



**REQUEST FOR PROPOSAL**

**VENDOR FOR MUNICIPAL OUTDOOR LIGHTING OPERATIONS AND  
MAINTENANCE**

**2019-2021**

**Issued: November 16, 2018**

**Proposals Due: December 4, 2018 at 2:00 PM ET**

Cape Light Compact JPE  
261 Whites Path, Unit 4 | S. Yarmouth, MA 02664  
[www.capelightcompact.org](http://www.capelightcompact.org)

## VENDOR FOR MUNICIPAL OUTDOOR LIGHTING OPERATIONS AND MAINTENANCE

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# 1 General Information

## 1.1 *Participating Municipalities*

The Cape Light Compact JPE (Compact) is issuing this Request for Proposal (RFP) on behalf of the following Participating Municipalities (Municipalities) on Cape Cod and Martha's Vineyard:

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

The Cape Light Compact JPE (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 205,000 electric consumers to negotiate the best terms and conditions for competitively priced renewable electricity, and other public benefits. The Compact members include the twenty-one towns in Barnstable and Dukes Counties, as well as Dukes County themselves. It is organized as a Joint Powers Entity under the Act Modernizing Municipal Finance and Government, Massachusetts General Laws Chapter 40,

Section 4A1/2. The Compact maintains a business office at 261 Whites Path, Unit 4, South Yarmouth, MA 02664.

## **1.2 Scope of Services**

### **1.2.1 Introduction**

The Compact, on behalf of the Participating Municipalities, seeks to find a qualified Vendor to provide outdoor area lighting operations and maintenance. For the purpose of this RFP outdoor area lighting is meant to include streetlights, traffic signals including school zone signals, parking and building lights.

Each Municipality will contract directly with the Vendor and may elect to include some or all of the services noted above. Please be aware that the Compact can make no guarantees as to how many communities enter into a contract with the vendor selected by the Compact as a result of this RFP. The Compact believes that selecting a single Vendor to serve the entire Cape and Vineyard territory will enhance the probability of a higher level of community participation and result in a more economical opportunity for potential Vendors. The Compact will inform all its Town/Fire Districts about the results of the RFP and recommend participation as appropriate.

Please see Table 1 for the start dates for each Municipality. The initial term shall be three (3) years with one (1) option to renew for a two (2) year term.

## **2 Services to be Provided**

### **2.1 Overview of Services**

The Compact on behalf of the Municipalities is soliciting proposals from qualified Vendors to furnish all labor and materials in relation to outdoor area lighting operations and maintenance including, but not limited to:

- Repair, replacement, and maintenance of all failed components
- Installation of requested lighting including controls.
  - One example would be dimming controls, and it is the expectation that the Vendor will work with Municipality as well as the Compact for applicable rebates before proceeding with the work.
- A call center to receive outage calls that is open and responsive for twenty-four (24) hours a day, seven days a week.

- This should include a clear process for alerting and gaining approval from the Municipality before incurring any costs
- Monthly reports and billing for outages and performed repairs
- Night-time inspections for each town's street and/or area lights and a summary of the results of the inspections to be included in the next monthly report
- Provision for hourly rate for non-routine tasks such as preventative maintenance inspection
- Coordination with Eversource for billing, installations, and other applicable tasks.
- Emergency response within two hours or notification.

For the purpose of this RFP outdoor area lighting is meant to include streetlights, traffic signals including school zone signals, parking and building lights.

## 2.2 Tasks by Municipality

The information below is provided to help the Vendor to put the best bid forward. Please be aware that each Municipality has indicated the tasks as they know best as of the time of the bid, but each Municipality reserves the right to add, delete, or otherwise edit the tasks with advance notice to the Vendor.

Municipality	Contract Start Date	Number of Streetlights	Interested in			
			Night-Time Audit of Streetlights	Traffic Lights	Other Area Lighting	Controls such as Dimming
Barnstable Fire District	1/1/2019	11 LED 154 HPS	No	No	Yes	No
Bourne	1/1/2019	1120 LED	Yes	Yes	No	Yes
Brewster	1/1/2019	104 LED 7 HPS	No	No	No	No
Chatham	1/1/2019	549 LED 17 HPS	No	No	No	No
Chilmark	1/1/2019	22 LED	Maybe	No	Yes	Maybe
C-O-M-M Fire District	1/1/2019	1324 LED	No	No	No	No
Cotuit Fire District	1/1/2019	283 LED	No	No	No	No
Dennis	1/1/2019	2181 LED 56 HPS	Maybe	Maybe	Maybe	Maybe
Edgartown	1/1/2019	276 LED 3 HPS 5 Mercury Vapor	Yes	No	Yes	No
Falmouth	1/1/2019	2433 LED 106 HPS 4 CFL	Maybe	Maybe	Yes	Maybe
Harwich	1/1/2019	1079 LED 31 HPS	Maybe	Maybe	Maybe	No
Hyannis Fire District	1/1/2019	1258 LED 5 HPS	Yes	No	No	Maybe
Mashpee	1/1/2019	359 LED 2 HPS	Yes	No	Yes	No
Oak Bluffs	1/1/2019	464 LED	No	No	No	No
Orleans	1/1/2019	277 LED 8 HPS	No	Yes	Yes	Maybe
Provincetown	1/1/2019	392 LED 10 HPS	Yes	No	No	No
Sandwich	1/1/2019	256 LED	No	Yes	Yes	No
Tisbury	10/1/2019	214 LED 3 HPS	No	No	No	Yes
Truro	1/1/2019	33 LED 2 HPS	Maybe	Maybe	Maybe	No
Wellfleet	1/1/2019	222 LED 7 HPS	Yes	No	No	No
West Barnstable Fire District	1/1/2019	86 LED 7 HPS	Maybe	No	Yes	Yes
West Tisbury	5/1/2019	42 LED	No	No	No	Maybe
Yarmouth	1/1/2019	2428 LED	Yes	Yes	Yes	Yes

