

**CAPE LIGHT COMPACT JPE
REQUEST FOR PROPOSALS
RURAL ENERGY SERVICES LOAN PROGRAM**

November 24, 2020

I. GENERAL OVERVIEW

A. Background

The Cape Light Compact JPE (the “Compact”) is a regional energy services governmental organization comprised of and serving the twenty-one towns of Cape Cod and Martha’s Vineyard. The Compact is a joint powers entity and municipal aggregator pursuant to Massachusetts General Laws Chapter 40, §4A ½ and G.L. c. 164, §134. More information about the Compact is available at <https://www.capelightcompact.org>.

The Compact’s mission is to serve its 205,000 customers through the delivery of proven energy efficiency programs, effective consumer advocacy and renewable competitive electricity supply.

The Compact is operating an Energy Efficiency Plan which is periodically updated and approved by the Massachusetts Department of Public Utilities.

The Compact seeks energy related services related to implementation of its energy efficiency programs.

B. Program Overview/Scope of Services

The Compact’s Chief Procurement Officer hereby requests the submittal of proposals from qualified professionals to provide loan administration services for the Compact’s Rural Energy Savings Loan Program (the “Program”) which the Compact intends to roll out in 2021.

The Program will provide low interest customer loans up to \$50,000.00 with funds provided to the Compact from the United States Department of Agriculture (“USDA”) Rural Utility Service (“RUS”) to: (1) finance solar photovoltaic (“PV”) systems for residential customers; (2) finance cost-effective energy efficiency measures for small commercial customers who do not have a low or no interest option; and (3) finance solar PV for commercial customers. In addition to solar, small commercial customers will utilize Program funds for energy efficiency measures that are cost-effective, but the total cost exceeds the incentive provided by the Compact.

See Attachment A to this RFP for more details on the scope of the services requested.

II. RFP SCHEDULE AND RELATED MATTERS

A. RFP Schedule

The following is a tentative schedule noting target dates for phases and tasks to be completed:

| | |
|-------------------------------------|----------------------------------|
| Friday, November 27, 2020 | Publication of RFP advertisement |
| Friday, November 27, 2020 | RFP issued |
| Monday, December 7, 2020 | Written inquiries due |
| Friday, December 11, 2020 | Responses to inquiries posted |
| Tuesday, December 22, 2020 12:00 PM | Proposals due |
| Tuesday, December 29, 2020 | Winning Proposal selected |
| Early January 2021 | Kick-off meeting, if needed |

Program implementation, upon Notification of Loan Approval by USDA

B. Questions and Clarifications

Questions or clarifications related to this RFP must be submitted to the Chief Procurement Officer in writing prior to the deadline stated above in order to afford the Compact adequate time to respond with a correction or additional information prior to the deadline for submission of Proposals. Should it be found necessary or useful, a written addendum will be incorporated into this RFP. Parties who have received a copy of this RFP will be notified of issuance of an addendum.

C. Contract Award

All Proposers will be notified of the contract award decision within seven (7) days of the date Proposals are due to the Compact unless otherwise notified by the Compact. In no case will the award be made beyond one hundred and twenty (120) days unless Proposer agrees to extend the period of time in which its Proposal is valid.

If a contract is not executed by the chosen Proposer within (30) thirty days after notification of award (January 29, 2021), the Compact reserves the right to negotiate with alternative Proposer(s) in order to execute contracts by March 1, 2021.

III. GENERAL QUALIFICATIONS

The following general qualifications apply to all vendors engaged by the Compact and Proposers who cannot meet these requirements should not submit Proposals:

- A. The Proposer must be organized or registered to do business in Massachusetts, and

in good standing with the Secretary of the Commonwealth.

- B. The Proposer must be an individual or established business, corporation, partnership, sole proprietorship, limited liability company, joint venture, firm, agency, or other entity engaged in the regular practice of providing such services as the principal business for which the entity was organized.
- C. The Proposer must have all necessary current licenses and registrations required to perform the requested services.
- D. The Proposer cannot be debarred under M.G.L., c. 149, § 44C, or disqualified under M.G.L., c. 7, § 38H, as applicable.
- E. Proposers must be able to demonstrate that they are financially solvent.

