

**Cape Light Compact JPE
Board of Directors Meeting**

DATE: May 12, 2017
LOCATION: Innovation Room, Open Cape Building
3195 Main Street, Barnstable County Complex
TIME: 12:30 p.m. – 2:30 p.m.

AGENDA

1. Public Comment
2. Recognition of Members and Directors
3. Approval of Minutes
4. Introduction of Compact Comptroller
 - a. Review and Potential Vote on Scope of Work for Treasurer Services
5. Administrator's Report
 - a. Update on Policies for Board Consideration
 - b. Discuss and Potential Vote on Employer/Employee Health Insurance Contribution Levels
6. Discussion and Potential Vote on Article V(D) of the Joint Powers Agreement ✓
7. Discussion and Potential Vote on Adopting Roberts Rules of Order, Newly Revised

**Cape Light Compact
Joint Powers Entity Director's Meeting
Open Session Meeting Minutes
Wednesday, April 12, 2017**

The Cape Light Compact Board of Directors met April 12, 2017, in the Innovation Room, Open Cape Building, Barnstable County Complex, 3195 Main Street, Barnstable, MA 02630 at 2:30 p.m.

PRESENT WERE:

Colin Odell – Brewster
Robert Hannemann – Chilmark
Fred Fenlon – Eastham
Andrew Gottlieb – Mashpee
Richard Toole – Oak Bluffs
Thomas Donegan – Provincetown
Joshua Peters – Sandwich
Joseph Buteau – Truro
Sue Hruby – West Tisbury, by phone

LEGAL COUNSEL

Jeff Bernstein, Esq., BCK Law, PC
Erin O'Toole, Esq., BCK Law, PC

STAFF PRESENT

Maggie Downey, Administrator
Austin Brandt, Power Supply Planner
Phil Moffitt, Residential Program Manager
Margaret Song, Commercial and Industrial Program Manager
Briana Kane, Planning and Evaluation Manager
Lindsay Henderson, Analyst
Jacob Wright, Special Projects Coordinator

PUBLIC PRESENT

Chris Rogers, CPA, Clifton Larson Allen
Michael Embury
Joyce Flynn, Yarmouth
Richard Elkin, Wellfleet
David Anthony, Barnstable
Peter Cocolis, Chatham
Ron Zweig, Falmouth
Martin Culik, Orleans
Robert Schofield, Bourne

RECOGNITION OF MEMBERS AND DIRECTORS

Maggie Downey recognized the current JPA Directors and Alternates. Maggie informed the group that the Towns of Chatham, Bourne, and Aquinnah have voted to join the JPE, but paperwork hasn't been sent to her and until she receives a copy of the required votes, these Towns cannot participate as members of the JPE.

PRESENTATION BY CHRIS ROGERS, CLIFTON LARSON ASSOCIATES: FINANCIAL OPERATIONS OF THE JPE

Chris Rogers provided a presentation differentiating the responsibilities of the CLCJPE Business Officer and Treasurer. He explained that the Treasurer role serves as the one who's signing the checks, warrants, and reconciling the bank accounts. In distinction, the Business Officer will identify the chart of accounts and systems to be used, policies and procedures, and be responsible for processing the Compact's transactions.

Chris explained that there are a lot of details that will have to be hashed out once a Treasurer is identified and hired, including the process by which checks are issued. He went on to state that the position's scope of services should be less than \$50,000 on an annual basis.

The Compact's Comptroller will perform the functions of the Business Officer and should be referred to with that title to be consistent with the Joint Powers statute..

Lastly, Chris stated that before purchasing/leasing a financial system, we should be sure it accomplishes the functions we require, such as if we decide we want to use electronic funds transfer, or EFT.

ORGANIZATIONAL ITEMS FOR DISCUSSION AND POTENTIAL VOTE

A. ESTABLISH EFFECTIVE DATE OF JPE AS 4/12/2017

Tom Donegan moved to establish the Joint Powers Entity Effective date as April 12, 2017. Andrew Gottlieb seconded and the Board voted by roll call as follows:

<i>Colin Odell – Brewster</i>	<i>Yes</i>	<i>Richard Toole – Oak Bluffs</i>	<i>Yes</i>
<i>Robert Hannemann – Chilmark</i>	<i>Yes</i>	<i>Thomas Donegan – Provincetown</i>	<i>Yes</i>
<i>Fred Fenlon – Eastham</i>	<i>Yes</i>	<i>Joseph Buteau – Truro</i>	<i>Yes</i>
<i>Andrew Gottlieb – Mashpee</i>	<i>Yes</i>	<i>Sue Hruby – West Tisbury</i>	<i>Yes</i>

Motion carries in the affirmative (8-0-0),

B. ELECTION OF CHAIRMAN

Tom Donegan moved that the term of the current positions be until July 1, 2017. Andrew Gottlieb seconded and the Board voted by roll call as follows:

<i>Colin Odell – Brewster</i>	<i>Yes</i>	<i>Richard Toole – Oak Bluffs</i>	<i>Yes</i>
<i>Robert Hannemann – Chilmark</i>	<i>Yes</i>	<i>Thomas Donegan – Provincetown</i>	<i>Yes</i>
<i>Fred Fenlon – Eastham</i>	<i>Yes</i>	<i>Joseph Buteau – Truro</i>	<i>Yes</i>
<i>Andrew Gottlieb – Mashpee</i>	<i>Yes</i>	<i>Sue Hruby – West Tisbury</i>	<i>Yes</i>

Motion carries in the affirmative (8-0-0).

Richard Toole nominated Colin Odell for Chairman, Joseph Buteau seconded. Hearing no other nominations, Colin Odell called for a vote, Tom Donegan seconded and the Board voted by roll call as follows:

<i>Colin Odell – Brewster</i>	<i>Yes</i>	<i>Richard Toole – Oak Bluffs</i>	<i>Yes</i>
<i>Robert Hannemann – Chilmark</i>	<i>Yes</i>	<i>Thomas Donegan – Provincetown</i>	<i>Yes</i>
<i>Fred Fenlon – Eastham</i>	<i>Yes</i>	<i>Joseph Buteau – Truro</i>	<i>Yes</i>
<i>Andrew Gottlieb – Mashpee</i>	<i>Yes</i>	<i>Sue Hruby – West Tisbury</i>	<i>Yes</i>

Motion carries in the affirmative (8-0-0).

C. ELECTION OF VICE CHAIRMAN

Tom Donegan nominated Robert Schofield for Vice Chairman, Joseph Buteau seconded. Hearing no other nominations, Colin Odell called for a vote, Tom Donegan seconded and the Board voted by roll call as follows:

<i>Colin Odell – Brewster</i>	<i>Yes</i>	<i>Richard Toole – Oak Bluffs</i>	<i>Yes</i>
<i>Robert Hannemann – Chilmark</i>	<i>Yes</i>	<i>Thomas Donegan – Provincetown</i>	<i>Yes</i>
<i>Fred Fenlon – Eastham</i>	<i>Yes</i>	<i>Joseph Buteau – Truro</i>	<i>Yes</i>
<i>Andrew Gottlieb – Mashpee</i>	<i>Yes</i>	<i>Sue Hruby – West Tisbury</i>	<i>Yes</i>

Motion carries in the affirmative (8-0-0).

D. ELECTION OF SECRETARY

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Sue Hruby nominated Richard Toole for Secretary, Joseph Buteau seconded. Hearing no other nominations, Colin Odell called for a vote, Fred Fenlon seconded and the Board voted by roll call as follows:

<i>Colin Odell – Brewster</i>	<i>Yes</i>	<i>Richard Toole – Oak Bluffs</i>	<i>Yes</i>
<i>Robert Hannemann – Chilmark</i>	<i>Yes</i>	<i>Thomas Donegan – Provincetown</i>	<i>Yes</i>
<i>Fred Fenlon – Eastham</i>	<i>Yes</i>	<i>Joseph Buteau – Truro</i>	<i>Yes</i>
<i>Andrew Gottlieb – Mashpee</i>	<i>Yes</i>	<i>Sue Hruby – West Tisbury</i>	<i>Yes</i>

Motion carries in the affirmative (8-0-0).

E. ELECTION OF INTERIM TREASURER

Andrew Gottlieb nominated David Anthony for the position of Interim Treasurer, Richard Toole seconded. Hearing no other nominations, Colin Odell called for a vote, Fred Fenlon seconded and the Board voted by roll call as follows:

<i>Colin Odell – Brewster</i>	<i>Yes</i>	<i>Richard Toole – Oak Bluffs</i>	<i>Yes</i>
<i>Robert Hannemann – Chilmark</i>	<i>Yes</i>	<i>Thomas Donegan – Provincetown</i>	<i>Yes</i>
<i>Fred Fenlon – Eastham</i>	<i>Yes</i>	<i>Joseph Buteau – Truro</i>	<i>Yes</i>
<i>Andrew Gottlieb – Mashpee</i>	<i>Yes</i>	<i>Sue Hruby – West Tisbury</i>	<i>Yes</i>

Motion carries in the affirmative (8-0-0).

F. ELECTION OF BUSINESS OFFICER

MOTION TO HAVE THE COMPTROLLER SERVE AS THE INTERIM BUSINESS OFFICER FOR CLCJPE

Richard Toole made a motion to designate the Joint Power Entity's Comptroller Interim Business Officer. Hearing no other nominations, Colin Odell called for a vote, Fred Fenlon seconded and the Board voted by roll call as follows:

<i>Colin Odell – Brewster</i>	<i>Yes</i>	<i>Richard Toole – Oak Bluffs</i>	<i>Yes</i>
<i>Robert Hannemann – Chilmark</i>	<i>Yes</i>	<i>Thomas Donegan – Provincetown</i>	<i>Yes</i>
<i>Fred Fenlon – Eastham</i>	<i>Yes</i>	<i>Joseph Buteau – Truro</i>	<i>Yes</i>
<i>Andrew Gottlieb – Mashpee</i>	<i>Yes</i>	<i>Sue Hruby – West Tisbury</i>	<i>Yes</i>

Motion carries in the affirmative (8-0-0).

G. APPOINTMENT OF JPE ADMINISTRATOR

Tom Donegan nominated Margaret Downey for the position of JPE Administrator, Fred Fenlon seconded. Hearing no other nominations, Colin Odell called for a vote and the Board voted by roll call as follows:

<i>Colin Odell – Brewster</i>	<i>Yes</i>	<i>Richard Toole – Oak Bluffs</i>	<i>Yes</i>
<i>Robert Hannemann – Chilmark</i>	<i>Yes</i>	<i>Thomas Donegan – Provincetown</i>	<i>Yes</i>
<i>Fred Fenlon – Eastham</i>	<i>Yes</i>	<i>Joseph Buteau – Truro</i>	<i>Yes</i>
<i>Andrew Gottlieb – Mashpee</i>	<i>Yes</i>	<i>Sue Hruby – West Tisbury</i>	<i>Yes</i>

Motion carries in the affirmative (8-0-0).

H. APPOINT BCK LAW AS CLCJPE LEGAL COUNSEL

Colin Odell asked whether legal services were required to be competitively procured under Massachusetts General Law, Tom Donegan and Maggie Downey both noted that legal services are exempted from Massachusetts General Law Chapter 30B procurement procedures.

Tom Donegan moved the Governing Board to appoint BCK Law as counsel for the Cape Light Compact Joint Powers Entity, and the JPE Administrator is authorized and directed to take all powers necessary or appropriate to implement this vote and to execute and deliver all documents as may be necessary or appropriate to implement this vote. xx seconded.