### **2.3 Vendor Responsibilities**

The Vendor is responsible for overall management and services to the Municipalities. The Vendor and subcontractors must have applicable licenses and insurance. The Municipalities will not compensate the Vendor for any training costs associated with essential requirements, unless otherwise specified in advance.

The Vendor is responsible for facilitating, scheduling, and coordinating the necessary work with the Municipality.

In addition to the initiative management activities listed above, Vendor's responsibilities will include the following:

- Maintain a computerized database tracking system capable of aggregating all information for customer reports/invoices and reporting to the Municipalities.
- Procure all equipment and materials necessary.
- Promptly responding to any complaints or inquiries within 24 hours.
- Coordinating with the key contact at each Municipality of the process for approvals before costs are incurred.
- Submission of monthly reports and invoices.
- Adhere to all applicable state and local regulations and codes
- Toll Free or local hotline maintenance

## **3 General Conditions Regarding Material Installations**

1. The Vendor (including subcontractors) shall not install any materials without prior approval of the Municipality.
2. All work shall be performed in a professional manner and be consistent with all applicable safety standards.
3. All installed materials shall be consistent with the application and be sufficiently durable to ensure measure performance.
4. The Vendor (including subcontractors) shall, at all times, keep the customer work site free from accumulations of waste material or rubbish caused by performance of the work.
5. The proper, safe, and lawful disposal of all items used or removed during implementation of the Initiative including, without limitation any substances considered hazardous and/or toxic under state or federal law or regulation, is the sole responsibility of the Vendor and its subcontractors.

## 4 Financial Accounting

It is anticipated that the Vendor will submit invoices monthly. Cost proposals should make clear the invoicing terms. Duplicates of all invoices, supporting documentation and financial reports submitted shall be kept on file at the Vendor's place of business.

## 5 Qualifying Questions/Information

Please provide answers/information/proposals for the following:

1. Detailed description of the proposed approach and capability for services that can be provided
2. List of all currently employed staff proposed to provide the indicated services and summary of their qualifications, including technical training, licensing, etc. (e.g. Professional Engineers), provide an organizational chart, if available
3. If Bidder intends to hire additional staff in order to provide proposed services, a description of its approach to hiring and the qualifications it will require of prospective employees should be included
4. Proposed approval process for Municipality for work to proceed and then be billed
5. Detailed explanation of how the Bidder proposes to coordinate and develop subcontracting relationships
6. Detailed description of the proposed management to ensuring an exceptional customer experience (i.e., initial intake, call center staffing, response to inquiries, and reporting)
7. Detailed description of the tracking and follow up process
8. Detailed description of response time to repair lighting
9. List other similar contracts in force in Massachusetts and/or nationally along with the names or references to be contacted regarding performance for programs that are within the size and scope of the Program
10. Assurances that as the Vendor the ability exists to be in the field at the appropriate start up time given the proposed service(s)
11. Current warranty policy, if applicable
12. Will High Pressure Sodium (HPS) lighting costs be included in the monthly charge? If so, please elaborate on the costs.



## 6 Summary of Municipality Responsibilities

In general, the Municipality anticipates the following tasks:

1. Providing a Point-of-Contact within the Municipality
2. Monitoring and oversight of Vendor performance, including
  - a. Reviewing and approving any change orders or modifications
  - b. Reviewing all management reports from the Vendor
  - c. Verifying, approving and processing Vendor invoices
3. Working with the Vendor on the process for work approval.

## 7 Pricing Structure

Bidders shall provide a fixed dollar cost (or suitable alternative) per line item. The municipalities are interested in looking at Option A (monthly, per-light charge) as well as Option B (a time and materials option). Please provide two tables that would include the following for the Option A and Option B:

- Hourly labor rates
- Bucket truck rates
- Common fixtures with hardware and wiring without fixture
- Cost of common fixtures (streetlight, traffic light, and other area lighting)
- Any mark-up costs
- Any escalating adding within and past the initial term
- Cost for night-time audits
- Other applicable fees (including travel)

Please be aware that each Municipality may wish to choose Option A or Option B, and therefore, there may not be consistency among the group. As such, please note any contingencies in pricing if there are differences.

