIGHT COMPACT AS AGENT

The Contractor agrees and acknowledges that the Compact will administer and implement this Agreement for the County. The Compact will also act as agent for the Participating Municipalities in accordance with the Participation Agreements. The Contractor shall accept the instructions and directions given to it by the Compact.

ARTICLE XI -- MISCELLANEOUS

A. Assignments; Subcontracts; Delegation. In the execution of the Agreement, it may be necessary for the Contractor to subcontract part of the work to others; however, the Contractor shall not award any work to any subcontractor without prior written approval of the Compact which approval shall not be given until the Contractor submits to the Compact a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the Compact may require. The Contractor shall be fully responsible to the Compact for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by the Contractor, as it is for the acts and omissions of persons directly employed by it. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the Compact. The Contractor shall not assign, transfer, convey, or otherwise dispose of this Agreement, or any part hereof, or its right, title or interest in the same or any part thereof, without the prior written consent of the Compact. The Contractor shall not assign by power-of-attorney, or otherwise, any of the moneys due or to become due and payable under this Agreement, without the prior written consent of the Compact. [DOER – F]

B. Reports, Drawings, Etc. The Contractor's proposal, reports, inventories, drawings, plans and other data and material, including, but not limited to, data and material stored on electronic media, furnished to the County during the term of this EMS Agreement (collectively, the "Materials") shall become the County's property and may be used by the County (or such parties as the County may designate) thereafter in such manner and for such purposes as the County (or such parties as the County may designate) may deem advisable, without further employment of or additional compensation to the Contractor. The Contractor shall not release or disclose to any third party any Materials produced for the County without obtaining the County's prior written consent. At no time shall the Contractor release or disclose to any third party any Materials furnished to the Contractor by the County in connection with the performance of the Scope of Work. [DOER – S]

C. Delays Caused by Force Majeure. In any case where either party is required hereby to do any act, delays caused by Force Majeure shall not be counted in determining the time during which such act shall be completed, whether such time be designed by a fixed date, a fixed time, or “a reasonable time,” and such time shall be deemed to be extended by the period of the delay; provided that (i) the non-performing party, within five (5) business days after the occurrence of the Force Majeure, gives the other party written notice describing the particulars of 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 either party that arose prior to the occurrence causing the suspension of performance be excused as a result of the occurrence; and (iv) the non-performing party shall use its best efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. Notwithstanding the foregoing, neither party shall be required to settle strikes, lockouts or other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in its judgment, not in its best interest. In no event, however, shall any extension of time under this Article XI(C) exceed sixty (60) days.

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

(i) if to the County, to:

with a copy to:

[Cape Light Compact]

(ii) if to the Contractor:

with copy to:

Notices hereunder shall be deemed properly served (i) if by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this EMS Agreement; (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 EMS Agreement; 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 EMS Agreement. Notices may also be transmitted by electronic mail, provided that any notice transmitted solely by electronic mail which is not confirmed as received by the receiving party shall be followed up by personal delivery or overnight delivery within forty-eight (48) hours. Either party may change its address for the purpose of this Article XI(D) by giving the other party prior notice thereof in accordance with this provision.

E. Successors and Assigns. Subject to the restrictions set forth in Article XI(A) above, the terms and provisions of this EMS Agreement shall be binding upon, and shall inure to

the benefit of, the successors, assigns and personal representatives of the respective parties hereto. This EMS Agreement shall not (directly, indirectly, contingently or otherwise) confer or be construed as conferring any rights or benefits on any person or entity not named as a party hereto, except as may otherwise be provided herein.

F. Applicable Law and Dispute Resolution. This EMS Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts, without regard to its rules regarding choice of laws. The parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this EMS Agreement. Unless otherwise expressly provided for in this EMS Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this EMS Agreement between the Parties.

Any dispute that arises under or with respect to this EMS Agreement shall in the first instance be the subject of informal negotiations between the _____ of the County or the Compact and the _____ of the Contractor who shall use their respective best efforts to resolve such dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other a written notice that identifies with particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute.

In the event that the parties cannot resolve a dispute by informal negotiations as described above, if both parties hereto agree, the parties shall submit the dispute to binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Judgment on any award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration shall occur in Barnstable County in the Commonwealth of Massachusetts. The prevailing party in any such arbitration shall be entitled to recover the costs and fees (including reasonable attorneys' fees and costs of discovery) incurred by such party in such arbitration. [DOER – K]

Notwithstanding the foregoing, injunctive relief may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this EMS Agreement. The parties agree to bring any such injunctive proceedings, as well as any other litigation relating to or arising under this EMS Agreement, in the Superior Court for Barnstable County. Each party consents to said venue and expressly waives any objections to venue it might otherwise be able to raise. This Article XI(F) shall not be construed to limit any rights a party may have to intervene or join in any action, whether litigation or alternative dispute resolution, wherever pending, relating to the Scope of Work in any way in which the other is a party.

