

SELECTMEN'S MEETING AGENDA*

Donn B. Griffin Room, Town Hall

732 Main Street, Harwich, MA

Regular Meeting 6:30 P.M.

Monday, December 14, 2020

REMOTE PARTICIPATION ONLY
OPEN PUBLIC FORUM – NEW STEPS – PLEASE READ

1. First, send an email [to comment@town.harwich.ma.us](mailto:tocomment@town.harwich.ma.us) (send emails at any time after the meeting agenda has been officially posted)
 - a. In the subject line enter "request to speak, your name"
 - b. In the body of the email please indicate which specific agenda item you wish to speak on.
No further detail is necessary.
 2. The meeting will close to new attendees promptly at the scheduled start time for the meeting, generally 6:30pm. It will remain closed to new attendees until agenda items with scheduled speakers are reached. This is to minimize interruptions. You may join prior to (6:30) or when the meeting has been opened up. You may participate using your computer and the GoToMeeting interface or simply using your phone. Connection information can be found below.
 3. After the Chairman has opened the floor to those wishing to speak callers will be taken in the order the emails are received.
Use *6 to mute and unmute your phone
- When you join the meeting by phone you should turn off Channel 18 or your computer if streaming the meeting.

Board of Selectmen Meeting

Mon, Dec 14, 2020 6:30 PM

Please join my meeting from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/953424541>

You can also dial in using your phone.

United States: +1 (408) 650-3123

Access Code: 953-424-541

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. WEEKLY BRIEFING

- A. COVID-19 Updates
- B. Update on ongoing efforts by the Town in support of the business community

IV. PUBLIC COMMENTS/ANNOUNCEMENTS

V. ANNUAL COMMITTEE PRESENTATIONS

- A. Board of Assessors
- B. Council on Aging
- C. Board of Health

VI. PUBLIC HEARING/PRESENTATIONS

VII. CONSENT AGENDA

VIII. NEW BUSINESS

- A. Discussion and possible vote to approve – New Seasonal Innholders License – On the Harbor LLC DBA Allen Harbor Inn – 326 Lower County Road
- B. Discussion and possible vote to approve - M.G.L. Chapter 138, Section 12 Annual on premise Liquor License Renewals
 1. Brax Restaurant Management Inc. DBA Brax Landing – 705 Main Street – All Alcohol
 2. Harwich Inn and Tavern LLC DBA Harwich Inn and Tavern – 77 Route 28 – All Alcohol
- C. Discussion and possible vote to approve – Annual Common Victuallers License Renewals
 1. Dent Donuts LLC DBA Dunkin Donuts – 175 Route 137
 2. Dent Donuts LLC DBA Dunkin Donuts – 481 Route 28
 3. Hot Stove Inc. DBA Hot Stove Saloon – 551 Route 28
 4. Murphy/Torres LLC DBA Upper Crust Pizza – 1421 Orleans Road
 5. Shogun Inc. DBA Noble House – 21 Route 28
- D. Discussion and possible vote to approve – Annual Auto License Renewals
 1. Bassil Brothers Inc. DBA Unified Gas – 570 Route 28 - Class IV Auto Repairman
 2. BB's Automotive – 805 Route 28 – Class II Used Car Dealer
 3. Cape and Islands Collision, Inc. DBA Cranberry Collision – 161 Queen Anne Road - Class IV Auto Repairman
 4. Cape and Islands Collision, Inc. DBA Cranberry Auto LLC –161 Queen Anne Road - Class II Used Car Dealer
 5. Carlos Tapia Inc. DBA JC Auto Sales – 195 Queen Anne Road – Class II Used Car Dealer
 6. Dave's Garage – 910 Route 28 – Class IV Auto Repairman
 7. Nick and Claudine Enterprises LLC DBA West Harwich Sav-on-gas – 4 Route 28 – Class IV Auto Repairman
 8. Reflections Auto Restoration and Collision – 4 Evergreen Way – Class IV Auto Repairman
 9. Sam's Auto Repairs and Sales Inc. DBA Sam's Automotive Center – 413 Route 28 – Class II Used Car Dealer and Class IV Auto Repairman
 10. Scott D. Hardy DBA Scott's Cycle – 210 Queen Anne Road – Class IV Auto Repairman
 11. Steven's Auto Repair – 216 Main Street – Class IV – Auto Repairman
 12. Wayne's Auto Service – 643 Main Street – Class UV Auto Repairman
 13. Discussion and possible vote approving Section 1.07 of the Harwich Board of Selectmen Liquor License Regulations requests for closure by licensed establishments:
 - a. Mad Minnow Bar & Kitchen – 554 Route 28 - Seasonal All Alcohol license - Seeking to close early for the season due to COVID-19
 - b. 3 Monkey's – 554 Route 28 - Seasonal All Alcohol license - Seeking to close early for the season due to COVID-19
 - c. Lanyard Bar & Grill – 429 Route 28 – Annual All Alcohol license – seeking to temporarily close due to COVID-19

- E. Discussion and possible vote to approve the SewerCAD Modeling Contract and Phasing Plan– \$150,000
- F. Discussion and possible vote – Instruct Town Staff to pursue wastewater cost saving and sharing opportunities with MassDOT and Water Department
- G. Update on current tax collection rate
- H. Update of the Cape & Islands Water Protection Fund
- I. Discussion of the Dennis Harwich Yarmouth (DHY) Draft Agreement

IX. OLD BUSINESS

- A. Discussion and possible vote for the Board of Selectmen to approve the participation in the contract for Harwich municipal electric accounts through Cape Light Compact
- B. Vote to Authorize the Interim Town Administrator to execute contract with selected competitive electric supplier on behalf of the Town of Harwich

X. CONTRACTS

XII. TOWN ADMINISTRATOR’S REPORT

X. SELECTMEN’S REPORT

XI. ADJOURNMENT

**Per the Attorney General’s Office: The Board of Selectmen may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting following “New Business.” If you are deaf or hard of hearing or a person with a disability who requires an accommodation contact the Selectmen’s Office at 508-430-7513.*

Authorized Posting Officer:

Patricia A. Macura, Admin. Secretary

Posted by: _____
Town Clerk

Date: _____
December 10, 2020

WEEKLY BRIEFING



Town of Harwich Board of Health

732 Main Street Harwich, MA 02645
508-430-7509 – Fax 508-430-7531
E-mail: health@town.harwich.ma.us

December 11, 2020

Weekly COVID-19 Case Update

To date there have been a total of 237 cases of COVID-19 in the Town of Harwich. Harwich has been moved to the “red” which designates us as a **High Risk Community**. This designation is made when a community of our size reaches a positivity rate of over 5% and has had more than 25 positive cases in a two week period. We have a positivity rate of 5.21% and 48 new cases in the last 2 weeks.



Massachusetts Department of Public Health COVID-19 Dashboard – Thursday, December 10, 2020

Count and Rate of Confirmed COVID-19 Cases and Tests Performed in MA by City/Town, January 1, 2020 – December 8, 2020

City/Town	Total Case Count	Case Count (Last 14 Days)	Average Daily Incidence Rate per 100,000 (Last 14 days) ¹	Relative Change in Case Counts ²	Total Tests	Total Tests (Last 14 days)	Total Positive Tests (Last 14 days)	Percent Positivity (Last 14 days)	Change in Percent Positivity ³
Hampden	189	20	29.17	Lower	4919	568	22	3.87%	Lower
Hancock	9	<5	44.59	Higher	146	18	4	22.22%	Higher
Hanover	323	81	40.24	Higher	10364	1186	87	7.34%	Higher
Hanson	283	63	41.81	Higher	7428	804	65	8.08%	Higher
Hardwick	25	7	14.97	Higher	1729	165	8	4.85%	Higher
Harvard	52	16	16.44	Higher	4555	450	16	3.56%	Higher
Harwich	237	41	23.26	Higher	8453	921	48	5.21%	Higher
Hatfield	44	5	11.04	Higher	3116	318	5	1.57%	Higher

As of today, we are following 32 active cases of COVID-19 in Harwich. The majority of these cases are the result of family gatherings that included an asymptomatic individual who spread the virus to other members of the household. Several cases were acquired through healthcare settings or travel related, and several are of unknown origin.