<i>Colin Odell – Brewster</i>	<i>Yes</i>	<i>Tom Donegan – Provincetown</i>	<i>Yes</i>
<i>Robert Hannemann – Chilmark</i>	<i>Yes</i>	<i>Joshua Peters – Sandwich</i>	<i>Yes</i>
<i>Fred Fenlon – Eastham</i>	<i>Yes</i>	<i>Joseph Buteau – Truro</i>	<i>Yes</i>
<i>Andrew Gottlieb – Mashpee</i>	<i>Yes</i>	<i>Sue Hruby – West Tisbury</i>	<i>Yes</i>
<i>Richard Toole – Oak Bluffs</i>	<i>Yes</i>		

Motion carried in the affirmative (9-0-0)

I. RATIFY THE ACTIONS OF THE COMPACT ADMINISTRATOR FOR CONTACTING CAPE COD MUNICIPAL HEALTH GROUP AND BARNSTABLE COUNTY RETIREMENT

Tom Donegan moved the Governing Board to ratify the Cape Light Compact's Administrator's submission of a letter to the Cape Cod Municipal Health Group (CCMHG) petitioning for membership of a new unit, Cape Light Compact JPE, in the CCMHG, and the JPE Administrator is authorized and directed to take all powers necessary or appropriate to implement this vote and to execute and deliver all documents as may be necessary or appropriate to implement this vote. Andrew Gottlieb seconded.

<i>Colin Odell – Brewster</i>	<i>Yes</i>	<i>Tom Donegan – Provincetown</i>	<i>Yes</i>
<i>Robert Hannemann – Chilmark</i>	<i>Yes</i>	<i>Joshua Peters – Sandwich</i>	<i>Yes</i>
<i>Fred Fenlon – Eastham</i>	<i>Yes</i>	<i>Joseph Buteau – Truro</i>	<i>Yes</i>
<i>Andrew Gottlieb – Mashpee</i>	<i>Yes</i>	<i>Sue Hruby – West Tisbury</i>	<i>Yes</i>

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Richard Toole – Oak Bluffs Yes

Motion carried in the affirmative (9-0-0)

J. AUTHORIZE THE CLCJPE ADMINISTRATOR TO EXECUTE A LEASE FOR OFFICE SPACE

Tom Donegan moved the Governing Board to authorize the JPE Administrator to execute a lease for office space, and the JPE Administrator is authorized and directed to take all powers necessary or appropriate to implement this vote and to execute and deliver all documents as may be necessary or appropriate to implement this vote. Fred Fenlon seconded.

Colin Odell – Brewster	Yes	Tom Donegan – Provincetown	Yes
Robert Hannemann – Chilmark	Yes	Joshua Peters – Sandwich	Yes
Fred Fenlon – Eastham	Yes	Joseph Buteau – Truro	Yes
Andrew Gottlieb – Mashpee	Yes	Sue Hruby – West Tisbury	Yes
Richard Toole – Oak Bluffs	Yes		

Motion carried in the affirmative (9-0-0)

K. AUTHORIZE THE CLCJPE ADMINISTRATOR TO APPLY FOR A TAX IDENTIFICATION NUMBER ON BEHALF OF THE CLCJPE, OPEN BACK ACCOUNTS AND EXECUTE DOCUMENTS NEEDED TO CONDUCT BUSINESS

Tom Donegan moved the Governing Board to authorize the JPE Administrator to complete and submit the necessary and required paperwork to obtain a Federal Tax Identification Number and Execute Documents needed to conduct business on behalf of the Cape Light Compact Joint Powers Entity; the JPE Administrator is authorized and directed to take all powers necessary or appropriate to implement this vote and to execute and deliver all documents as may be necessary or appropriate to implement this vote. Richard Toole seconded.

Colin Odell – Brewster	Yes	Tom Donegan – Provincetown	Yes
Robert Hannemann – Chilmark	Yes	Joshua Peters – Sandwich	Yes
Fred Fenlon – Eastham	Yes	Joseph Buteau – Truro	Yes
Andrew Gottlieb – Mashpee	Yes	Sue Hruby – West Tisbury	Yes
Richard Toole – Oak Bluffs	Yes		

Motion carried in the affirmative (9-0-0)

L. AUTHORIZE CLCJPE ADMINISTRATOR TO SERVE AS CLCJPE PUBLIC RECORDS ACCESS OFFICER

Tom Donegan moved the Governing Board to appoint the JPE Administrator to serve as the Cape Light Compact Joint Powers Entity Public Records Officer, and the JPE Administrator is authorized and directed to take all powers necessary or appropriate to implement this vote and to execute and deliver all documents as may be necessary or appropriate to implement this vote. xx seconded.

Colin Odell – Brewster	Yes	Tom Donegan – Provincetown	Yes
Robert Hannemann – Chilmark	Yes	Joshua Peters – Sandwich	Yes
Fred Fenlon – Eastham	Yes	Joseph Buteau – Truro	Yes
Andrew Gottlieb – Mashpee	Yes	Sue Hruby – West Tisbury	Yes
Richard Toole – Oak Bluffs	Yes		

Motion carried in the affirmative (9-0-0)

M. DESIGNATE LOCATION OF POSTING CLCJPE MEETING NOTICES FOR OPEN MEETING LAW (OML)

Tom Donegan moved the Governing Board to designate the Cape Light Compact web site as the official location for posting Cape Light Compact Joint Powers Entity meeting notices, and the JPE Administrator is authorized and directed to take all powers necessary or appropriate to implement this vote and to execute and deliver all documents as may be necessary or appropriate to implement this vote. xx seconded.

Colin Odell – Brewster	Yes	Tom Donegan – Provincetown	Yes
Robert Hannemann – Chilmark	Yes	Joshua Peters – Sandwich	Yes
Fred Fenlon – Eastham	Yes	Joseph Buteau – Truro	Yes
Andrew Gottlieb – Mashpee	Yes	Sue Hruby – West Tisbury	Yes
Richard Toole – Oak Bluffs	Yes		

Motion carried in the affirmative (9-0-0)

N. ADOPT REMOTE PARTICIPATION POLICY

Tom Donegan moved the Governing Board to adopt the attached Policy and Procedures for participating remotely in meetings of the Cape Light Compact Joint Powers Entity, and the JPE Administrator is authorized and directed to take all powers necessary or appropriate to implement this vote and to execute and deliver all documents as may be necessary or appropriate to implement this vote. xx seconded.

Colin Odell – Brewster	Yes	Tom Donegan – Provincetown	Yes
Robert Hannemann – Chilmark	Yes	Joshua Peters – Sandwich	Yes
Fred Fenlon – Eastham	Yes	Joseph Buteau – Truro	Yes
Andrew Gottlieb – Mashpee	Yes	Sue Hruby – West Tisbury	Yes
Richard Toole – Oak Bluffs	Yes		

Motion carried in the affirmative (9-0-0)

O. ADOPT PUBLIC MEETING PROTOCOLS

Tom Donegan moved the Governing Board to adopt the attached Public Meeting Protocols, and the JPE Administrator is authorized and directed to take all powers necessary or appropriate to implement this vote and to execute and deliver all documents as may be necessary or appropriate to implement this vote. xx seconded.

Colin Odell – Brewster	Yes	Tom Donegan – Provincetown	Yes
Robert Hannemann – Chilmark	Yes	Joshua Peters – Sandwich	Yes
Fred Fenlon – Eastham	Yes	Joseph Buteau – Truro	Yes
Andrew Gottlieb – Mashpee	Yes	Sue Hruby – West Tisbury	Yes
Richard Toole – Oak Bluffs	Yes		

Motion carried in the affirmative (9-0-0)

P. VOTE ON TREASURER'S BOND

Maggie briefly explained that the Interim Treasurer would not be expected to expend funds on behalf of the JPE, and as a result she recommends the Interim Treasurer's Bond should be set at 0 until a permanent Treasurer is selected by the Directors.

Tom Donegan moved the Governing Board to set the Interim Treasurer's Bond at zero until such time as the Treasurer is set to expend funds, and the JPE Administrator is authorized and directed to take all powers necessary or appropriate to implement this vote and to execute and deliver all documents as may be necessary or appropriate to implement this vote. xx seconded.

Colin Odell – Brewster	Yes	Tom Donegan – Provincetown	Yes
Robert Hannemann – Chilmark	Yes	Joshua Peters – Sandwich	Yes
Fred Fenlon – Eastham	Yes	Joseph Buteau – Truro	Yes
Andrew Gottlieb – Mashpee	Yes	Sue Hruby – West Tisbury	Yes
Richard Toole – Oak Bluffs	Yes		

Motion carried in the affirmative (9-0-0)

Q. VOTE ON OPERATIONAL TRANSFER DATE

Maggie Downey explained that now that a majority of towns had come on board with the JPE, advice from Chris Rogers recommended the Board move up the Operational Transfer Date to July 1, 2017 in order to avoid maintaining two separate organizational structures and two financial and accounting systems.

Tom Donegan moved the Governing Board to set the Operational Transfer Date as July 1, 2017, and the JPE Administrator is authorized and directed to take all powers necessary or appropriate to implement this vote and to execute and deliver all documents as may be necessary or appropriate to implement this vote. xx seconded.

Colin Odell – Brewster	Yes	Tom Donegan – Provincetown	Yes
Robert Hannemann – Chilmark	Yes	Joshua Peters – Sandwich	Yes
Fred Fenlon – Eastham	Yes	Joseph Buteau – Truro	Yes
Andrew Gottlieb – Mashpee	Yes	Sue Hruby – West Tisbury	Yes
Richard Toole – Oak Bluffs	Yes		

Motion carried in the affirmative (9-0-0)

R. AGREE AT A FUTURE DIRECTOR'S MEETING TO REVISE JPA'S EFFECTIVE DATE, OPERATIONAL TRANSFER DATE, AND OTHER SCRIVENER'S ERRORS

Maggie briefly explained the necessity to revise the Joint Powers Agreement to reflect the new Effective and Operational Date, and to rectify any clerical errors with the document at a future meeting.

Tom Donegan moved the Governing Board amend the Joint Powers Agreement to establish the Operational Transfer and Effective Date as July 1, 2017, and correct other scrivener's errors and that the agreement be revised accordingly at a future date, and the JPE Administrator is authorized and directed to take all powers necessary or appropriate to implement this vote and to execute and deliver all documents as may be necessary or appropriate to implement this vote. xx seconded.

Colin Odell – Brewster	Yes	Tom Donegan – Provincetown	Yes
Robert Hannemann – Chilmark	Yes	Joshua Peters – Sandwich	Yes
Fred Fenlon – Eastham	Yes	Joseph Buteau – Truro	Yes
Andrew Gottlieb – Mashpee	Yes	Sue Hruby – West Tisbury	Yes
Richard Toole – Oak Bluffs	Yes		

Motion carried in the affirmative (9-0-0)

DISCUSSION AND VOTE ON TRANSITION, ASSET TRANSFER AND SUCCESSION PLAN

Maggie Downey referred everyone to the draft Succession Plan document, which outlined the Plan to fully reorganize from the Cape Light Compact under the Intergovernmental Agreement, to the Cape Light Compact organized under the Joint Powers Agreement. She requested the board move to approve the draft document.

Tom Donegan moved the Governing Board approve the draft Transition, Asset Transfer and Succession Plan, and the JPE Administrator is authorized and directed to take all powers necessary or appropriate to implement this vote and to execute and deliver all documents as may be necessary or appropriate to implement this vote.xx seconded

Colin Odell – Brewster	Yes	Tom Donegan – Provincetown	Yes
Robert Hannemann – Chilmark	Yes	Joshua Peters – Sandwich	Yes
Fred Fenlon – Eastham	Yes	Joseph Buteau – Truro	Yes
Andrew Gottlieb – Mashpee	Yes	Sue Hruby – West Tisbury	Yes
Richard Toole – Oak Bluffs	Yes		

Motion carried in the affirmative (9-0-0)

DISCUSS DATES FOR NEXT CLCJPE DIRECTORS' MEETING(S)

Maggie Downey suggested that due to other commitments and the difficulty in getting a meeting prepared and ready by May 10th, that the Board change its next meeting to May 12th to coincide with the Cape Light Compact Governing Board Meeting. A sense of the board of directors indicated this was acceptable.

DISTRIBUTE OML MATERIALS AND INSTRUCTIONS FOR RETURNING CERTIFICATIONS

Maggie and Jeff Bernstein indicated that there was a link to Open Meeting Law certifications at the back of the packet, and Directors were instructed to visit the website and follow the instructions provided, along with all the publications regarding Open Meeting Law already provided.

