



**REQUEST FOR PROPOSAL**

**VENDOR FOR MARKETING SERVICES**  
**FOR CAPE LIGHT COMPACT**

**Issued: November 15, 2013**

**Proposals Due: December 15, 2013, 2:00 PM ET**

Cape Light Compact. P.O. Box 427, Barnstable, MA 02630  
[www.capelightcompact.org](http://www.capelightcompact.org)

## VENDOR FOR MARKETING SERVICES FOR CAPE LIGHT COMPACT

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# **1 General Information**

## ***1.1 Cape Light Compact***

Cape Light Compact (Compact) is a governmental aggregator under G. L. c. 164, section 134, providing energy services on Cape Cod and Martha's Vineyard. The Compact administers a regional energy efficiency program and works with the combined buying power of the region's over 200,000 electric consumers to negotiate for competitive electricity, including a green power offering, and other public benefits. The Compact members include the twenty-one towns in Barnstable and Dukes Counties, as well as the two counties themselves. It is organized through a formal Intergovernmental Agreement under G. L. c. 40, section 4A. The Compact maintains a business office within Barnstable County offices located at the Superior Courthouse, 3195 Main Street, Barnstable, MA. Barnstable County serves as the fiscal agent for the Compact.

## ***1.2 Introduction***

Cape Light Compact is soliciting proposals from qualified firms to provide marketing services and create campaigns for all of the Compact's programs. The term would commence February 15, 2014 (estimated) and continue through December 31, 2014, at which time the contract may be renewed for up to three additional one-year terms.

The Compact's core efforts include power supply, consumer advocacy and energy efficiency. Throughout the years, the Compact has focused on grassroots efforts to increase education and outreach to nearly 200,000 consumers on Cape Cod & Martha's Vineyard. The Compact's programs have grown substantially over the past 4 years and will continue to grow in the coming years. The objective is to educate all ratepayers about all of the Compact's efforts.

# **2 Summary of Cape Light Compact Responsibilities**

Cape Light Compact will provide a primary point of contact person who will:

1. Communicate with Vendor regarding marketing needs
2. Submit information about Compact programs to Vendor to assist with marketing
3. Review and approve Vendor invoices

# **3 Services to be Provided**

The Compact requests proposals from firms that can plan and execute an integrated education, outreach and marketing strategy. The selected Vendor will develop an overarching program to submit to the

Compact for approval prior to implementation. Then, the Vendor and any prospective sub-contractors will be expected to provide at least the following services:

- *Marketing Campaign* - Create and execute an integrated education, outreach and marketing campaign for the Compact as a whole.
- *Media Strategy* – Develop and execute an integrated media strategy, including a mass media communications plan, including creative development and production. Actual media placement should not be included in the Scope or price proposal, as the Compact will directly pay these media outlets. Any applicable estimates should be provided in the scope for expected media buys by calendar year.
- *Public Relations* – Develop and execute a public relations plan designed to extend the reach of priority messages. Outreach strategy, that may include geographic and/or community-based partners, outreach opportunities such as grassroots outreach events and presentations (e.g., fairs and home shows, business or trade conferences, etc.), participation in special events, sponsorships/advertisements at arenas and sporting venues(when feasible), community events, and newspaper supplements.
- *Media Relations* - Create on average two press releases per month and distribute to local media outlets. Create strategy for approaching local editorial boards for coverage on the Compact's programs.
- *Social Media* - Manage the Compact's Facebook and Twitter accounts. Compact staff must approve all content that is posted to both social media sites. Any questions/comments that are received as a result of a post must be sent to the Compact for appropriate response/information. The Compact is looking to use these outlets primarily to educate consumers on all of our programs, while also maintaining the grassroots aspect of the Compact. Create strategy to increase number of likes and followers on the Compact's social media sites.
- *Reports to the Community* – Create format of report and detail what information should be included. These reports will be distributed to all Cape Cod and Martha's Vineyard towns and included on the website on an annual basis, starting with spring 2014. Compact staff to approve format and proof before distribution.
  - NOTE- Provide a quote for design, format, and populating of information, with an option for Compact staff to populate information.

- *Videos* - The Compact is looking to have at least four (4) short (up to 10 minute) videos created, per calendar year, on programs and offerings. See links for samples of previous videos that have been completed.
  - Power Supply Consumer Awareness Video  
<http://www.capelightcompact.org/power-supply/>
  - Home Energy Assessment Overview Video  
<http://www.capelightcompact.org/hea>
- *Case Studies* - Create and develop case studies about residential and commercial customers who have recently participated in our energy efficiency program. The names of customers will be provided by the Compact to the Vendor for follow up. All case studies are to have same format, maximum of 2 pages and include picture(s), brief description of energy efficient measures installed and total incentive and savings received. Previous case studies may be found at this link:  
<http://www.capelightcompact.org/commercial-case-studies/>.
- *Website* – Recommend improvements to current Cape Light Compact website. Proficiency in WordPress is required.
- *Materials* – Create at least two (2) brochures and support materials each quarter on Compact programs.
- *Other Vendor responsibilities* –
  - Maintain weekly communications with the Compact to ensure that needs are being met and identify additional marketing and public relations opportunities.
  - A weekly report, to the Compact, from the Vendor will be required stating the tasks that are currently being worked on and status of each task.
  - Attend at least one (1) meeting per month, as directed by the Compact.

## 4 Schedule

RFP issued: November 15, 2013

Pre-bid conference call: December 3, 2013, 10:00 a.m. ET\*

Questions regarding the RFP due: December 5, 2013

All proposals due: December 16, 2013 by 2:00 p.m. ET

Oral Presentations: week of January 6, 2014

Vendor selected: January 31, 2014 (estimated)

Implementation: February 15, 2014 (estimated) – December 31, 2014

\*Please indicate via e-mail to Margaret Downey (mdowney@barnstablecounty.org) your interest in participating in the call by November 26, 2013.

## **5 Proposal – Number of Copies and Format**

Proposals, to be entitled for consideration, must be submitted in accordance with the following instructions. The Bidder shall be responsible for submitting one (1) electronic, one (1) original and five (5) copies of the proposal in such form as set forth below.

Proposals shall be:

- Type written on 8 1/2" x 11" paper;
- The pages numbered; and
- The Proposal must also be signed in longhand in accordance with the instructions as stated in Section 5.7, "Bid Submission Page"

Acceptance of any proposals remains in the sole discretion of Barnstable County. Proposals which in the judgment of Barnstable County fail to meet the requirements of this RFP or which are incomplete or obscure, or in which errors occur will be rejected.

### ***5.1 Bid Due Date***

The bound Proposal must be signed and shall be delivered to Barnstable County within the time set forth in this Request for Proposals (RFP). Proposals will be enclosed in sealed envelopes and marked as follows:

RFP Title:	Marketing Services for Cape Light Compact
Dated:	
Bidder's Name:	
Delivered to:	Barnstable Superior Courthouse 3195 Main Street Barnstable MA, 02630
Attention:	Margaret Downey <a href="mailto:mdowney@barnstablecounty.org">mdowney@barnstablecounty.org</a> Cape Light Compact Chief Procurement Officer

Bids must be received by December 16, 2013 by 2:00 p.m. EST. Proposals received after this time will not be considered.

### **5.1.1 Interpretation of the RFP**

Barnstable County is seeking one qualified firm to provide the requested services. Proposals shall be in accordance with all requirements set forth in this RFP. Should a Bidder find any ambiguity, discrepancy or omission in the RFP, the bidder should notify the Compact in writing. Such information must be received by December 5, 2013, to afford Barnstable County an opportunity to send any instructions or interpretations to other Bidders who have received an Invitation to Bid. Barnstable County will not be responsible for any oral instructions or interpretations. Please send all inquiries to:

**Barnstable Superior Courthouse**

P.O. Box 427

3195 Main Street

Barnstable MA, 02630

Attn: Margaret Downey

### **5.1.2 Rights to Modify This Specification**

Barnstable County reserves the right to modify any aspect of this RFP if the change will make the *Marketing Services for Cape Light Compact* more cost-effective and customer responsive. Only qualified Vendors experienced in providing marketing services are invited to submit proposals.