## 8 Schedule

RFP issued: November 16, 2018

Pre-bid conference call: November 26, 2018 at 12:00 p.m. ET\*

Questions regarding the RFP due: November 26, 2018 by 2:00 p.m. ET

All proposals due: December 4, 2018 by 2:00 p.m. ET

Vendor selected: December 20, 2018 (estimated)

Kick-off meeting: December 28, 2018 (tentative)

Implementation: January 1, 2019 – December 31, 2021 with possible extension

\*Please indicate via e-mail to Margaret Downey ([mdowney@capelightcompact.org](mailto:mdowney@capelightcompact.org)) your interest in participating in the Pre-bid conference call by 2:00 p.m. ET on November 26, 2018. Additionally, any questions regarding the RFP can also be sent to the same email address.

## 9 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, (1) original and four (4) 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 Attachment 10.1, "Bid Submission Page"

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

### 9.1 Bid Due Date

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

RFP Title: Municipal Outdoor Lighting Operations and Maintenance Vendor

Dated:

Bidder's Name:

Delivered to: Cape Light Compact JPE  
261 Whites Path, Unit 4  
South Yarmouth, MA 02664

Attention: Margaret Downey  
[mdowney@capelightcompact.org](mailto:mdowney@capelightcompact.org)  
Cape Light Compact Chief Procurement Officer

Bids must be received by **December 4, 2018** by 2:00 p.m. ET. Proposals received after this time will not be considered.

### **9.1.1 Interpretation of the RFP**

The Compact is seeking one qualified vendor to provide the requested services. Proposals shall be in accordance with all requirements set forth in this request for proposals (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 **November 26, 2018**, 2:00 p.m. ET, to afford The Compact an opportunity to send any instructions or interpretations to other Bidders who have received an Invitation to Bid. The Compact will not be responsible for any oral instructions or interpretations. Please send all inquiries to

Cape Light Compact JPE  
Attn: Margaret Downey  
261 Whites Path, Unit 4  
South Yarmouth, MA 02664  
[mdowney@capelightcompact.org](mailto:mdowney@capelightcompact.org)

### **9.1.2 Rights to Modify This Specification**

The Compact reserves the right to modify any aspect of this RFP if the change will make it more cost-effective and customer responsive. Only qualified contractors experienced in providing operations and maintenance for lighting are invited to submit proposals.

## **9.2 Proposal Contents**

### **9.2.1 Narrative Requirements**

Bidders must submit a proposal narrative containing the following information. Please note that The Compact 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 technical training, licensing, and installation 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. If licenses are required, Bidder shall provide verification of each license holder;
- 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 subcontracting relationships;
- e. A detailed description of the proposed approach to communicate with the Municipality;
- f. A detailed description of the proposed approach, which affects the delivery of the services. In particular, scheduling approaches to ensure implementation and customer convenience. Please discuss methods utilized in backlog management and reporting;
- g. The locale or anticipated locale for field operations and describe how this site or sites will help satisfy the requirements of this RFP. Describe the approach for providing service to all areas of Cape Cod and Martha's Vineyard;
- 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;
- i. Assurances that as the Vendor/contractor, you will be able to be in the field at the appropriate start up time, given the proposed service(s), such that the anticipated delivery schedule will not be adversely delayed. Further, describe the company's planned allocation of resources toward timely startup of the services. Include an implementation schedule and list of startup resources to be utilized;
- j. Any exceptions and/or all requested edits to the Installation Services Agreement provided as Attachment 10.2.

### **9.2.2 Pricing Structure**

Bidders shall quote pricing as specified in Section 7. Bidders shall provide complete documentation and detailed assumptions of the pricing to support projections.

Bidders shall quote a price based upon the estimated number of jobs projected. The Compact makes no representations of the actual number of lights to be services.

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 by Municipality differs from Table 1.

### **9.2.3 Qualification of Bidders**

The competency and responsibility of Bidders and of any proposed Sub-Contractors will be considered in making the award. The Compact 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 irregularities in Proposals, and to accept that Proposal whether it be the lowest bid or not, which in the unilateral judgment of the Compact best serves the Municipalities' purpose and intent provided, that, no course of dealing or delay or omission on the part of the Compact in exercising such right shall operate as a waiver thereof.

### **9.2.4 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 as of this proposal. The Compact encourages the utilization of Cape and Vineyard-based contractors. The cost of Work proposed by each said Sub-Contractor shall be included in this information. Subcontractors that are added throughout the contract period should be done added with the Municipality's approval. The Municipalities reserve the right to substitute other Subcontractors to provide like services or materials.

### **9.2.5 Substitutions**

Unless otherwise stated in the RFP, any material or computer hardware mentioned by its trade name or identified by the name of the Manufacturer in the specifications is to be regarded as merely indicating a standard or the type desired. Articles of other manufacturers may be used, provided they are equal or better in material, design and workmanship to those named, and such substitutions are approved by Municipality in writing. The Bidder shall attach to its Proposal a list showing manufacturer and type of all material or computer hardware it proposes to substitute for that specified by name in the various specifications. If there is no attachment, it will be assumed by the Municipality that the Bidder intends to use material and computer hardware as specified and no substitution will be allowed at a later date. In all cases, the Municipality shall have the right to request descriptive literature and/or design calculations and data on substitute materials before granting an approval. No substitutions of Sub-contractors are allowed unless approved by the Municipality in writing.