IV. SPECIFIC QUALIFICATIONS

The Compact has identified the following specific qualifications that are unique to the Program. Proposers who cannot meet these requirements should not submit proposals.

- A. Proposer must have experience providing banking services to governmental entities in Massachusetts, with a minimum of two (2) governmental entities in Massachusetts. Loan servicing experience preferred.
- B. Substantial experience administering and servicing consumers.

V. CONTRACT

The Compact's standard form of agreement is set forth as Attachment B to this RFP (the "Contract"). The Compact reserves the right during Contract negotiations to expand, modify, supplement and/or add to the form of agreement.

The Contract has a term of twelve (12) years, with an option for the Compact to extend the term should it receive a second RUS loan and expand the Program to include more customers as more fully described in Article VI D below.

The following Contract terms are considered to be material and are generally non-negotiable:

- 1.2 Termination
- 2.2 Conflicts of Interest
- 6 Indemnification
- 7 Choice of Law and Dispute Resolution

If a Proposer believes that a mandatory Contract term will affect its liability risk, it should

adjust its Contract price accordingly.

Non-mandatory Contract terms may be modified and expanded through negotiations. Proposer should identify the specific language in the Contract that it would like to modify, and submit with its Proposal all requested edits to the Contract.

Proposers may not submit its own standard contract form as a response to this RFP.

VI. PROPOSAL FORMAT AND CONTENTS

A. Cover Letter

Proposer must submit a cover letter which includes its business name(s), address and telephone number, signed in ink by someone authorized to sign such documents. Proposer must acknowledge any addenda, if any. All responses must include a statement that the Proposal is in accordance with this RFP and that Proposer has read and understands all sections and provisions herein.

B. General Background Information

Proposer must provide its full official business name, any other names that it uses to conduct its business, tax identification number, and its main office address. Proposer must provide a company profile including length of time in business and core competencies.

Proposer must provide the following statements: (i) statement as to whether business or affiliate has commenced, or been forced into, any insolvency proceeding within the last five (5) years; (ii) statement as to whether business or affiliate has been subject to any litigation in the last five (5) years; (iii) statement as to whether business or affiliate has been subject to any investigation by a state or federal agency within the last five (5) years; and (iv) statement as to the number, if any, of consumer complaints filed with a state, federal, or local agency, against the business or affiliate within the last five (5) years.

C. Staffing Requirements

Proposer must briefly describe its organizational capacity to provide the services to be rendered in connection with the Program. More specifically, it should briefly describe the percentage of staff that would work on these services relative to its entire staff (using full time equivalents). For example, if Proposer would use one full time staffer on the Program and Proposer have a staff of ten (10), the percentage would be ten percent (10%).

D. Proposed Plan/Scope of Work

Proposer should provide a general explanation of its proposed plan/approach to each of the services requested by the Compact in this RFP related to the Program.

Proposer must propose a complete Scope of Work that explains in detail the work Proposer

will perform for the Compact if it is selected as the winning respondent. This proposed Scope of Work will be used as the basis for negotiating the final Scope of Work for inclusion in Exhibit A of the Contract, Attachment B to this RFP. The Scope of Work must describe the Program objectives, expected outcomes, specific tasks to be performed in furtherance of the Program objectives, milestones, reports, quality controls, deliverables and work product that Respondent proposes to provide.

The Scope of Work format is set forth as Exhibit A to the Contract, Attachment B of this RFP.

E. Pricing

Proposals must include a pricing schedule for each service being proposed, with all labor, overhead, travel, other direct costs associated with the services. All general and administrative costs must be included in hourly labor rates and direct expenses. These terms apply to subcontractor costs as well. Proposals should also state if the same hourly rates would apply for out-of-scope work relating to the requested services which may be contracted for during the original Contract term.

Proposer should consider whether a cost savings could be achieved by requiring borrowers to submit all loan payments electronically, and Proposals should include a statement regarding how the Program could be designed to minimize costs associated with loan administration services.