## **5.2 Proposal Contents**

### **5.2.1 Narrative Requirements**

Bidders must submit a proposal narrative containing the following information. Please note that Barnstable County reserves the right to reject any proposal, which, in its judgment, is incomplete. Please provide the following:

- a. A brief description of the business nature of the Bidder, its purpose, and its general history. Include a summary of contracts held similar in nature to the services described in this RFP;
- b. A listing of all staff proposed to provide the indicated services and summary of their qualifications, including training and experience. If existing positions are to be used, indicate the percentage of time to be devoted to this project. Include a summary of qualifications and references for each subcontractor. If the Bidder intends to hire additional staff in order to provide the proposed services, a description of its approach to hiring and the qualifications it will require of prospective employees should be included;
- c. A detailed description of the proposed approach for implementing all of the proposed services;
- d. A detailed explanation of how the Bidder proposes to coordinate and develop subcontracting relationships;

- e. A draft education, outreach and marketing plan and schedule for the first term (February 15, 2014 – December 31, 2014). This plan shall include the full mix of media types as described above, as well as others that the respondent may suggest;
- f. A detailed description of the proposed approach to electronically communicate with the Compact;
- g. The locale or anticipated locale for operations and describe how this site or sites will help satisfy the requirements of this RFP;
- h. A list of other similar contracts in force in Massachusetts and/or nationally along with the names of references to be contacted regarding your company's job performance for programs that are within the size and scope of the *Program*;
- i. Explanation of data security measures employed by the bidder regarding confidential consumer information that may be shared with the firm (consumer name and one of the following: social security number or financial account number or utility account number) and confirmation that security measures comply with applicable federal, and state laws covering protection of Personal Information of residents of the applicable state. (In Massachusetts the applicable Regulation is 201 CMR 17.00 - STANDARDS FOR THE PROTECTION OF PERSONAL INFORMATION OF RESIDENTS OF THE COMMONWEALTH [Effective date of Mass Regulation is 3/1/10.]);
- j. Any exceptions to the Contract provided in section 5.3

### **5.2.2 Pricing Structure**

Bidders shall submit a completed bid form detailing estimated costs, by key program tasks, on a time and material basis, indicating hourly rates for personnel, travel, total hours and total cost for completing the project by year.

Any start-up costs, which are nonrecurring or which may be expected to be reduced, over time should be clearly identified. Bidders shall describe how their unit prices would change, if at all, in the event that the actual participation targets for the programs and measures differ from the budget estimates.

### **5.2.3 Qualification of Bidders**

The competency and responsibility of Bidders and of any proposed Sub-Contractors will be considered in making the award. Barnstable County expressly reserves the right to reject any or all Proposals (either generally or in a particular instance and either retroactively or prospectively) and to waive any informalities or regularities in Proposals, and to accept that Proposal whether it be the lowest bid or not, which in the unilateral judgment of Barnstable County best serves the Cape Light Compact's purpose and intent provided, that, no course of dealing or delay or omission on the part of the Barnstable County in exercising such right shall operate as a waiver thereof.



#### **5.2.4 Sub-Contracts**

The Bidder shall submit with its Proposal the names and addresses of any Sub-Contractors proposed for principal parts of the Work and their price. The Compact encourages the utilization of Cape Light Compact territory based contractors. The cost of work proposed by each said Sub-Contractor shall be included in this information. Barnstable County reserves the right to substitute other Subcontractors to provide like services or materials.

#### **5.2.5 Substitutions**

N/A

#### **5.2.6 Massachusetts State Sales Tax**

Massachusetts Sales Tax on materials and equipment rentals or any other taxable items for use in the completion of lump sum or guaranteed price contracts will be paid by the Program Contractor who is considered the consumer and not billed to the Cape Light Compact or its customers. Said Massachusetts Sales Tax shall be incorporated into the cost prices used in determining the bids submitted. Any amounts owing, due, claimed or paid with regard to such taxes shall be subject to the indemnification provisions of the contract.

#### **5.2.7 Detailed Bid Information**

Where specific information (such as names, addresses, and prices of any Sub-contractor; number of working days and/or calendar days required to complete the Work; or other data) requested in the written Proposal is omitted, the Bidder may be automatically eliminated from consideration for the Contract at the discretion of Barnstable County.

### ***5.3 Acceptance of Proposals and Award of Contract***

Barnstable County, at its sole discretion, may accept entire proposals submitted by a Bidder, or accept portions of proposals submitted by a Bidder, or reject proposals in whole or in part.

Screening Proposals for Compliance with Submission Requirements and Minimum Evaluation Criteria will include utilizing the proposal submission requirements and the minimum criteria incorporated herein. The Selection Committee, to be designated by the Chief Procurement Officer, shall screen proposals as to their responsiveness, and identify those which are responsive. Any proposal, which in the opinion of the Evaluation Committee, fails to include the information or documentation specified in the submission requirements shall be determined to be non-responsive and shall be rejected. Any bidder who fails to meet any of the standard set forth as minimum criteria shall be determined to be non-responsive and shall be rejected. All other proposals meeting both the submission requirements and minimum evaluation criteria shall be considered qualifying proposals.

Barnstable County reserves the right to waive portions of the RFP for all bidders and to waive minor informalities as defined by Chapter 30B, or allow the bidder to correct them. The remaining responsive proposals shall be evaluated using the comparative evaluation criteria incorporated herein. Each proposal shall be assigned:

- a) a separate rating for each comparative evaluation criterion; and
- b) a composite rating.

Proposal ratings and accompanying written explanations shall be forwarded to the Chief Procurement Officer.

Methodology for Determining Best Price:

Taking into consideration price and the evaluations of the Evaluation Committee, the Chief Procurement Officer shall determine the most advantageous proposal. Award of the contract is subject to the approval of the Barnstable County Commissioners.

### **5.3.1 Selection Criteria**

The final selection of a consultant shall be based on the following sets of criteria:

Minimum Evaluation Criteria

- a. Submission of all required documentation and certifications detailed in Proposal Contents.
- b. Demonstrated capacity to understand and provide a full range of services to address the issues facing Cape Light Compact.
- c. Demonstrated understanding of electric utility restructuring issues.
- d. Experience, references and proven ability to meet schedules.
- e. Submitted proposal responds to the issues identified in the RFP.
- f. Oral presentation, if requested.

## Comparative Evaluation criteria

Question Weighting	Section
<b>20.0%</b>	<b>Experience</b>
2.00%	Demonstrated experience and expertise with Energy Topics
5.00%	Demonstrated experience and expertise with similar programs
5.00%	Demonstrated prior experience implementing / transitioning similar programs
3.00%	Bidder team member roles and responsibilities are identified
5.00%	Quality and experience of the account management team
<b>50.0%</b>	<b>Understanding of the SOW</b>
25.00%	Demonstrated a good understanding of the SOW
25.00%	Demonstrated capabilities to perform activities in the SOW. The work plan is comprehensive and achievable
<b>30.0%</b>	<b>Other questions</b>
10.00%	IT Capabilities and platform
5.00%	Transition plan (If applicable)
10.00%	Local presence in the service territory (Or plan to start operation in the service territory)
5.00%	Reporting capabilities

Contract negotiations will commence in order to complete a signed contract within 15 days of contract award. All contracts will incorporate the general terms and conditions included with the bid package and the written documents provided by the Bidder in its bid.

If a contract is not executed by the chosen Vendor by **February 15, 2014** Barnstable County reserves the right to negotiate with an alternative Bidder. All exceptions to the contract must be noted in writing and included within the body of the proposal

### **5.4 Proposal Confidentiality**

All proposals will become the property of Cape Light Compact. As a public entity it may become necessary to supply price information to regulatory agencies for review. Barnstable County will request

that all such information be treated confidentially by the regulatory agencies and Barnstable County will furnish such information when required. If any proprietary information is contained in the Proposal, it should be clearly identified and will be treated as such provided that neither the Barnstable County, the Cape Light Compact, officers, employees shall be liable for any action taken, or omitted to be taken, in good faith by it or them hereunder or be responsible for the consequences of any oversight or error in judgment thereof except for direct losses due to its or their willful misconduct or gross negligence.

#### **5.4.1 Return of Proposal Materials**

Proposal materials will not be returned to Bidders. All costs incurred by Bidders in the preparation and submission of a proposal and/or oral presentation shall be the sole responsibility of Bidders.