ADJOURNMENT

Joseph Buteau made a motion to adjourn, seconded by Tom Donegan and voted by roll call as follows:

Colin Odell – Brewster	Yes	Tom Donegan – Provincetown	Yes
Robert Hannemann – Chilmark	Yes	Joshua Peters – Sandwich	Yes
Fred Fenlon – Eastham	Yes	Joseph Buteau – Truro	Yes
Andrew Gottlieb – Mashpee	Yes	Sue Hruby – West Tisbury	Yes
Richard Toole – Oak Bluffs	Yes		

Motion carried in the affirmative (9-0-0)

Meeting adjourned at 4:31PM.

Respectfully submitted,

Jake Wright
Special Projects Coordinator

LIST OF DOCUMENTS AND EXHIBITS

- Cape Light Compact Joint Powers Entity 4/12/2017 Agenda
- Remote Participation Policy, dated 4/12/2017.
- Cape Light Compact JPE Public Meeting Protocols, dated 4/12/2017.
- Transition, Asset Transfer and Succession Plan, dated 4/12/2017.
- Open Meeting Law Links

**Agenda Action Request
Cape Light Compact JPE Governing Board
Meeting Date: 5/12/17**

Approve Scope of Services for Treasurer

REQUESTED BY: *Joanne Nelson*

Proposed Motion(s)

- 1) *I move that the Board approve the attached scope of services for the Cape Light Compact JPE Treasurer and for the Interim Treasurer to present his recommendation for the position of Treasurer to the full Board at its next meeting.*

The JPE Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote.

Additional Information

The attached scope of services was prepared with input from the Compact's auditor, the JPE's Interim Treasurer, and the JPE's Administrator.

Record of Board Action

Motion by:	Second by:	# Aye	# Nay	# Abstain	Disposition

CAPE LIGHT COMPACT JOINT POWERS ENTITY SCOPE OF SERVICES FOR TREASURER

General Description: Receive and administer all money belonging to the Cape Light Compact Joint Powers Entity (CLC JPE), including the payment of all bills approved by the CLC JPE Administrator and Comptroller

Essential Tasks:

1. Establish and monitor all bank accounts of the Cape Light Compact Joint Powers Entity.
 - The projected number of CLC JPE bank accounts are between 5 - 7
2. The Treasurer and the Cape Light Compact Joint Powers Entity authorized alternate shall be the only signatories on the Cape Light Compact Joint Powers Entity bank accounts.
3. Reconcile all bank accounts on a monthly basis to the Cape Light Compact Joint Powers Entity General Ledger balances within 30 days of the close of the previous month.
4. Assumes responsibility for all receipts and disbursements of the Cape Light Compact Joint Powers Entity.
5. Establish and maintain an on-site weekly work schedule to print, sign/approve Accounts Payable Checks/ACH/Electronic Funds Transfers and authorize Payroll Checks/Direct Deposit Advices (with the warrant listings attached for review).
 - Weekly warrants with approximately 35-75 checks and 1- 3 EFTs
 - Bi-weekly Payroll for 16 employees with an Outside Payroll Service
6. Prepares bank transfers within the Cape Light Compact Joint Powers Entity bank accounts.
7. Stays current with banking practices, interest rate environment, and economic conditions.
8. Invest funds prudently in a manner that will maximize interest income according to Massachusetts General Laws, Chapter 44, Section 55B.
9. Give bond for the faithful performance of the tasks in an amount prescribed by the Cape Light Compact Joint Powers Entity Governing Board. The Cape Light Compact Joint Powers Entity will pay the premium of the bond.
10. Provide copies of certain documents in preparation of the annual audit (i.e., copies of bank statements and bank reconciliations).
11. Upon request, be available to the Cape Light Compact Joint Powers Entity Governing Board and/or the Department of Utilities, and prepare reports, if needed.
12. Coordinate borrowing, if necessary, with a fiscal advisor and bond counsel, and issue debt on behalf of the Cape Light Compact Joint Powers Entity.
13. Perform other tasks related to the treasury function, if needed, to be assigned by the Cape Light Compact Joint Powers Entity Administrator.
14. Individual or company should be able to execute the attached Professional/Consulting Services Agreement

Education and Experience: Bachelor's degree in Accounting. Experience with municipal or fund accounting, cash management, and financial reporting. Demonstrated knowledge of financial software. Certification as a Certified Public Accountant.

The Treasurer will be appointed by the Cape Light Compact Joint Powers Entity Governing Board for a one year term.

PROFESSIONAL/CONSULTING SERVICES AGREEMENT

This PROFESSIONAL/CONSULTING SERVICES AGREEMENT ("Agreement") is made by and between the Cape Light Compact, an inter-governmental association and aggregator formed pursuant to Massachusetts law, (the "Compact"), and [insert] ("Consultant"). The Compact and Consultant may be referred to herein collectively as the "Parties," or either singularly as a "Party." This Agreement is effective as of [insert].

WHEREAS, pursuant to G.L. c. 40, §4A, 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 (individually, a "Member Municipality" and collectively, the "Member Municipalities"), entered into an inter-governmental agreement, as amended from time to time, to act together as 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 28, 2016, DPU 15-166], for plan years [2016 through 2018];

WHEREAS, the Compact issued a [insert as applicable: request for proposals, invitation for bids, etc.] on [insert date] for the performance of [insert program name];

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

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

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

SECTION 1 TERM OF AGREEMENT AND TERMINATION

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

1.2 **Termination.** The Compact shall have the right to terminate or suspend this Agreement for any reason, including, but not limited to, in the event that the Consultant is in default under another consulting or installation services agreement between Consultant and the Compact, or

for convenience. Consultant may terminate this Agreement only if the Compact materially breaches its obligations under this Agreement. The terminating Party shall provide written notice to the other Party of any such termination or suspension, specifying the effective date thereof. If the terminating Party is the Compact, such notice shall be given at least fifteen (15) calendar days before such effective date; if the terminating Party is Consultant, such notice shall be given at least ninety (90) calendar days before such effective date. In addition, if the Compact terminates this Agreement for cause, the Compact shall be entitled to deduct and/or be reimbursed any costs of cure and transition costs (including reasonable attorneys' fees) that it, its Fiscal Agent (as defined herein), a Member Municipality or a Customer (as defined herein) incurs related to engagement of a substitute Consultant.

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

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

SECTION 2 SCOPE OF SERVICES AND RELATED MATTERS

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

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

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

2.4 Staffing; Background Check Requirements. The Compact may require Consultant to remove from its project team such employees of Consultant or subcontractors of Consultant as the Compact, in its reasonable discretion, deems objectionable, or whose continued employment

in connection with the Services is deemed by the Compact, in its reasonable discretion, to be contrary to the best interests of the Compact.

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

[] required [] not required

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

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

SECTION 3 COMPENSATION AND RELATED MATTERS

3.1 **Rates of Compensation.** Consultant shall be compensated by the Compact for the Services in accordance with the terms and rates set forth in Exhibit B hereto. The Compact may reject any invoices using billing rates that are not consistent with Exhibit B, unless the Compact has previously accepted such substitute rates in a written amendment to this Agreement.

3.2 **Invoicing and Payment.** Consultant shall submit monthly invoices to the Compact by the 10th day of each month, unless otherwise authorized in writing by the Compact. The Compact will remit payment within forty-five (45) calendar days of the Compact's receipt of each monthly invoice. Payment may be contingent upon final inspection and/or acceptance of the Services. Upon request, Consultant shall provide to the Compact all backup documentation required to establish the value of the Services in place as represented by Consultant's monthly invoices. The Compact may elect to use a fiscal agent ("Fiscal Agent") to provide administrative services in connection with the payments made by the Compact under this Agreement. Consultant acknowledges and agrees that the Compact's Fiscal Agent will have no financial obligation to the Consultant or responsibility under this Agreement.

3.3 **Effect of Payment.** The Compact shall not be deemed to have accepted any improper Services, materials or performance by virtue of any payment made to Consultant. Payments shall be deemed advances and are subject to adjustment for errors, overpayments, or the

Compact's good faith determination that the remaining balance of payments may be insufficient to ensure completion of the Services.

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

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

SECTION 4 PERFORMANCE STANDARDS

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

and expedition. Good Industry Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.

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

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

4.4 Periodic Reporting. Upon the request of the Compact, the Consultant shall promptly submit a report detailing the status of the Services including the progress toward achieving completion of any deliverables or project milestones. Additional reporting requirements may be set forth in Exhibit A.

SECTION 5 INTELLECTUAL PROPERTY MATTERS

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

perfect the Compact's ownership of any such property. Consultant further agrees that, to the best of its knowledge, all work created or developed by Consultant will be original and non-infringing.

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

SECTION 6 INSURANCE

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

- (a) Until completion of the Services:
 - i. Workers' Compensation and Employers' Liability Insurance covering *each and every worker employed in, about or upon the Services*, as provided for in each and every statute applicable to the Workers' Compensation and Employers' Liability Insurance.
 - ii. Commercial General Liability Insurance, written on an occurrence form including coverages for Bodily Injury, Broad Form Property Damage, Personal Injury, Products/Completed Operations, Liability arising out of Subcontractors, Contractual Liability (to specifically include coverage for the indemnification clause of this Agreement), and so-called Explosion, Collapse and Underground Hazards, with minimum limits of \$1,000,000 per occurrence/\$2,000,000 per project general aggregate; \$1,000,000 aggregate for products and completed operations.
 - iii. Automobile Liability Insurance covering all owned, non-owned and/or hired motor vehicles to be used in connection with the Services with a minimum combined single limit of \$1,000,000 bodily injury and property damage, including Form MCS-90 and Broadened Pollution Coverage via ISO form CA9948 or its equivalent.
 - iv. Umbrella Liability Insurance covering over underlying General Liability, Auto Liability and Employers' Liability Insurance with a minimum limit of \$5,000,000.
 - v. Professional Liability Insurance covering Consultant's errors and omissions relating to the Services if the Services involve rendering of professional advice or consultation, including designs, surveys, drawings, approval of maps, etc. Such insurance shall be provided at a limit of at least \$1,000,000. Such insurance may be maintained on a "claims made" basis but in such case it shall always be subject to a retroactive date that is effective prior to the effective date of this Agreement.

(b) After the Services are complete:

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

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

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

Consultant agrees to waive any rights of subrogation against the Compact, the Compact's Customers, Member Municipalities, and their respective employees, subcontractors, engineers, workers and agents. Consultant shall name the Compact and its officials and employees as additional insureds on its commercial general liability insurance, automobile liability insurance and umbrella liability insurance policies.

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

SECTION 7 INDEMNIFICATION BY CONSULTANT¹ AND DAMAGES FOR BREACH

7.1 Indemnification. To the fullest extent allowed by law, Consultant (and its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) shall indemnify, defend, and hold harmless the Compact, the individual Member Municipalities and the Fiscal Agent (and all of the respective officials, officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns of the Compact each individual Member Municipality and the Fiscal Agent), and all Customers from and against any and all costs, claims, liabilities, damages,

¹ Note to Consultant: In accordance with guidance received from the Massachusetts Office of Attorney General, the Compact cannot indemnify private parties.

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

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

7.3 Limitations. NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. Notwithstanding the foregoing, Consultant acknowledges that the preceding sentence shall not limit the Compact's rights to seek indemnification from Consultant for consequential, punitive, or incidental damages or other such losses claimed by third parties.

7.4 No Cap on Consultant's Liability.² Consultant's liability under this Agreement shall not be limited to the value of the Services rendered under this Agreement; further, Consultant's liability shall not be limited by the availability of its insurance coverage.

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

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

² Note to Consultants: The Compact does not accept liability caps as a matter of public policy, and the constitutional prohibition on providing private parties with indemnification rights may also apply.

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. Consultant shall diligently carry on the Services and maintain the project milestone schedule during any dispute resolution proceedings, unless otherwise agreed to by the Compact in writing.