The Compact may receive additional loans from the USDA to expand the program within the contract term. Proposers must specify if the pricing will be the same (or it will increase or decrease) if these additional customers are added to the Program.

F. References

Proposer must provide a list of governmental entities that is has performed similar work for in the past three (3) years and any other relevant references with the names and telephone numbers of contact persons for each entity.

G. Redlined Contract or Contract Acceptance Letter

Proposer must provide a redlined Microsoft Word version of any requested changes to the form of Contract set forth in Attachment B. If Proposer is not requesting any changes to the form of Contract, it should submit a letter to the Compact with its Proposal stating that it accepts all of the terms and conditions of the Contract as set forth in this RFP.

H. Ancillary Documents

Proposer must have signed the Certificate of Non-Collusion (see Attachment C) and all other required Proposal forms (including the Proposal Checklist set forth in Attachment D), and

have included them in the Proposal submittal.

I. Other

Any other information that Proposer considers relevant for the purpose of evaluating its qualifications for the Program.

J. Signature Requirements

The Proposal must be signed by an officer or authorized representative who has authority to bind the Proposer to a firm price.

VII. SUBMISSION PROCEDURES

A. Number of Copies and Format

Proposer must submit one (1) electronic, one (1) original proposal. Proposals must be typewritten on 8 1/2" x 11" paper and each page must be numbered.

B. Proposal Due Date and Labeling

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

| | |
|------------------|---|
| RFP Title: | Cape Light Compact Rural Energy Savings Loan Program |
| Proposer's Name: | [insert] |
| Delivered to: | Cape Light Compact JPE 261 Whites Path, #4 South Yarmouth, MA 02664 Attention: Margaret Downey mdowney@capelightcompact.org Cape Light Compact JPE Chief Procurement Officer |

C. Modification or Withdrawal of Proposals

Proposers may correct, modify or withdraw their original Proposals on or before the date and time set forth in Article II. Corrections or modifications must be in sealed envelopes, clearly marked to indicate the contents, with the name and address of Proposer. Any late correction or modification to a Proposal will not be accepted. A Proposer who wish to withdraw a Proposal must make a request in writing.

D. Late Proposals

Any Proposal received after the due date and time stated in Article II will be deemed non-

responsive and will not be opened. Unopened Proposals will be returned to Proposers.

E. Offer to Provide Services

Proposer understands and agrees that its Proposal to the Compact to provide services will remain valid for one hundred and twenty (120) days past the submission deadline.

VIII. SELECTION PROCESS

The final selection of the winning Proposer will be based on the following set of minimum evaluation criteria:

1. Responsiveness to the Program goals and desired outcomes as set forth in this RFP.
2. Satisfaction of all qualifications set forth in Articles III and IV.
3. Proposed plan/approach to manage and perform the requested services.
4. Team qualifications and experience.
5. Proposed edits to Contract.
6. Quality of references.
7. Submission of all required documentation and certifications detailed in Article VI (Proposal Contents).

The Chief Procurement Officer will review all Proposals to make sure minimum requirements are met. Proposals that meet all of the minimum requirements set forth in this RFP, and are determined to be both responsive (those that offer all of the services requested in the RFP and contain all of the required information and completed forms) and those that are responsible (those with the capability, integrity, and reliability to perform under the Contract) will be further reviewed by the Chief Procurement Officer.

The Chief Procurement Officer will make a preliminary determination of the most advantageous proposal from a responsible and responsive Proposer taking into consideration price and the evaluation criteria set forth above. Proposals will be evaluated on each criteria set forth above; each criterion will be assigned a rating of “highly advantageous,” “advantageous,” “not advantageous” or “unacceptable. The Chief Procurement Officer may negotiate all terms of the Contract not deemed mandatory or non-negotiable with such Proposer. If after negotiation with such Proposer the Chief Procurement Officer determines that it is in the best interest of the Compact, the Chief Procurement Officer may determine the proposal which is the next most advantageous proposal from a responsible and responsive Proposer taking into consideration price and the evaluation criteria set forth above, and may negotiate all terms of the Contract with such Proposer. The Chief Procurement Officer will award the Contract to the Proposer who submitted the most advantageous proposal taking into consideration price, the evaluation criteria set forth above, and the terms of the negotiated Contract.