### ***5.5 Oral Presentations***

Bidders whose Proposals are deemed as competitive may be required, upon request, to make an oral presentation. The location of the presentation will be stated on the invitation; presentations will be limited to two (2) hours. The first half hour will be allocated to a formal presentation by the Bidder. The balance of the presentation period will be devoted to questions by and discussion with Barnstable County's representatives.

The oral presentation will be arranged through Barnstable County. Bidders will receive at least 48 hours' notice to prepare for the presentation. Attendance must include the Bidder's proposed Project Manager. Barnstable County may disqualify a Bidder on the basis of its refusal to honor its request for an oral presentation.

Results of the oral presentations will be used in part to arrive at ranking the finalist(s) and may result in adjustments to the final rankings assigned. In addition to, or as an alternative to additional technical data provided in a written or oral format, Barnstable County reserves the right to request a "best and final offer" from said Bidders in order to arrive at a final selection.

Based upon all information, Barnstable County will select a finalist with which contract negotiations will commence.

Attachments

## **5.6 Bidder's Submission Statement**

### Bidder's Submission Statement

The following must be completed and included in each Bidder's proposal:

The undersigned Bidder hereby offers to perform the Services as described in the Request for Proposal (RFP) dated November 15, 2013, prepared by Barnstable County, in accordance with the Proposal attached hereto. This bid offer is firm and shall remain in effect for a period of sixty (60) days after receipt thereof by Barnstable County.

In connection with such offer, the undersigned represents and warrants to Barnstable County that it has carefully and thoroughly reviewed the entire RFP and that it possesses the special experience, skills, and abilities necessary to perform the Services bud on in accordance with the specifications detailed in the RFP.

Name of Bidding Firm

Signature

Name of Signatory (print or type)

Position with (print or type)

## **5.7 Draft Contract**

CONTRACT  
between  
BARNSTABLE COUNTY  
and  
[insert name of Vendor]

This Contract is made effective as of [\_\_\_\_\_], and is by and between Barnstable County, Massachusetts (“THE COUNTY”) and [\_\_\_\_\_] (“THE VENDOR”). THE VENDOR 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 (the “Member Municipalities”), 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 31, 2013, DPU 12-107, for plan years 2013 through 2015;

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 VENDOR for [\_\_\_\_\_] services in connection with the energy efficiency programs that the Compact will operate under the Energy Efficiency Plan;

WHEREAS, THE VENDOR is experienced in the [\_\_\_\_\_] field(s) and can provide the Compact with the services required pursuant to this Contract;

WHEREAS, THE VENDOR was selected by [describe competitive bidding, or other, process used to hire Vendor]; and

WHEREAS, the Compact and the Member Municipalities are intended third-party beneficiaries of this Contract.

NOW, THEREFORE, THE COUNTY and THE VENDOR do mutually agree as follows:

## 1. SCOPE OF WORK

### (a) Description of Work

THE VENDOR shall furnish all labor, equipment, permits, supervision and materials to perform the work described in the Scope of Work attached as Exhibit A hereto (the "Work").

### (b) Contract Documents

The following documents (the "Contract Documents") shall comprise this Contract:

- (i) this Contract between Barnstable County and [insert name of Vendor] dated [\_\_\_\_\_]
- (ii) any and all exhibits hereto, including any plans and specifications related to the Work; and
- (iii) any and all Contract change orders.

The Contract Documents are listed in order of precedence. THE VENDOR is solely responsible for any errors or omissions caused by any failure to inspect, familiarize and understand the complete set of Contract Documents. The Work shall be performed in strict compliance with the Contract Documents and any written amendments thereto and other drawings and detail requirements that may be furnished or accepted by THE COUNTY under Section 15 or Section 16 below. No substitutions shall be made with the Work unless permitted in the Contract Documents and only then upon THE VENDOR first receiving all approvals required under the Contract Documents for substitutions.

## 2. Authorized Representatives and Notice

THE COUNTY hereby names [insert name and title], as its authorized representative and day-to-day point of contact for THE VENDOR for all issues arising under this Contract. THE VENDOR shall submit all Contract related correspondence to THE COUNTY at the following address:

Margaret T. Downey  
Assistant County Administrator  
P.O. Box 427  
Barnstable, MA 02630  
mdowney@barnstablecounty.org (email)

All VENDOR communications with THE COUNTY, an owner or tenant of properties at which THE VENDOR is performing or will perform Work, or their representative, (collectively referred to herein as the "Customer"), and/or separate contractors, subcontractors, or suppliers of THE COUNTY shall be made through:

Margaret T. Downey  
Assistant County Administrator  
P.O. Box 427

Barnstable, MA 02630  
mdowney@barnstablecounty.org (email)

THE VENDOR hereby names [insert name and title], as its authorized representative and day-to-day point of contact for THE COUNTY for all issues arising under this Contract and the person responsible for ensuring (over the entire term of this Contract, unless otherwise requested in writing to THE COUNTY, the consent of which shall not be unreasonably withheld) that the Work is performed and completed in a manner satisfactory to THE COUNTY and in accordance with the terms of the Contract Documents (the "Project Manager"). THE COUNTY shall submit all Contract related correspondence to THE VENDOR at the following address:

[insert contact information]

Except for any notice required by law to be given in another manner, all notices, waivers, demands, or other communications required or permitted by this Contract to be effective shall be in writing, properly addressed, and shall be given by: (i) personal delivery; (ii) established overnight commercial courier delivery service with charges prepaid or duly charged by the sender; or (iii) registered or certified mail, return receipt requested, first class, postage prepaid. Notices given hereunder shall be deemed sufficiently given on: (i) the date of personal delivery if so delivered; (ii) the day after sending if sent by established overnight commercial courier delivery service; or (iii) the fifth day after sending if sent by registered or certified mail. Either Party may additionally provide notice by electronic mail, facsimile, or telephone communication, but this shall not relieve the Party of the obligation to provide notice as specified above.

### 3. Contract Term

The Contract term shall commence on [insert date] and shall continue until the earlier of [insert date] or termination pursuant to Sections 27 or 28 hereof. THE COUNTY may, in its sole discretion, extend the term of the Contract until the earlier of [insert date] or termination pursuant to Sections 27 or 28 hereof.

### 4. Contract Price and Rates; Credits

The Contract price and rates shall be as set forth and described in Exhibit B hereto.

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

### 5. Payment Procedures



(a) Retainage

Intentionally omitted.

(b) Effect of Payment

THE COUNTY shall not be deemed to have accepted any improper Work, materials or performance by virtue of any payment made to THE VENDOR. Payments (if any) shall be deemed advances and are subject to adjustment for errors, overpayments, or THE COUNTY's good faith determination that the remaining balance of payments may be insufficient to ensure completion of Work or to pay lien claims.

(c) Invoicing and Payment

THE VENDOR shall submit monthly invoices to THE COUNTY by the 10th day of each month, unless otherwise authorized in writing by THE COUNTY. THE COUNTY will remit payment within forty-five (45) calendar days of THE COUNTY's receipt of each monthly invoice. Payment may be contingent upon final inspection and acceptance of the Work. Upon request, THE VENDOR shall provide to THE COUNTY all backup documentation required to establish the value of the Work in place as represented by THE VENDOR's monthly invoices.

All payments, including final payment, are contingent upon:

- (i) all Contract Documents being fully executed;
- (ii) provision by THE VENDOR of a Release, Certification, and Lien Waiver in the form attached as Exhibit C hereto (THE VENDOR shall be required to provide a Release, Certification, and Lien Waiver only prior to final payment);
- (iii) proof by THE VENDOR that it is in current compliance with all of its insurance obligations under this Contract;
- (iv) proof by THE VENDOR that it is not in default of any provision of this Contract; and further, when required by THE COUNTY, all payments, including final payment, shall be contingent upon THE VENDOR providing THE COUNTY with:
  - (a) copies of all necessary permits and/or licenses;
  - (b) performance and payment bonds;
  - (c) a written statement indicating whether THE VENDOR is a certified minority and/or women business enterprise;
  - (d) evidence of compliance with defined industry safety requirements; and/or
  - (e) where applicable, State Prevailing Wage Forms or U.S. Department of Labor Form WH-347 Payroll Form, WH 348 Statement of Compliance Form, or similar, in accordance with all Prevailing Wage Laws and Requirements.