SECTION 9 ASSIGNMENT AND SUBCONTRACTING

Except as expressly permitted in Exhibit D, none of the Services shall be subcontracted or assigned, in whole or in part, without the prior written approval of the Compact, in its sole discretion. No subcontract or assignment shall relieve or discharge Consultant from any obligation or liability under this Agreement except as specifically set forth in the instrument of approval. Consultant shall provide prompt notice to the Compact of any such permitted subcontract or assignment, together with the name and address of the assignee, and a copy of the subcontract or assignment instrument. Consultant acknowledges and agrees that the Compact may contract with a Fiscal Agent that may be the employer of record for its employees and, at the Compact's option, on behalf of the Compact, enforce the Compact's rights under this Agreement. The Parties agree that upon written notification to the Consultant by the Compact that the Compact has contracted with a Fiscal Agent, the Parties will use good faith efforts to amend this Agreement in a timely fashion to recognize the Fiscal Agent as a party to this Agreement with rights to enforce the Agreement. In the event that during the Term of this Agreement the Compact undertakes to reorganize its inter-governmental agreement structure to operate in whole or in part by and through the Fiscal Agent, the Compact may assign its rights under this Agreement in whole or in part to the Fiscal Agent or may elect to assign this Agreement to the Fiscal Agent without the consent of the Consultant, provided the Compact provides written notice of such assignment to the Consultant.

SECTION 10 CONFIDENTIALITY AND CUSTOMER INFORMATION

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

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

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

SECTION 11 MISCELLANEOUS

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

if to Consultant to:

[insert]

if to the Compact to:

Margaret T. Downey
Compact Administrator
Cape Light Compact
3195 Main Street
Open Cape Building
Barnstable, MA 02630
mdowney@capelightcompact.org (email)

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

11.2 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. To the extent any of the exhibits to this Agreement contain terms that conflict with the terms set forth in the main body of this Agreement, 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. Consultant will perform all Services under this Agreement as an independent contractor. Consultant understands and agrees that none of its employees are Compact employees by virtue of entering into this Agreement. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Compact and Consultant hereunder are individual and neither collective nor joint in nature.

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

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

11.6 Records; Audit. Consultant shall maintain books, records, and other compilations of data pertaining to the requirements of this Agreement to the extent and in such detail as shall properly substantiate claims for payment under this Agreement. Consultant agrees that the Compact may audit Consultant's books, records, and other compilations of data associated with

the performance of this Agreement to ascertain that the payments requested by Consultant represent the value of the Services. All records shall be kept for a period of six (6) years commencing on the first day after final payment under this Agreement. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the retention period, all records shall be retained until the completion of the action and resolution of all issues resulting therefrom, or until the end of the retention period, whichever is later.

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

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

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

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

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

11.12 Procurement Process. [The Agreement is intended to be a contract for "energy" and/or "energy related services" within the meaning of G.L. c. 30B, §1(b)(33) and therefore this Agreement is exempt from the competitive procurement procedures set forth in G.L. c. 30B. It shall be the Compact's obligation to comply with submission and reporting requirements of G.L.

c. 30B, §1(b)(33)] OR [In entering into the Agreement, the Parties complied with the competitive procurement procedures required under G.L. c. 30B or [Insert reference to other applicable procurement law] and have executed this Agreement in accordance therewith.] If this Agreement was procured under G.L. c. 30B, Consultant represents that it has executed all certifications required by such statute, or will provide them concurrently with execution of this Agreement.

11.13 Third-Party Beneficiaries. The County and each individual Member Municipality is an intended third-party beneficiary of this Agreement, entitled to the full rights of this Agreement.

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

11.15 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.

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

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

CONSULTANT

CAPE LIGHT COMPACT

Signature
Print Name: _____
Title: _____

Signature
Margaret T. Downey
Compact Administrator/Chief Procurement Officer

Date

Date

LIST OF EXHIBITS

- Exhibit A - Services**
- Exhibit B - Compensation**
- Exhibit C - Background Check Policy**
- Exhibit D - Pre-approved Contractors**

**EXHIBIT A
SERVICES**

**EXHIBIT B
COMPENSATION**

EXHIBIT C
BACKGROUND CHECK POLICY

EXHIBIT D
PRE-APPROVED CONTRACTORS

**JOINT POWERS AGREEMENT
OF THE
CAPE LIGHT COMPACT JPE**

This Joint Powers Agreement (“Agreement”) is effective as of the date set forth in Article I(A) (Effective Date; Formation) below, and is entered into by and among the municipalities and counties listed on Exhibit A hereto (the “Members”), pursuant to the authority of Massachusetts General Laws Chapter 40, §4A ½ and G.L. c. 164, §134.

WHEREAS, the Massachusetts Restructuring Act of 1997 (the “Act”) was enacted during a period where Federal Law allowed for the restructuring of existing electric utilities into separate generation, transmission and distribution companies and, accordingly, the Act set forth a framework for the competitive supply of electric generation service to Massachusetts electric customers and allowed electric customers to choose their electric power supplier; and

WHEREAS, the Cape Light Compact (“Compact”) was entered into with the County of Barnstable, County of Dukes County and the municipalities legally joining therein, pursuant to the authority of Massachusetts General Laws Chapter 40, §4A, through an original Inter-Governmental Agreement effective as of October, 1997 which has been amended from time to time (most recently in November of 2015) and is due to expire in October of 2022 (the “IGA”); and

WHEREAS, under the authority of G.L. c. 164, §134, G.L. c. 25A, §6 and pursuant to the original Inter-Governmental Agreement, adopted October, 1997, as amended, the Compact developed a municipal aggregation plan, setting forth the structure, operations, services, funding and policies of the Compact, approved in D.T.E. 00-47 (August 10, 2000) and approved as updated in D.P.U. 14-69 (May 1, 2015; May 18, 2015); and

WHEREAS, the Compact currently operates a municipal aggregation competitive supply program pursuant to a municipal aggregation plan, setting forth the structure, operations, services, funding and policies of the Compact as most recently approved and updated in D.P.U. 14-69 (May 1, 2015; May 18, 2015) which provides electric power supply on an opt-out basis to customers across all customer classes located on Cape Cod and Martha’s Vineyard and the Compact also provides comprehensive energy efficiency services to Cape Cod and Martha’s Vineyard through the Cape Light Compact Energy Efficiency Plan; and

WHEREAS, it is in the best interests of the Compact’s members to transfer its administrative, fiscal and operational functions to a new independent legal entity, a joint powers entity, prior to expiration of the IGA; and

WHEREAS, members of joint powers entities are afforded express liability protection

from the acts and omissions of the entity and the other participating members; and

WHEREAS, joint powers entities are conferred many express powers by law that are not available to the Compact, including the ability to employ staff; and

NOW THEREFORE, the Members hereby enter into this Agreement and, pursuant to G.L. c. 40, § 4A½, hereby form a body politic and corporate.

ARTICLE I: EFFECTIVE DATE; FORMATION; MEMBERSHIP; LIABILITY OF MEMBERS

A. Effective Date; Formation.

This Agreement shall become effective and the joint powers entity shall exist as a separate public entity on such date as this Agreement is executed by at least two (2) municipal members of the Compact after authorization by each municipal member's Board of Selectmen or other governing body as set forth in G.L. c. 40, §4A½ (as may be amended from time to time, the "Joint Powers Statute"). Such date shall be referred to herein as the "Effective Date." There is formed as of the Effective Date a separate public entity named the Cape Light Compact JPE. The Cape Light Compact JPE shall provide notice to the Members of the Effective Date. The Cape Light Compact JPE shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated or expires in accordance with Article XVI (Term; Termination; Withdrawal), subject to the rights of the Members to withdraw from the Cape Light Compact JPE.

B. Eligibility for Membership; Addition of Members.

Municipal members of the Compact are eligible for full membership in the Cape Light Compact JPE. Municipal members of the Compact who become members of the Cape Light Compact JPE shall be referred to as "Municipal Members." Barnstable County and Dukes County may participate as limited members as set forth in Article I(E) (County Members) below. This subsection may not be amended unless such amendment obtains the affirmative approval of the Municipal Members whose population is at least equal to 50% of the combined population of all of the Municipal Members of the Cape Light Compact JPE. Subject to the deadlines set forth in Article XVIII(C) (Transfer of Operations), a municipal member of the Compact may become a member of the Cape Light Compact JPE by duly executing this Agreement in accordance with the Joint Powers Statute and delivering an executed copy of this Agreement and a copy of the authorization, vote or resolution as required by the Joint Powers Statute to the Cape Light Compact JPE. The Members acknowledge that membership in the Cape Light Compact JPE may change by the addition and/or withdrawal of Members. The Members agree to participate with such other Members as may later be added. The Members also agree that the withdrawal by a Member shall not affect this Agreement or the remaining Members' continuing obligations under this Agreement.

C. Region.

The region within which the powers and duties provided in this Agreement shall be exercised is Barnstable County and Dukes County. The foregoing sentence shall not be construed as a limitation on the Cape Light Compact JPE's powers in any way, including, but not limited to, its power to offer statewide programs or participate in statewide proceedings (as such programs or proceedings may affect the region), or its power to contract with persons or entities outside the Commonwealth of Massachusetts.

D. Liability of Members.

Members shall not be liable for the acts or omissions of other Members or the region or the Cape Light Compact JPE created by this Agreement, unless the Member has agreed otherwise in this Agreement, or as may be provided for in a separate contract between the Member and the Cape Light Compact JPE. This subsection may not be amended unless such amendment obtains the affirmative approval of the Municipal Members whose population is at least equal to fifty percent (50%) of the combined population of all of the Municipal Members of the Cape Light Compact JPE.

This Agreement is not intended to impose any independent financial liabilities on the Members. Each Member shall remain responsible for its own debts and other financial liabilities, except as specifically provided herein, or as may be provided for in a separate contract between a Member and the Cape Light Compact JPE.

E. County Members.

Barnstable County and Dukes County may participate as limited members of the Cape Light Compact JPE and shall be referred to herein as the "County Members," or collectively with the Municipal Members as the "Members." The County Members shall not be permitted to vote on matters concerning aggregated power supply, energy efficiency plans and programs or other such matters committed to municipal aggregators pursuant to any provision of the Massachusetts General Laws. Other limitations on the participation rights of County Members are set forth elsewhere in this Agreement.

A county member of the Compact may become a Member of the Cape Light Compact JPE by duly executing this Agreement in accordance with the Joint Powers Statute. Each County Member shall provide a duly authorized signature page for attachment hereto.

ARTICLE II: GOALS; POLICIES; PURPOSES

The Cape Light Compact JPE's goals, policies and purposes include, without limitation, the following:

- a) providing the basis for aggregation of all consumers on a non-discriminatory basis;

- b) negotiating the best terms and conditions for electricity supply and transparent pricing;**
- c) exploring all available options for negotiating the best terms and conditions for electricity supply and the development of renewable energy resources, including, without limitation, the formation of and/or membership in a co-operative organization to purchase or produce energy or renewable energy certificates ("RECs") or both on a long-term, basis;**
- d) providing equal sharing of economic savings based on current electric rates and/or cost-of-service ratemaking approved by the Department of Public Utilities or its successor ("DPU");**
- e) providing and enhancing consumer protection and options for service under contract provisions and to allow those consumers who choose not to participate to opt-out;**
- f) improving quality of service and reliability;**
- g) encouraging environmental protection through contract provisions;**
- h) utilizing and encouraging renewable energy development to the extent practicable through contract provisions, demonstration projects and state mandated system benefit charges for renewable energy;**
- i) administering an energy efficiency plan that advances consumer awareness and the adoption of a wide variety of energy efficiency measures and that also utilizes and encourages demand side management, all through contract provisions, demonstration projects and the use of state mandated system benefit charges for energy efficiency and other related charges and funds;**
- j) advancing specific community goals that may be selected from time to time, such as placing utility wires underground;**
- k) providing full public accountability to consumers; and**
- l) utilizing municipal and other powers and authorities that constitute basic consumer protection to achieve these goals.**

The Cape Light Compact JPE shall accomplish the foregoing purposes through the following: (i) operation of energy efficiency programs; (ii) developing or promoting the development of renewable energy resources and projects; (iii) procuring competitive electric supply for its customers; (iv) procuring RECs; (v) participating in regulatory and legislative proceedings; and (vi) consumer advocacy.