The prevailing party in any court action brought under or related to this EMS Agreement shall be entitled to recover the costs and fees (including reasonable attorneys' fees and costs of discovery) incurred by such party in such action.

The Contractor shall diligently carry on the services required under the Scope of Work during any dispute resolution proceedings, unless otherwise agreed to by the County in writing. No dispute under this EMS Agreement shall give the Contractor the right to stop rendering such services pending dispute resolution.

G. Expenses. Each party hereto shall pay all expenses incurred by it in connection with its entering into this EMS Agreement, including without limitation, all attorneys' fees and expenses.

H. Counterparts. This EMS Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this EMS 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 EMS Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this EMS Agreement and without the requirement that the unavailability of such original, executed counterpart of this EMS Agreement first be proven.

I. Severability. If any provision of this EMS Agreement or the application thereof to any party or circumstance be invalid or unenforceable to any extent, the remainder of this EMS Agreement and the application of such provision to persons and circumstances other than those to which it has been held invalid or unenforceable shall not be affected thereby and each provision of this EMS Agreement shall be valid and enforceable to the fullest extent permitted by law.

J. Interpretation Matters. Except to the extent expressly provided herein, the provisions of this EMS Agreement, and the rights and obligations of the parties hereto, shall be construed so as to be consistent with the provisions of the P&S Agreement and the License Agreement and the applicable rights and obligations of the parties thereunder. The Contractor acknowledges it has received and reviewed the P&S Agreement and the License Agreement and is familiar with the terms thereof. The Exhibits hereto are an integral part of this EMS Agreement; however, if there is any inconsistency between any provision in the foregoing Articles and any provision in the Scope of Work, the former shall prevail.

K. Entire Agreement; Amendments. This EMS Agreement (including, without limitation, the Exhibits hereto) 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. This EMS Agreement may only be amended or modified by a written instrument signed by both parties hereto.

L. 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 EMS Agreement shall operate or be construed as a waiver of any future default, whether of a 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 EMS Agreement shall only be effective if made in writing and signed by the party who is making such waiver.

M. No Joint Venture. Nothing in this EMS Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any joint venture or fiduciary relationship between the parties. The Contractor is and shall remain an independent contractor in the performance of this EMS Agreement, maintaining complete control of its personnel, workers, subcontractors and operations required for its performance hereunder.

N. Joint Work Product. This EMS Agreement shall be considered the work product of both parties hereto, and, therefore, no rule of strict construction shall be applied against either party hereto.

O. Equal Employment Opportunity. In connection with the performance of work under this EMS Agreement, the Contractor agrees not to discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex, race, color, religion, national origin, or ancestry. [DOER –E] The Contractor shall comply with all applicable laws and regulations pertaining to non-discrimination, equal opportunity and affirmative action, including, but not limited to, executive orders and rules and regulations of federal and state agencies of competent jurisdiction.

P. Anti-Boycott Warranty. The Contractor hereby warrants that, during the term of this EMS Agreement, neither it nor any “affiliated company,” 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 “affiliated company” shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor, or by a person or persons or business entity or entities that directly or indirectly own at least 51% of the ownership interests of the Contractor.

Q. Political Activity Prohibited. None of the services to be provided by the Contractor 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.

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

[signature blocks]

List of Exhibits

EXHIBIT xx
SCOPE OF WORK/ REQUIRED ENERGY SERVICES

Required Energy Services

- A. The Contractor will be required to work with current operating and maintenance personnel, training and overseeing their work on a pre-planned and programmed basis. The facility maintenance responsibilities will be clearly delineated in the Contract. In addition, the Contractor will develop for the maintenance staff a preventive maintenance schedule for all new equipment installed as part of this project. No equipment may be installed that will require the Compact to hire additional maintenance personnel, unless contract negotiations produce an explicit exemption from this rule for a specific installation (such as the agreement to include cogeneration as part of the project).
- B. All municipal owned streetlight systems in the Compact territory must be considered in this project. The Compact is responsible for determining end-use condition requirements at all times, and must have override capability to deal with emergencies, malfunctions, or extra-ordinary needs. Contractor Proposals may include maintenance services for all equipment installed for the full length of the contract. At all times, the requirements of the Massachusetts Building Code shall be met.
- C. The Contract must require the Contractor to provide "as built" and record drawings of all existing and modified conditions associated with the project conforming to typical engineering standards. This should include architectural, mechanical, electrical, structural, and control drawings each stamped by a Massachusetts Registered Professional Engineer (P.E.) for the corresponding discipline.
- D. Minimum acceptable illumination must be kept for the use intended. Light levels within other space types should be determined using the most current Illuminating Engineering Society guidelines based upon the tasks performed. Please note bench testing and test retrofits may be requested to verify illumination levels. In areas where light levels are specifically mandated by code, light levels must meet these requirements at all times.
- E. All ballasts are suspected to contain PCBs unless they are specifically labeled otherwise. Further inquiry and clarification of PCB ballast storage and disposal can be obtained from the Massachusetts Department of Environmental Protection.
- F. Disposal plans must be documented and appropriate transportation and disposal documents prepared before disposal. Actual disposal must be documented immediately after disposal.
- (vii) Lamp Ballasts Containing PCBs: The Contractor will be responsible for the proper handling and storage of fluorescent lamp and HID fixture ballasts containing or suspected of containing PCBs in accordance with applicable local, state, and federal laws and regulations.
- (viii) Lamps Containing Mercury: The Contractor will be responsible for the proper handling, storage, and transportation of fluorescent and HID lamps, as necessary, in accordance with applicable local, state and federal laws and regulations.
- G. The Contractor will use a method for computing the energy baseline and subsequent energy savings which is wholly consistent with the letter and intent of the most recent version of the U.S. Department of Energy, Federal Energy Management Measurement and Verification Guidelines (FEMP Guidelines).
- H. The Contractor is responsible for providing the owner with an energy conservation measurement (ECM) commissioning plan that assures the Compact that the performance of the ECMs achieves facility and/or process performance requirements as set out in the Contract. ECM Commissioning is to be accomplished through a process of verification and documentation. Furthermore, commissioning requirements must be: 1)