6. Prevailing Wage

To the extent that it applies to the Work (e.g., in the implementation of energy efficiency services that result in physical alterations to public buildings), THE VENDOR shall comply with the requirements of G.L. c. 149, §§ 26-27H, as well as any and all other applicable local, state

and federal wage laws. When Work is performed under prevailing wage rates, THE VENDOR 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 VENDOR 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.

#### 7. Withholding

THE COUNTY reserves the right to withhold payment(s), partial or complete, for any default by THE VENDOR in the performance of any of its obligations under any of the Contract Documents, and/or in the event that an entity or individual makes a claim, prepares to make a claim, or threatens to make a claim upon said payment(s), including, but not limited to, claims for liquidated damages, attachments, the failure to pay compensation to any party when due, or other damages. Payments to THE VENDOR shall be withheld for failure of THE VENDOR to comply with all applicable tax laws, or the failure to remedy any lien against it or THE COUNTY. Upon lawful resolution of any such claim, THE COUNTY shall have the right to reconcile with all parties in accordance with the resolution, including the use of checks payable jointly to the order of THE VENDOR and its suppliers, lessors, laborers or unions. THE COUNTY is not responsible for paying any interest on any withheld payment(s).

#### 8. Partial Performance

THE VENDOR shall not be entitled to any payment for any partial performance except for progress payments made in accordance with the Contract Documents, or in the event that this Contract is terminated by THE COUNTY as set forth under Section 27 or Section 28 below. THE VENDOR understands that THE COUNTY is contracting for nothing less than full, complete and timely performance of the Work, and with the express agreement that THE COUNTY shall be obliged only upon final completion of the Work.

#### 9. Correction of the Work

THE VENDOR is required to correct in a timely fashion any Work rejected by THE COUNTY, or a Customer for failing to comply with the Contract Documents, whether observed prior to the commencement of the Warranty Period or during the Warranty Period established under Section 26 below. THE VENDOR shall correct at its own cost and time and bear the expense of additional services for any non-conforming Work.

#### 10. Nonperformance

If THE VENDOR defaults in performance of its obligations under these Contract Documents, and fails to cure the default or produce a plan acceptable to THE COUNTY (in its reasonable discretion) to cure the default within 24 hours of notice from THE COUNTY, THE COUNTY may take over the Work or any separable part thereof, and complete the same or have the same completed at THE VENDOR's expense. In taking over, THE COUNTY shall have the

right, for the purpose of completing Work, to take possession of all drawings and materials belonging to THE VENDOR and purchased or leased for the performance of THE VENDOR's Work. For such purpose, this Contract shall be construed as an assignment by THE VENDOR to THE COUNTY of said drawings and materials. THE VENDOR shall not be entitled to receive further payment until Work is completed. After such Work is completed, the direct and indirect costs of such completion (the "Cost of Completion") shall then be applied against the Contract Price. If the Cost of Completion is in excess of the balance due to THE VENDOR, the excess shall be a debt immediately due from THE VENDOR to THE COUNTY.

11. Time for Commencing and Completing Work; Damages

THE VENDOR shall commence and complete the Work in accordance with the Project Schedule attached hereto as Exhibit D.

THE VENDOR hereby agrees that, should THE VENDOR fail to fully perform according to the Contract Documents, including the Project Schedule, then THE COUNTY shall recover from THE VENDOR any and all damages resulting from said breach, including, but not limited to, retaining THE VENDOR's payment(s) hereunder up to the full amount of said damages, plus interest and other charges as may be applicable and suffered by THE COUNTY. Should THE VENDOR fail to complete said Work, THE COUNTY also reserves the right to have any uncompleted Work performed by another Vendor of THE COUNTY's choosing, with any and all additional project costs incurred by THE COUNTY to become the sole expense of THE VENDOR.

12. Independent Contractor

In performing the work under the Contract Documents, THE VENDOR will at all times be acting as an independent contractor. As such, THE VENDOR will not be an employee of THE COUNTY and will not by reason of the Contract Documents or by Work performed be entitled to participate in or to receive any benefit or right under THE COUNTY's employee benefit plans. All employees/personnel supplied by or used by THE VENDOR shall be deemed employees or subcontractors or agents of THE VENDOR. THE VENDOR assumes full responsibility for the actions of all such employees or subcontractors or agents while performing the Work under the Contract Documents and for the payment of their compensation. THE VENDOR agrees to pay all withholding, FICA, worker's compensation and other taxes, union contributions or other employment related taxes and/or dues required by law or third-party agreement, as and when the same become due and payable. THE VENDOR shall have no authority to bind or make commitments on behalf of THE COUNTY for any purpose and shall not hold itself out as having such authority.

13. Standards of Performance and Compliance with Laws

THE VENDOR shall fulfill its obligations hereunder in accordance with generally accepted standards of professional care, skill and competence in the field(s) in which it is providing services to THE COUNTY. THE VENDOR warrants and represents that it is and shall remain properly licensed in the geographical area in which the Work is to be performed. THE VENDOR will, at its expense, apply for and maintain all permits and licenses required to

perform the Work and will perform the Work in strict accordance with any and all relevant federal, state, or local codes, laws, regulations, orders, requirements, and guidelines. THE VENDOR shall schedule and obtain at its own expense any and all necessary tests and inspections. Costs associated with the reopening of any concealed area not inspected in a timely manner will be at THE VENDOR's expense. THE VENDOR shall coordinate and cooperate with any and all trades, customs or local agreements without exception, delay, or claim for additional compensation.

14. Performance of Work

THE VENDOR shall strictly conform the Work to these Contract Documents, unless THE COUNTY executes a written authorization specifying the changes. Should there be any discrepancy between the plans or the specifications, or both, and any applicable laws, then the most stringent shall govern. THE COUNTY assumes no responsibility for failure of the Contract Documents to comply with laws, as THE VENDOR represents that THE VENDOR is familiar with the same. If any Contract Documents provide for a method of work contrary to any such laws and regulations, THE VENDOR shall notify THE COUNTY in writing prior to the commencement of the Work. THE VENDOR shall use only materials that are new and the best of their respective kind; labor and workmanship shall be of first class quality.

15. Changes and Extra Work

THE COUNTY may at any time or from time to time during the progress of the Work, or until the expiration of the Warranty Period, as established in Section 26, below, require a deviation from, or an addition to the Contract Documents. No change will be effective unless in writing and approved by both Parties. No such change shall in any manner impair or void the Contract Documents. The value of any change required by THE COUNTY shall be added to or deducted from the Contract Price as the case may be; the adjustment shall be determined by agreement of THE VENDOR and THE COUNTY. 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 VENDOR shall make the change and the dispute will be settled by later agreement or dispute resolution in accordance with Section 30 (c) below. THE VENDOR 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 VENDOR 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.

16. Punch Lists; Completion and Acceptance

Intentionally omitted.

17. Inspection; Prior Work

THE VENDOR has examined all Contract Documents, the job site and/or the conditions to be encountered. THE VENDOR enters into this Contract relying solely on its own investigations and not on representations, if any, that may have been made by or on behalf of THE COUNTY or the Compact. Unless THE COUNTY is notified in writing to the contrary

prior to THE VENDOR commencing performance of the Work, it shall be conclusively presumed that work by others that precedes THE VENDOR's performance has been done in a proper manner. Any expense accruing to THE VENDOR, THE COUNTY, or the Compact because of the failure of such work by others to be properly done shall be borne by THE VENDOR.

#### 18. Safety

To the fullest extent allowed by law, THE VENDOR shall assume responsibility for the general and overall safety of the work site, including the safety of any employee, client, guest, or visitor of THE VENDOR, THE COUNTY, the Compact, or a Customer. Systems that have been disabled or otherwise affected in the course of performance of the Work will be left in a safe condition. Out of service systems will be tagged by THE VENDOR in a manner accepted by OSHA, state and local authorities, the insurance company, and THE COUNTY. THE VENDOR shall at all times exercise reasonable precautions for the safety of its employees and the general public and will be responsible for the performance and maintenance of any appropriate safety procedures pursuant to which it and its employees shall act. Further, THE VENDOR shall operate in complete compliance with OSHA regulations, as well as any and all applicable local, state or federal safety laws, regulations, or requirements.