ARTICLE III: POWERS OF THE CAPE LIGHT COMPACT JPE

The Cape Light Compact JPE is a body politic and corporate with power to:

- a) sue and be sued;
- b) make, negotiate and execute contracts and other instruments necessary for the exercise of the powers of the region, provided, however, that any contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, shall not impose direct or individual financial obligations on any Member until approved by such individual Member, as the case may be;
- c) make, amend and repeal policies and procedures relative to the operation of the region in accordance with the Joint Powers Statute and other limitations as may be applicable under state law;
- d) receive and expend funds, including funds derived from the state mandated system benefit charges and to use such funds in accordance with state law;
- e) apply for and receive grants from the commonwealth, the federal government and other public and private grantors;
- f) submit an annual report to each Member, which shall contain a detailed audited financial statement and a statement showing the method by which the annual charges assessed against each governmental unit (if any) were computed;
- g) borrow money, enter into long or short-term loan agreements or mortgages and apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purposes of the Cape Light Compact JPE, provided, however, that such borrowing, loans or mortgages shall be consistent with this Agreement, standard lending practices and G.L. c. 44, §§16-28;
- h) subject to G.L. c. 30B (or other applicable procurement laws), enter into contracts for the purchase of supplies, materials and services and for the purchase or lease of land, buildings and equipment, as considered necessary by the Governing Board;
- i) as a public employer, to hire staff;
- j) to plan projects;
- k) to implement projects and/or conduct research;
- l) adopt an annual budget and to direct the expenditure of funds made available to the Cape Light Compact JPE by grant or contribution from public and private sector entities, or on account of any contract negotiated or administered by the Cape Light Compact JPE;

- m) to acquire property by gift, purchase or lease;
- n) to construct equipment and facilities;
- o) to apply for and receive contributions and other such financial assistance from public and private sector entities or to receive amounts derived as a portion of the savings on, or as a surcharge, dedicated mills/kilowatt hour fee or other such charge as part of any electric energy purchase or similar contract negotiated and/or administered by the Cape Light Compact JPE and, to the extent required herein, agreed to by each Member to be financially bound thereby;
- p) to engage consultants, attorneys, technical advisors and independent contractors;
- q) to adopt bylaws to govern its internal affairs;
- r) to reimburse persons who have advanced funds;
- s) to enforce agreements or otherwise prosecute claims on behalf of Members and coordinate their defense in any claim made against them relating to any agreement or other matter related to the Cape Light Compact JPE;
- t) to invest funds;
- u) to procure insurance;
- v) to obtain project-related financing through any mechanism such as the federal Clean Renewable Energy Bond program or similar or successor programs, and other financing options;
- w) to contract with an agent, including, without limitation, a regional government or a Member, to manage or accomplish any of its functions or objectives;
- x) to enter into agreements with state, quasi-state, county and municipal agencies, cooperatives, investor-owned utilities and other private entities, all as is convenient or necessary to manage or accomplish any of the Cape Light Compact JPE's functions or objectives; and
- y) any such other powers as are necessary to properly carry out its powers as a body politic and corporate.

ARTICLE IV: SERVICES; ACTIVITIES; UNDERTAKINGS

The services, activities or undertakings to be jointly performed within the region are as follows: (i) power supply procurement; (ii) offering of energy efficiency programs; (iii) participation in regulatory and legislative proceedings; (iv) education of the public and government regarding energy issues; and (v) such other services, activities, and undertakings as set forth in Article II (Goals, Policies; Purposes).

ARTICLE V: GOVERNING BOARD

A. Powers of the Governing Board.

In accordance with the Joint Powers Statute, the Cape Light Compact JPE shall be governed by a board of directors consisting of the Directors from the Municipal Members (the "Governing Board"). The Governing Board shall be responsible for the general management and supervision of the business and affairs of the Cape Light Compact JPE, except with respect to those powers reserved to the Members by law or this Agreement. The Governing Board shall coordinate the activities of the Cape Light Compact JPE and may establish any policies and procedures necessary to do so. The Governing Board may from time to time, to the extent permitted by law, delegate any of its powers to committees, subject to such limitations as the Governing Board may impose. The Governing Board may delegate to the Executive Committee (as set forth below in Article V(C) (Executive Committee)) the powers to act for the Governing Board between regular or special meetings of the Governing Board. The Governing Board may designate persons or groups of persons as sponsors, benefactors, contributors, advisors or friends of the Cape Light Compact JPE or such other title as they may deem appropriate and as is consistent with applicable law.

The Governing Board shall establish and manage a fund or funds to which all monies contributed by the Members, and all grants and gifts from the federal or state government or any other source shall be deposited.

The Governing Board may borrow money, enter into long or short-term loan agreements or mortgages and apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purposes of the Cape Light Compact JPE. The borrowing, loans or mortgages shall be consistent with this Agreement, standard lending practices and G.L. c. 44, §§ 16-28. The Governing Board may, subject to G.L. c. 30B (or other applicable procurement laws), enter into contracts for the purchase of supplies, materials and services and for the purchase or lease of land, buildings and equipment, as considered necessary by the Governing Board.

B. Number, Qualifications and Term of Office.

The Governing Board shall consist of one Director for each Municipal Member. In the absence of a Director, his or her alternate shall be entitled to vote and otherwise exercise all of the powers of such Director. The Directors, and alternate directors, shall be selected by each Municipal Member in accordance with its municipal appointment rules and procedures and for such term as may be established by their respective appointing authorities. Except as hereinafter provided, the Directors (and alternates) shall hold office until the next selection of Directors (and alternates) by each such Member and until his or her successor is selected. Directors shall be subject to any limitations or direction established by their appointing authorities. The Cape Light Compact JPE shall not be responsible for interpreting or enforcing any such limitations that may be established by the appointing authorities. Further, any action on the part of the Cape Light Compact JPE shall not be rendered void or invalid as a result of a Director's failure to abide by any such limitations. The sole remedy of an appointing authority in such instance is to remove

and replace such Director.

Each County Member may appoint a representative to attend Governing Board meetings (the "County Representative"). County Representatives may participate in Governing Board discussions and nonbinding Governing Board votes.

C. Executive Committee.

At such time as there are more than five (5) Municipal Members, there shall be an Executive Committee composed of no less than five (5) Directors elected by the Governing Board from among the Directors appointed by the Municipal Members. The Executive Committee shall be selected by majority vote of all of the Directors of the Municipal Members. In addition to the delegation of powers set forth in Article V(A) (Powers of Governing Board), the powers of the Board of Directors shall be delegated to the Executive Committee in the following circumstances: (i) when a quorum of the full Governing Board is not present for a regularly scheduled meeting; and (ii) exigent circumstances require Governing Board action, and there is insufficient time to convene a regular meeting of the Governing Board.

The Executive Committee shall conduct its business so far as possible in the same manner as is provided by this Agreement by the Governing Board. A majority of the Executive Committee shall constitute a quorum. The Executive Committee shall keep records of its meetings in form and substance as may be directed by the Governing Board and in accordance with the Open Meeting Law, G.L. c. 30A, §§18-25, and other applicable law.

Any Director who is not a member of the Executive Committee may attend and participate in Executive Committee meetings, but may not vote. Attendance may be in-person or by telephone.

From time to time upon request and at each meeting of the Board of Directors, the Executive Committee shall make a full report of its actions and activities since the last meeting of the Governing Board.

If two (2) members of the Executive Committee object to the affirmative action taken by the Executive Committee, they may appeal such decision within forty-eight (48) hours of such action or vote by requesting a special meeting of the Governing Board in accordance with Article VI(C) (Special Meetings) which must occur as soon as possible but no later fourteen (14) days after the Executive Committee action if the original Executive Committee action was necessitated by exigent circumstances. At such special meeting, the Governing Board may overturn the action or vote of the Executive Committee by a two-thirds vote of the Directors. A vote by the Executive Committee to take no action cannot be appealed.

D. Manner of Acting and Quorum.

The Governing Board shall act by vote of a majority of the Directors of the Municipal Members present and voting at the time of the vote. Unless altered by the Governing Board in

accordance with this Agreement, each Municipal Member shall be entitled to select one (1) Director whose vote shall be equal in weight to the Director of any other Municipal Member, except as expressly set forth in the succeeding paragraphs. Directors may participate in meetings remotely in accordance with the regulations of the Office of the Attorney General governing remote participation, 940 C.M.R. 29.10. In accordance with 940 C.M.R. 29.10 and the Open Meeting Law, G.L. c. 30A, §§ 18-25, a simple majority of the Directors of the Municipal Members must be physically present to attain a quorum. County Representatives shall not count towards a quorum as they have limited participation rights. Directors abstaining from voting shall be counted for meeting quorum purposes, but their votes shall not count with respect to the matters they abstain from voting on. By way of example, if ten (10) Directors from the Municipal Members are present and four (4) abstain from voting, and the remaining Directors split their votes four (4) in favor, two (2) against, the motion would pass.

While a quorum is present, unless another provision is made by law, this Agreement or by the Cape Light Compact JPE's own rules, all business shall be determined by a majority vote of the Directors of the Municipal Members then present and voting. Notwithstanding the foregoing, any vote involving a matter concerning issues which would or could bear in a direct and material fashion on the financial interests of the Municipal Members shall be taken by a weighted vote in which the vote of each Director shall be weighted in the same proportion as the population of the Municipal Member such Director represents bears to the whole population of the Municipal Members of the Cape Light Compact JPE, such population as determined, in the case of Barnstable County, by the most recent federal census, or decennial census, and, in the case of Dukes County, by the most recent data available from the Martha's Vineyard Commission. In case of a dispute as to whether a vote shall be taken on a weighted basis as set forth in this paragraph or on a one (1) town, one (1) vote basis as set forth in the preceding paragraph of this subsection, the determination shall be made by weighted vote as set forth herein. Exhibit B sets forth the population for each Municipal Member, and provides an example of a vote taken in accordance with weighted voting procedures.

E. Rules and Minutes; Meeting Announcements.

The Governing Board shall determine its own rules and order of business, unless otherwise provided by law or this Agreement. The Governing Board shall also provide for the keeping of minutes of its proceedings in accordance with the Open Meeting Law. All regular and Executive Committee meeting announcements shall be sent to all Directors and County Representatives.

F. Voting.

If requested by any Director and as may be required by law, a vote of the body shall be taken by a roll call and the vote of each Director shall be recorded in the minutes, provided, however, if any vote is unanimous only that fact need be recorded. Pursuant to the Open Meeting Law, roll call votes are required for the following: (i) a vote to go into executive session; (ii) votes taken in executive session; and (iii) votes taken in open session when one or more Directors is participating remotely.

G. Resignation and Removal.

1. Resignation.

Any Director or County Representatives (or their alternates) may resign at any time upon written notice to the remaining Governing Board. A Director may resign from the Executive Committee and still keep his or her position as a Director. The resignation of any Director (or alternate) or resignation from the Executive Committee shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

2. Removal.

Any Director (or alternate) may be removed at any time with or without cause by his or her appointing authority. The Governing Board may send a notice to an appointing authority requesting removal of a Director for cause as specified in such notice. For cause removal shall include, but not be limited to, disclosure of documents exempt from disclosure under the Massachusetts Public Records Law in violation of G.L. c. 268A, §23(c)(2), or disclosure of matters discussed during executive session prior to release of executive session minutes.