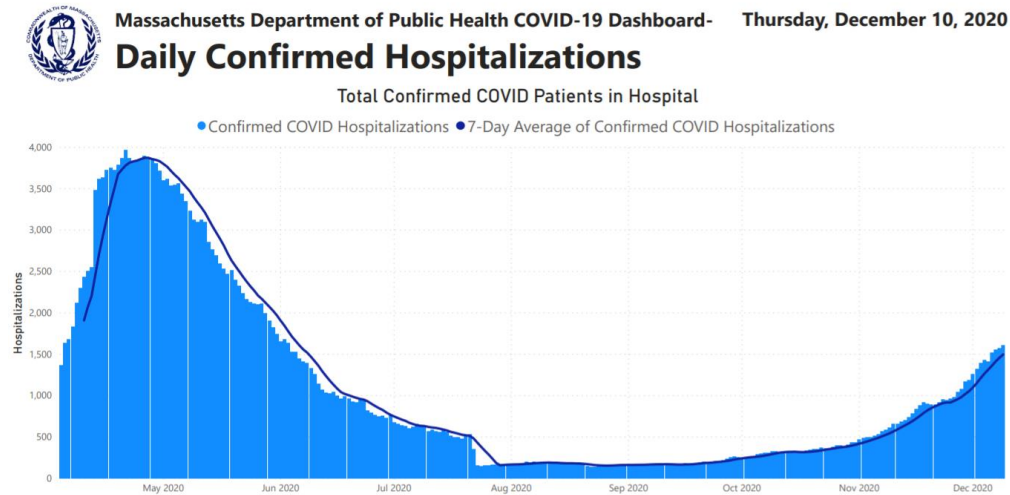
Massachusetts Department of Public Health COVID-19 Dashboard -

Thursday, December 10, 2020

Active COVID Clusters by Exposure Setting Type

Exposure Setting	New Clusters (Identified 11/08 –12/05)			Ongoing Clusters (Cluster Identified Prior to 11/08 But Not Meeting Criteria for Closing)			Total		
	Clusters	Confirmed Cases	Contacts	Clusters	Confirmed Cases	Contacts	Clusters	Confirmed Cases	Contacts
24/7 Congregate Settings	32	186	39	54	67	33	86	253	72
Child Care	100	283	467	89	47	110	189	330	577
Colleges & Universities	11	79	16	36	25	42	47	104	58
Corrections	5	186	0	11	717	128	16	903	128
Hospitals	13	191	14	17	65	17	30	256	31
Household	12,583	31,921		4,812	2,906		17,395	34,827	
Industrial Settings	19	71	12	57	130	83	76	201	95
K-12 Schools	29	121	131	47	24	58	76	145	189
Long Term Care Facilities	150	1,437		138	1,272		288	2,709	
Offices	2	4	5	13	13	1	15	17	6
Organized Athletics/Camps	8	31	77	29	13	136	37	44	213
Other	2	24	0	7	7	37	9	31	37
Other Food Establishments	2	5	1	7	2	2	9	7	3
Other Healthcare	7	40	35	23	28	15	30	68	50
Other Workplaces	15	70	47	19	39	2	34	109	49
Places of Worship	3	15	1	15	15	15	18	30	16
Recreation/Cultural	2	17	0	4	0	0	6	17	0
Restaurants & Food Courts	18	105	109	56	28	38	74	133	147
Retail & Services	11	28	8	22	19	15	33	47	23
Senior Living	34	159	126	41	196	4	75	355	130
Shelters	1	2	9	4	14	4	5	16	13
Social Gatherings	25	134	71	44	34	52	69	168	123
Travel & Lodging	0	0	0	3	0	3	3	0	3
Total	13,072	35,109	1,168	5,548	5,661	795	18,620	40,770	1,963

Hospitalizations on Cape Cod and throughout the State continue to rise each day. Cape Cod Healthcare is reporting 27 COVID patients within the two hospitals, 7 of which are in the ICU. As you can see from the graph below, we are in an upward trend for hospitalizations.



The Governor announced a statewide rollback to Step 1 of Phase 3 that begins on Sunday, December 13th. This action is in response to the increase in new cases and those needing hospitalization. Our hospital capacity is being taxed and two field hospitals have been opened to deal with the surge. The rollback includes strict restaurant standards and smaller occupancy percentages in most businesses. Additionally, the gatherings order has been revised to reduce down to 50 people maximum for outdoor gatherings with a requirement to notify the local board of health when a gathering is expected to be over 25 people.

The Covid-19 vaccine will be shipped out to hospitals in Massachusetts beginning next week. Cape Cod Hospital is scheduled to receive doses for this first round of distribution. The distribution plan is laid out as follows:

PHASE ONE
In order of priority

- Clinical and non-clinical healthcare workers doing direct and COVID-facing care
- Long term care facilities, rest homes and assisted living facilities
- Police, Fire and Emergency Medical Services
- Congregate care settings (including corrections and shelters)
- Home-based healthcare workers
- Healthcare workers doing non-COVID-facing care

PHASE TWO
In order of priority

- Individuals with 2+ comorbidities (high risk for COVID-19 complications)
- Early education, K-12, transit, grocery, utility, food and agriculture, sanitation, public works and public health workers
- Adults 65+
- Individuals with one comorbidity

PHASE THREE
Vaccine available to general public

December - February **February - April** **April - June**
Estimated timeframes

Harwich will partner with Barnstable County and the Visiting Nurses Association for vaccine clinics when the time comes. Due to the sub-zero temperature that the vaccine requires for storage, the town is unable to store it ourselves. Health Agents across the Cape have been coordinating with the County on this topic to ensure we are prepared for distribution to the general public.

Becoming a High Risk Community means we have widespread infection across the town. It is extremely important to maintain your vigilance and limit social gatherings. Always wear a face covering when you are around people who do not live in your home and keep a distance of at least 6' to reduce the likelihood of infection. Adhere to the Stay at Home Advisory and make sure that you and your children are in your own home by 10 pm. Avoid carpooling when possible, and if you must carpool, wear masks.

This pandemic has been wearing on all of us. If we can't follow the public health guidance to stop the spread, it will last longer than it needs to. Please, do your part and limit your in-person social interactions, wear a mask and wash your hands.

Have a good week,
Meggan Eldredge
Health Director



Town of Harwich Board of Health

732 Main Street Harwich, MA 02645

508-430-7509 – Fax 508-430-7531

E-mail: health@town.harwich.ma.us

December 10, 2020

Good afternoon, this is Health Director Meggan Eldredge with a COVID-19 update. The Town of Harwich is currently experiencing a surge of new coronavirus cases following the Thanksgiving holiday. We have just been designated as a High Risk Community by the Department of Public Health with a positivity rate of over 5%. This is higher than the statewide average. Our cumulative case count is now 228 and we are currently following 27 active cases. Community spread of the virus is evident at this time and I ask that everyone do their part to stop the spread by limiting social interactions with people outside of your household. Always wear a mask and keep your distance from those you do not live with. This is the number one way the virus is spreading at this time.

In reaction to the marked increase in the number of cases in Massachusetts and the rise in the number of individuals needing hospitalization, Governor Baker has announced a state-wide roll-back to Step 1 of Phase 3. This step reduces the number of people allowed at outside gatherings to 50 as well as imposes occupancy reductions inside certain businesses. Face coverings are required at all times when at a restaurant except when physically eating or drinking. A number of other restrictions have been put in place, please visit the Town's website or the Mass.gov website for details on this.

Please share this information with your family and friends. It is extremely important that we stop this upward rise in cases as soon as possible. Community spread of infection places a strain on our local businesses, schools, and mental health of our residents. We all need take responsible steps to stop the spread. If you feel sick or think you have been exposed, get tested. There is a link to free testing sites on our website or you can call 211 to speak to a live person for this information.

Massachusetts is scheduled to receive our first shipment of COVID-19 vaccine next week. The first round will be given to healthcare workers. Distribution to the general public is expected to begin in April of 2021. The vaccine distribution plan can also be reviewed on our website.

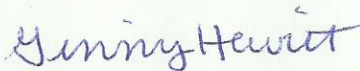
<https://www.harwich-ma.gov/>

<https://www.mass.gov/info-details/covid-19-updates-and-information>

Thank you and stay safe!