Proposals, which are incomplete, conditional or obscure, will be rejected. No award will be made to any Proposer who cannot satisfy the Compact that it has sufficient ability and resources to enable it to meet the requirements of this RFP. The Compact’s decision or

judgment on these matters shall be final, conclusive and binding.

IX. CONFIDENTIALITY/RETENTION OF RFP SUBMITTALS

Each Proposal will be held confidential by the Compact until such time as the evaluation and selection process has been completed.

If any proprietary information is contained in the Proposal and Proposer wishes that the Compact treat such information as confidential, it should be clearly identified. The Compact will take commercially reasonable efforts to protect such information. Under Massachusetts law, the Compact cannot assure the confidentiality of any material or information that may be submitted by a Proposer in response to this RFP.

Proposers who choose to submit confidential material or proprietary information do so at their own risk. The Compact is not be liable for any action taken or omitted to be taken related to such proprietary information.

In general, proposal responses are public documents available for inspection by interested parties after the completion of this procurement. Upon completion of the evaluation and the award of the Contract, all responses and information submitted in response to this RFP are subject to the Massachusetts Public Records Law, M.G.L. c. 66, § 10, and to M.G.L. c. 4, §7, cl. 26. Any statements in submitted responses that are inconsistent with these statutes will be disregarded.

Further, as the Compact is a public entity it may become necessary to provide the Proposal or Contract information to regulatory agencies for review. At Proposer's specific request, and if commercially reasonable, the Compact will request that such information be treated confidentially by the regulatory agencies.

X. MISCELLANEOUS

A. Supplementary Information

The Compact may request that supplementary information be furnished to assure the Compact that a Proposer has the technical competence, and the business and financial resources adequate to successfully perform the requested services.

B. Proposal Costs

All costs involved in preparing the Proposal will be borne by Proposer. Proposer must be familiar with all state, local and other laws relating to these services and must obtain all permits required and must pay all expenses for same.

C. Cancellation

The Compact may cancel this RFP, in whole or in part, or may reject all Proposals, or may procure only some goods and/or services outlined in this RFP whenever such action is determined to be fiscally advantageous to the Compact, or if it is otherwise in the best interest of the Compact.

ATTACHMENTS

- A Detailed Project Overview/Detailed Scope of Services
- B Form of Contract
- C Certification of Non-collusion
- D Proposal Checklist

ATTACHMENT A

Cape Light Compact Rural Energy Savings (RESP) Loan Program Scope of Services

- A. Serve as the loan underwriter of the Compact's RESP Loan Program, including performing credit checks and other commercially reasonable loan practices. The Compact will be responsible for determining applicant eligibility for the energy efficiency project/measure prior to submission of any loan application.
- B. Serve as the loan servicer of the RESP Loan Program, which includes, but is not necessarily limited to, the following:
- Organizing and implementing loan closings using forms approved by the Compact
 - Disbursing loan principal at the direction of the Compact
 - Setting up monthly loan re-payment arrangements with the borrower (via monthly statement, ach, etc.)
 - Maintaining loans in loan tracking software and receiving, depositing and tracking payments and balances on the loans
 - Responding to borrower inquiries
 - Remitting loan collections to the Compact
 - Following up on delinquent loan accounts and reporting to the Compact accordingly
 - Providing monthly reports to the Compact that detail the status and balance of each loan, including aging reports, loan disbursements, loan repayments (separated by principal and interest), etc.
 - Protecting borrower information by implementing and maintaining an information security program and complying with applicable state and federal privacy laws
 - Complying with the Compact's commercially reasonable requests to implement loan practices necessary to comply with any regulatory or RUS requirements with respect to the servicing of the Loans (should the additional requirements results in extra costs, an addendum services contract addendum may be executed)
 - Providing the Compact with reports required by RUS (should the reporting requirements results in extra costs, an addendum services contract addendum may be executed)
- C. Work with the Compact's legal counsel (as necessary) to aid in any loan account legal action.
- D. Maintain all necessary records regarding the RESP loan portfolio, program compliance, individual loan information.