Imminent danger situations created by THE VENDOR must be corrected immediately. THE COUNTY reserves the right, but without obligation, to take corrective action and pass the costs associated with the same back to THE VENDOR. Additionally, THE VENDOR shall, at the end of each work day or job site, leave the Work area in a clean and safe condition.

THE VENDOR shall immediately notify THE COUNTY of any accident or damage to persons or property and, within forty eight (48) hours, file a written report of the accident with THE COUNTY. If THE VENDOR encounters any asbestos or other hazardous substances in the course of the Work, THE VENDOR shall immediately notify THE COUNTY and any agency required by state or federal law, and shall stop any Work that may disturb, damage or cause a release of asbestos or hazardous substances until THE VENDOR receives written instruction from THE COUNTY. If any hazardous substances are to be handled in the execution of the Work, THE VENDOR shall assume any and all liabilities associated with such handling and must AT ALL TIMES, provide proper storage and disposal of such hazardous substances. Hazardous substances will be handled and disposed of in compliance with governing federal, state, and local laws and/or codes as originally written or subsequently modified. UNDER NO CIRCUMSTANCES WILL THE COUNTY OR THE COMPACT BE LIABLE FOR ANY INJURY TO i) THE VENDOR, ii) ANY EMPLOYEE, CLIENT, GUEST, REPRESENTATIVE, CONTRACTOR, OR SUBCONTRACTOR OF THE VENDOR, iii) ANY CUSTOMER, ANY EMPLOYEE, CLIENT, GUEST, REPRESENTATIVE, CONTRACTOR, OR SUBCONTRACTOR OF ANY CUSTOMER, OR iv) ANY THIRD PERSON, THAT IS THE RESULT OF ANY SUCH PERSON'S EXPOSURE TO HAZARDOUS MATERIALS OR THAT IS OTHERWISE CAUSED BY A RELEASE OR THREAT OF RELEASE OF HAZARDOUS MATERIALS.

#### 19. Vendor Employees

THE COUNTY may require THE VENDOR to remove from the work site such employees of THE VENDOR or subcontractors of THE VENDOR as THE COUNTY, in its reasonable discretion, deems objectionable, or whose continued employment in connection with the Work is deemed by THE COUNTY, in its reasonable discretion, to be contrary to the best interests of THE COUNTY or the Compact.

20. Storage and Clean-up

THE VENDOR shall maintain, to THE COUNTY's satisfaction, all work sites in a clean, neat and safe condition, and shall comply promptly with any instructions from THE COUNTY relating thereto. As the Work covered by the Contract Documents is completed, THE VENDOR shall remove from the work sites, to the satisfaction of THE COUNTY, all of THE VENDOR's rubbish, debris, materials, tools and equipment, and if THE VENDOR fails to do so promptly, THE COUNTY may remove the same to any place of storage, or any dumping ground, at THE VENDOR's risk and expense and without incurring any responsibility to THE VENDOR for loss, damage or theft. All storage and removal costs thus incurred by THE COUNTY shall be deducted from any payment or balance due to THE VENDOR, and any excess shall be the debt of THE VENDOR to THE COUNTY.

21. Damage and Loss

Damage caused by the direct or indirect action of THE VENDOR to a Customer's property and/or facility must be immediately repaired to the satisfaction of THE COUNTY and the Customer, at THE VENDOR's sole expense. THE VENDOR acknowledges that THE COUNTY may provide to THE VENDOR certain materials and/or equipment. THE VENDOR shall install such in accordance with the Contract Documents, all prevailing laws, rules, regulations and codes, and the manufacturers' written recommendations.

THE VENDOR accepts full responsibility for any breakage, shrinkage, damage, or loss of any and all material and/or equipment that has been purchased and/or assigned by THE COUNTY to THE VENDOR. THE VENDOR will replace such lost items with identical items, or THE COUNTY will furnish such items to THE VENDOR, at THE VENDOR's sole expense.

Disruption of services of any kind by THE VENDOR or its agents shall require the immediate action of THE VENDOR to restore such services including, if appropriate, the hiring of subcontractors specializing in the installation and repair of the systems disrupted. No additional compensation shall be due THE VENDOR for such damage and repair. THE VENDOR shall also take reasonable precautions to protect the Work, including materials supplied by THE VENDOR and/or materials supplied by THE COUNTY, prior to final acceptance of the Work.

Written documentation of any and all damage or disruption, as well as the repair action taken, must be forwarded to THE COUNTY immediately. THE COUNTY reserves the right to inspect the damage and repairs. In the event that THE COUNTY executes repairs, THE COUNTY will pursue cost recovery from THE VENDOR and/or its insurance company.

## 22. Indemnification

To the fullest extent allowed by law, THE VENDOR (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, the individual Member Municipalities (and all of the respective officials, officers, directors, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns of THE COUNTY, the Compact, and each individual Member Municipality), and all Customers from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, and/or judgments caused by, arising out of, or related to any act or failure to act of THE VENDOR (and/or its officers, directors, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns) related to the Contract Documents, including, but not limited to, any failure on the part of THE VENDOR (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 the Contract Documents on its part to be performed or complied with. This indemnification obligation is not limited in any way by the amount or type of damages or compensation payable by THE COUNTY.

## 23. Insurance

The VENDOR shall, at its sole expense, procure and maintain on all of its actions hereunder, the following insurance:

### (a) Until completion of the Work:

- i. Workers' Compensation and Employers' Liability Insurance covering each and every worker employed in, about or upon the Work, as provided for in each and every statute applicable to Workers' Compensation and Employers' Liability Insurance.
- ii. Commercial General Liability Insurance, written on an occurrence form including coverages for Bodily Injury, Broad Form Property Damage, Personal Injury, Products/Completed Operations, Liability arising out of Subcontractors, Contractual Liability (to specifically include coverage for the indemnification clause of this Contract), and so-called Explosion, Collapse and Underground Hazards, with minimum limits of \$1,000,000 per occurrence/\$2,000,000 per project general aggregate; \$1,000,000 aggregate for products and completed operations.
- iii. Automobile Liability Insurance covering all owned, non-owned and/or hired motor vehicles to be used in connection with the Work with a minimum combined single limit of \$1,000,000 bodily injury and property damage, including Form MCS-90 and Broadened Pollution Coverage via ISO form CA9948 or its equivalent.

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

v. Professional Liability Insurance covering THE VENDOR's errors and omissions relating to the Work if the Work involves rendering of professional advice or consultation, including designs, surveys, drawings, approval of maps, etc. Such insurance shall be provided at a limit of at least \$1,000,000.

(b) After the Work is completed:

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

ii. Professional Liability Insurance with a limit of at least \$1,000,000 for one year.

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 or the Compact. THE VENDOR'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 VENDOR's insurance company.

THE VENDOR agrees to waive any rights of subrogation against THE COUNTY, the Compact, the Customer, and their respective employees, subcontractors, engineers, consultants and agents.

THE COUNTY and the Compact must be named as additional insureds on the Commercial General Liability Insurance. In addition, if required by a Customer, THE VENDOR shall name the Customer as an additional insured on such policy.

THE VENDOR shall not enter upon any work site or begin Work without first submitting to THE COUNTY insurance certificate(s) that indicate the coverages required by the Contract Documents. 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 Work, the VENDOR 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 Contract. THE VENDOR shall be solely responsible for tracking and reporting to THE COUNTY the expiration of the policies shown on the insurance certificate(s) provided.

THE COUNTY reserves the right to waive and/or modify the insurance provisions of this Section 23, if THE VENDOR provides alternate forms of adequate security for its obligations under the Contract.

## 24. Bonds

Upon request by THE COUNTY, THE VENDOR shall provide performance and payment bonds from a surety company in amounts, form and substance acceptable to THE



COUNTY, naming THE COUNTY as a direct beneficiary of the surety's obligations under such bonds. Such bonds shall fully protect THE COUNTY and the Compact against any and all breaches by THE VENDOR, 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 VENDOR's Work and the Warranty Period described in Section 26 below. Failure to provide the requested bonds, prior to the commencement of the Work or cancellation of requested bonds during the course of the Work or the Warranty Period, shall entitle THE COUNTY to terminate this Contract without recourse by THE VENDOR except as allowed under Section 27 or 28 below.