### **9.2.6 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 Municipality. 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.

### **9.2.7 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 the Municipality.

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

The Compact, 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 standards 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.

Cape Light Compact 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 each Municipality.

### 9.3.1 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 provide a full range of services to address the issues facing the Municipalities.
- f. Submitted proposal responds to the issues identified in the RFP.

#### *Comparative Evaluation Criteria*

##### 1. Experience of Comparable Delivery in Massachusetts

- a. Highly Advantageous: The bidder has demonstrated an exceptional background and greater than five years of experience within Massachusetts
- b. Advantageous: The bidder has demonstrated an adequate background and greater than three years of experience with Massachusetts

##### 2. Experience of Project Team with Barnstable and Dukes County Issues

- a. Highly Advantageous: The bidder has experience working with more than one town in Barnstable or Dukes County on lighting related issues.
- b. Advantageous: The bidder has experience working with one town in Barnstable or Dukes County or other Massachusetts municipality on lighting related issues.

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 **December 28, 2018**, Cape Light Compact reserves the right to negotiate with an alternative Bidder in order to execute a contract by **January 31, 2019**. All exceptions to the contract must be noted in writing and included within the body of the proposal.

## **9.4 Proposal Confidentiality**

All proposals will become the property of the Compact and Municipalities. As a public entity it may become necessary to supply price information to regulatory agencies for review. Cape Light Compact will request that all such information be treated confidentially by the regulatory agencies and Cape Light Compact and/or the Municipalities 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 Cape Light Compact, the Municipalities or its 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.

### **9.4.1 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.



## **9.5 Oral Presentations**

Bidders whose Proposals are deemed as highly advantageous 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 Cape Light Compact's representatives.

The oral presentation will be arranged through Cape Light Compact. Bidders will receive at least 48 hours' notice to prepare for the presentation. Attendance must include the Bidder's proposed Project Manager. Cape Light Compact 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, Cape Light Compact 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, Cape Light Compact with the Municipalities will select a finalist with which contract negotiations will commence.

## 10 Attachments

### 10.1 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 [DATE], prepared by Cape Light Compact, 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 Cape Light Compact.

In connection with such offer, the undersigned represents and warrants to Cape Light Compact 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 bid 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)

## **10.2 Draft Contract**

## OUTDOOR AREA LIGHTING OPERATION AND MAINTENANCE AGREEMENT

This Outdoor Area Lighting Operation and Maintenance Agreement (the "Agreement") is entered into this [DAY] day of [MONTH], 2019 by and between the [MUNICIPALITY], a municipal corporation of the Commonwealth of Massachusetts having a usual place of business at [ADDRESS], Massachusetts (the "[Town/Fire District]") and [CONTRACTOR] (the "Contractor"). This Agreement is effective as of [insert].

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

WHEREAS, the [Town/Fire District]/Fire District is a member of the Cape Light Compact, a joint powers entity organized pursuant to M. G.L. c. 40, §4A½ consisting of the twenty-one Cape Cod and Martha's Vineyard towns and Dukes County (the "Compact") engaged in various activities to promote energy efficiency and lower the costs of energy;

WHEREAS, the Compact has been assisting its member [Town/Fire District]/Fire Districts in efforts to purchase and operate their municipal street light systems;

WHEREAS, the Contractor was selected by the Compact pursuant to a Request for Proposals issued in November of 2018 (the "RFP");

WHEREAS, the Compact has acted and will continue to act as the [Town/Fire District]'s agent with respect to certain matters pertaining to this Agreement and the [Town/Fire District]'s operation of municipal outdoor area lighting systems;

WHEREAS, the [Town/Fire District] desires to have the Contractor assist it with the operation and maintenance of its municipal outdoor area lighting pursuant to the terms and conditions of this Agreement, the P&S Agreement and the License Agreement; and

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

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

### SECTION 1 TERM OF AGREEMENT AND TERMINATION

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

1.2 **Termination.** The [Town/Fire District] shall have the right to terminate or suspend this Agreement for any reason, including, but not limited to, in the event that the Contractor is in

default under another Contractor Services or consulting agreement between Contractor and the [Town/Fire District], or for convenience. Contractor may terminate this Agreement only if the [Town/Fire District] materially breaches its obligations under this Agreement. The terminating Party shall provide written notice to the other Party of any such termination or suspension, specifying the effective date thereof. If the terminating Party is the [Town/Fire District], such notice shall be given at least fifteen (15) calendar days before such effective date; if the terminating Party is Contractor, such notice shall be given at least ninety (90) calendar days before such effective date. In addition, if the [Town/Fire District] terminates this Agreement for cause, the [Town/Fire District] shall be entitled to deduct and/or be reimbursed any costs of cure and transition costs (including reasonable attorneys' fees) that it, a Member<sup>1</sup> or a Customer (as defined herein) incurs related to engagement of a substitute Contractor.

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

## SECTION 2 SCOPE OF SERVICES AND RELATED MATTERS

2.1 **Contractor Services.** Contractor agrees to provide the expertise, labor, materials and supplies necessary to perform the services and deliverables described in Exhibit A attached hereto from time to time and such other services as may be specifically requested by the [Town/Fire District] from time to time (the "Contractor Services"). All such Contractor Services and deliverables shall be designed to achieve the anticipated outcomes specified in the description of Contractor Services and shall be provided in accordance with the terms and conditions of this Agreement.