ATTACHMENT B

PROFESSIONAL/CONSULTING SERVICES AGREEMENT (SHORT FORM NOVEMBER 2020)

This PROFESSIONAL/CONSULTING SERVICES AGREEMENT (“Agreement”) is made by and between the Cape Light Compact JPE, a joint powers entity organized pursuant to G.L. c. 40, §4A½ and the organizational successor to the Cape Light Compact (the “Compact”), and [insert] (“Energy Efficiency Loan EE Loan Administrator”). The Compact and EE Loan Administrator may be referred to herein collectively as the “Parties,” or either singularly as a “Party.” This Agreement is effective as of [insert].

WHEREAS, the Compact is governmental entity and its purposes include protecting and advancing the interests of residential, commercial and industrial customers in a competitive electric supply market, and promoting energy efficiency;

WHEREAS, the Compact issued a [insert as applicable (request for proposals)] on [insert date] for the performance of [insert program name];

WHEREAS, the Compact seeks to enter into an agreement with EE Loan Administrator for certain loan administration services in connection with operation of a loan program as more fully described in Exhibit; and

WHEREAS, EE Loan Administrator has the expertise required to provide the Compact with the loan administration services required pursuant to this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, EE Loan Administrator 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. EE Loan Administrator 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 EE Loan Administrator, 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, a Member¹ (as defined herein) incurs related to engagement of a substitute EE Loan Administrator.

SECTION 2 SCOPE OF SERVICES AND RELATED MATTERS

2.1 Services. EE Loan Administrator agrees to provide the expertise, labor, materials and supplies necessary to perform the services and deliverables (including, but not limited to, certain reporting requirements) 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").

The EE Loan Administrator is hereby appointed to administer the customer loans in accordance with the terms of this Agreement. The EE Loan Administrator shall have full power and authority to do or cause to be done any and all things in connection with such administration of the customer loans as may be necessary or desirable to perform its obligations under this Agreement in accordance with its terms, provided, that in no event shall EE Loan Administrator violate the terms of the customer loans or this Agreement. In performing its obligations hereunder, EE Loan Administrator shall be entitled to execute and deliver any agreements, instruments or other documents, and take such other actions, for and on behalf of the Compact as are reasonably necessary in connection with the performance by EE Loan Administrator of its obligations hereunder.

2.2 Conflicts of Interest. EE Loan Administrator 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. EE Loan Administrator 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. EE Loan Administrator further covenants that it shall comply with all relevant provisions of G.L. c. 268A.

2.3 Points of Contact. EE Loan Administrator 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 EE Loan Administrator for all issues arising under this Agreement.

SECTION 3 COMPENSATION AND RELATED MATTERS

EE Loan Administrator 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

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

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. EE Loan Administrator 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 in accordance with applicable municipal finance laws.

SECTION 4 PERFORMANCE STANDARDS AND REPORTING

EE Loan Administrator assumes professional and technical responsibility for the performance of the Services in accordance with the terms of this Agreement. In performing its obligations hereunder during the term of this Agreement, EE Loan Administrator 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; and (vi) provide the required notice under Section 6.3 (Notice of Claims) of this Agreement.

SECTION 5 INSURANCE

EE Loan Administrator shall maintain, at its own expense, "Errors and Omissions" insurance, with broad coverage on all officers, employees or other persons under EE Loan Administrator's supervision and control ("EE Loan Administrator Employees"). Any such Errors and Omissions Insurance Policy shall protect and insure EE Loan Administrator against losses, including forgery, theft, embezzlement, fraud, errors and omissions and negligent acts of such EE Loan Administrator Employees. EE Loan Administrator shall at all times and at its sole cost and expense, also keep in full force and effect until one (1) year after termination of this Agreement, (i) comprehensive general liability insurance policies providing coverage in an amount totaling at least Two Million Dollars (\$2,000,000.00), (ii) workers compensation insurance in compliance with Applicable Law, and (iii) supplemental insurance of no less than Three Million Dollars (\$3,000,000.00) in the aggregate. All insurance policies will be with insurers rated a minimum of "A minus" by A.M. Best. Upon the request of the Compact, EE Loan Administrator shall cause to be delivered to the Compact a certificate of insurance evidencing such required coverages.