Performance Bond	<input type="checkbox"/>	required	<input type="checkbox"/>	not required
Payment Bond	<input type="checkbox"/>	required	<input type="checkbox"/>	not required

Premium(s) for requested bond(s) may be added to the Contract Price through a Change Order Form without additional markup by THE VENDOR (except as specifically approved, in writing, by THE COUNTY in advance of the Work). THE VENDOR must present to THE COUNTY a copy of the invoice for the bonds signed by the agent with power of attorney for the bonding company.

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 or the Compact. THE VENDOR'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 VENDOR's surety company.

## 25. Taxes and Contributions

THE VENDOR is solely responsible to pay when due all sales, use, and transportation taxes, and all contributions and taxes for unemployment insurance or pension or health funds or similar taxes imposed by any government entity or any labor organization, measured by the wages, salaries or other remuneration paid persons employed by THE VENDOR and engaged in the performance of Work. In the event that THE VENDOR fails to pay such taxes or contributions when due, or in the event that THE COUNTY or the Compact is claimed to be liable to pay such taxes or contributions, THE COUNTY shall have the right, but not the obligation, to pay such taxes or contributions, and THE VENDOR agrees to reimburse THE COUNTY upon demand for the amount thereof (including penalties and interest). THE COUNTY shall have the right to deduct any amounts so paid from sums due THE VENDOR, and any excess shall be the debt of THE VENDOR to THE COUNTY.

## 26. Warranty

THE VENDOR hereby warrants that all labor performed and any VENDOR supplied materials furnished hereunder shall conform to the requirements of the Contract Documents and be free from defects for a period of one (1) year from and after THE COUNTY's final acceptance of all Work performed hereunder (the "Warranty Period").

Without limiting any other remedy available to THE COUNTY, if any such non-conformance or defect appears during the Warranty Period, THE VENDOR shall make any and all repairs or replacements necessary to remedy the same at its sole expense and within a reasonable time after notification by THE COUNTY. The warranty shall also apply to all Work performed pursuant to the foregoing warranty with the Warranty Period for the repair or replacement work commencing on THE COUNTY's final acceptance of the repair or replacement work. The said warranty shall, at a minimum, obligate THE VENDOR to respond to all warranty calls placed by telephone within forty eight (48) hours. Failure to honor the warranty shall entitle THE COUNTY to withhold funds due THE VENDOR, enforce any applicable bond, proceed to obtain a judgment against THE VENDOR based on all applicable laws, or pursue any other available remedy. THE VENDOR shall maintain insurance as listed above during the Warranty Period.

THE COUNTY shall have the right to charge THE VENDOR Fifty-Five Dollars (\$55) for inspection of warranty or repair work. This charge will become the sole expense of THE VENDOR, which THE COUNTY shall either deduct from current invoices due or invoice directly to THE VENDOR.

27. Termination or Suspension at the Discretion of the County

THE COUNTY may, in its sole discretion, terminate or suspend this Contract upon seven (7) days notice without cause, or immediately for cause. Termination or suspension for cause may include, but not be limited to, THE VENDOR's failure to remedy an imminent danger situation, failure to remedy any lien or lawful claim against it or related to the Work that affects or may affect THE COUNTY, the Compact, a Member Municipality, or a Customer, or for any other material breach of this Contract.

The sole obligation of THE COUNTY upon termination or suspension will be to pay to THE VENDOR the actual cost of the Work in place at 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 Contract. Under no circumstances shall THE VENDOR be entitled to compensation for lost profits, anticipated profits, interest, consequential damages, or the like. THE VENDOR's rights under this Section shall constitute its sole and exclusive remedy under this Contract.

Termination or suspension for cause shall entitle THE COUNTY to assess against THE VENDOR's account all damages, including, but not limited to, costs required to complete the outstanding Work, incurred or to be incurred by THE COUNTY, the Compact, a Member Municipality, or a Customer, and all warranties and guarantees of THE VENDOR as agreed herein to the satisfaction of THE COUNTY.

28. Termination or Suspension Due to Changes in Funding

This Contract is subject to the receipt of funds from various sources to support the Energy Efficiency Plan. If for any reason such funding is terminated, suspended, or restricted, this Contract will become null and void, effective immediately. THE COUNTY shall provide written notice of such termination or suspension to THE VENDOR. In the event of such

termination or suspension, THE VENDOR shall be paid for all authorized, satisfactory (in the reasonable discretion of THE COUNTY) Work performed up to and including the date of termination or suspension. Subsequent to termination, neither Party will have any rights or duties towards the other except for any obligations hereunder that by their terms expressly survive such termination.

## 29. Force Majeure

“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.

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 Section 29 exceed sixty (60) days.

## 30. Miscellaneous

### (a) Assignment and Subcontracting

No Work to be performed by THE VENDOR pursuant to this Contract shall be assigned or subcontracted, in whole or in part, to any other organization, association, individual, corporation, partnership, or other entity without the prior written consent of THE COUNTY in its sole discretion. No assignment or subcontract shall relieve or discharge THE VENDOR from any obligation or liability under this Contract. THE VENDOR shall ensure that its assignees and subcontractors are bound to all of the terms and conditions contained in this Contract.

### (b) Records; Audit

THE VENDOR shall maintain books, records, and other compilations of data pertaining to the requirements of this Contract to the extent and in such detail as shall properly substantiate claims for payment under this Contract. THE VENDOR agrees that THE COUNTY may audit THE VENDOR's books, records, and other compilations of data associated with the performance of this Contract to ascertain that the payments requested by THE VENDOR represent the value of the Work. THE VENDOR agrees to maintain separate expense records for each specified project within and to segregate the costs of the base Work and any authorized change orders. All records shall be kept for a period of six (6) years commencing on the first day after final payment under this Contract. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the retention period, all records shall be retained until the completion of the action and resolution of all issues resulting therefrom, or until the end of the retention period, whichever is later.

(c) Dispute Resolution

This Contract 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 Contract. Unless otherwise expressly provided for in this Contract, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Contract between the Parties.

Any dispute that arises under or with respect to this Contract shall in the first instance be the subject of informal negotiations between the Assistant County Administrator of THE COUNTY, and the [insert title] of THE VENDOR, 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, the Parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by each Party.

In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, either Party may seek judicial enforcement. 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 Contract. In any judicial proceeding, the "Prevailing Party" shall be entitled to payment from the opposing party of its reasonable costs and fees, including but not

limited to attorneys' fees and travel expenses, arising from the civil action. As used herein, the phrase "Prevailing Party" shall mean the Party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action. Venue for any judicial proceeding involving a dispute arising from this Contract shall be Barnstable County Superior Court, Massachusetts. This Section 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 Work in any way in which the other is a Party.

THE VENDOR shall diligently carry on the Work and maintain the progress schedule during any dispute resolution proceedings, unless otherwise agreed to by THE COUNTY in writing. No dispute under this Contract shall give THE VENDOR the right to stop Work pending dispute resolution.

(d) Confidentiality and Compliance with Data Security Laws

Through the performance of the specified Work, THE VENDOR may be furnished with certain confidential or proprietary information. The disclosure and use of such information shall be governed by the Non-Disclosure Agreement entered into by THE COUNTY and THE VENDOR dated [insert date] and the Non-Disclosure Agreement entered into by the Compact and the Commonwealth Electric Company d/b/a NSTAR Electric dated May 10, 2001.

In addition, THE VENDOR shall comply with all applicable state and federal data security laws. Unless otherwise provided by law, THE VENDOR shall promptly pay all fines, penalties and damages that may arise out of or are imposed because of THE VENDOR'S failure to comply with the provisions of this section and, shall indemnify THE COUNTY and THE COMPACT against any liability incurred as a result of a violation of this section.

(e) Solicitation

THE VENDOR shall not solicit work from a Customer for two (2) years from expiration of the Warranty Period, unless THE VENDOR can provide proof that it has a pre-existing relationship with said Customer. For purposes of this subsection, "pre-existing relationship" means a relationship pursuant to which THE VENDOR performed services for the Customer prior to performing services for that Customer under an energy efficiency services program run by the Compact, the Commonwealth Electric Company d/b/a NSTAR Electric, or any other utility. THE VENDOR may do additional work directly with a Customer if said Customer has solicited THE VENDOR.