Meggan Eldredge
Health Director

Brooks Free Library
739 Main St., Harwich MA 02645
www.brooksfreelibrary.org
vhewitt@clamsnet.org


From: Ginny Hewitt, Library Director
To: Brooks Free Library Board of Trustees
CC: Joe Powers, Interim Town Administrator
Meggan Eldredge, Health Director
Subj: Suspension of Inside Hours at Brooks Free Library
Date: Dec. 10. 2020

This letter is to let you know that I've made the difficult decision to suspend inside browsing effective Monday, Dec. 21st. This is not an easy decision or one I take lightly. The staff and I take our obligation to serve the community very seriously and inside browsing is understandably a much more popular way for patrons to select materials than curbside pickup. It is so popular, in fact, that we have had many open hours where 50 -100 patrons have visited during the same hour. The longer we have been open for inside browsing, the more popular it has become, with the numbers of patrons each day trending upwards. This is a concern as numbers of COVID19 cases continue to rise and community spread is occurring. We are noticing that more patrons, likely suffering from "COVID fatigue," have acclimated to the restrictions and although they are wearing masks, less social distancing is occurring. Patrons are becoming more comfortable and spending more time chatting rather than a more business-like approach of coming in to pick out some items and leave as quickly as possible. This is a concern as the case numbers are growing but patrons are relaxing their behavior.

We've taken some steps - reducing the length of patron visits from 30 minutes to 15 minutes, for example - and have been evaluating what additional steps to take but recent events have tipped the scales as we were evaluating if and when we needed to return to Curbside only service. On Tuesday Snow Library in Orleans announced they would be suspending inside access and going with a Curbside only service model effective Saturday, December 12th and last night Eldredge Library in Chatham announced they would be doing the same, effective today. This was a surprise as we just met last week and planned to meet again soon. I did not anticipate needing to return to Curbside only service so soon but this suspension of inside browsing in comparably-sized libraries in our neighboring towns means the volume of patrons we would see per hour would grow substantially if we continued to provide inside access, exacerbating what was already a growing concern.

Like Snow and Eldredge, we plan to re-evaluate this in mid-January and if the post-holiday spike in case numbers has not occurred and numbers are trending downward we may be able to re-institute Inside Hours at that time.

We will continue to offer Curbside Pickup Mondays through Saturdays with morning, afternoon and evening pickup times available. We will increase efforts to reach out to patrons who are unable to place requests online or who don't have a particular book or movie in mind, and encourage them to call and speak to a staff member who will be happy to place requests or find materials that might interest the patron. In addition to the outdoor tables of items on holds for specific patrons, we plan to add "book bundles" - grab bags of several books in the same genre or on a particular theme - so that patrons who haven't placed requests can stop by and pick up a bag to borrow. All of the items may not be of interest, but patrons will hopefully receive one or two they really enjoy. Details on how patrons notify us which bag they took so the items can be checked out to them are being finalized and we can inform the public when the Trustees meet with the Selectmen for their Annual Meeting on Dec. 21st.

We are also implementing a cohort system on Dec. 21st as well. Staff members will be divided into 3 teams of 5 or 6 and only work in the building with members of their cohort. Each cohort team will consist of two full-time staff members and several part-time staff members and substitute Library Assistants. After the initial two weeks pass, this will eliminate the need for the Library to shut down for a week or two if someone on the staff tests positive for COVID19. Only that cohort would need to quarantine. The Library is not a typical office setting, it's an operation. We have separated work spaces but as part of circulating materials there is no way to eliminate the need for staff members to transit past each other to get to the Hold Shelf, for example. Right now there would be no way to guarantee that staff members did not spend up to 15 minutes in close proximity through multiple small interactions or transitions over the course of the day and we would have to err on the side of caution and have everyone quarantine. A cohort system will rectify this. If a staff member tests positive that team will quarantine but the other cohorts will be able to cover those shifts and library service will not be interrupted.

Please let me know if you have any questions or concerns.



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150*

Jean M. Lorizio, Esq.
Chairman

**ALCOHOLIC BEVERAGES CONTROL COMMISSION ADVISORY
REGARDING THE ROLLBACK OF THE COMMONWEALTH OF MASSACHUSETTS
TO PHASE 3, STEP 1, OF THE REOPENING PLAN**

On December 8, 2020, Governor Charlie Baker rolled back the Commonwealth of Massachusetts to Phase 3, Step 1 of the Reopening Plan. The Governor's Reopening Plan can be found [HERE](#).

Licensees should be aware that this rollback mandates the following for licensees that sell alcohol for on-premises consumption:

- 1) Patrons may be seated at a table for only up to ninety (90) minutes total;
- 2) Tables may only have a capacity of six (6) individuals;
- 3) All employees, including both those at the front of the house and the back of the house, must wear face coverings at all times, with no exceptions;
- 4) All patrons must wear face coverings at all times, except for eating and drinking;
- 5) No musical performances may be held; and
- 6) There can be no food court seating.

This rollback goes into effect on Sunday, December 13, 2020, and will remain in effect until rescinded or until the state of emergency is ended, whichever occurs first.

As always, all licensees must ensure that they comply with the laws of the Commonwealth of Massachusetts, and that sales of alcoholic beverages take place only as authorized by federal, state, and local law. All questions should be directed to the ABCC Executive Director Ralph Sacramone at rsacramone@tre.state.ma.us or (617) 727-3040 x 731.

(Issued December 9, 2020)

ANNUAL
COMMITTEE
PRESENTATIONS

**TOWN OF HARWICH
BOARD OF ASSESSORS
732 MAIN STREET
HARWICH, MA 02645
TEL: (508) 430-7503 FAX: (508) 430-7086**



To: Larry Ballantine, Chairman
Harwich Board of Selectmen

From: Board of Assessors,
Richard Waystack
Bruce Nightingale
Jay Kavanaugh

CC: Joseph Powers, Interim Town Administrator
Donna Molino, Director of Assessing

Date: December 14, 2020

RE: Annual Meeting and Report, 2020

The Board of Assessor's, Richard Waystack, Bruce Nightingale and Jay Kavanaugh, in this annual report to the Board of Selectmen, continue to discharge our primary legal responsibility of assuring a fair assessment of all property in the Town of Harwich in a professional manner.

The Board remains true to its mission by remaining consistent, with exemplary attendance and focus on its regulatory role and in assisting the Department in creating and overseeing policies. Each member has been duly sworn in by the Town Clerk, Mrs. Doucette, and all have completed required ethics training. We are at full board capacity with three appointed members with staggered terms.

Our relationship with the Department Head, Donna Molino and her staff is strong. All parties respect the fact that our Board, with its statutory requirements, is primarily a policy setting and regulatory Board. Daily operations of the Department are left to those responsible, Ms. Molino and the hierarchy of the Finance Department. Ms. Molino continues to update the board on operational matters and her level of communication with the Board allows us to focus our tasks on the regulatory and policy issues that fall within our responsibility. The Department does remain understaffed with a vacancy of a staff member at this time.

The Town of Harwich is awaiting our state certification for growth and property values for FY 2021 as part of our five year required revaluation.. This state mandated review has been done in a timely manner, with the competent assistance of our outside contractor, Paul S. Kapinos & Associates. Taxpayers will be able to view a list of updated valuations in person at the Assessor's Office, Community Center, Brooks Free Library, as well as online through the Assessor's website once available.

It is our intention for tax bills to be sent out in a timely manner for the 20th consecutive year. This is our primary function and goal. Any delay in the distribution of tax bills can be costly to the Town in terms of lost revenue and interest.

The Board oversees and approves numerous programs which are available for our Seniors, Veterans, spouses of Veterans, sight impaired citizens and those who may need assistance in paying taxes because of age, infirmity or financial condition.

The Board oversees several other programs available through exemptions and deferrals which are readily available to meet the needs of our community. In addition, we provide the criteria for assessing property in Harwich, the abatement process and timetables to file. A list for these programs is available online. A continuous goal is to make our community aware of all programs available to the taxpayers. The Board has continued its outreach in the community by partnering with the Council of Aging to promote the tax work-off program with volunteerism throughout Town Departments. Currently, there are opportunities for taxpayers to utilize the Senior Tax Work-Off provision where a taxpayer volunteers for the town under specific guidelines to lessen their tax burden. Requirements for this program mirror those of the Senior Exemption. We do allow an "Angel Volunteer Program" where friends or relatives of a qualifying Senior can complete the volunteer hours, and the applicant may obtain a tax credit of up to \$3,000. We are proud that the Board is proactive in seeking options for the Seniors of our community to extend if possible, residency in their homes.