specified in the Contract, 2) defined explicitly after design, 3) implemented during construction, 4) completed prior to final project acceptance, and 5) followed-up on after acceptance.

**STREET LIGHT SYSTEM
OPERATION AND MAINTENANCE AGREEMENT**

This Street Light System Operation and Maintenance Agreement (the "Agreement") is entered into this ___ day of _____, 2013 by and between the Town of _____, a municipal corporation of the Commonwealth of Massachusetts having a usual place of business at _____, Massachusetts (the "Town") and _____, a _____ organized under the laws of _____ and having a usual place of business at _____ (the "Contractor").

WHEREAS, the Town is the owner and operator of its municipal street light system pursuant to the P&S Agreement and the License Agreement described in Article I below, both of which are attached as Exhibits A and B hereto and incorporated by reference herein;

WHEREAS, the Town is a member of the Cape Light Compact, an intergovernmental association presently consisting of twenty-one Cape Cod and Vineyard towns and Dukes and Barnstable County (the "Compact") engaged in various activities to promote energy efficiency and lower the costs of energy;

WHEREAS, the Compact has been assisting its member towns in efforts to purchase and operate their municipal street light systems;

WHEREAS, the Contractor was selected by the Compact pursuant to a Request for Qualifications issued in July of 2013 (the "RFQ");

WHEREAS, the Compact has acted and will continue to act as the Town's agent with respect to certain matters pertaining to this Agreement and the Town's operation of a municipal street light system;

WHEREAS, the Town desires to have the Contractor assist it with the operation and maintenance of its municipal street light system pursuant to the terms and conditions of this Agreement, the P&S Agreement and the License Agreement; and

WHEREAS, the Contractor has the special skills necessary to provide such services;

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

ARTICLE I - DEFINITIONS

Unless the context indicates otherwise, the capitalized terms set forth below shall have the meanings defined as follows:

“Additional Facilities” means such other equipment and fixtures that the Town may purchase after the effective date of the P&S Agreement in connection with its municipal street light system.

“Compact” shall have the meaning set forth in the recitals to this Agreement.

“Contractor” shall have the meaning set forth in the recitals to this Agreement.

“Facilities” means the FERC Account 373 municipal street lighting facilities and equipment, municipal flood lighting and area lighting facilities and equipment purchased by the Town under the P&S Agreement and more particularly described in Exhibit A to the P&S Agreement.

“Force Majeure” shall mean acts of God; hurricanes; tornadoes; fires; epidemic; landslides; earthquakes; floods; 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; insurrections; prolonged inability of suppliers to provide essential materials; military action; war, whether or not it is declared; sabotage; riots; civil disturbances; explosions; or any cause or event, not reasonably within the control of the party claiming Force Majeure; provided, however, that Force Majeure shall not include the financial inability of the Vendor, whether or not caused by any of the foregoing factors.

“Good Engineering Practice” means any of the practices, methods and acts that, in the exercise of reasonable judgment in light of the facts known or with the exercise of due diligence should have been known at the time the decision was made, would have been expected to accomplish the desired result in a manner consistent with reliability, safety, environmental protection, expedition, project economics and applicable laws, ordinances, rules and regulations for similar facilities. Good Engineering 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.

“License Agreement” means the License Agreement entered into by the Town, the Commonwealth Electric Company d/b/a NSTAR Electric and the New England Telephone and Telegraph Company d/b/a Bell Atlantic - New England, which is effective as of _____, 20XX.