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

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

2.4 **Staffing; Background Check Requirements.** The [Town/Fire District] may require Contractor to remove from its project team such employees of Contractor or subcontractors of Contractor as the [Town/Fire District], in its reasonable discretion, deems objectionable, or

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<sup>1</sup> For the purposes of this Agreement, the term "Member" means the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, Yarmouth, Dukes County, and any other governmental unit that becomes a member of the [Town/Fire District] during the term of this Agreement.

whose continued employment in connection with the Contractor Services is deemed by the [Town/Fire District], in its reasonable discretion, to be contrary to the best interests of the [Town/Fire District]. Contractors working in the field having contact with [Town/Fire District] customers or program participants (“Customers”) must comply with the [Town/Fire District]’s background check requirements set forth in Exhibit C.

2.5 **Conflicts of Interest.** Contractor 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 Contractor Services. Contractor agrees to diligently serve and endeavor to further the best interests of the [Town/Fire District], as known or made known to Contractor. Contractor further agrees not to undertake activities that conflict, or are not in accordance with, the best interests of the [Town/Fire District], and will disclose any other employment or engagements that could conflict with its obligations under this Agreement. Contractor further covenants that it shall comply with all relevant provisions of G.L. c. 268A.

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

2.7 **Safety.**

If performing installation or construction related services, the provisions in this Section 2.7 shall apply.

To the fullest extent allowed by law, Contractor shall assume responsibility for the general and overall safety of the work site, including the safety of any employee, client, guest, representative, contractor or subcontractor of Contractor, the [Town/Fire District], and Customers. Systems that have been disabled or otherwise affected in the course of performance of the Contractor Services will be left in a safe condition. Out of service systems will be tagged by Contractor in a manner accepted by OSHA, state and local authorities, and the [Town/Fire District]. Contractor shall at all times exercise reasonable precautions for the safety of its employees, subcontractors and the general public and will be responsible for the performance and maintenance of any appropriate safety procedures pursuant to which it, its subcontractors and its employees shall act. Further, Contractor 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 Contractor must be corrected immediately. The [Town/Fire District] reserves the right, but has no obligation, to take corrective action and charge the costs associated with the same back to Contractor.

Contractor shall immediately notify the [Town/Fire District] of any accident or damage to persons or property and, within forty-eight (48) hours, file a written report of the accident with

the **[Town/Fire District]**. If Contractor encounters any asbestos or other hazardous substances in the course of the Contractor Services, Contractor shall immediately notify the **[Town/Fire District]** and any agency required by state or federal law, and shall stop any Contractor Services that may disturb, damage or cause a release of asbestos or hazardous substances until Contractor receives written instruction from the **[Town/Fire District]**. If any hazardous substances are to be handled in the execution of the Contractor Services, Contractor 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 **[TOWN/FIRE DISTRICT]** BE LIABLE FOR ANY INJURY TO a) CONTRACTOR, b) ANY EMPLOYEE, CLIENT, GUEST, REPRESENTATIVE, CONTRACTOR, OR SUBCONTRACTOR OF CONTRACTOR, c) ANY CUSTOMER, ANY EMPLOYEE, CLIENT, GUEST, REPRESENTATIVE, CONTRACTOR, OR SUBCONTRACTOR OF ANY CUSTOMER, OR d) 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.

## 2.8 Storage and Clean-up.

If performing installation or construction related services, the provisions in this Section 2.8 shall apply.

Contractor shall, at the end of each work day, leave the work area in a clean and safe condition, and shall comply promptly with any instructions from the **[Town/Fire District]** relating thereto. As the Contractor Services covered by this Agreement are completed, Contractor shall remove from the work sites, to the **[Town/Fire District]**'s satisfaction, all of Contractor's rubbish, debris, materials, tools and equipment, and if Contractor fails to do so promptly, the **[Town/Fire District]** may remove the same to any place of storage, or any dumping ground, at Contractor's risk and expense and without incurring any responsibility to Contractor for loss, damage or theft. All storage and removal costs thus incurred by the **[Town/Fire District]** shall be deducted from any payment or balance due to Contractor, and any excess shall be immediately due from Contractor to the **[Town/Fire District]**.

## SECTION 3 COMPENSATION AND RELATED MATTERS

3.1 **Rates of Compensation; Prevailing Wage.** Contractor shall be compensated by the **[Town/Fire District]** for the Contractor Services in accordance with the terms and rates set forth in Exhibit B hereto. The **[Town/Fire District]** may reject any invoices using billing rates that are not consistent with Exhibit B, unless the **[Town/Fire District]** has previously accepted such substitute rates in a written amendment to this Agreement. To the extent that it applies to the Contractor Services (e.g., in the implementation of energy efficiency services that result in physical alterations to public buildings), Contractor 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 the Contractor Services are performed under prevailing wage rates,

Contractor is required to submit Statements of Compliance and certified payrolls using appropriate state forms or, if a federal project, U.S. Department of Labor Form WH-347 and WH-348 (or similar), for each payroll period. If these forms are not submitted with each invoice, payment will not be made. Contractor shall keep accurate records showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed by it in connection with the Contractor Services, and such records shall be preserved at least two (2) years from the date of payment.