A Director from a Municipal Member who fails to attend at least half of the Directors' meetings annually shall be automatically removed, unless such Director has requested an exemption from this requirement due to special circumstances (i.e., prolonged illness, conflicting work/personal commitments). Annual attendance shall be calculated on a calendar year basis. The secretary (or other officer of as may be designated by the Governing) shall report on the annual attendance of Directors as requested by the Governing Board. In each vote implementing the removal of a Director, the Governing Board shall state an official removal date, which shall generally take place within ninety (90) to one hundred and eighty days (180) in order to give the Municipal Member who appointed such Director an opportunity to replace such Director. A Municipal Member whose Director is removed shall be given immediate notice of such removal. A Director who has been removed or a Municipal Member whose Director has been removed may petition the Governing Board for reinstatement and he or she shall be given notice and an opportunity to be heard before the Governing Board on such matter within ninety (90) days of such request.

H. Vacancies.

1. Vacancies on the Governing Board.

The remaining Directors may act despite a vacancy in the Governing Board. A vacancy in the Governing Board of a Director from a Municipal Member shall be promptly filled, but in no case more than sixty (60) days thereafter, by the appointing authority of the Municipal Member which originally selected such Director. Each Director chosen to fill a vacancy on the Governing Board shall hold office until his or her successor shall be appointed and qualified by his or her appointing authority. Insofar as there is no Director then in office representing a

Municipal Member, the alternate shall act in his or her stead. If a Municipal Member has not appointed an alternate, the Director position shall be considered vacant for that particular Municipal Member and it shall not be counted for quorum purposes under Article V(D) (Manner of Acting and Quorum) or for the purposes of the Open Meeting Law until the Municipal Member fills the vacancy and/or appoints an alternate.

2. Vacancies on the Executive Committee.

Vacancies on the Executive Committee shall be filled in the same manner as the position was originally filled.

3. No Right to Compensation.

No Director shall receive an additional salary or stipend for his or her service as a Governing Board member. Directors are not eligible for health insurance or other benefits provided to employees of the Cape Light Compact JPE.

ARTICLE VI: MEETINGS OF THE GOVERNING BOARD

A. Place.

Meetings of the Governing Board, including meetings of the Executive Committee, shall be held at such place within Barnstable County or Dukes County, or at such other place as may be named in the notice of such meeting.

B. Regular Meetings.

Regular meetings may be held at such times as the Governing Board may fix but no less frequently than quarterly.

C. Special Meetings.

Special meetings of the Governing Board may be called by the chairman or any other officer or Director at other times throughout the year.

D. Notice.

In addition to the personal notice to Directors and County Representatives set forth in Article V(E) (Rules and Minutes; Meeting Announcements), public notice of any regular meeting shall be made in compliance with the Open Meeting Law and other applicable law. Forty-eight (48) hours' notice to Directors and County Representatives by mail, electronic mail, telegraph, telephone or word of mouth shall be given for a special meeting unless shorter notice is adequate under the circumstances, provided, however, that public notice of such special meeting has been made in compliance with applicable law. A notice or waiver of notice need not specify the purpose of any special meeting. Personal notice of a meeting need not be given to any Director

or County Representative if a written waiver of notice, executed by him or her before or after the meeting, is filed with the records of the meeting, or to any Director who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him or her.

E. Vote of Interested Directors.

A Director or County Representative who is a member, stockholder, trustee, director, officer or employee of any firm, corporation or association with which the Cape Light Compact JPE contemplates contracting or transacting business shall disclose his or her relationship or interest to Governing Board. No Director or County Representative so interested shall deliberate or vote on such contract or transaction. The affirmative vote of a majority of the disinterested Directors present and voting hereof shall be required before the Cape Light Compact JPE may enter into such contract or transaction.

In case the Cape Light Compact JPE enters into a contract or transacts business with any firm, corporation or association of which one or more of its Directors is a member, stockholder, trustee, director, officer, or employee, such contract or transaction shall not be invalidated or in any way affected by the fact that such Director or County Representative have or may have interests therein which are or might be adverse to the interests of the Cape Light Compact JPE. No Director or County Representative having disclosed such adverse interest shall be liable to the Cape Light Compact JPE or to any creditor of the Cape Light Compact JPE or to any other person for any loss incurred by it under or by reason of any such contract or transaction, nor shall any such Director or County Representative be accountable for any gains or profits to be realized thereon.

Nothing contained herein shall affect the compliance of any Director or County Representative or the Governing Board or the Cape Light Compact JPE with G.L. c. 268A, as set forth in Article VIII (G.L. c. 268A), below.

ARTICLE VII: OPEN MEETING LAW; EXECUTIVE SESSIONS

The meetings of the Governing Board are subject to the Massachusetts law governing open meetings of governmental bodies and governmental boards and commissions, including the Open Meeting Law. The Governing Board is therefore required to maintain accurate records of its meetings, setting forth the date, time, place, Directors present or absent and action taken at each meeting, including executive sessions.

In accordance with the Open Meeting Law, the Governing Board may hold an executive session after an open meeting has been convened and a recorded roll call vote has been taken to hold an executive session. Executive sessions may be held only for the purposes specifically enumerated in the Open Meeting Law, including, but not limited to, to discuss energy-related trade secrets or confidential information, or litigation strategy.

Matters discussed in executive sessions of the Governing Board must be treated as confidential, and disclosure of such matters is a violation of G.L. c. 268A, §23(c)(2). A violation

of confidentiality may lead to disciplinary action as established by the Governing Board, including a request for removal of a Director in accordance with Article V(G)(2) (Removal).

ARTICLE VIII: G.L. c. 268A

Directors, County Representatives, officers and employees of the Cape Light Compact JPE are subject to the provisions of the Massachusetts Conflict of Interest Law, G.L. c. 268A, and shall act at all times in conformity therewith. Public employees who work for two (2) or more public entities may find that each agency has an interest in a particular matter. Any employee, officer, County Representative or Director may request free legal advice from the State Ethics Commission about how the Conflict of Interest Law applies to them in a particular situation. This process is explained at <http://www.mass.gov/ethics/commission-services/request-advice.html>. Directors may also request a formal conflict of interest opinion from town counsel pursuant to G.L. c. 268A, §22.

In accordance with G.L. c. 268A, §23(c)(2), Directors, County Representatives, officers and employees of the JPE are prohibited from improperly disclosing materials or data that are exempt from disclosure under the Public Records Law, and were acquired by him or her in the course of his or her official duties, and may not use such information to further his or her personal interest.

ARTICLE IX: OFFICERS; STAFF; SERVICE PROVIDERS

A. Election.

At its first meeting of the calendar year, the Governing Board shall elect a chairman, vice chairman, treasurer, secretary and business officer and such other officers as the Governing Board shall determine. The term of office for those so elected shall be one (1) year and until their respective successors are elected and qualified. Other than the treasurer and business officer, all officers must be a Director and, upon selection of a successor Director by such officer's appointing Member, such officer shall immediately tender notice thereof to the Cape Light Compact JPE and the Governing Board shall select a replacement among the various Directors from the Municipal Members for the remaining term of such officer.

B. Qualifications.

Two (2) or more offices may be held by the same person, except the offices of chairman, secretary or treasurer.

C. Vacancies.

Any vacancy occurring among the officers, however caused, may be filled by the Directors from the Municipal Members for the unexpired portion of the term.

D. Removal and Resignation of Officers.

1. Removal.

Any officer of the Cape Light Compact JPE may be removed from his or her respective offices with or without cause by resolution adopted by a majority of the Directors present and voting at any regular or special meeting of the Governing Board.

2. Resignation.

Any officer may resign at any time by giving his or her resignation in writing to the chairman, treasurer, secretary, the Cape Light Compact JPE Administrator, or Director of the Cape Light Compact JPE. An officer may resign as officer without resigning from other positions in the Cape Light Compact JPE, including positions on the Executive Committee or as Director.

E. Sponsors, Benefactors, Contributors, Advisors, Friends of the Cape Light Compact JPE.

Persons or groups of persons designated by the Governing Board as sponsors, benefactors, contributors, advisors or friends of the Cape Light Compact JPE or such other title as the Governing Board deems appropriate shall, except as the Governing Board shall otherwise determine, serve in an honorary capacity. In such capacity they shall have no right to notice of or to vote at any meeting, shall not be considered for purposes of establishing a quorum and shall have no other rights or responsibilities.

F. Chairman.

The chairman shall preside at all meetings at which he or she is present. Unless otherwise directed by the Governing Board, all other officers shall be subject to the authority and supervision of the chairman. The chairman also shall have such other powers and duties as customarily belong to the office of chairman or as may be designated from time to time by the Governing Board.

G. Vice Chairman.

The vice chairman shall assist the chairman and preside at meetings at which the chairman is not present. The vice chairman also shall have such other powers and duties as customarily belong to the office of vice chairman or as may be designated from time to time by the Governing Board.

H. Treasurer and Business Officer.

The Governing Board shall appoint a treasurer who may be a treasurer of one of the Municipal Members. No Director or other employee of the Cape Light Compact JPE shall be

eligible to serve concurrently as treasurer. The treasurer, subject to the direction and approval of the Governing Board, shall be authorized to receive, invest and disburse all funds of the Cape Light Compact JPE without further appropriation. The treasurer shall give bond for the faithful performance of his or her duties in a form and amount as fixed by the Governing Board. The treasurer may make appropriate investments of the funds of the Cape Light Compact JPE consistent with G.L. c. 44, § 55B.

The Governing Board shall appoint a business officer who may be a city auditor, town accountant or officer with similar duties, of one of the Municipal Members. The business officer shall have the duties and responsibilities of an auditor or accountant pursuant to G.L. c. 41, §§52 and 56 and shall not be eligible to hold the office of treasurer.

If the Cape Light Compact JPE is using a service provider pursuant to Article IX(M) (Service Providers) to handle Cape Light Compact JPE funds, the Governing Board shall consider using one or more employees of such service provider to serve as treasurer or business officer.

I. Secretary.

The secretary shall arrange for the recording, consistent with applicable law, of all proceedings of the Governing Board, Executive Committee and any other such committee in a book or books to be kept therefor, and have such powers and duties as customarily belong to the office of clerk or secretary or as may be designated from time to time by the chairman or the Governing Board.

J. Other Officers.

The Governing Board shall retain legal counsel for the Cape Light Compact JPE. The Cape Light Compact JPE's legal counsel may jointly represent the Cape Light Compact JPE's Municipal Member or other parties in accordance with this Article XIX(I) (Shared Legal Representation) of this Agreement.

The Cape Light Compact JPE shall designate a Chief Procurement Officer, whose role, in accordance with G.L. c. 30B (or other applicable procurement laws) and other applicable provisions of law, shall be to select proposals for and facilitate the award of contracts on behalf of the Cape Light Compact JPE, with input from Directors, the Cape Light Compact JPE staff, counsel and others, as such Chief Procurement Officer sees fit. Notwithstanding the foregoing, the Governing Board may determine that the Cape Light Compact JPE, as long as consistent with applicable law, will select proposals and award contracts in another manner.

Other officers shall have such powers as may be designated from time to time by the Governing Board.

K. The Cape Light Compact JPE Administrator.

The Governing Board shall appoint a JPE Administrator who shall be an employee of the Cape Light Compact JPE. In general, the Cape Light Compact JPE Administrator shall serve as the chief administrative and operating officer and supervise, direct and be responsible for the efficient administration of the business of the Cape Light Compact JPE.

More specifically, the Cape Light Compact JPE Administrator shall be responsible for:

- (i) Implementing the goals and carrying out the policies of the Cape Light Compact JPE Governing Board;
- (ii) Maintaining the complete and full records, reports and filings associated with the financial and administrative activity of the Cape Light Compact JPE;
- (iii) Planning and directing all administrative and operational functions of the Cape Light Compact JPE consistent with budgets approved by the Governing Board;
- (iv) Managing the hiring process, supervising and directing the work of all staff consistent with budgets and strategic goals approved by the Governing Board;
- (v) Consulting and advising the Governing Board as to the business, operational and strategic concerns of the Cape Light Compact JPE including fiscal affairs, legal and operational issues, and major program initiatives;
- (vi) Regularly attending all Governing Board meetings and answering all questions addressed to him or her;
- (vii) Managing the Cape Light Compact JPE's legal affairs, including directing the Cape Light Compact JPE's participation in regulatory and judicial proceedings, consistent with relevant budgets approved by the Governing Board;
- (viii) Managing the Cape Light Compact JPE's energy efficiency program in accordance with all applicable laws and the rules and regulations of the DPU, or any successor entity;
- (ix) Negotiating and executing contracts for power supply procurement, renewable energy certificates, energy efficiency contracts, contracts for professional services and legal services in order to achieve the strategic goals and business purposes of the governing board; and
- (x) Perform such other duties as may be directed by the Governing Board from time to time, or as may be necessary or advisable to fulfill the Cape Light Compact JPE's objectives.