SECTION 6 INDEMNIFICATION BY EE LOAN ADMINISTRATOR² AND DAMAGES FOR BREACH

6.1 Indemnification. To the fullest extent allowed by law, EE Loan Administrator (and its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) shall indemnify, defend, and hold harmless the Compact, the Members (and all of the respective officials, officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns of the Compact and

² Note to EE Loan Administrator: In accordance with guidance issued by the Massachusetts Office of Attorney General, the Compact cannot indemnify private parties.

each Member), from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, and/or judgments caused by, arising out of, or related to any act or failure to act of EE Loan Administrator (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 EE Loan Administrator (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. EE Loan Administrator's indemnification obligation is not limited in any way by the amount or type of damages or compensation payable by the Compact. EE Loan Administrator 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.

6.2 No Cap on EE Loan Administrator's Liability.³ EE Loan Administrator's liability under this Agreement shall not be limited to the value of the Services rendered under this Agreement; further, EE Loan Administrator's liability shall not be limited by the availability of its insurance coverage.

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

6.4 Acknowledgment of JPE Status. EE Loan Administrator understands that the Compact is a governmental entity, specifically a joint powers entity, and that its members are the governmental units set forth in footnote 1 of this Agreement. EE Loan Administrator understands and agrees that the Members assume no liability whatsoever for any of the debts and liabilities of the Compact, including, but not limited to, any obligations under this Agreement. EE Loan Administrator further agrees and covenants that it will not sue or otherwise make any claim against any of the Members for any obligations, debts or liabilities of the Compact that may exist or accrue as a result of its obligations under this Agreement, or any acts or omissions related to the performance of such obligations. EE Loan Administrator understands that the Compact is a governmental entity, and certain legal privileges, defenses and remedies are available to it. Nothing in this Agreement shall be construed to waive any of these privileges, defenses or remedies.

SECTION 7 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

³ Note to EE Loan Administrator: 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.

the American Arbitration Association, Boston, Massachusetts, appoint a mediator. Each Party shall bear its own mediation costs. Injunctive relief may be sought by either Party without resorting to mediation to prevent irreparable harm. Exclusive venue for any judicial proceeding involving a dispute arising from this Agreement shall be Barnstable County Superior Court, Massachusetts. In any judicial action, the "Prevailing Party" shall be entitled to payment from the opposing party of its reasonable costs and fees, including, but not limited to, attorneys' fees arising from the civil action. "Prevailing Party" means the Party who most substantially prevails in its claims or defenses in the civil action. EE Loan Administrator shall diligently carry on the Services during any dispute resolution proceedings, unless otherwise agreed to by the Compact in writing.

SECTION 8 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 EE Loan Administrator from any obligation or liability under this Agreement except as specifically set forth in the instrument of approval, and EE Loan Administrator shall continue to be liable, jointly and severally, with the assignee for the fulfillment of all of the terms and conditions under this Agreement.

SECTION 9 MISCELLANEOUS

9.1 **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 EE Loan Administrator to:

[insert]

if to the Compact to:

Margaret T. Downey
Cape Light Compact JPE EE Loan Administrator
Cape Light Compact JPE
261 Whites Path, Unit 4
South Yarmouth, MA 02664
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.

9.2 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 or impose additional obligations on the Compact, the language in the exhibits shall be disregarded and shall be of no force and effect. This Agreement may only be amended or modified by a written instrument signed by both Parties hereto.

9.3 Independent Contractor. EE Loan Administrator will perform all Services under this Agreement as an independent contractor.

9.4 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. Notwithstanding the foregoing, EE Loan Administrator agrees that if Exhibit A (Services) is primarily drafted by EE Loan Administrator, any ambiguous terms contained therein shall be construed against EE Loan Administrator.

9.5 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.

9.6 Records; Audit. EE Loan Administrator 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. EE Loan Administrator agrees that the Compact may audit EE Loan Administrator's books, records, and other compilations of data associated with the performance of this Agreement to ascertain that the payments requested by EE Loan Administrator 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.