**3.2 Invoicing and Payment.** Contractor shall submit monthly invoices to the **[Town/Fire District]**, unless otherwise authorized in writing by the **[Town/Fire District]**. The **[Town/Fire District]** will remit payment within forty-five (45) calendar days of the **[Town/Fire District]**'s receipt of each monthly invoice. Payment may be contingent upon final inspection and/or acceptance of the Contractor Services. Upon request, Contractor shall provide to the **[Town/Fire District]** all backup documentation required to establish the value of the Contractor Services performed to date as represented by Contractor's monthly invoices.

**3.3 Effect of Payment.** The **[Town/Fire District]** shall not be deemed to have accepted any improper Contractor Services, materials or performance by virtue of any payment made to Contractor. Payments shall be deemed advances and are subject to adjustment for errors, overpayments, or the **[Town/Fire District]**'s good faith determination that the remaining balance of payments may be insufficient to ensure completion of the Contractor Services. Contractor shall not be entitled to any payment for any partial performance except for progress payments made in accordance with this Agreement. Contractor understands that the **[Town/Fire District]** is contracting for nothing less than full, complete and timely performance of the Contractor Services, and with the express agreement that the **[Town/Fire District]** shall be obliged only upon final completion of the Contractor Services.

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



3.5 **Credits.** Contractor may not claim any governmental or other energy efficiency credits, tax credits, forward capacity payments, carbon offsets, rebates or incentives of any kind as a result of or in connection with the Contractor Services performed under this Agreement (collectively, the “Credits”) without the written consent of the [Town/Fire District] in its sole discretion. To the extent any Credits are allocated to the [Town/Fire District], a [Town/Fire District] project or Customer by operation of law or regulation, Contractor shall, upon request and without charge, cooperate fully with the [Town/Fire District] 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 [Town/Fire District].

3.6 **Bonds.**

If performing installation or construction related services, the provisions in this Section 3.6 shall apply.

Upon request by the [Town/Fire District], Contractor shall provide performance and payment bonds from a surety company in amounts, form and substance acceptable to the [Town/Fire District], naming the [Town/Fire District] as a direct beneficiary of the surety’s obligations under such bonds. Such bonds shall fully protect the [Town/Fire District] against any and all breaches by Contractor, including, but not limited to, payments of salaries, withholdings, union welfare funds and any other union or employee benefits. Performance and payment bonds shall cover the Contractor Services and the warranty period described below. Failure to provide the requested bonds, prior to the commencement of the Contractor Services or cancellation of requested bonds during the term of this Agreement or the warranty period, shall entitle the [Town/Fire District] to terminate this Agreement without recourse by Contractor.

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 Agreement price through a written request seeking approval from the [Town/Fire District] without additional markup by Contractor (except as specifically approved, in writing, by the [Town/Fire District] in advance of the Contractor Services). Contractor must present to the [Town/Fire District] a copy of the invoice for the bonds signed by the agent with power of attorney for the bonding company. The [Town/Fire District] reserves the right to refuse any exception to the bond requirements if it determines that the exception is not in the best interest of the [Town/Fire District]. Contractor's surety companies are to be licensed as “admitted” carriers in Massachusetts with minimum acceptable A.M. Best ratings of “A” and size Class VIII, or as otherwise acceptable to the [Town/Fire District], in its discretion. The [Town/Fire District] reserves the right of final approval of Contractor’s surety companies.

## SECTION 4 PERFORMANCE STANDARDS

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

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

4.3 **Correction of the Contractor Services.** Contractor is required to correct in a prompt and timely fashion any Contractor Services rejected by the [Town/Fire District]. Contractor shall correct at its own cost and bear the expense of additional services performed to correct non-conforming Contractor Services. If Contractor fails to cure the default or produce a plan acceptable to the [Town/Fire District] (in its reasonable discretion) to cure the default in a prompt and timely fashion, the [Town/Fire District] may take over the Contractor Services or any separable part thereof, and complete the same or have the same completed at Contractor's expense. In taking over, the [Town/Fire District] shall have the right, for the purpose of completing the Contractor Services, to take possession of all equipment, supplies and materials belonging to Contractor and purchased or leased for the performance of the Contractor Services.

For such purpose, this Agreement shall be construed as an assignment by Contractor to the [Town/Fire District] of said equipment, supplies and materials.

4.4 **Periodic Reporting.** Upon the request of the [Town/Fire District], the Contractor shall promptly submit a report detailing the status of the Contractor Services including the progress toward achieving completion of any deliverables or project milestones. Additional reporting requirements may be set forth in Exhibit A.

