

PARTICIPATION AGREEMENT

FOR

LED STREET LIGHT RETROFIT FULL CONVERSION PROJECT

SECTION 1. PARTIES AND PURPOSE

This Participation Agreement (“Agreement”) is entered into by and between the Cape Light Compact (the “Compact”) and the municipalities and fire districts that have signed this Agreement (collectively, the “Participating Municipalities”). The purpose of this Agreement is to allow the Compact to provide the Participating Municipalities with certain services and benefits related to the LED street light retrofit full conversion project (the “Project”) as further described below and pursuant to the terms set forth in this Agreement.

Within this document, the terms “parties” refers to the Compact and the Participating Municipalities.

SECTION 2. PROJECT DESCRIPTION

The Project entails replacing town owned street lights with LED (light emitting diode) lamps. The Project costs, except for police detail, will be paid by the Compact through its energy efficiency program.

The Compact’s current objective is to complete the Project by June of 2014. If inclement weather or other difficulties delay completion of the Project, it will be completed as soon as practicable. Scheduling will depend in part on the Department of Public Works (“DPW”) of each of the Participating Municipalities.

SECTION 3. DUTIES AND RIGHTS OF THE PARTIES

3.1 The Compact will provide services necessary for procuring goods and services related to the Project on behalf of the Participating Municipalities.

3.2 The Compact will prepare an appropriate Request for Proposals (“RFP”) in compliance with any applicable Massachusetts General Laws, including procurement laws, for conversion of all street lights operation and maintenance (“O&M”) services of Participating Municipalities electing to participate in the Project. The RFP scope of work will include: (i) audit of existing street lights of each Participating Municipality to estimate energy savings and specify fixture selection; (ii) procurement of selected fixtures; (iii) installation services; (iv) confirmation of energy savings and billing revisions through the distribution company, NSTAR Electric; and (v) O&M services. The O&M contract will be for a three-year term and the Compact will have the right to renew the contract for an additional two-year term. The O&M contract will cover street light maintenance services for all fixtures owned by Participating Municipalities (including fixtures excepted from LED conversion as set forth in Section 3.11 below). Participating Municipalities agree that they will execute a master O&M contract or a separate O&M contract as may be determined by the Compact in consultation with state agencies having jurisdiction over procurement issues.

3.3 The Compact will coordinate the retrofit schedule with each Participating Municipality's DPW Director or designee. Each Participating Municipality shall be responsible for providing and paying for any required police and/or safety detail during installation.

3.4 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 also choose, and notify the Compact in writing by June 14, 2013, of its election to (i) remove, (ii) relocate, or (iii) replace the LED fixtures installed as part of the prior Demonstration Project and will need to identify them in the exhibit to this Agreement as set forth in Section 3.11 below.

3.5 Installation of all new LED fixtures is expected to occur by June of 2014.

3.6 Each Participating Municipality will need to inform the Compact in writing of its election to participate in the Project no later than June 14, 2013 by executing this Agreement. Each Participating Municipality that elects not to participate will need to independently provide or procure O&M services for its street lights.

3.7 The Compact anticipates issuing an RFP for the Project on or about July 12, 2013.

3.8 If a Municipality elects not to participate in the Project for all of its street lights, the removal of the demonstration project materials and replacement with the former high pressure sodium luminaries shall be performed by the Compact as part of the Project.

3.9 Each Participating Municipality understands that the Compact and/or its agents will own all of the Project materials and equipment, including, without limitation, all intellectual property rights in such materials and equipment.

3.10 In performing its duties and exercising its rights under this Agreement, the Compact may act through or in conjunction with Barnstable County (the "County") pursuant to the terms of the Administrative Services Agreement between the Compact and the County as amended from time to time.

3.11 Each Participating Municipality understands and agrees that this Agreement is the Compact's standard form agreement for this project and that modifications to the main body of this Agreement are not permitted. To the extent there are special terms and conditions that are specific to the installation of the Project materials and equipment in a particular municipality, or special town charter or ordinance requirements, such terms and conditions will be set forth in Exhibit A attached hereto (the "Special Terms and Conditions"). To the extent there is a conflict between the Special Terms and Conditions and the main body of this Agreement, the Special Terms and Conditions will control.

Each Participating Municipality will identify any sites that may require special attention in Exhibit A and will provide the Compact with the applicable street name(s), utility pole numbers, the

lumen size(s) and a description of the concern (i.e., pole in close proximity to residence - avoid backlighting or current intersection overlit – reduce lumens, for example) and the information required under Section 3.4 above.