(f) Modification and Waiver

This Contract shall be binding upon THE VENDOR and the COUNTY and their respective attorneys, representatives, agents, officers, successors and assigns, and may not be modified, amended, discharged or supplemented except by an instrument in writing signed by a duly authorized representative of each Party. Failure of THE COUNTY to enforce any provision contained herein does not constitute a waiver of said provision or any other provision.

(g) Savings Clause

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

(h) Survival

Neither completion of the Work nor any termination of the Contract shall be deemed to relieve THE VENDOR of any obligations hereunder that by their nature survive completion of the Work; including, but not limited to, all warranties, guarantees and promises of indemnity and confidentiality.

(i) Third Party Beneficiaries

The Compact and each individual Member Municipality is an intended third-party beneficiary of this Contract, entitled to the full rights of this Contract.

(j) Non-Discrimination in Employment and Affirmative Action

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

(k) Interest of Vendor; Other Activities; Conflicts

THE VENDOR covenants that it presently has no interest, and shall not acquire any interest, directly or indirectly that would conflict in any manner or degree with the performance of the Work. THE VENDOR agrees to diligently serve and endeavor to further the best interests of THE COUNTY and the Compact. THE VENDOR further agrees not to undertake activities that conflict, or are not in accordance, with the best interests of THE COUNTY and the Compact, and will disclose any other employment or engagements that could conflict with its obligations under this Contract. THE VENDOR further covenants that it shall comply with all relevant provisions of G.L. c. 268A.

(l) Political Activity Prohibited

None of the services to be provided by THE VENDOR 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.

(m) Anti-Boycott Warranty

THE VENDOR hereby warrants that, during the term of this Contract, 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 VENDOR, 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 VENDOR.

(n) Headings

All headings contained in this Contract are intended for convenience of reference only, and shall not be used to interpret any of the terms and provisions of this Contract.

(o) Entire Agreement

This Contract 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.

(p) Joint Work Product

This Contract shall be considered the joint work product of the Parties hereto, and shall not be construed against either Party by reason thereof.

(q) Counterpart Execution; Scanned Copy

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

IN WITNESS WHEREOF, the Parties have executed this Contract effective as of [insert].

BARNSTABLE COUNTY:

Mary Pat Flynn  
Chair

William Doherty  
Vice Chair

Sheila Lyons  
Commissioner

Date: \_\_\_\_\_

VENDOR:

Name/Title:

Date:

## EXHIBITS

Exhibit A: Scope of Work  
Exhibit B: Contract Price and Rates  
Exhibit C: Release, Certification and Lien Waiver  
Exhibit D: Project Schedule  
Exhibit E: Change Order Form

## EXHIBIT A

## SCOPE OF WORK

## EXHIBIT B

## CONTRACT PRICE AND RATES

## EXHIBIT C

## RELEASE, CERTIFICATION AND LIEN WAIVER

PROJECT NAME:

SITE LOCATION:

THE COUNTY/OWNER: Barnstable County, Massachusetts

VENDOR:

---

Original Contract Value:	\$ _____
Payments Received to Date:	\$ _____
Remaining Contract Value:	\$ _____
Attached Final Invoice/Documentation to be Paid:	\$ _____

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For and in consideration of the sum of \$\_\_\_\_\_, and for other good and valuable consideration, the receipt of which is hereby acknowledged to the VENDOR by THE COUNTY, THE VENDOR hereby:

1. remises, releases and forever discharges all actions, debts, claims, demands, liens, suits, covenants, damages, equitable actions, and liabilities whatsoever, both at law and in equity against THE COUNTY, the Cape Light Compact and its municipal members, and any of THE COUNTY's customers arising from, in connection with or in any way relating to any work or labor performed and any materials, machinery, equipment, services, insurance bonds or supplies furnished by or through THE VENDOR;

2. certifies and warrants that the following have been paid in full or will be paid in full within seven (7) days of the date hereof: (a) all persons, parties or entities that have furnished materials and performed labor or either to, for or through THE VENDOR in connection with the project; (b) all taxes, benefits, assessments, insurance and obligations of any other descriptive title in connection with labor performed for the project; and (c) obligations for all materials, machinery, equipment, services and supplies to, for or through THE VENDOR;

3. waives and relinquishes all rights whatsoever (a) to lien, by way of any mechanic's lien, materialmen's lien, and any other lien, against and/or attach the property, real estate, buildings and improvements comprising of the project, on account of work, services, equipment, materials supplied;

4. along with its officers, directors, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns, to the fullest extent allowed by law, indemnifies, defends, and holds harmless THE COUNTY, the Cape Light Compact, the individual municipal members of the Cape Light Compact (and all of the respective officials, officers, directors, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns of THE COUNTY, the Cape Light Compact, and its individual municipal members), and THE COUNTY's customers from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees and expenses), side agreements, consent decrees, causes of action, suits, and/or judgments caused by, arising out of, or related to the performance of this Contract by THE VENDOR and its officers, directors, employees, servants, agents, attorneys, designated volunteers, independent contractors, successors and assigns.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

Then personally appeared \_\_\_\_\_, to me personally known and being first duly sworn, took oath that: (1) the certification above are true; and (2) that he/she is authorized to execute the foregoing on behalf of THE VENDOR and she/he signs on his own free will and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

EXHIBIT D

PROJECT SCHEDULE

EXHIBIT E

CHANGE ORDER FORM

## 5.8 Non-Disclosure Agreement

### CONFIDENTIALITY AGREEMENT

between

THE CAPE LIGHT COMPACT

and

\_\_\_\_\_ [Company]

This CONFIDENTIALITY AGREEMENT ("Agreement") is entered into by and between the Cape Light Compact and \_\_\_\_\_, a \_\_\_\_\_ [insert jurisdiction and state of organization] (the "Company"), and is effective as of the date of execution by the Company as set forth below.

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 (collectively, the "Members") entered into an inter-governmental agreement to act together as the Cape Light Compact (the "Compact");

WHEREAS, the Compact, through its agent, Barnstable County, issued a request for proposals marketing services (the "RFP");

WHEREAS, the Compact, for itself and for its Members, desires to supply certain confidential information to the Company so that the Company may submit a proposal in response to the RFP;

WHEREAS, the Company may also disclose certain confidential information in its proposal; and

WHEREAS, the parties desire to maintain the confidentiality of such information to the greatest extent allowed by law.

NOW THEREFORE, the parties hereby agree and state as follows:

1. *Confidential Information.* The term "Confidential Information" means all trade secrets or confidential, competitively sensitive or other proprietary information provided by either party in connection with the RFP and/or the execution or performance of the residential rebate processing that the parties may enter into (the "Energy Activity"), whether disclosed directly or indirectly, in writing or orally, and which, if in tangible form, is marked by the disclosing party with the words "Confidential" or "Proprietary" or marking of similar import, or if disclosed orally,

is identified as confidential at the time of disclosure and in a written notice delivered to the nondisclosing party promptly following disclosure. Confidential Information does not include:

- (i) information already in the possession of the nondisclosing party at the time of disclosure by the disclosing party, as long as such information was not provided by the disclosing party;
- (ii) information that is now or later becomes publicly available, unless such information becomes publicly available as a result of any action or inaction on the part of the nondisclosing party;
- (iii) information received by the nondisclosing party from a third party, unless such third party was under a duty of confidentiality with respect to such information;
- (iv) information for which disclosure is required under the Massachusetts Public Records Act, including without limitation, G. L. c. 4, §7, cl. 26 and G. L. c. 66, §10; or
- (v) information that is not designated or identified by the disclosing party as “Confidential” or “Proprietary” at the time of its initial submission. Such information shall be presumptively subject to disclosure under the Public Records Act.

2. *Use of Confidential Information.* The parties shall use the Confidential Information exclusively in connection with the Energy Activity. Each party shall receive all Confidential Information in strict confidence and shall protect the Confidential Information against disclosure using the same degree of care, but no less than a reasonable degree of care, that each party uses to protect its own confidential information.