## **SECTION 5 INTELLECTUAL PROPERTY MATTERS**

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

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

## **SECTION 6 INSURANCE**

Contractor shall, at its sole expense, procure and maintain, the following insurance:

- (a) Until completion of the Contractor Services:
  - i. Workers’ Compensation and Employers’ Liability Insurance covering *each and every worker employed in, about or upon the Contractor Services*, as provided for in each and every statute applicable to the Workers’ Compensation and Employers’ Liability Insurance.
  - ii. Commercial General Liability Insurance, written on an occurrence form

including coverages for Bodily Injury, Broad Form Property Damage, Personal Injury, Products/Completed Operations, Liability arising out of Subcontractors, Contractual Liability (to specifically include coverage for the indemnification clause of this Agreement), and so-called Explosion, Collapse and Underground Hazards, with minimum limits of \$1,000,000 per occurrence/\$2,000,000 per project general aggregate; \$1,000,000 aggregate for products and completed operations.

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

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

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

(b) After the Contractor Services are complete:

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

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

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

Contractor agrees to waive any rights of subrogation against the **[Town/Fire District]**, the **[Town/Fire District]**'s Customers, Member Municipalities, and their respective employees, subcontractors, engineers, workers and agents. Contractor shall name the **[Town/Fire District]** and its officials and employees as additional insureds on its commercial general liability insurance, automobile liability insurance and umbrella liability insurance policies.

Contractor shall not begin rendering Contractor Services without first submitting to the **[Town/Fire District]** the insurance certificate(s) that indicate the coverages required by this

Agreement. The insurance certificate(s) shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Contractor and Contractor shall in turn provide at least (thirty) 30 days advance notice of cancellation to the [**Town/Fire District**]. If the policy expires prior to completion of the Contractor Services, Contractor must submit replacement insurance certificate(s) prior to the policy expiration date. Failure to submit new certificates shall result in withholding payments and/or may lead to the termination of this Agreement. Contractor shall be solely responsible for tracking and reporting to the [**Town/Fire District**] the expiration of the policies shown on the insurance certificate(s) provided.

Contractor shall be solely responsible for any damage to or loss to its property, equipment or materials regardless of its insurance coverage.

## **SECTION 7 INDEMNIFICATION BY CONTRACTOR<sup>2</sup> AND DAMAGES FOR BREACH**

7.1 **Indemnification.** To the fullest extent allowed by law, Contractor (and its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) shall indemnify, defend, and hold harmless the [**Town/Fire District**], the individual Member Municipalities (and all of the respective officials, officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns of the [**Town/Fire District**] 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 Contractor (and/or its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) related to this Agreement, including, but not limited to, any failure on the part of Contractor (and/or its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) to perform or comply with any of the covenants, agreements, terms, or conditions contained in this Agreement on its part to be performed or complied with. Contractor's indemnification obligation includes claims related to the unauthorized use of any trade secrets, patent infringement, or trademark or copyright violation. Contractor's indemnification obligation is not limited in any way by the amount or type of damages or compensation payable by the [**Town/Fire District**]. Contractor agrees to pay all costs relating to indemnification claims, including reasonable attorneys' fees incurred in investigating and responding to claims, within thirty (30) days of receipt of a payment request.

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

7.3 **Limitations.** NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. Notwithstanding the foregoing, Contractor acknowledges that the preceding

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<sup>2</sup> Note to Contractor: In accordance with guidance received from the Massachusetts Office of Attorney General, the [**Town/Fire District**] cannot indemnify private parties.

sentence shall not limit the **[Town/Fire District]**'s rights to seek indemnification from Contractor for consequential, punitive, or incidental damages or other such losses claimed by third-parties.

7.4 **No Cap on Contractor's Liability**<sup>3</sup>. Contractor's liability under this Agreement shall not be limited to the value of the Contractor Services rendered under this Agreement; further, Contractor's liability shall not be limited by the availability of its insurance coverage.

7.5 **Notice of Claims**. Contractor will provide formal written notice to the **[Town/Fire District]** in the event that Contractor receives notice of pending or threatened litigation, claims or assessments against the Contractor or the **[Town/Fire District]** in connection with the Contractor Services rendered by the Contractor under this Agreement.

## **SECTION 8 CHOICE OF LAW AND DISPUTE RESOLUTION**

This Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts, without regard to its rules regarding choice of laws. Any dispute that arises regarding this Agreement that cannot be resolved by informal negotiations shall be submitted to nonbinding mediation. If the parties cannot agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. Each Party shall bear its own mediation costs. Injunctive relief may be sought by either Party without resorting to mediation to prevent irreparable harm. Exclusive venue for any judicial proceeding involving a dispute arising from this Agreement shall be Barnstable County Superior Court, Massachusetts. In any judicial action, the "Prevailing Party" shall be entitled to payment from the opposing party of its reasonable costs and fees, including, but not limited to, attorneys' fees arising from the civil action. "Prevailing Party" means the Party who most substantially prevails in its claims or defenses in the civil action. Contractor shall diligently carry on the Contractor Services and maintain the project milestone schedule during any dispute resolution proceedings, unless otherwise agreed to by the **[Town/Fire District]** in writing.

## **SECTION 9 ASSIGNMENT AND SUBCONTRACTING**

Except as expressly permitted in Exhibit D, none of the Contractor Services shall be subcontracted or assigned, in whole or in part, without the prior written approval of the **[Town/Fire District]**, in its sole discretion. No subcontract or assignment shall relieve or discharge Contractor from any obligation or liability under this Agreement except as specifically set forth in the instrument of approval. Contractor shall provide prompt notice to the **[Town/Fire District]** of any such permitted subcontract or assignment, together with the name and address of the assignee, and a copy of the subcontract or assignment instrument.