SECTION 4. TERM OF AGREEMENT; TERMINATION

This Agreement shall be effective as of the date it is fully executed, and shall continue in effect until the Project is complete. The Participating Municipalities shall not have any termination rights. The Project may be altered, suspended, or canceled by the Compact at any time without prior notice. Termination of this Agreement for any reason shall not relieve any party of any obligation accrued or accruing prior to such termination. Section 10 (Recovery of Project Costs) shall survive termination of this Agreement. Any other provision of this Agreement which by its nature should survive termination of this Agreement shall also survive.

SECTION 5. COOPERATION; FEEDBACK; PUBLICITY

Each Participating Municipality agrees that it will execute and deliver any additional documents that are reasonably requested by the Compact, and will take any other action consistent with the terms of this Agreement that may be reasonably requested by the Compact in order to achieve successful completion of the Project.

Each Participating Municipality agrees to provide all requested feedback to the Compact on the Project. All of Participating Municipality’s feedback will become the property of the Compact and may be used by the Compact for any purpose. The Compact may publicize the fact of the Participating Municipality’s participation in the Project, the results of such participation, and any other information which reasonably relates to the Participating Municipality’s participation in the Project.

SECTION 6. INTERPRETATION

This Agreement is not intended to expand upon or alter any authority that the Compact has under the “Fifth Amended and Restated Inter-Governmental Agreement of the Cape Light Compact” dated September 12, 2012 (“Inter-Governmental Agreement”), as amended from time to time, or any successor Inter-Governmental Agreement, nor expand upon or alter any authority that the County has under the Barnstable County Charter (“Charter”), St. 1988, ch. 163 or any successor Charter. This Participating Agreement shall be interpreted to be in accordance with the Inter-Governmental Agreement, the Charter, the policies and procedures of the County, and other relevant provisions of the Massachusetts General Laws or Special Laws. If any term of this Agreement shall be deemed in conflict with either the Inter-Governmental Agreement, the Charter, the policies and procedures of the County, or any provisions of the General Laws, this Agreement shall yield.

SECTION 7. CONSTRUCTION AND SEVERABILITY

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision of this Agreement is declared to be contrary to Massachusetts law, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the

applicability thereof to any government, agency, person or circumstance shall not be affected thereby.

SECTION 8. NO PARTNERSHIP OR JOINT VENTURE IN CONTRACTS WITH THIRD PARTIES

In carrying out its purposes as described herein, and in entry into any contracts related to the Project, the Compact shall not be a partner or joint venturer with any third party. The relationship between the Compact (and/or the Participating Municipalities) on the one hand and the other parties to such contracts on the other hand shall be that of buyer and seller, or agent for the buyer and seller, as the case may be.

SECTION 9. WARRANTY AND LIMITATION OF LIABILITY

The Compact disclaims all warranties of any kind, whether express or implied, including, but not limited to, any warranties of merchantability or fitness for a particular purpose. In no event will the Compact be liable for any indirect or consequential loss or damage arising from Participating Municipality's participation in the Project.

SECTION 10. RECOVERY OF PROJECT COSTS

In the event a Participating Municipality replaces any or all street lights installed under the Project with non-energy efficient fixtures or terminates its membership in the Compact on or before the end of the fixture life as determined by the manufacturers specifications as per the responsive proposal to the RFP, such Participating Municipality shall refund such incentive amounts related to those projected energy savings of the Project that have not yet been achieved. By way of illustration, Town A receives a total incentive of fifty-thousand dollars (\$50,000.00) for one hundred (100) street lights installed by the Project. Five years after the Project installation is complete, Town A terminates membership in the Compact. Assuming a ten-year measure life of the fixtures, Town A would refund the Compact twenty-five thousand dollars (\$25,000.00).

SECTION 11. OBLIGATION TO MODIFY AGREEMENT

Each Participating Municipality understands that the contractor selected through the RFP process may request amendments to this Agreement. In such event, each Participating Municipality shall be obligated to make commercially reasonable amendments to this Agreement. Each Participating Municipality understands that failure to do so may result in its termination from participation in the Project.

SECTION 12. COUNTERPARTS; SCANNED COPY

This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement

notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Participation Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be provided.

AUTHORIZED AND AGREED TO BY:

Town of Bourne

Town of Brewster

Town of Chatham

Town of Dennis

Town of Eastham

Town of Falmouth

Town of Harwich

Town of Mashpee

Town of Orleans

Town of Provincetown

Town of Sandwich

Town of Truro

Town of Wellfleet

Town of Yarmouth

Town of Edgartown

Town of Oak Bluffs

Town of West Tisbury

Barnstable Fire District

Hyannis Fire District

Cotuit Fire District

West Barnstable Fire District

The Compact

Name: Margaret T. Downey
Title: Administrator/Chief Procurement Officer

As authorized by the Barnstable County Commissioners

Dated: _____

EXHIBIT A

SPECIAL TERMS AND CONDITIONS