The Tax Deferral Option is another reasonable option for seniors who have equity in their homes but are having difficulty in meeting tax obligations. The Deferral Option allows a Senior Taxpayer to defer any or all their annual tax liability. The deferral is at simple, non-compounded interest and can be paid back at any time. The application is simple and requires a deed rider to be filed at the Barnstable County Registry of Deeds. It does take first position, and as a result, must be bank approved if there is any mortgage, including a reverse mortgage on the property. Upon sale of the property, the Town is in first position to have any accrued taxes repaid. This can have a substantial impact on a taxpayer, and we encourage all who may have interest to inquire at the front desk of the Assessor's Office at Town Hall.

At the Annual Town Meeting this year, the Town Meeting Voters approved two articles that will impact our residents and taxpayers directly. For those who apply for the Tax Deferral Option, the simple interest rate has been reduced to 5% from 8% to represent current fiscal policy.

To address those in our community under the age of 60 who are facing hardship, economically or in terms of health, and who are struggling to pay their tax bills, Article 26 was passed unanimously. This will allow the Town of Harwich to request that the State Legislature to pass a bill amending the Hardship Exemption for taxpayers under the age of 60, as a local option or as a home rule petition.

For those taxpayers who wish to challenge their assessed value, abatement hearings will commence via an online platform during the month of February, thirty days after mailing of the third tax bill. This is the only time of year that assessed values may be challenged. **We would encourage all those who travel during the winter months to pay close attention to their third billing, as the new valuations will be available for the first time. The Board of Assessors must abide by State statute which requires the Board to act upon abatement application within three months.** We will complete this task on time and cannot extend this period due to late filings. Abatement applications will be accepted at the Assessor's Office between January 1, 2021 and February 1, 2021. The 'Application for Abatement' will be available on the Town of Harwich website as of January 1 and may be filed with the Harwich Board of Assessors **after** January 1, 2021 but must be postmarked no later than February 1, 2021 in order to be considered as timely filed. No late file applications will be considered.

Property Record Cards (PRC) and Town Assessments and Assessor's maps continue to be available on the Town Web site. This technology update has been a direct goal of the Assessors and allows greater productivity for our staff while allowing greater access for our public records. The field appraiser position is now outsourced for better efficiency.

The Board of Assessors normal meets monthly, Monday's at 5:30 in the Assessor's Office. During this year of Covid, we meet via the online platform provided by the town. Our posted meetings are open to

the public, apart from Executive Sessions. All exemptions, deferrals and abatements are subject to Executive Session, following state and town protocols. During Abatement timeframe we increase our meetings to meet the demands of statutory requirements. Attendance at meetings is exemplary, and there are no vacancies currently. Member of the Board of Assessors are required to obtain state certification as a standard for service, and all members are duly certified at this time.

It is our honor and pleasure to assist the taxpayers of Harwich as we continue to meet our fiduciary responsibilities of civic service in carrying out our regulatory role. We thank the Board of Selectmen for their faith in our abilities to carry out our responsibilities.

2020 Annual Report of the Board of Health

I want to thank the Board of Selectmen for giving us the opportunity to meet with you tonight. In particular, we thank our liaison, Larry Ballantine for being a steady presence at our meetings.

All board members have been sworn in and have taken their state ethics course. And there have been no recurrent absences and only a couple of excused absences. All meetings are posted and advertised in accordance with the Open Meeting Law and meeting minutes are voted and available to the public for past meetings online as well as in hard copy at the Health Department.

2020 has been one of the most challenging years for the Board of Health in memory.

- While the year began rather routinely, it quickly became mired in dealing with COVID-19 and governmental efforts to slow down its spread. While much of the guidance was coming directly from the governor's office, coordinating and implementing it all, as well as making sure the public received accurate information, fell to Meggan Eldredge, the Town Health Director. As relates to COVID, much of our focus on the board involved working in conjunction with her. Many discussions ensued about appropriate safety orders for public places. We did vote on an Emergency Order for facial coverings along Rt. 28 between Bank Street and Lower County Road. We met to review and vote an implementation of Mandatory Workplace Safety Standards training manual. Even with so many things going on almost daily, we were able to step back and assess the complimentary, but separate, roles of the Board of Health (in the policy arena) and the Health Director (implementing policy and guiding the day to day activities of the Health Department). That has strengthened us during the crisis and will certainly help as we (hopefully) finally put COVID-19 behind us.

But even with all the things related to COVID going on, other important business was addressed:

- The board met with representatives of Protect Our Cape Cod Aquifer, or POCCA, to receive a presentation regarding glyphosate (a chemical found in Round-Up as well as other weed killing products). We discussed their request to ban its use from town owned lands. Out of this, we reviewed a draft of The Town of a Harwich Nutrient and Pesticide Control Bylaw, as well as education efforts which might be undertaken with the general public.
- We held a discussion to adopt the Massachusetts Safety Standards for Restaurants and incorporate them into the Harwich Board of Health Food Service Regulations
- We reviewed the Fiscal Year '21 VNA Contract.
- We performed a review of The Town of Harwich Public & Semi-Public Bathing Beaches, going over testing frequency, results and performing a regulatory review.
- We had discussions on Health Department staffing levels and duties leading to a budget request for additional staff and some changes to job descriptions.
- We adopted a Board of Health Mission Statement
- And we reviewed and adopted an amended Board of Health definition of a bedroom

Board of Health Agenda Stats:

- 12 properties requested variances from Title 5
- 3 Environmental Impact Reports were reviewed

- 2 properties requested reconsideration of previous orders of conditions
- 1 public bathing beach requested a sampling variance
- 1 review of a food service seating plan was done for a new food establishment
- 1 request was heard to transfer an existing retail tobacco permit to an adult only tobacco permit
- 1 extension request was heard to extend a Board of Health condition regarding a tobacco permit condition
- 1 tobacco fine hearing was held
- 1 food service suspension hearing was held
- 1 waiver was requested to use a septic system until sewer is available
- 1 show cause hearing was held regarding a failed septic
- Health Director Eldredge provided COVID-19 updates at every meeting since March 17, 2020

At this time, I would like to recognize the efforts of the Town's dedicated Health Department staff who work daily to keep us all safe. They are Meggan Eldredge, our Health Director, Kathleen O'Neill our Senior Health Agent, Geri Leonard our Part Time Health Inspector, Jennifer Clarke our Department's Executive Assistant. And we wish our now retired Part Time Health Inspector all the best.

As well, thanks to the other members who make up the Board of Health: Sharon Pflieger, MS, our Vice Chair, Ron Dowgiallo, D.M.D., Matt Antoine, and our newest member, Kevin DuPont, RN. I also wish to recognize Matthew Cushing, M.D. for his service and wish him well in his future endeavors.

In closing, it remains an honor to serve the Town of Harwich.

Respectfully submitted,

Pamela R Howell, RN

Harwich Board of Health Chair

TOWN OF HARWICH
Council on Aging
100 Oak Street
HARWICH, MA 02645
TEL: (508) 430-7550



To: Larry Ballantine, Chairman
Harwich Board of Selectmen

From: Council on Aging
Richard Waystack, Chairman
Carol Thayer, Vice Chairman
Ralph Smith
James Mangan
Joanne Lepore
Angelina Chilaka
Justin White, HFD

CC: Joseph Powers, Interim Town Administrator
Emily Mitchell, Director, Harwich Council on Aging

Date: December 8, 2020

RE: Annual Meeting with the Board of Selectmen

The Council on Aging, in this annual report to the Board of Selectmen, continues to promote our mission which is to support and advocate for older adults, their families, and caregivers.

The Council serves this mission in a variety of ways. In ordinary circumstances, we organize or sponsor programs designed to meet a wide variety of seniors' needs including entertainment, health and fitness, socialization, nutrition, and more. We bring in SHINE counselors who assist residents in navigating the complicated world of health insurance, attorneys who specialize in Elder Law, caseworkers from the Homeless Prevention Council, specialists in providing foot care, specialized support groups, a monthly dental clinic, and video conferencing technology that allows people to make appointments regarding Social Security without having to travel to the Hyannis office. We provide free transportation to any resident who needs it to all Council

on Aging programming as well as to the Family Pantry, the library, local grocery stores, and further locations as well.

This past year saw the loss of a caring, dedicated member of our Board, Lee Culver. So much has been said about Lee and his contributions, not only to the Council on Aging and the older adults of Harwich, but to the entire community. His leadership, counsel and passion were a cornerstone of his service. He is sorely missed, but his legacy will remain with the Council on Aging.