Any subcontractor who has been subcontracted, assigned or delegated thirty percent (30%) or more of the Contractor Services must abide by all of the terms and conditions of this Agreement, including, but not limited to,

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<sup>3</sup> Note to Contractor: The **[Town/Fire District]** does not accept liability caps as a matter of public policy, and the constitutional prohibition on providing private parties with indemnification rights may also apply to such caps.

insurance requirements. The [Town/Fire District] reserves the right to impose these requirements on subcontractors performing less than thirty percent (30%) of the Contractor Services.

**SECTION 10 CONFIDENTIALITY AND CUSTOMER INFORMATION**

10.1 **Confidentiality.** Through the term of this Agreement, the Parties may share certain confidential or proprietary information with each other. The Parties agree not to use this information for any purposes other than as needed to meet their respective obligations under this Agreement and to protect such information to the same standards as each Party holds its own confidential or proprietary information.

**SECTION 11 MISCELLANEOUS**

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

if to Contractor to:

[insert]

if to the [Town/Fire District] to:

Name  
Town/Fire District  
Title  
Address  
(email)

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

11.2 **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. To the extent any of the exhibits to this Agreement contain terms that conflict with the terms set forth in the main body of this Agreement, the language in the exhibits shall be

disregarded. This Agreement may only be amended or modified by a written instrument signed by both Parties hereto.

**11.3 Independent Contractor; No Joint Venture.** Contractor will perform all Contractor Services under this Agreement as an independent contractor. Contractor understands and agrees that none of its employees are [Town/Fire District] employees by virtue of entering into this Agreement. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the [Town/Fire District] and Contractor hereunder are individual and neither collective nor joint in nature.

**11.4 Joint Workproduct; Independent Counsel.** This Agreement shall be considered the workproduct of both Parties hereto. Each Party acknowledges that it has been represented by independent counsel or has had the opportunity to seek counsel in connection with this Agreement and all matters pertinent to it, and each Party waives the benefit of the rules of construction providing that an agreement should be construed against its drafter.

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

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

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

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

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



directly or indirectly owned by Contractor, or by a person or persons or business entity or entities that directly or indirectly own at least 51% of the ownership interests of Contractor.

**11.10 Non-Discrimination in Employment and Affirmative Action.** Contractor 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. Contractor agrees to comply with all applicable federal, state, and local laws, rules, and regulations prohibiting discrimination in employment and in public accommodations.

**11.11 Procurement Process.** In entering into the Agreement, the Parties complied with the competitive procurement procedures required under G.L. c. 30B and have executed this Agreement in accordance therewith. If this Agreement was procured under G.L. c. 30B, Contractor represents that it has executed all certifications required by such statute, or will provide them concurrently with execution of this Agreement.

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

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

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

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

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

CONTRACTOR

[TOWN/FIRE DISTRICT]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_ [Designee]  
Title: \_\_\_\_\_ **[Town/Fire District]**  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**LIST OF EXHIBITS**

- 10.2.1.1.1.1 Exhibit A - Contractor Services
- Exhibit B - Compensation
- Exhibit C - Background Check Policy
- Exhibit D - Pre-approved Subcontractors

**EXHIBIT A**  
**CONTRACTOR SERVICES**

**EXHIBIT B**  
**COMPENSATION**

**EXHIBIT C**  
**BACKGROUND CHECK POLICY**

*REQUIREMENTS FOR CONTRACTOR EMPLOYEE  
AND SUBCONTRACTOR BACKGROUND CHECKS*

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

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

To the extent Contractor finds that any background check requirements are in conflict with State or Federal statutes, collective bargaining agreements, or other issues that would prohibit compliance, Contractor should notify the **[Town/Fire District]** so that Contractor and the **[Town/Fire District]** may discuss appropriate resolution of the issue.

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

Contractor must be able to evidence that it has verified the identification of all Contractor Employees working for the **[Town/Fire District]** and that all such individuals are legally eligible to work in the country where the services are to be performed.

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

the **[Town/Fire District]** and the **[Town/Fire District]** shall determine whether to remove the Contractor Employee from the work site.

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

Contractor must maintain a record of all background checks completed in accordance with these requirements and correspondence with the **[Town/Fire District]** regarding background checks performed during the term of the Agreement and shall make all such records available to the **[Town/Fire District]** upon reasonable notice.

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

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

The **[Town/Fire District]** reserves the right to perform, at its sole cost, audits of Contractor's background check program and records for any Contractor Employee performing services under the Agreement.

The **[Town/Fire District]** reserves the right to revise these requirements at any time during the term of the Agreement, which Contractor must comply with. Any revisions to these requirements will be provided in writing to Contractor.

Upon written request of Contractor, the **[Town/Fire District]**, in its sole discretion, may provide Contractor with a written modification or waiver of any of any of the background check requirements marked above.

**EXHIBIT D**  
**PRE-APPROVED SUBCONTRACTORS**

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