“P&S Agreement” means the Purchase and Sale Agreement Regarding Municipal Street Lights entered into by the Town and the Commonwealth Electric Company d/b/a NSTAR Electric, which is effective as of _____, 20XX.

“Permits” means all material authorizations from, permits and licenses issued by, consents and approvals of, filings with, notices from, and registrations with, any and all governmental entities, departments or agencies (including all conditions thereof), which may be

required to be obtained, from time to time, for or in connection with the operation, maintenance, possession or ownership of a municipal streetlight system.

“Scope of Work” means the Scope of Work for Operation and Maintenance of the Town of _____ Municipal Street Light System, based upon the Request for Proposals and the final submission of the Contractor, which is attached as Exhibit C hereto and made a part hereof.

“Town” shall have the meaning set forth in the recitals to this Agreement.

For all capitalized terms not specifically defined in this Agreement, the definitions of such terms contained in the P&S Agreement or the License Agreement shall apply and shall be incorporated by reference herein.

ARTICLE II - TERM

Subject to the other provisions hereof, this Agreement shall be effective immediately and shall remain in force for an initial term of three (3) years and may be extended for one additional two (2) year term if mutually agreed upon in writing by the parties hereto, unless the License Agreement is sooner terminated in accordance with Article 10 of the License Agreement (in which case this Agreement shall terminate) or this Agreement is sooner terminated in accordance with Article IX below. At least six (6) months prior to the end of the initial term of this Agreement, the parties hereto shall meet in good faith to negotiate the terms and conditions of the first one-year term extension. At least six (6) months prior to the end of the first one-year term extension, if exercised, the parties hereto shall meet in good faith to negotiate the terms and conditions of the second one-year term extension.

ARTICLE III – STREET LIGHT SYSTEM OPERATION AND MAINTENANCE

A. Duties. Subject to and without limiting the provisions of Article IV(A) below, the Contractor shall perform the duties and obligations set forth in the Scope of Work. The Contractor shall perform such duties and obligations for the fees set forth in Article VI below and without any additional cost or expense to the Town.

B. Changes and Extra Work. The Town may at any time or from time to time during the progress of the Scope of Work require a deviation from, or an addition to the Scope of Work. In addition, the Contractor may submit a written change order request to [specify Town representative]. No change will be effective unless in writing and approved by both parties. No such change shall in any manner impair or void this Agreement. The value of any change required by the Town shall be determined by agreement of the Town and the Contractor. If the parties cannot agree on the amount of such adjustment within ten (10) days from the date that the change is authorized or ordered by the Town, the Contractor shall make the change and the dispute will be settled by later agreement or dispute resolution in accordance with Article XI(F) below. The Contractor shall make no claims for extra work unless the same shall be fully agreed upon in writing by the Town prior to performance of any extra work. If the Contractor performs

extra work without first obtaining a written order from the Town, such action is to be construed as a waiver of any and all claims to extra payment.

C. Permits. The Contractor shall, at its own expense, prepare and file applications for all Permits that may be required in connection with the Scope of Work and diligently prosecute such applications with a view to obtaining all Permits that may be so required, from time to time. The Contractor shall, at its own expense, maintain all such Permits, whether new or existing, in full force and effect without interruption and shall not take or omit to take (or permit the taking or omission of) any action that would result in any restriction or encumbrance on, or any violation of, any Permit. Notwithstanding the foregoing two sentences, the Town shall bear all expenses directly incurred by the Contractor in fulfilling its obligation to obtain and maintain any local Permits required by the Town or any local agency or commission, including expenses related to obtaining necessary police details. To the extent legally required, legally allowed and/or requested by the Town, all Permits shall be obtained and maintained (solely or jointly) in the name of the Town and current copies thereof shall be provided to the Town. A breach of this Article III(C) by the Contractor shall be deemed to be a material default for the purposes of Article IX.

D. Waste Materials. As part of its responsibilities under this Agreement, the Contractor shall be responsible for, and shall bear all costs and expenses incurred in connection with, the disposal of any and all waste material, including, but not limited to, hazardous material, produced or collected in connection with operation and maintenance of the Facilities and Additional Facilities. Such disposal shall at all times be in accordance with applicable laws and regulations.

ARTICLE IV – STANDARDS OF PERFORMANCE

A. Compliance with Laws, Agreements, Etc. The Contractor's performance of its obligations under this Agreement shall be in material compliance with (i) all applicable laws, ordinances, rules and regulations, (ii) any and all applicable orders, decrees, judgments and Permits of any governmental or judicial authority, (iii) the Scope of Work, (iv) Good Engineering Practice and (v) the applicable provisions of the P&S Agreement and the License Agreement. In addition, the Contractor shall not cause, by its actions or failures to act under or in connection with this Agreement, the Town or the Town's municipal street light system to be in violation of any of the foregoing.