9.7 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). EE Loan Administrator represents that it has executed all certifications requested by the Compact in the Request for Proposals, or will provide them concurrently with execution of this Agreement, including the certificates set forth in Exhibit E and F attached hereto.

9.8 Further Assurances. From time to time and at any time at and after the execution of this

Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other in order to effectuate the purposes and to carry out the terms of this Agreement.

9.9 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 6 (Indemnification) and Section 7 (Dispute Resolution) and any other term that by its nature should survive, shall survive the expiration of termination of this Agreement.

9.10 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.

EE LOAN ADMINISTRATOR

CAPE LIGHT COMPACT JPE

Signature
Print Name: _____
Title: _____
Chief Procurement Officer

Signature
Margaret T. Downey
Cape Light Compact JPE EE Loan Administrator &

Date

Date

LIST OF EXHIBITS

- Exhibit A - Services
- Exhibit B - Compensation
- Exhibit C - Pre-approved Subcontractors
- Exhibit D - Tax Compliance Certification
- Exhibit E - Certificate of Non-Collusion

EXHIBIT A TO FORM OF CONTRACT

SERVICES

NOTE: In response to the RFP, EE Loan Administrator shall submit a proposed scope of work/description of proposed services setting forth: (a) project objectives and expected outcome; (b) specific tasks to be performed in furtherance of the project objective; (c) deliverables/work-product; (d) reports; (e) timing of deliverables/work-product; (f) quality controls and (g) project team. Scope of Works should not have included: (a) pricing sheet; (b) narrative questions; (c) contract terms; (d) citations to certificates of insurance; (e) dates that apply to the RFP process; and (f) resumes.

1. *Program Description.* [insert program or project name; applicable language maybe copied from RFP].

2. *Project Objectives and Expected Outcome.* [insert; applicable language may be copied from RFP]

3. *Services.* EE Loan Administrator shall perform: [insert detailed description of the specific tasks and services to be performed in furtherance of the project objectives.]

4. *Deliverables/Work-Product.* [EE Loan Administrator should list all deliverables/work-product it is required to deliver under the Agreement.]

5. *Reports.* [EE Loan Administrator should list any reporting requirements that it believes would be useful to track the progress of its services; applicable language may be copied from RFP]

6. *Timing of Deliverables/Work-Product.* The services are to be performed according to the following schedule: [insert timing, particular project milestones, etc.]. [Note: Do not insert dates related to the RFP process.]

7. *Quality Controls.* [EE Loan Administrator should described the quality control procedures that it will employ to ensure that its services are performed in a timely, efficient and professional manner.]

8. *Project Team.* The work is to be performed by [insert description of vendor employees – need not be names, but titles/category of employees]. [Note: Do not attach employee resumes.]

9. *Definitions.* Any terms not defined in this Exhibit shall have the meanings assigned to them in the Agreement.

10. *Conflicts with Agreement.* In the event of a conflict between the terms in this description of services and the terms of the Agreement, the terms of the Agreement shall control.

ATTACHMENT C

CERTIFICATE OF NON-COLLUSION

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

Signature of individual submitting bid or proposal/title:

Proposer Name

ATTACHMENT D

Proposal Checklist

Proposer has submitted the following as part of its Proposal

- 1. Cover letter with signature. [Article VIA and K]
- 2. Statement that the Proposal is submitted in accordance with this RFP, and that Proposer has read and understands all sections of the RFP. [Article VI A]
- 3. General background information. [Article VI B]
- 4. Company profile. [Article VI B]
- 5. Four background statements. [Article VI B]
- 6. Organizational capacity. [Article VI C]
- 7. Proposed plan/approach. [Article VI D]
- 8. Scope of work in format set forth in Contract. [Article VI D]
- 9. Pricing (including rates for out of scope work). [Article VI E]
- 10. References. [Article VI F]
- 11. Redlined Contract or Contract acceptance letter. [Article VIH]
- 12. Certificate of Non-collusion. (Attachment C)
- 13. Checklist (this document).