With the onset of COVID-19 in March 2020, the COA had to overhaul all operations. With older adults facing some of the highest health and mortality risks associated with virus, coupled with the impact of extended isolation on physical, mental, and cognitive health, the need for COA services has never been higher. The department transitioned from majority onsite services to a community based model and prioritized resources to meet the most essential needs. Without missing a day, the COA switched from onsite lunches to no-contact community distributions. They are currently serving approximately 60-70 meals per day and 85 individuals each week. They've partnered with the Family Pantry and local grocery stores and pharmacies to ensure continuous access to food, medications, and other essentials. Transportation services continue and are operating with greatly reduced capacity (2 riders/trip rather than 12 riders/trip pre-COVID) and under enhanced sanitation protocols. The COA van has expanded ride locations to include pharmacies, banks, and the Post Office, as well as to essential medical appointments (a need previously met by volunteer drivers; service absorbed onto COA van to allow appropriate physical distancing).

Beginning in July, the COA resumed limited onsite services. These include appointments with staff as well as 1:1 meetings with professionals including podiatry care, Mobile Dental Hygiene Clinic, elder law attorneys, and the Town Nurse Wellness Clinic. They continue to facilitate remote services, notably with SHINE counselors for assistance with the Medicare Open Enrollment process. The department has worked to bring fun programming to people at home, distributing activity kits, fitness equipment, indoor vegetable gardening projects, and more. They have partnered with volunteers and with the Academic Public Health Volunteer Corps to provide ongoing opportunities for socialization. Outreach services continue in a modified format to help people with benefits applications, needs assessment, and connection to resources that allow people to remain safely and independently in their homes.

We continue to utilize and maximize our software, My Senior Center, which has allowed the Council to better serve the needs of our members. It has become an absolute necessity in this difficult year of Covid. This software allows us to manage events, track program attendance and volunteer hours, to communicate with members in a variety of ways, and to track statistics that are useful both for program evaluation and when applying for grant funding. The communication tools, which include the ability to send robocalls and to generate groups and email lists, have been enormously helpful. Staff can send event reminders, distribute the newsletter electronically, and provide information to our most at risk clients during emergencies.

We document attendance for all events and programs, volunteer hours, and transportation services. In total for FY 20, we served 1546 unique individuals. FY 21 statistics are harder to capture. Many programs and events remain on hold. Many of the services and supports currently provided by the COA are offered by phone and email and are therefore harder to quantify. Of services we do keep detailed statistics for, we have distributed meals to 167 unique individuals, transported 86 individuals, delivered groceries to 43 people, distributed at home activities to approximately 300 people, served approximately 250 people onsite for 1:1 appointments with staff and professionals, and have provided professional and social support through thousands of phone calls.

As a note, all these statistics are likely an underrepresentation of the number of people served, as so program participants are inconsistent in following the sign in process. Modified service provision during COVID has further impacted program sign in, as most services are offered remotely without a formal sign-in. Additionally, these numbers do not capture the extensive work of the Social Services Coordinator, Town Nurse, and Director done outside the COA including home visits, nursing care, and events held offsite.

Additionally, the bimonthly COA newsletter which serves as the primary source for sharing information about COA programs and resources with the public, is mailed to approximately 1,900 homes each month. The COA no longer has the ability to utilize a non profit postage rate to mail our newsletter and we thank the generosity of the Friends of The Harwich Council on Aging for assisting with these unanticipated costs for FY 21. With the help of dedicated volunteers, another 300 copies are distributed to public locations around town including Town Hall, the libraries, Public Safety, and area housing complexes and medical offices. With the use of My Senior Center, we are now able to distribute the newsletter via email as well!

Once again, there has been a change in personnel in the department. Susanna Keith, Social Services Coordinator left and we were very fortunate to promote Julie Witas, our Program Specialist I, to the position. Ms. Witas has worked diligently since her promotion to cover the essential functions of both positions. She has a background in case management, program management, and healthcare research.

The Council on Aging could not provide the breadth and scope of programs and services without the aid of our 90 plus volunteers. Their donations of time, energy, and experience make our Council successful in reaching out to the countless members of our community who we serve. During non-COVID operations, our volunteers provide health insurance counseling through the SHINE program, offer specialized legal counseling, income tax preparation, rides to medical appointments, friendly visiting, and telephone reassurance. They also prepare, serve, and deliver meals, and many serve as the first smiling and helpful faces you see when you walk into the COA offices. During COVID, we have recruited many new volunteers to deliver meals and groceries, help with special projects, and recently, to resume assistance with reception services. Though volunteer services like medical transportation and Friendly Visiting are temporarily on hold, volunteers have found new ways to get involved and to serve

community needs. To translate this service into numbers, volunteers provide upwards of 5,600 hours of service each year– this is roughly equivalent to three full-time staff members!

Our Volunteer Recognition events have been suspended due to an abundance caution. We look forward to resuming them in 2021 once it is safe to do so and contingent on public health trends and local, state, and federal guidelines. . The Board and Council are committed to holding two volunteer recognition events every year, as we could not provide the scope of services we offer without their support.

The COA has an exceptional relationship with the Friends of the Harwich Council on Aging under President Jack Brown, a 501(c)(3) nonprofit organization which supports programs and needs outside of the town budget for our seniors. A member of the COA attends Friends meetings monthly to coordinate programs and to continue to monitor the needs our senior population. Through their generosity, they have helped provide emergency assistance to seniors in need, purchased needed medical equipment for the COA to distribute, and covered the unanticipated postage costs for the bimonthly newsletter to ensure the COA can rely on this mechanism to share up to date information about programs and services with the community.

Our relationship with the Department staff continues to excel. Emily Mitchell, Director, Julie Witas, Social Services Coordinator, Susan Jusell, Town Nurse, Linda St. Pierre, Town Chef, Marie Carlson, Executive Assistant, and our dedicated Van Drivers, all of whom serve as integral members of the team in providing the services and programs that enable our seniors to be active, thriving members of our community.

The Council on Aging normally meets monthly, the first Wednesday of each month at the Community Center at 10:00 AM. Due to the pandemic, we have migrated to the Town's online platform as required. The Board did not meet from April through August, as the Town was prioritizing meetings of regulatory boards and committees during that time. We were eager to resume meetings in September once authorized and we are anxious to resume in person meetings when free to do so. Mr. Donald Howell is the liaison to the Council on Aging, and we appreciate his availability as our link to the Board of Selectmen. Our posted meetings are open to the public, and we welcome any and all who share in our mission of providing comprehensive support for the older adult population in Harwich. Our members' attendance is excellent, and we are awaiting the appointment of alternate member, Lt. Justin White of the Harwich Fire Department to a full member of the Council.

It is our honor and pleasure to assist the residents of Harwich, their families and caregivers; we thank you for the opportunity to serve!

NEW BUSINESS



Jean M. Lorizio, Esq.
Commission Chairman

Commonwealth Of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, MA 02150-2358

2021
Retail License Renewal

License Number: 00016-RS-0506

Municipality: HARWICH

License Name : Brax Restaurant Management Inc

License Class: Annual

DBA : Brax Landing

License Type: Restaurant

Premise Address: 705 Main Street Harwich, MA 02646

License Category: All Alcoholic Beverages

Manager: Jeffrey Gomes

I hereby certify and swear under penalties of perjury that:

1. I am authorized to sign this renewal pursuant to M.G.L. Chapter 138;
2. The renewed license is of the same class, type, category as listed above;
3. The licensee has complied with all laws of the Commonwealth relating to taxes; and
4. The premises are now open for business (if not, explain below).

Jeffrey A Gomes

Signature

11/4/2020

Date

Jeffrey S Gomes

Printed Name

Owner/PMCS

Title

Additional Information:



Jean M. Lorizio, Esq.
Commission Chairman

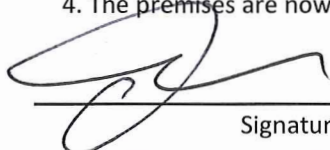
Commonwealth Of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, MA 02150-2358

2021
Retail License Renewal

License Number: 04210-HT-0506	Municipality: HARWICH
License Name : Harwich Inn and Tavern LLC	License Class: Annual
DBA : Harwich Inn And Tavern	License Type: Hotel/Innkeeper
Premise Address: 77 Route 28 Harwich, MA 02671	License Category: All Alcoholic Beverages
Manager: James Tsoukalas	

I hereby certify and swear under penalties of perjury that:

1. I am authorized to sign this renewal pursuant to M.G.L. Chapter 138;
2. The renewed license is of the same class, type, category as listed above;
3. The licensee has complied with all laws of the Commonwealth relating to taxes; and
4. The premises are now open for business (if not, explain below).