B. Compliance with Standards of Professional Care. The Contractor shall fulfill its obligations hereunder in accordance with Good Engineering Practice and other generally accepted standards of professional care, skill and competence in the field(s) in which it is providing services to the Town. The Contractor warrants and represents that it is and shall remain properly licensed in Barnstable County and/or Dukes County, as the case may be. All services of the Contractor shall be performed by qualified personnel. All services, with the exception of the replacement of bulbs and or photocells, shall be performed by licensed electricians or under the direct supervision of a licensed electrician.

C. Performance of Work. The Contractor and its personnel shall perform one hundred percent (100%) of all the services required under this Agreement, except as may be required due to emergency circumstances or as otherwise approved by the Town pursuant to this Agreement.

D. Removal of Contractor Personnel. The Town may require the Contractor to relieve any of the Contractor's personnel or subcontractors from any further work under this Agreement if, in the Town's sole opinion, (i) the individual or subcontractor does not perform at the applicable skill level, as described in the Request for Proposals issued by the Compact (the "RFP"), the Contractor's responsive proposal and this Agreement, (ii) the individual or subcontractor does not deliver work that conforms to the performance standards stated in the RFP and the Contractor's proposal an this Agreement, or (iii) personality conflicts with Town personnel hinder effective progress on the services for which the individual or subcontractor is responsible. Employees of the Contractor shall exhibit the utmost courtesy when dealing with the public and or Town personnel. Repeated receipt of complaints shall entitle, but not obligate, the Town to require relief under this Article IV(D) or terminate this Agreement for a material default pursuant to Article IX below.

E. No Liens. In connection with the performance of its duties hereunder, the Contractor shall not (i) create, or suffer the creation of, any lien or encumbrance on the Facilities or Additional Facilities, or any interest in or portion thereof, or (ii) take any action that would otherwise cause the Town to cease to have good and marketable title to the Facilities or Additional Facilities.

F. The Town's Right to Cure the Contractor's Defaults. If the Contractor shall default or neglect to carry out any of its obligations under this Agreement and shall fail within fifteen (15) days after receipt of written notice from the Town to the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Town may, without prejudice to any other remedy or right it may have, make good such deficiencies. In such case, the cost of correcting such deficiencies shall be paid by the Contractor to the Town promptly after receipt of an invoice therefor.

G. Time; Coordination; Etc.. The Contractor shall adhere to all time requirements and schedules described in the Scope of Work or elsewhere in this Agreement. The Contractor shall perform its services as expeditiously as is consistent with the standards of professional skill and care required hereby. The Contractor also shall perform its services in coordination with the operations of the Town and with any party engaged by the Town in connection with this Agreement. It shall be the obligation of the Contractor to request any information necessary for the performance of its services.

H. Preference to Veterans and Citizens; Rate of Wages. The Contractor shall comply with the requirements of G.L. c. 149, §§26-27H, to the extent that they apply to the work performed hereunder, as well as any and all other applicable local, state and federal wage laws. When work is performed under prevailing wage rates, the Contractor is required to submit Statements of Compliance and certified payrolls using appropriate state forms or, if a federal project, U.S. Department of Labor Form WH-347 and WH-348 (or similar), for each payroll period. If these forms are not submitted with each invoice, payment will not be made. The

Contractor shall keep an accurate record showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed by it in connection with such prevailing wage work, and such records shall be preserved at least two (2) years from the date of payment.

ARTICLE V – CONTRACTOR’S CERTIFICATIONS

The Contractor hereby certifies and warrants as follows:

A. The Contractor has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement.

B. No subcontractor of the Contractor has given, offered or agreed to give any gift, contribution or offer of employment to the Contractor or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the subcontractor of a subcontract by the Contractor.

C. No person, corporation or other entity, other than a *bona fide* full time employee of the Contractor, was retained or hired by the Contractor to solicit for or in any way assist the Contractor in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Contractor.

D. To the best of the Contractor’s knowledge, none of the documents or other written information furnished by or on behalf of the Contractor to the Town pursuant to the RFP, this Agreement, the P&S Agreement or the License Agreement contain any untrue statement of a material fact or omit 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.

E. The Contractor is not aware of any fact peculiar to the Contractor that materially adversely affects or in the future could (so far as the Contractor can now reasonably foresee) materially adversely affect the Town’s operation of its municipal street light system and that has not been set forth in this Agreement or in other written material furnished to the Town by or on behalf of the Contractor prior to the date hereof in connection with the transactions contemplated hereby.

F. Pursuant to Section 49A of Chapter 62C of the Massachusetts General Laws, the Contractor certifies under the penalties of perjury that it has complied fully with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, withholding and remitting of child support, filed all state tax returns and paid all state and local taxes required under law.

G. The Contractor acknowledges that the Town is a Town for the purposes of Chapter 268A of the Massachusetts General Laws and agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with obligations of the Contractor based on said statute.