The Governing Board may elect to expand, limit or otherwise amend the foregoing responsibilities by replacing this Article IX(K) with a list of responsibilities set forth in Exhibit C.

L. Cape Light Compact JPE Staff.

The Cape Light Compact JPE shall be a public employer. The Governing Board may employ personnel to carry out the purposes of this Agreement and establish the duties, compensation and other terms and conditions of employment of personnel. The Governing Board shall take all necessary steps to provide for continuation of membership in a valid and existing public employee retirement system.

M. Service Providers.

The Governing Board may appoint or engage one or more service providers to serve as the Cape Light Compact JPE's administrative, fiscal or operational agent in accordance with the provisions of a written agreement between the Cape Light Compact JPE and the service provider. A Municipal Member may contract with the Cape Light Compact JPE to be a service provider. The service provider agreement shall set forth the terms and conditions by which the service provider shall perform or cause to be performed the requested services. This subsection (M) shall not in any way be construed to limit the discretion of the Cape Light Compact JPE to hire its own employees to perform such functions.

ARTICLE X: BUDGET; FINANCING; BORROWING; AND RELATED MATTERS

A. Budget; Segregation of Funds; Expenditures.

Prior to the beginning of each fiscal year, the Cape Light Compact JPE staff shall work with the Governing Board to prepare a proposed operating budget. The Cape Light Compact JPE shall adopt an operating budget for each fiscal year and direct the expenditure of funds in accordance with applicable law. The operating budget and any amendments thereto shall be approved by a weighted vote of the Governing Board in accordance with Article V(D) (Manner of Acting and Quorum).

All funds of the Cape Light Compact JPE shall be held in separate accounts in the name of the Cape Light Compact JPE and not commingled with funds of any other person or entity. All funds of the Cape Light Compact JPE shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements. The Governing Board shall contract with a certified public accountant to make an annual audit of the accounts and records of the Cape Light Compact JPE. All expenditures shall be made in accordance with the approved budget and in accordance with any applicable procedures or controls as may be authorized by the Governing Board.

B. Financing.

The Cape Light Compact JPE shall finance the joint services, activities or undertakings within the region in the manner set forth in this Article X. Upon the transfer of operations as set forth in Article XVIII(C) (Transfer of Operations), the Cape Light Compact JPE may collect a kilowatt hour charge or equivalent of up to a mil per kilowatt hour, from consumers participating in the municipal aggregation power supply program. The amount collected may be up to 1 mil (\$.001), or such lower amount as the Cape Light Compact JPE Administrator may determine, for every kilowatt hour sold to consumers for the duration of service under a competitive electric supply agreement (this charge is referred to as an "Operational Adder"). The Cape Light Compact JPE will primarily use the Operational Adder funds to support the municipal aggregation power supply program budget and other costs associated with implementing the powers and purposes of the Cape Light Compact JPE. The level of the Operational Adder shall be determined during the annual operating budget process based upon the projected expenses of the Cape Light Compact JPE. All uses of the Operational Adder shall follow the Cape Light Compact JPE budget appropriation process.

Upon the transfer of operations as set forth in Article XVIII(C) (Transfer of Operations), funding for the Cape Light Compact JPE's energy efficiency activities shall come in part from the mandatory system benefits charges imposed on consumers in accordance with G.L. c. 25, §19(a), which funds energy efficiency programs administered by municipal aggregators with energy plans certified by the DPU under G.L. c. 164, §134(b). In addition, in accordance with G.L. c. 25, §19(a), the Cape Light Compact JPE's energy efficiency activities may also be funded by revenues from the forward capacity market administered by ISO New England Inc., revenues from cap and trade pollution control programs (e.g., Regional Greenhouse Gas Initiative), other funding sources and an energy efficiency surcharge, as approved by the DPU or a successor thereto. In addition, the Cape Light Compact JPE shall finance the joint services, activities or undertakings within the region with grants from the commonwealth, the federal government and other public and private grantors.

C. Borrowing.

The Cape Light Compact JPE is authorized to incur borrowing pursuant to the Joint Powers Statute. There are no limitations on the purposes, terms and amounts of debt the Cape Light Compact JPE may incur to perform such services, activities or undertakings, except as may established by law.

ARTICLE XI: COOPERATION; AUTHORITY DOCUMENTS

The Members agree to act in good faith and use their best efforts to effectuate the intent and purpose of this Agreement. All parties to this Agreement shall cooperate to the fullest extent possible.

The Members acknowledge and agree that the authority of the Cape Light Compact JPE will be evidenced and effectuated through this Agreement and through Governing Board votes,

resolutions and various documents duly adopted by the Governing Board. The Members agree to abide by and comply with the terms and conditions of all such votes, resolutions and documents that may be adopted by the Governing Board, subject to the Members' right to withdraw from the Cape Light Compact JPE as described in Article XVI (Term; Termination; Withdrawal).

ARTICLE XII: ELECTRICITY AND OTHER AGREEMENTS

Pursuant to this Agreement, the Members and private consumers may enter into contracts for the distribution, transmission and/or supply of electricity, for the purchase of energy and RECs, and for project financing in support thereof, provided, however, that any contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, shall not impose direct or individual financial obligations on any Members until approved by such individual Member, as the case may be, and further, that any contract shall indemnify and hold harmless the Cape Light Compact JPE and its Members from any financial liability or provide commercially reasonable indemnification with respect to the provision of such products or services.

ARTICLE XIII: OTHER APPLICABLE LAWS

Nothing in this Agreement or in any negotiated contract for the supply of electricity shall be construed to supersede, alter or otherwise impair any obligation imposed on any Member by otherwise applicable law.

ARTICLE XIV: INDEMNIFICATION OF DIRECTORS; LIABILITY OF DIRECTOR AND OFFICERS; INSURANCE; INDEMNIFICATION OF MEMBERS

A. Indemnification of Directors.

The Cape Light Compact JPE shall, to the extent legally permissible, indemnify the Directors, County Representatives, officers and Members. All contracts negotiated or undertaken by the Cape Light Compact JPE shall also include, to the maximum extent feasible, indemnification of the Directors, County Representatives, officers and the Members.

B. Liability of Directors, Officers, and Employees.

The Directors, County Representative, officers, and employees of the Cape Light Compact JPE shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, County Representative, officer, or employee.

C. Insurance.

The Cape Light Compact JPE shall acquire such insurance coverage as the Governing Board deems necessary to protect the interests of the Cape Light Compact JPE, the Members,

the Directors and officers, employees and the public. If possible, such insurance coverage shall name the Members as additional insureds. If the Cape Light Compact JPE has employees, it shall obtain worker's compensation insurance.

D. Indemnification of Members.

The Cape Light Compact JPE shall defend, indemnify and hold harmless the Members from any and all claims, losses, damages, costs, injuries and liabilities of every kind to the extent arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Cape Light Compact JPE under this Agreement, and not arising directly or indirectly from the negligent or intentional actions of any Member. In addition, the Cape Light Compact JPE shall not be responsible for indemnifying any Member for any claims, losses, damages, costs or injuries arising from any duties that such Member has agreed to assume in a contract with the Cape Light Compact JPE.

ARTICLE XV: AMENDMENT; REVISION OF EXHIBITS

Except as set forth below in the following paragraph, this Agreement may be altered, amended, or repealed, in whole or in part, by the affirmative vote of Directors of Municipal Members whose population is at least equal to 50% of the combined population of all of the Municipal Members of the Cape Light Compact JPE. Notice of proposed amendments shall be sent to Members at least thirty (30) days before any Governing Board vote on such amendments in accordance with Article XIX(D) (Notices).

Certain amendments to this Agreement and certain actions of the Cape Light Compact JPE shall require the affirmative approval of the Municipal Members whose population is at least equal to 50% of the combined population of all of the Municipal Members of the Cape Light Compact JPE: (i) Article I(B) (Eligibility for Membership; Addition of Members); and (ii) Article I(D) (Liability of Members).

In addition, termination of the Cape Light Compact JPE shall require the approval of all Municipal Members.

The Municipal Members agree that Exhibits A (List of Members), B (Weighted Voting) and C (JPE Administrator Responsibilities) to this Agreement set forth certain administrative matters that may be revised by the Cape Light Compact JPE Administrator in accordance with Governing Board authorization without such revision constituting an amendment to this Agreement. The Cape Light Compact JPE shall provide written notice to the Members of the revision to such exhibits.

ARTICLE XVI: TERM; TERMINATION; WITHDRAWAL

This Agreement shall continue in effect for a term not to exceed twenty-five (25) years. At the conclusion of the term, taking into account any changed circumstances, the Municipal Members shall in good faith negotiate a replacement agreement.

Any Member may voluntarily withdraw from the Cape Light Compact JPE at the end of each calendar quarter upon at least ninety (90) days prior written notice. Withdrawal of such Member shall not affect any obligations entered into prior to the date of withdrawal which are binding by their terms on such member, including, without limitation, contracts directly entered into by such Member and financial contributions to the Cape Light Compact JPE made or agreed to be made by such member.

This Agreement may be terminated by collective agreement of all the Municipal Members; provided, however, the foregoing shall not be construed as limiting the rights of a Municipal Member to withdraw its membership in the Cape Light Compact JPE, and thus terminate this Agreement only with respect to such withdrawing Municipal Member.

Upon termination of this Agreement, any surplus money or assets in possession of the Cape Light Compact JPE for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement shall be returned to the then-existing Members in proportion to the contributions made by each, if applicable; if no contributions were made, surplus assets shall be distributed based on the relative populations of each Municipal Member. Payment of liabilities and disbursement of surplus money or assets shall also be in accordance with any rules, regulations and policies adopted by governmental authorities having jurisdiction over the Cape Light Compact JPE.

ARTICLE XVII: CONSTRUCTION AND SEVERABILITY

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the constitution of the Commonwealth of Massachusetts or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution or the Massachusetts General Laws, the Cape Light Compact JPE shall remain in full force and effect as to all severable matters.

ARTICLE XVIII: THE CAPE LIGHT COMPACT JPE AS SUCCESSOR TO THE COMPACT; TRANSFER OF COMPACT'S ADMINISTRATIVE AND OPERATIONAL FUNCTIONS

A. The Cape Light Compact JPE's Status as Successor Entity to the Compact.

It is the intent of the Members that the Cape Light Compact JPE eventually serve as the successor entity to the Compact.

In order to provide for an orderly transition, the Cape Light Compact JPE and the Compact will coordinate transfer and succession plans in accordance with this Article XVIII.

Upon transfer of the Compact's operations as set forth in Article XVIII(D) (Transfer of Operations) below, and in accordance with applicable transfer and succession plans, the Cape Light Compact JPE shall assume all benefits, obligations and liabilities of the Compact.

B. Transfer of Administrative and Financial Functions.

Upon the Effective Date, the Cape Light Compact JPE will serve as the administrative and fiscal arm of the Compact. As soon as practicable, Compact staff will become employees of the Cape Light Compact JPE. At such time, the Cape Light Compact JPE shall assume responsibility for any and all loss, injury, damage, liability, claim, demand, tort or worker's compensation incidents that occur on or after the date personnel are transferred to the Cape Light Compact JPE. The Cape Light Compact JPE will also perform certain financial services for the Compact as set forth in a written agreement between the Compact and the Cape Light Compact JPE. The Cape Light Compact JPE may elect to delegate performance of such functions to service providers as set forth in Article IX(M) (Service Providers).