 Signature
 James Tsoukalas

 Printed Name

11/30/20

 Date
 Owner

 Title

Additional Information:



OFFICE OF THE SELECTMEN
732 MAIN STREET
HARWICH, MA 02645
508-430-7513

APPLICATION FOR COMMON VICTUALLERS LICENSE

Fee: \$50 New application Annual # of seats n/a
Renewal Seasonal Opening date _____

In accordance with the provisions of the Statutes relating thereto, application for a Common Victuallers license is hereby made by:

Business Name DENT DONUTS LLC Phone 508-432-1354

Doing Business As (d/b/a) Dunkin Donuts

Business Address 175 Rte 137 ~~133 Pleasant Lake Ave~~ Harwich MA 02645

Mailing Address _____

Email Address _____

Name of Owner _____

(If corporation or partnership, list name, title and address of officers)

Neal Faulkner President

Tony Placido VP

Cristian Jarama
Signature of applicant & title

Federal I.D. # _____

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required under law.

Cristian Jarama
Signature of individual or corporate name

By _____
Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes and regulations, including zoning ordinances, health regulations and building and fire codes.

[Signature]
Building Commissioner

[Signature]
Board of Health

[Signature]
Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
 732 MAIN STREET
 HARWICH, MA 02645
 508-430-7513

APPLICATION FOR COMMON VICTUALLERS LICENSE

Fee: \$50 New application _____ Annual _____ # of seats _____
 Renewal ✓ Seasonal _____ Opening date _____

In accordance with the provisions of the Statutes relating thereto, application for a Common Victuallers license is hereby made by:

Business Name DENT DONUTS LLC Phone 508-430-8594

Doing Business As (d/b/a) Dunkin Donuts

Business Address 481 Rte 28, Harwich Port MA 02646

Mailing Address _____

Email Address _____

Name of Owner _____

(If corporation or partnership, list name, title and address of officers)

Neal Faulkner President

Tony Placido VP

Courten Placco Federal I.D. # _____
 Signature of applicant & title

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required under law.

Courten Placco By _____
 Signature of individual or corporate name Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes and regulations, including zoning ordinances, health regulations and building and fire codes.

[Signature]
 Building Commissioner

[Signature]
 Board of Health

[Signature]
 Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
 732 MAIN STREET
 HARWICH, MA 02645
 508-430-7513

APPLICATION FOR COMMON VICTUALLERS LICENSE

Fee: \$50 New application _____ Annual _____ # of seats 66
 Renewal Seasonal _____ Opening date MAY, 2005

In accordance with the provisions of the Statutes relating thereto, application for a Common Victuallers license is hereby made by:

Business Name Hot Stone, INC Phone 508-432-9911

Doing Business As (d/b/a) Hot Stone Saloon

Business Address 551 Rt 28 / Harwich Port, MA / 02646

Mailing Address _____

Email Address _____

Name of Owner Gabe Leidner

(If corporation or partnership, list name, title and address of officers)

Gabe Leidner, owner

[Signature]

Signature of applicant & title

Federal I.D. #

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required under law.

Signature of individual or corporate name

By _____
 Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes and regulations, including zoning ordinances, health regulations and building and fire codes.

[Signature]
 Building Commissioner

[Signature]
 Board of Health

[Signature]
 Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN STREET
HARWICH, MA 02645
508-430-7513

APPLICATION FOR COMMON VICTUALLERS LICENSE

Fee: \$50 New application Annual # of seats 16
Renewal Seasonal Opening date _____

In accordance with the provisions of the Statutes relating thereto, application for a Common Victuallers license is hereby made by:

Business Name MURPHY/TORRES LLC Phone: _____

Doing Business As (d/b/a) UPPER CRUST PIZZA

Business Address 1421 ORLEANS ROAD EAST HARWICH MA 02645

Mailing Address _____

Email Address _____

Name of Owner LANCE R. MURPHY

(If corporation or partnership, list name, title and address of officers)

Lance R. Murphy ceo _____
Signature of applicant & title Federal I.D. #

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief, I have filed all state tax returns and paid all state taxes required under law.

Murphy/Torres LLC By Lance R. Murphy
Signature of individual or corporate name Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes and regulations, including zoning ordinances, health regulations and building and fire codes.

[Signature] [Signature] [Signature]
Building Commissioner Board of Health Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN STREET
HARWICH, MA 02645
508-430-7513

APPLICATION FOR COMMON VICTUALLERS LICENSE

Fee: \$50 New application Annual # of seats _____
Renewal Seasonal Opening date _____

In accordance with the provisions of the Statutes relating thereto, application for a Common Victuallers license is hereby made by:

Business Name shogun inc / Noble House Phone 508 432 8855

Doing Business As (d/b/a) Noble House

Business Address 21 Rte 28 W. Harwich MA 02671

Mailing Address Same

Email Address _____

Name of Owner Amy Liang

(If corporation or partnership, list name, title and address of officers)

Amy Amy owner
Signature of applicant & title Federal I.D. # _____

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required under law.

Amy By _____
Signature of individual or corporate name Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes and regulations, including zoning ordinances, health regulations and building and fire codes.

[Signature]
Building Commissioner

[Signature]
Board of Health

[Signature]
Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN ST., HARWICH, MA 02645
www.harwich-ma.gov
(508) 430-7513

LICENSE FOR: CLASS I - AGENTS OR SELLERS
 CLASS II - USED CAR DEALERS
 CLASS III - JUNK CAR DEALERS
 CLASS IV - AUTO REPAIRMAN

NEW APPLICATION RENEWAL FEE: \$100 each

BUSINESS NAME Bassil Brothers inc dba/ United gas
D/B/A United gas PHONE 508 432 6940
BUSINESS ADDRESS 570 Route 28 Harwichport Ma 02646
MAILING ADDRESS Same
NAME OF OWNER Rabih Bassil
EMAIL ADDRESS _____

IF CORPORATION OR PARTNERSHIP, LIST OFFICER INFORMATION BELOW.

Name	Title	Address
<u>Rabih Bassil</u>	<u>owner</u>	<u>0 - 1</u>

[Signature] Signature of applicant & title Federal I.D. # _____

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required by law.

[Signature] Signature of individual or corporate name By [Signature] Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected & found to be in compliance with applicable local codes & regulations including zoning ordinances, health regulations, building & fire codes.

[Signature] Building Commissioner [Signature] Board of Health [Signature] Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN ST., HARWICH, MA 02645
www.harwich-ma.gov
(508) 430-7513

LICENSE FOR: _____ CLASS I - AGENTS OR SELLERS
_____ CLASS II - USED CAR DEALERS
_____ CLASS III - JUNK CAR DEALERS
_____ CLASS IV - AUTO REPAIRMAN

_____ NEW APPLICATION RENEWAL FEE: \$100 each

BUSINESS NAME BB'S AUTOMOTIVE

D/B/A _____ PHONE 508 432 6607

BUSINESS ADDRESS 705 RT 28 Harwichport MA 02646

MAILING ADDRESS same

NAME OF OWNER Barry Bessette

EMAIL ADDRESS _____

IF CORPORATION OR PARTNERSHIP, LIST OFFICER INFORMATION BELOW.

Name	Title	Address

[Signature]
Signature of applicant & title

Federal I.D. #

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required by law.

[Signature]
Signature of individual or corporate name

By _____
Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected & found to be in compliance with applicable local codes & regulations including zoning ordinances, health regulations, building & fire codes.

[Signature]
Building Commissioner

[Signature]
Board of Health

[Signature]
Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN ST., HARWICH, MA 02645
www.harwich-ma.gov
(508) 430-7513

LICENSE FOR: CLASS I - AGENTS OR SELLERS
 CLASS II - USED CAR DEALERS
 CLASS III - JUNK CAR DEALERS
 CLASS IV - AUTO REPAIRMAN

NEW APPLICATION RENEWAL FEE: \$100 each

BUSINESS NAME Cape & Islands Collision Inc

D/B/A Cranberry Auto LLC PHONE 508-951-4280

BUSINESS ADDRESS 161 Queen Anne Rd Harwich MA 02645

MAILING ADDRESS _____

NAME OF OWNER William + Margaret Vincent

EMAIL ADDRESS _____

IF CORPORATION OR PARTNERSHIP, LIST OFFICER INFORMATION BELOW.