ARTICLE VI - PAYMENT

A. Rates. The services required under this Agreement shall be rendered at the rates set forth in Exhibit D attached hereto. In no event shall the Town be liable for additional charges such as interest, penalties, attorneys' fees or any other expense incurred by the Contractor, such as travel, telephone, or duplication expenses, except as may be specifically agreed to in advance by the Town.

B. Submission of Invoices. The Contractor shall submit invoices to the Town for services rendered under this Agreement on a monthly basis. The Contractor's invoices shall include a description of the services performed in such form and detail, and with such supporting data, sufficient to justify the basis for all charges and to provide an historical record of all work performed under this Agreement, including, but not limited to, the dates of service, a specific description of the activities performed, a list of the equipment serviced, the computational basis for charges, and such other factors as the Town may reasonably request. The Contractor shall keep records pertaining to services performed employing sound bookkeeping practices and in accordance with generally accepted accounting principles.

C. Payments. Payments to the Contractor for services performed in accordance with the contract will be made as expeditiously as possible. Payments by the Town under this Agreement will be made only to the Contractor. The Contractor shall be responsible for the compensation of its subcontractors, if any. The Contractor shall not be compensated for any services not included in the Scope of Work, including, but not limited to, any services made necessary by the fault or negligence of the Contractor or any of its subcontractors. The Contractor shall be penalized at the rate of \$100 per day for failure to meet the response time applicable to the services at issue, as set forth in the Scope of Work. The Town may deduct any such penalty from payments made pursuant to this Article VI.

D. Bonds. The Contractor shall provide performance and payment bonds from a surety company in amounts, form and substance acceptable to the Town, naming the Town as a direct beneficiary of the surety's obligations under such bonds. Such bonds shall fully protect the Town against any and all breaches by the Contractor, including, but not limited to, payments of salaries, withholdings, union welfare funds and any other union or employee benefits. Performance and payment bonds shall cover the Contractor's work hereunder. Failure to provide the requested bonds, prior to the commencement of the Scope of Work or cancellation of requested bonds during the course of the Scope of Work, shall entitle the Town to terminate this Agreement without recourse by the Contractor except as allowed under Article IX below.

The Town reserves the right to refuse any exception to the bond requirements if it determines that the exception is not in the best interest of the Town. The Contractor's surety 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 Town, in its discretion. The Town reserves the right of final approval of the Contractor's surety company.

ARTICLE VII – INSURANCE

A. Workers' Compensation and Employers' Liability Insurance. The Contractor shall, at its sole expense, procure and maintain Workers' Compensation and Employers' Liability Insurance with limits of \$500,000/\$500,000/\$500,000 covering *each and every worker employed in, about or upon the Scope of Work*, as provided for in each and every statute applicable to Workers' Compensation and Employers' Liability Insurance.

B. Commercial General Liability Insurance. The Contractor shall, at its sole expense, procure and maintain Commercial General Liability Insurance, written on an occurrence form including coverages for Bodily Injury, Broad Form Property Damage, Personal Injury, 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 \$3,000,000 per occurrence/\$3,000,000 general aggregate.

C. Automobile Liability Insurance. The Contractor shall, at its sole expense, procure and maintain Automobile Liability Insurance covering all owned, non-owned and/or hired motor vehicles to be used in connection with the Scope of Work with a minimum combined single limit of \$1,000,000 bodily injury and property damage.

D. General Insurance Requirements. The Town 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 Town. The Contractor'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 Town, in its discretion. The Town reserves the right of final approval of the Contractor's insurance company.

The Contractor agrees to waive any rights of subrogation against the Town and its employees, subcontractors, engineers, consultants and agents. The Town, the Commonwealth Electric Company d/b/a NSTAR Electric and the New England Telephone and Telegraph Company d/b/a Bell Atlantic – New England shall be named as an additional insureds on the Commercial General Liability Insurance.

The Contractor shall not enter upon any work site or begin rendering services under this Agreement without first submitting to the Town insurance certificate(s) that indicate the coverages required hereunder. The insurance certificate(s) shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to the Town. If the policy expires prior to completion of the Scope of Work, the Contractor 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. The Contractor shall be solely responsible for tracking and reporting to the Town the expiration of the policies shown on the insurance certificate(s) provided.

ARTICLE VIII - INDEMNIFICATION

To the fullest extent allowed by law, the Contractor (and its officers, directors, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns) shall indemnify, defend, and hold harmless the Town and the Compact (and each of their officials, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns) 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 the Contractor (and/or its officers, directors, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns) related to this Agreement, including, but not limited to, (i) any failure on the part of the Contractor (and/or its officers, directors, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns) to perform or comply with any of the covenants, agreements, terms, or conditions contained in this Agreement or the Scope of Work on its part to be performed or complied with, and (ii) any damage to any public property, private property or utilities co-located on poles supporting the Facilities or Additional Facilities caused by the Contractor's utility operations. This indemnification obligation is not limited in any way by the amount or type of damages or compensation payable by the Town. Notwithstanding the foregoing, the Contractor (and its officers, directors, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns) shall not be obligated to indemnify, defend, or hold harmless the Town (and its officials, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns) to the extent that the proximate cause of any cost, claim, liability, damage, expense (including reasonable attorneys' fees and expenses), cause of action, suit and/or judgment is the negligent act, negligent omission or the willful misconduct of the Town (or its officials, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors or assigns) subsequent to the execution of this Agreement.