3. *Disclosure to Third Parties.* The nondisclosing party agrees that it will not disclose any Confidential Information to any third party without the prior written consent of the disclosing party. After having obtained the written consent of the disclosing party, the nondisclosing party agree(s) that it will: (i) advise the third party of the terms of this Agreement; (ii) advise such party that it will be bound by the terms of this Agreement; and (iii) have such party execute a Non-Disclosure Certificate in the form attached to this Agreement as Exhibit A. The nondisclosing party may disclose Confidential Information only to consultants and contractors and other agents of the nondisclosing party who execute Non-Disclosure Certificates.

4. *Ownership of Confidential Information; No Implied License or Warranty.* Each party acknowledges that it has no ownership or proprietary rights in the disclosing party’s Confidential Information, and that the Confidential Information is the sole property of the disclosing party. Nothing in this Agreement will be construed as granting as rights to the receiving party by license or otherwise, to any of the disclosing party’s Confidential Information, except as specifically stated in this Agreement. Neither party makes any warranty or guaranty as to the accuracy of Confidential Information disclosed hereunder, nor is any assurance provided that Confidential Information is fit for any particular intended use or purpose. Each party shall rely on Confidential Information only at its own risk.

5. *Notes, Copies and Abstracts.* To the extent necessary to carry out the Energy Activity, the receiving party may make notes, copies or abstracts of the Confidential Information, provided that all such notes, copies and abstracts themselves are marked as confidential and provided that the receiving party maintains a written record of the distribution of all such copies and abstracts.

6. *Return of Confidential Information.* Within fourteen days of receiving notice that it is not the winning bidder, the Company will return to the Compact all copies of Confidential Information, and will destroy all notes, copies, abstracts, documents, computer files and other media that contain Confidential Information, and will provide to the Compact a written certification of an officer of the receiving party that it has done so. If the Company is the winning bidder, within fourteen (14) days after the Company has ceased to provide services to the Compact, the Company will return to the Compact all copies of Confidential Information, and will destroy all notes, copies, abstracts, documents, computer files and other media that contain Confidential Information, and will provide to the Compact a written certification of an officer of the receiving party that it has done so. If requested in writing, the Compact will return any Confidential Information received from any bidder (including the winning bidder), upon expiration of the relevant document retention period under Massachusetts Law. Each party agrees that upon the return of the Confidential Information, it shall continue to be bound by the terms of this Agreement.

7. *Scope of Agreement.* This Agreement is binding upon the employees, officers, directors, agents, representatives, attorneys, contractors and consultants and affiliates of each party. The Company understands and agrees that certain Confidential Information disclosed by the Compact may be owned by its Members and that the Compact is disclosing such information in its role as agent for the Members. The Company understands and agrees that such information shall be entitled to be treated as Confidential Information under this Agreement.

8. *Consent of the Disclosing Party.* As to any instance under this Agreement whereby the nondisclosing party is required to obtain the consent of the disclosing party prior to taking certain actions, the disclosing party reserves the right to withhold consent for any reason.

9. *Term.* This Agreement shall become effective when executed by both parties and shall continue in effect until either: (i) in the event that the Company is the successful bidder, two (2) years after the Company has ceased to provide services to the Compact, or until sooner terminated by the written agreement of both parties hereto, or (ii) the event that the Company is not the successful bidder, two years after termination of the solicitation process. The obligations of confidentiality contained herein shall survive and continue following the expiration or termination of this Agreement, unless otherwise agreed to in writing by both parties hereto.

10. *Required Disclosures.* Anything in this Agreement to the contrary notwithstanding, the nondisclosing party may disclose Confidential Information to the extent that it is required to do so by law, a court, or other governmental or regulatory authorities; provided, however, that the nondisclosing party shall give the disclosing party written notice of such a required disclosure prior to making such disclosure so that the disclosing party may seek a protective order or other relief with respect to such Confidential Information, and shall limit the disclosure to the minimum required to comply with the law, court order, or governmental or regulatory authority. Supplier acknowledges that the Compact and its Members are subject to public records laws, including without limitation, G. L. c. 4, §7, cl. 26 and G. L. c. 66, §10.

11. *Representations and Warranties.* The Compact hereby represents and warrants to the Company as follows: (i) the Compact shall use the Confidential Information only in connection with the Energy Activity; (ii) this Agreement constitutes the legal, valid and binding obligation of the Compact enforceable in accordance with its terms; and (iii) the Compact has taken all necessary action to authorize and approve the execution and delivery of this Agreement and the performance of the obligations hereunder. The Company hereby represents and warrants to the Compact as follows: (i) the Company shall use the Confidential Information only in connection with the Energy Activity; (ii) this Agreement constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms; and (iii) the Company has taken all necessary action to authorize and approve the execution and delivery of this Agreement and the performance of the obligations hereunder. The representations and warranties contained in this Agreement shall survive execution and delivery of this Agreement.

12. *Governing Law; Enforcement.* The validity, construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to its choice of law rules. The parties agree that venue for judicial enforcement of this Agreement shall be Barnstable County Superior Court. The parties acknowledge and agree that the extent of damage to the disclosing party in the event of a breach by the nondisclosing party of any of the covenants contained in this Agreement will be difficult or impossible to ascertain and that there may be no adequate remedy at law available to the disclosing party. The parties therefore agree that, in the event of such breach, the disclosing party, in addition to receiving damages for breach, shall be entitled to enforce any and all of the covenants contained in this Agreement by injunctive or other equitable relief.

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

FOR THE COMPACT:

Margaret T. Downey, Administrator  
Cape Light Compact  
P.O. Box 427  
3195 Main Street  
Barnstable, MA 02630  
(508) 375-6636 (phone)  
(508) 362-4136 (facsimile)  
mdowney@barnstablecounty.org (email)

FOR THE COMPANY:

**[insert contact information]**

With a copy to:

**[insert contact information]**

Any party may additionally provide notice by electronic mail, facsimile, or telephone communication, but this shall not relieve the party of the obligation to provide notice as specified above.

14. *Waiver.* No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No failure or delay by any party to insist upon strict compliance with any term of this Agreement shall be deemed a waiver of such term. No waiver or relinquishment of any right under this Agreement at any one or more times shall be deemed as a waiver or relinquishment of such power or right at any other time.

15. *Assignment; Successors and Assigns.* No party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

16. *Entire Agreement; Amendments.* This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written instrument signed by both parties hereto.

17. *Further Agreements.* Nothing contained in this Agreement shall be deemed, by implication or otherwise, to convey to the nondisclosing party any rights in any Confidential Information, nor shall this Agreement be deemed a commitment of any kind by the Compact or the Company to enter into any further agreements with respect to any Confidential Information.

18. *Severability.* If any of the provisions of this Agreement shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect the validity or enforceability of any other provision of this Agreement to the maximum extent permissible by law.

19. *No Joint Venture.* Nothing in this Agreement is intended or shall be deemed to make the Compact a partner or joint venturer of the Company.

20. *Counterpart Execution; Scanned Copy.* This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates written below.

FOR THE COMPACT:

FOR THE COMPANY:

\_\_\_\_\_  
Name: Margaret T. Downey  
Title: Administrator/Chief Procurement Officer  
As authorized by the Barnstable County Commissioners  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_



## EXHIBIT A

### NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that the Confidential Information, as that term is defined in the Confidentiality Agreement between the Cape Light Compact and the [Company] dated \_\_\_\_\_, 2010 (the "Agreement"), is being provided to me pursuant to the terms and restrictions of the Agreement. I also certify that I have been given a copy of the Agreement, have read its terms and conditions, and agree to be bound by them. I understand that the contents of the Confidential Information and any parts of notes, abstracts, memoranda, or any other form of information that contains such Confidential Information shall not be disclosed to anyone nor copied other than in accordance with the Agreement, and shall be used only for the limited purposes stated therein. I also agree to protect the confidential and proprietary nature asserted for the Confidential Information.

I further acknowledge that, in the event that my role as a \_\_\_\_\_ of [the Company] ceases, I shall return all copies of Confidential Information and destroy all parts of notes, memoranda, and other documents that contain such material in accordance with the Agreement, and I shall continue to be bound by the terms and conditions of the Agreement.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Organization: \_\_\_\_\_  
Representing: \_\_\_\_\_  
Date: \_\_\_\_\_