Name	Title	Address
<u>Margaret Vincent</u>	<u>Manager</u>	_____

<u>Margaret Vincent</u>	<u>Manager</u>
Signature of applicant & title	Federal I.D. #

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required by law.

Margaret Vincent By Manager
Signature of individual or corporate name Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected & found to be in compliance with applicable local codes & regulations including zoning ordinances, health regulations, building & fire codes.

<u>[Signature]</u>	<u>[Signature]</u>	<u>[Signature]</u>
Building Commissioner	Board of Health	Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN ST., HARWICH, MA 02645
www.harwich-ma.gov
(508) 430-7513

LICENSE FOR: CLASS I - AGENTS OR SELLERS
 CLASS II - USED CAR DEALERS
 CLASS III - JUNK CAR DEALERS
 CLASS IV - AUTO REPAIRMAN

NEW APPLICATION RENEWAL FEE: \$100 each

BUSINESS NAME Carlos Tapia inc

D/B/A JC Auto Sales PHONE 508-432-0177

BUSINESS ADDRESS 195 Queen Anne Rd Harwich MA 02645

MAILING ADDRESS 195 Queen Anne Rd Harwich MA 02645

NAME OF OWNER Carlos Tapia, Jessica Tapia

EMAIL ADDRESS _____

IF CORPORATION OR PARTNERSHIP, LIST OFFICER INFORMATION BELOW.

Name	Title	Address
<u>Carlos Tapia</u>	<u>President</u>	
<u>Jessica Tapia</u>	<u>Secretary</u>	

[Signature] President
Signature of applicant & title Federal I.D. # _____

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required by law.

[Signature] By Carlos Tapia
Signature of individual or corporate name Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected & found to be in compliance with applicable local codes & regulations including zoning ordinances, health regulations, building & fire codes.

[Signature]
Building Commissioner

[Signature]
Board of Health

[Signature]
Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN ST., HARWICH, MA 02645
www.harwich-ma.gov
(508) 430-7513

LICENSE FOR: _____ CLASS I - AGENTS OR SELLERS
_____ CLASS II - USED CAR DEALERS
_____ CLASS III - JUNK CAR DEALERS
 X CLASS IV - AUTO REPAIRMAN

_____ NEW APPLICATION X RENEWAL FEE: \$100 each

BUSINESS NAME Dave's Garage

D/B/A Dave's Garage PHONE 508. 432. 5991

BUSINESS ADDRESS 910 Route 28 S, Harwich MA 02661

MAILING ADDRESS PO Box 886 S, Harwich MA 02661

NAME OF OWNER David J Coomber

EMAIL ADDRESS _____

IF CORPORATION OR PARTNERSHIP, LIST OFFICER INFORMATION BELOW.

Name Title Address

~~DAVID~~

David J. Coomber owner Federal I.D. # _____
Signature of applicant & title

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required by law.

David J Coomber By _____
Signature of individual or corporate name Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected & found to be in compliance with applicable local codes & regulations including zoning ordinances, health regulations, building & fire codes.

[Signature]
Building Commissioner

Myan Eldredge
Board of Health

[Signature]
Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN ST., HARWICH, MA 02645
www.harwich-ma.gov
(508) 430-7513

LICENSE FOR: _____ CLASS I - AGENTS OR SELLERS
_____ CLASS II - USED CAR DEALERS
_____ CLASS III - JUNK CAR DEALERS
 CLASS IV - AUTO REPAIRMAN

_____ NEW APPLICATION _____ RENEWAL FEE: \$100 each

BUSINESS NAME NICK & Claudine Enterprises LLC

D/B/A Westharwich SAU-ON-GAS PHONE 508 430 9923

BUSINESS ADDRESS 4 RT 28 Westharwich, MA 02671

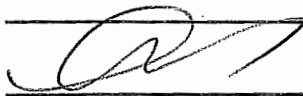
MAILING ADDRESS SAME

NAME OF OWNER NICK IMAD

EMAIL ADDRESS _____

IF CORPORATION OR PARTNERSHIP, LIST OFFICER INFORMATION BELOW.

Name	Title	Address


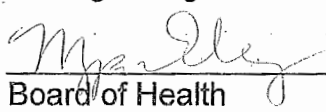
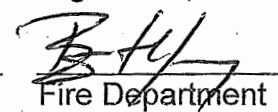
 OWNER
Signature of applicant & title Federal I.D. # _____

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required by law.

Signature of individual or corporate name By _____
Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected & found to be in compliance with applicable local codes & regulations including zoning ordinances, health regulations, building & fire codes.

  
Building Commissioner Board of Health Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN ST., HARWICH, MA 02645
www.harwich-ma.gov
(508) 430-7513

LICENSE FOR: _____ CLASS I - AGENTS OR SELLERS
_____ CLASS II - USED CAR DEALERS
_____ CLASS III - JUNK CAR DEALERS
_____ CLASS IV - AUTO REPAIRMAN

_____ NEW APPLICATION X RENEWAL FEE: \$100 each

BUSINESS NAME Reflections Auto Restorations And Collision

D/B/A _____ PHONE 508-432-8300

BUSINESS ADDRESS 4 Evergreenway Harwich, MA 02645

MAILING ADDRESS 4 Evergreenway Harwich, MA 02645

NAME OF OWNER Clarence R Ekerson Howard Kelley

EMAIL ADDRESS _____

IF CORPORATION OR PARTNERSHIP, LIST OFFICER INFORMATION BELOW.

Name	Title	Address
<u>Clarence R Ekerson</u>	<u>President</u>	_____
<u>Howard Kelley</u>	<u>Treas - Sec</u>	_____

[Signature]
Signature of applicant & title Federal I.D. # _____

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required by law.

Reflections Auto Restorations And Collision By [Signature] President - owner
Signature of individual or corporate name Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected & found to be in compliance with applicable local codes & regulations including zoning ordinances, health regulations, building & fire codes.

[Signature] [Signature] [Signature]
Building Commissioner Board of Health Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN ST., HARWICH, MA 02645
www.harwich-ma.gov
(508) 430-7513

LICENSE FOR: CLASS I - AGENTS OR SELLERS
 CLASS II - USED CAR DEALERS
 CLASS III - JUNK CAR DEALERS
 CLASS IV - AUTO REPAIRMAN

NEW APPLICATION RENEWAL FEE: \$100 each

BUSINESS NAME Sam's Auto repairs & Sales Inc

D/B/A Sam's Automotive Center PHONE 508 432 1096

BUSINESS ADDRESS 413 Rt 28 Harwichport MA 02646

MAILING ADDRESS Same

NAME OF OWNER Wissam Tarek

EMAIL ADDRESS _____

IF CORPORATION OR PARTNERSHIP, LIST OFFICER INFORMATION BELOW.

Name	Title	Address

[Signature] owner
Signature of applicant & title Federal I.D. # _____

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required by law.

[Signature]
Signature of individual or corporate name By Wissam Tarek
Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected & found to be in compliance with applicable local codes & regulations including zoning ordinances, health regulations, building & fire codes.

[Signature] Building Commissioner [Signature] Board of Health [Signature] Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN ST., HARWICH, MA 02645
www.harwich-ma.gov
(508) 430-7513

LICENSE FOR: _____ CLASS I - AGENTS OR SELLERS
_____ CLASS II - USED CAR DEALERS
 CLASS III - JUNK CAR DEALERS
 CLASS IV - AUTO REPAIRMAN

_____ NEW APPLICATION RENEWAL FEE: \$100 each

BUSINESS NAME SCOTT'S CYCLE

D/B/A SCOTT D Hardy PHONE 774-237-7357

BUSINESS ADDRESS 210 Queen Anne Rd Unit 1 Harwich MA 02645

MAILING ADDRESS Same

NAME OF OWNER SCOTT D Hardy

EMAIL ADDRESS _____

IF CORPORATION OR PARTNERSHIP, LIST OFFICER INFORMATION BELOW.

Name	Title	Address

Scott D Hardy owner
Signature of applicant & title Federal I.D. # _____

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required by law.

Scott D Hardy
Signature of individual or corporate name By _____
Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected & found to be in compliance with applicable local codes & regulations including zoning ordinances, health regulations, building & fire codes.