ARTICLE IX - TERMINATION

A. The Town's Right to Terminate. The Town may, in its sole discretion, terminate or suspend this Contract upon thirty (30) days notice without cause, or immediately for cause. Termination or suspension for cause may include, but not be limited to, the Contractor's failure to remedy an imminent danger situation, failure to remedy any lien or lawful claim against it or related to the Scope of Work that affects or may affect the Town, or for any other material breach of this Agreement.

The sole obligation of the Town upon termination or suspension will be to pay to the Contractor the *pro rata* actual cost of the services rendered under the Scope of Work as of the time of termination or suspension, as determined by unit price, agreement or audit, less any amount withheld in accordance with the provisions of this Agreement. Under no circumstances shall the Contractor be entitled to compensation for lost profits, anticipated profits, interest, consequential damages, or the like. The Contractor's rights under this Article IX(A) shall constitute its sole and exclusive remedy under this Agreement.

Termination or suspension for cause shall entitle the Town to assess against the Contractor's account all damages, including, but not limited to, costs required to complete the outstanding Scope of Work, incurred or to be incurred by the Town, for a period not to exceed ninety (90) days following termination or suspension.

B. The Contractor's Right to Terminate. The Contractor may, in its sole discretion, terminate this agreement upon thirty (30) days written notice to the Town for cause.

ARTICLE X – CAPE LIGHT COMPACT AS AGENT

The Contractor agrees and acknowledges that, from time to time, the Town may designate the Compact as the Town's agent to deal with certain matters arising under or relating to this Agreement. The Town shall generally act on its own behalf with respect to operational matters arising under this contract, i.e. duties under Article III and the Scope of Work while the Compact will likely act as agent on contract enforcement, renewal and dispute resolution matters. The Contractor shall accept the instructions and directions given to it by the Compact but need not consult or give any notice to the Compact except where expressly directed to pursuant to Article XI(D) hereunder or where it has previously received a written direction from either the Compact or the Town to such effect with respect to any particular matter.

ARTICLE XI -- MISCELLANEOUS

A. Assignments; Subcontracts; Delegation. The Contractor shall not assign, subcontract or delegate any or all of its rights and duties hereunder without the written consent of the Town. Any assignment, subcontract or delegation without such consent shall be null and void. No assignment, subcontract or delegation shall relieve or discharge the Contractor from any obligation or liability under this Agreement except as specifically agreed to in writing by the Town. The Contractor shall be as fully responsible to the Town for the acts and omissions of its assignees, subcontractors and delegates (and the persons either directly or indirectly employed by them) as it is for the acts and omissions of persons directly or indirectly employed by it.

B. Reports, Drawings, Etc. The Contractor's proposal, reports, inventories, drawings, plans and other data and material, including, but not limited to, data and material stored on electronic media, furnished to the Town during the term of this Agreement (collectively, the

“Materials”) shall become the Town’s property and may be used by the Town (or such parties as the Town may designate) thereafter in such manner and for such purposes as the Town (or such parties as the Town may designate) may deem advisable, without further employment of or additional compensation to the Contractor. The Contractor shall not release or disclose to any third party any Materials produced for the Town without obtaining the Town’s prior written consent. At no time shall the Contractor release or disclose to any third party any Materials furnished to the Contractor by the Town in connection with the performance of the Scope of Work.

C. Delays Caused by Force Majeure. In any case where either party is required hereby to do any act, delays caused by Force Majeure shall not be counted in determining the time during which such act shall be completed, whether such time be designed by a fixed date, a fixed time, or “a reasonable time,” and such time shall be deemed to be extended by the period of the delay; provided that (i) the non-performing party, within five (5) business days after the occurrence of the Force Majeure, gives the other party written notice describing the particulars of 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 either party that arose prior to the occurrence causing the suspension of performance be excused as a result of the occurrence; and (iv) the non-performing party shall use its best efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. Notwithstanding the foregoing, neither party shall be required to settle strikes, lockouts or other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in its judgment, not in its best interest. In no event, however, shall any extension of time under this Article XI(C) exceed sixty (60) days.

D. 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:

(i) if to the Town, to:

with a copy to:

[Cape Light Compact]

(ii) if to the Contractor:

with copy to:

Notices hereunder shall be deemed properly served (i) if by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (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 Agreement; 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 Agreement. Notices may also be transmitted by electronic mail, provided that any notice transmitted solely by electronic mail which is not confirmed as received by the receiving party shall be followed up by personal delivery or overnight delivery within forty-eight (48) hours. Either party may change its address for the purpose of this Article XI(D) by giving the other party prior notice thereof in accordance with this provision.