C. Transfer of Operations.

Unless such other date is established by the Governing Board, when the majority of the municipal members of the Compact join the Cape Light Compact JPE, the Compact and the Cape Light Compact JPE will develop an asset transfer and succession plan and, in consultation with DPU (and other governmental authorities if necessary or convenient), will establish an operational transfer date (no later than January 31, 2018, unless otherwise directed by DPU). Once such date is established, the Cape Light Compact JPE will notify the members of the Compact of the deadline for joining the Cape Light Compact JPE in order to participate in its aggregation plan. On or before the operational transfer date, the Cape Light Compact JPE will execute all documents and perform all acts necessary to transfer all programs, operational functions, tangible and intangible assets (including intellectual property), contracts and records of the Compact to the Cape Light Compact JPE so that the Cape Light Compact JPE is the legal successor to the Compact.

D. Meetings and Board Membership During Transition Period.

During the transition period, meetings of the Cape Light Compact JPE will occur immediately before or after scheduled meetings of the Compact. In order to provide for an orderly transition or for any other reason that a Municipal Member deems appropriate, a Municipal Member may appoint the same person to serve on the Cape Light Compact JPE's and Compact's Governing Boards.

ARTICLE XIX: MISCELLANEOUS

A. Principal Office.

The principal office of the Cape Light Compact JPE shall be located at such places as the Governing Board may establish from time to time.

B. The Cape Light Compact JPE Records.

The original, or attested copies, of this Agreement and records of all meetings of the Governing Board shall be kept in Massachusetts at the principal office of the Cape Light Compact JPE. Said copies and records need not all be kept in the same office. They shall be available at all reasonable times for the inspection of any Municipal Member or Director for any proper purpose and as required by law. The records of the Cape Light Compact JPE shall be subject to the Massachusetts Public Records Act, G.L. c. 66, and shall be deemed public records, unless such records fall within the exemptions set forth in G.L. c. 4, §7, including exemptions for development of inter-agency policy and trade secrets or commercial or financial information.

C. Fiscal Year.

The fiscal year of the Cape Light Compact JPE shall begin on January 1st and end on December 31st.

D. Notices.

All notices, waivers, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and if addressed to the Cape Light Compact JPE shall be sent to:

JPE Administrator
Cape Light Compact JPE
3195 Main Street
Open Cape Building
Barnstable, MA 02630

The Cape Light Compact JPE may change its address by sending a notice of change of address to all Members.

Members shall be required to send the Cape Light Compact JPE a notice each January setting forth the name, address and other contact information for its Director and alternate director, and the contact name and address for all notices to be sent to Members under this Agreement. If no address has been provided for notices, the Cape Light Compact JPE may use the Town Clerk's address for a Member as provided on its website.

A Member may change its address by sending a notice of change of address to the Cape Light Compact JPE.

Except for any notice required by law to be given in another manner, all notices, waivers, demands, requests, consents, 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. The Cape Light Compact JPE and the Members may additionally provide notice by electronic mail, facsimile, or telephone communication, but this shall not relieve the notifying party of the obligation to provide notice as specified above.

E. Reports.

The Cape Light Compact JPE shall submit an annual report to each Member which shall contain a detailed audited financial statement and a statement in accordance with the Joint Powers Statute.

The Cape Light Compact JPE shall prepare a written annual report, in the format required by the DPU regarding the expenditure of energy efficiency funds for the previous calendar year. Such reports shall be filed with the DPU no later than August 1, unless filing or reporting requirements established by the DPU necessitate a different date, and posted to the Cape Light Compact JPE's web site within thirty (30) days of submission to the DPU. In addition, the Cape Light Compact JPE shall periodically prepare written overviews of the Cape Light Compact JPE's program activities for each Municipal Member for inclusion in its individual town annual reports.

Upon the transfer of operations as set forth in Article XVIII(C) (Transfer of Operations), for so long as is required by the DPU, the Cape Light Compact JPE shall submit an annual report to the DPU on December 1st of each year regarding its municipal aggregation power supply program. The annual report will, at a minimum, provide: (1) a list of the program's competitive suppliers over the past year; (2) the term of each power supply contract; (3) the aggregation's monthly enrollment statistics by customer class; (4) a brief description of any renewable energy supply options; and (5) a discussion and documentation regarding the implementation of the municipal aggregation's alternative information disclosure strategy. As approved by the DPU, the Cape Light Compact JPE may submit this report on a fiscal year basis.

F. Dispute Resolution.

The Members and the Cape Light Compact JPE shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Before exercising any remedy provided by law, a Member and the Cape Light Compact JPE shall engage in nonbinding mediation in the manner agreed upon by the participating Member and the Cape Light Compact JPE. The Cape Light Compact JPE and Members agree that each Municipal Member may specifically enforce this Article XIX(F). In the event that nonbinding mediation is not initiated or does not result in the settlement of a dispute within sixty (60) days after the demand for mediation or is made, any Municipal Member and the Cape Light Compact JPE may pursue any remedies provided by law.

G. Multiple Originals.

This Agreement shall be executed in accordance with the requirements of the Joint Powers Statute. Amendments to this Agreement requiring approval of Directors shall be executed by the Directors approving such amendments. Amendments to this Agreement requiring approval of the Municipal Members shall be executed in the manner set forth in the Joint Powers Statute.

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and all of such signature pages shall be read as though one and shall have the same force and effect as though all of the parties had executed a single signature page.

H. No Partnership or Joint Venture in Contracts with Third Parties; Limitation of Responsibility.

In carrying out its purposes as described herein, and in entry into any third party contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, neither the Cape Light Compact JPE nor any of its Members shall be a partner or joint venturer with any third party. The relationship between the Cape Light Compact JPE (and/or its Members) on the one hand and the other party(ies) to such contract on the other hand shall be that of buyer and seller or agent for the buyer and seller, as the case may be. Nothing therein contained shall be deemed to constitute the Cape Light Compact JPE (and/or its Members) as a partner, agent or legal representative of any third party or to create a joint venture, agency or any relationship between the Cape Light Compact JPE (and/or its Members) and any third party other than that of buyer and seller or agent for the buyer and seller, as the case may be. The Cape Light Compact JPE and its Members have no responsibility to supply, distribute, transmit, meter, bill or otherwise provide electricity to any consumer and none is implied hereby or thereby. Nothing in this Article XIX(H) shall be construed as prohibiting the Cape Light Compact JPE from entering into a partnership or joint venture relationship with any organization in which it has a membership interest or affiliation.

I. Shared Legal Representation Involving Members or Other Public Entities; Official Duties of Cape Light Compact JPE Counsel.

The Cape Light Compact JPE may from time to time to retain counsel who may also represent its Members or other public entities in matters in which the Cape Light Compact JPE has a direct or substantial interest without violating G.L. c. 268A, subject to the consent and approval of all parties requesting legal representation (which may be one or Members, or one or more non-Member parties). Such dual or common representation allows the Cape Light Compact JPE to pool resources for a common purpose, develop mutual interests, and preserve public funds. The official duties of the Cape Light Compact JPE counsel include, but are not limited to, representing Members or other public entities in: (i) administrative and judicial

proceedings in which the Cape Light Compact JPE is also a party; (ii) contract negotiations or project development matters in which the Cape Light Compact JPE or its Members have an interest, and (iii) other matters in which the Cape Light Compact JPE has a direct or substantial interest, provided that in each instance, such dual or common representation would not cause a violation of rules governing attorney conduct. The Cape Light Compact JPE counsel shall discharge such duties only when requested in writing by the Cape Light Compact JPE's Governing Board. Prior to making such a request, the Cape Light Compact JPE's Governing Board shall determine whether the interests of the Cape Light Compact JPE would be advanced by such dual or common representation and shall evaluate if actual or potential conflicts of interest exist. If any conflicts are identified, they shall be described in the written request. Counsel shall then make its own determination whether such dual or common representation would not cause a violation of rules governing attorney conduct. Representation of the Compact and the Cape Light Compact JPE shall not be considered dual representation as the two entities shall function as two component parts of one legal entity for a transition period, and then the Cape Light Compact JPE shall serve as the successor entity to the Compact.

Should the provision in G.L. c. 268A limiting dual or common representation be amended or replaced after the Effective Date, the Governing Board may elect to follow any alternative procedures with respect to dual or common legal representation as provided by such statute.

[EXECUTION PAGES TO FOLLOW]

LIST OF EXHIBITS

- Exhibit A – List of Members
- Exhibit B – Weighted Voting
- Exhibit C – JPE Administrator Responsibilities

EXHIBIT A

List of Members

EXHIBIT B**Weighted Voting**

Name of Town	Population
Aquinnah	311
Barnstable	45,193
Bourne	19,754
Brewster	9,820
Chatham	6,125
Chilmark	866
Dennis	14,207
Eastham	4,956
Edgartown	4,067
Falmouth	31,531
Harwich	12,243
Mashpee	14,006
Oak Bluffs	4,527
Orleans	5,890
Provincetown	2,942
Sandwich	20,675
Tisbury	3,949
Truro	2,003
Wellfleet	2,750
West Tisbury	2,740
Yarmouth	23,793

For an example of weighted voting, if the Municipal Members consisted of the Towns of Barnstable, Bourne and Brewster, the total population of the three Municipal Members would be 74,767. For weighted voting purposes, Barnstable's vote would be weighted 60.45%, Bourne's vote would be weighted 26.42%, and Brewster's would be weighted 13.13%.

EXHIBIT C

JPE Administrator Responsibilities

**Agenda Action Request
Cape Light Compact JPE Governing Board
Meeting Date: 5/12/17**

Employer and Employee Contribution Level for Health Insurance

REQUESTED BY: *Maggie Downey*

Proposed Motion(s)

- 1) *I move that the Cape Light Compact employees contribute 25% of the cost of the health insurance premiums offered by Cape Cod Municipal Health Group (CCMHG) and that the Compact/employer contribute 75% of the cost of the health insurance premiums offered by CCMHG, and the JPE Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote.*

Presently Compact employees pay 25% of the health insurance premiums and the employer/County pays 75%. This vote would maintain existing funding proportions between employees and employer.

Record of Board Action

Motion by:	Second by:	# Aye	# Nay	# Abstain	Disposition

**Agenda Action Request
Cape Light Compact JPE Governing Board
Meeting Date: 5/12/17**

Request to Amend Joint Powers Agreement, Article V (D)

REQUESTED BY: *Richard Elkin*

Proposed Motion(s)

- 1) *I move that the Board recommend to the JPE member towns that the following sentence in the second paragraph of Article V (D) of the Joint Powers Agreement be stricken: "Notwithstanding the foregoing, any vote involving a matter concerning issues which would or could be in a direct and material fashion on the financial interests of the Municipal Members shall be taken as a weighted vote in in which the vote of each Director shall be weighted in the same proportion as the population of the Municipal Members such Director represents bears to the whole population of the Municipal Members of the Cape Light Compact JPE, such population as determined, in the case of Barnstable County, by the most recent federal census, or decennial census, and in the case of Dukes County, by the most recent data available from the Martha's Vineyard Commission."*

The JPE Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote.

The above request would require Member Towns to approve this amendment to the Joint Powers Agreement.

To date, weighted votes are taken on waivers of the \$150,000 cap for energy efficiency incentives for a specific Town project, and a weighted vote was taken on the policy to provide 100% funding for all cost effective energy efficiency measures.

Record of Board Action

Motion by:	Second by:	# Aye	# Nay	# Abstain	Disposition

**Agenda Action Request
Cape Light Compact JPE Governing Board
Meeting Date: 5/12/17**

Request to Adopt Roberts Rules of Order, Newly Revised

REQUESTED BY: Colin Odell

Proposed Motion(s)

I move that the Board vote to adopt the rules contained in the current edition of Robert's Rules of Order Newly Revised and that they shall govern the Cape Light Compact Joint Powers Entity Board of Directors in all cases where they are applicable and in which they are not inconsistent with the Joint Powers Agreement, Massachusetts and other applicable laws and any special rules of order the Directors may adopt.

The JPE Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote.

Record of Board Action

Motion by:	Second by:	# Aye	# Nay	# Abstain	Disposition