E. Successors and Assigns. Subject to the restrictions set forth in Article XI(A) above, the terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors, assigns and personal representatives of the respective parties hereto. This Agreement shall not (directly, indirectly, contingently or otherwise) confer or be construed as conferring any rights or benefits on any person or entity not named as a party hereto, except as may otherwise be provided herein.

F. Applicable 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. The parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Agreement between the Parties.

Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the _____ of the Town and the _____ of “_____,” who shall use their respective best efforts to resolve such dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other a written notice that identifies with particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute.

In the event that the parties cannot resolve a dispute by informal negotiations as described above, if both parties hereto agree, the parties shall submit the dispute to binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Judgment on any award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration shall occur in Barnstable County [**Dukes for any Dukes’ towns**] in the Commonwealth of Massachusetts. The prevailing party in any such arbitration shall be entitled to recover the costs and fees (including reasonable attorneys’ fees and costs of discovery) incurred by such party in such arbitration.

Notwithstanding the foregoing, injunctive relief may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. The parties agree to bring any such injunctive proceedings, as well as any other litigation relating to or arising under this Agreement, in the Superior Court for Barnstable County

[Dukes for Dukes' towns]. Each party consents to said venue and expressly waives any objections to venue it might otherwise be able to raise. This Article XI(F) shall not be construed to limit any rights a party may have to intervene or join in any action, whether litigation or alternative dispute resolution, wherever pending, relating to the Scope of Work in any way in which the other is a party.

The prevailing party in any court action brought under or related to this Agreement shall be entitled to recover the costs and fees (including reasonable attorneys' fees and costs of discovery) incurred by such party in such action.

The Contractor shall diligently carry on the services required under the Scope of Work during any dispute resolution proceedings, unless otherwise agreed to by the Town in writing. No dispute under this Agreement shall give the Contractor the right to stop rendering such services pending dispute resolution.

G. Expenses. Each party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including without limitation, all attorneys' fees and expenses.

H. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which 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.

I. Severability. If any provision of this Agreement or the application thereof to any party or circumstance be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to persons and circumstances other than those to which it has been held invalid or unenforceable shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

J. Interpretation Matters. Except to the extent expressly provided herein, the provisions of this Agreement, and the rights and obligations of the parties hereto, shall be construed so as to be consistent with the provisions of the P&S Agreement and the License Agreement and the applicable rights and obligations of the parties thereunder. The Contractor acknowledges it has received and reviewed the P&S Agreement and the License Agreement and is familiar with the terms thereof. The Exhibits hereto are an integral part of this Agreement; however, if there is any inconsistency between any provision in the foregoing Articles and any provision in the Scope of Work, the former shall prevail.

K. Entire Agreement; Amendments. This Agreement (including, without limitation, the Exhibits hereto) 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. This Agreement may only be amended or modified by a written instrument signed by both parties hereto.

L. 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 a 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.

M. No Joint Venture. Nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any joint venture or fiduciary relationship between the parties. The Contractor is and shall remain an independent contractor in the performance of this Agreement, maintaining complete control of its personnel, workers, subcontractors and operations required for its performance hereunder.

N. Joint Work Product. This Agreement shall be considered the work product of both parties hereto, and, therefore, no rule of strict construction shall be applied against either party hereto.

O. Equal Employment Opportunity. In connection with the performance of work under this Agreement, the Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religion, creed, national origin, sexual orientation, ancestry, gender, age or handicap. The Contractor shall comply with all applicable laws and regulations pertaining to non-discrimination, equal opportunity and affirmative action, including, but not limited to, executive orders and rules and regulations of federal and state agencies of competent jurisdiction.

P. Anti-Boycott Warranty. The Contractor hereby warrants that, during the term of this Agreement, neither it nor any "affiliated company," 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 "affiliated company" shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor, or by a person or persons or business entity or entities that directly or indirectly own at least 51% of the ownership interests of the Contractor.

Q. Political Activity Prohibited. None of the services to be provided by the Contractor 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.

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

TOWN OF _____

By: _____

The undersigned auditor or accountant or other officer of the Town having similar duties hereby certifies that an appropriation in the amount of this Agreement is available therefor and that the above-signed officer or agent of the Town has been authorized to execute this Agreement and approve all requisitions and change orders.

By: _____

Title:

Date:

[The Contractor]

By: _____

EXHIBIT A
P&S AGREEMENT

EXHIBIT B
LICENSE AGREEMENT

EXHIBIT C
SCOPE OF WORK

[based on final negotiations and proposal of Selected Offeror]

**EXHIBIT D
CONTRACT RATES**

[based on final negotiations and proposal of Selected Offeror]