[Signature]
Building Commissioner

[Signature]
Board of Health

[Signature]
Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN ST., HARWICH, MA 02645
www.harwich-ma.gov
(508) 430-7513

LICENSE FOR: _____ CLASS I - AGENTS OR SELLERS
_____ CLASS II - USED CAR DEALERS
_____ CLASS III - JUNK CAR DEALERS
 CLASS IV - AUTO REPAIRMAN

_____ NEW APPLICATION RENEWAL FEE: \$100 each

BUSINESS NAME STEVEN'S AUTO REPAIR

D/B/A STEVEN'S AUTO REPAIR PHONE 508-432-2782

BUSINESS ADDRESS 216 MAIN STREET WEST HARWICH MA 718

MAILING ADDRESS STEVEN'S AUTO REPAIR PO BOX 224 HARWICH MA 02645

NAME OF OWNER STEVEN SNOW

EMAIL ADDRESS _____

IF CORPORATION OR PARTNERSHIP, LIST OFFICER INFORMATION BELOW.

Name	Title	Address

Steven Snow OWNER _____
Signature of applicant & title Federal I.D. #

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required by law.

Signature of individual or corporate name By _____
Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected & found to be in compliance with applicable local codes & regulations including zoning ordinances, health regulations, building & fire codes.

[Signature]
Building Commissioner

[Signature]
Board of Health

[Signature]
Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN ST., HARWICH, MA 02645
www.harwich-ma.gov
(508) 430-7513

LICENSE FOR: _____ CLASS I - AGENTS OR SELLERS
_____ CLASS II - USED CAR DEALERS
_____ CLASS III - JUNK CAR DEALERS
X _____ CLASS IV - AUTO REPAIRMAN

_____ NEW APPLICATION X RENEWAL FEE: \$100 each

BUSINESS NAME WAYNE'S AUTO SERVICE

D/B/A WAYNE'S AUTO SERVICE PHONE 508 430 2359

BUSINESS ADDRESS 663 MAIN STREET HARWICH 02645

MAILING ADDRESS 663 main st. Harwich 02645

NAME OF OWNER WAYNE ELDRIDGE

EMAIL ADDRESS _____

IF CORPORATION OR PARTNERSHIP, LIST OFFICER INFORMATION BELOW.

Name	Title	Address

Wayne Eldridge owner
Signature of applicant & title Federal I.D. # _____

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required by law.

Wayne Eldridge
Signature of individual or corporate name By _____
Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected & found to be in compliance with applicable local codes & regulations including zoning ordinances, health regulations, building & fire codes.

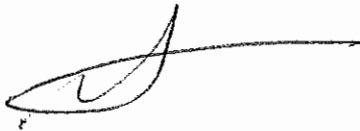
[Signature] Building Commissioner
Kathleen A. O'Neill Board of Health
[Signature] Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.

To Whom It May Concern,

We are closing for the season at both the Mad Minnow and 3 Monkeys, for a number of reasons including Covid 19. We are quite looking forward to a better 2021 season. Thank you.

Sincerely,



12/8/20

Mike Strangfeld

Owner

Mad Minnow Bar & Kitchen

3 Monkeys Sushi + Street Bar + Kitchen

554 Route 28 Harwich Port, MA 02646



Sent via email:

From: Benjamin Porter [<mailto:bporter7@hotmail.com>]

Sent: Thursday, December 10, 2020 12:22 PM

To: Danielle Delaney <ddelaney@town.harwich.ma.us>

Subject: Lanyard Closure

To whom it may concern,

The Lanyard will be closing Sunday December 13th for an indefinite amount of time. Given the circumstances surrounding the global pandemic and the states restrictions on restaurants ability to survive financially it is impossible to give a reopening date at this time.

We trust our Liquor License for 2021 will be issued since we were required to send all fees associated with our application.

Thank you, have a nice day

Ben Porter

The Lanyard Bar and Grill

**AGREEMENT FOR PROFESSIONAL
ENGINEERING SERVICES
BETWEEN
THE TOWN OF HARWICH, MASSACHUSETTS
AND GHD
FOR TOWN-WIDE SEWER MODELING**

THIS AGREEMENT made this ____ day of _____, 2020 between GHD, with a usual place of business at 1545 Iyannough Road, Hyannis, MA 02601, hereinafter called the "ENGINEER," and the Town of Harwich, MA, acting by its Board of Selectmen, with a usual place of business at Harwich Town Hall, 732 Main Street, Harwich, MA 02645, hereinafter called the "TOWN".

The ENGINEER and the TOWN, for the consideration hereinafter named, agree as follows:

1. Scope of Work

The ENGINEER shall perform the work set forth in the Scope of Services attached hereto as Exhibit A.

2. Contract Price

The TOWN shall pay the ENGINEER for services rendered in the performance of this Agreement a lump sum of \$150,000, subject to any additions and deductions provided for herein at the hourly rates set forth in Exhibit B. The amount to be paid to the ENGINEER shall not exceed \$150,000 without the prior written consent of the TOWN.

3. Commencement and Completion of Work

A. This Agreement shall commence on _____ and shall expire on _____, unless terminated sooner in accordance with this Agreement.

B. Progress and Completion: ENGINEER shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure completion in a timely manner.

4. Performance of the Work

The ENGINEER shall supervise and direct the Work, using his best skills and attention, which shall not be less than such state of skill and attention generally rendered by the engineering/design profession for projects similar to the Project in scope, difficulty and location.

A. Responsibility for the Work:

- (1) The ENGINEER shall be responsible to the TOWN for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the ENGINEER. Consistent with the standard of care referenced above, the ENGINEER shall be responsible for the professional and technical accuracy for all work or services furnished by him or his consultants and subcontractors. The ENGINEER shall perform his work under this Agreement in such a competent and professional manner that detail checking and reviewing by the TOWN shall not be necessary.
- (2) The ENGINEER shall not employ additional consultants, nor sublet, assign or transfer any part of his services or obligations under this Agreement without the prior approval and written consent of the TOWN. Such written consent shall not in any way relieve the ENGINEER from his responsibility for the professional and technical accuracy for the work or services furnished under this Agreement.
- (3) All consultants must be registered and licensed in their respective disciplines if registration and licensure are required under the applicable provisions of Massachusetts law.
- (4) The ENGINEER and all consultants and subcontractors shall conform their work and services to any guidelines, standards and regulations of any governmental authority applicable to the type of work or services covered by this Agreement.
- (5) The ENGINEER shall not be relieved from its obligations to perform the work in accordance with the requirements of this Agreement either by the activities or duties of the TOWN in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the ENGINEER.
- (6) Neither the TOWN's review, approval or acceptance of, nor payment for any of the work or services performed shall be construed to operate as a waiver of any rights under the Agreement or any cause of action arising out of the performance of the Agreement.

- B. Deliverables, Ownership of Documents: One (1) reproducible copy of all drawings, plans, specifications and other documents prepared by the ENGINEER shall become the property of the TOWN upon payment in full therefor to the ENGINEER. Ownership of stamped drawings and specifications shall not include the ENGINEER's certification or stamp. Any re-use of such documents without the ENGINEER's written verification of suitability for the specific

purpose intended shall be without liability or legal exposure to the ENGINEER or to the ENGINEER's independent professional associates, subcontractors or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as an act in derogation of the ENGINEER's rights under this Agreement.

- C. Compliance With Laws: In the performance of the Work, the ENGINEER shall comply with all applicable federal, state and local laws and regulations, including those relating to workplace and employee safety.

5. Site Information Not Guaranteed; Contractor's Investigation

The TOWN shall furnish to the ENGINEER available surveys, data and documents relating to the area which is the subject of the Scope of Work. All such information, including that relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the TOWN. All such information is furnished only for the information and convenience of the ENGINEER and is not guaranteed. It is agreed and understood that the TOWN does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures will be the same as those indicated in the information furnished, and the ENGINEER must reasonably satisfy himself as to the correctness of such information. If, in the opinion of the ENGINEER, such information is inadequate, the ENGINEER may request the TOWN's approval to verify such information through the use of consultants or additional exploration. In no case shall the ENGINEER commence such work without the TOWN's prior written consent. Such work shall be compensated as agreed upon by TOWN and ENGINEER.

6. Payments to the Contractor

- A. Cost incurred on this project shall be billed monthly on a lump sum basis as outlined in the attached Scope of Services. Payment shall be due 30 days after receipt of an invoice by the TOWN.
- B. If there is a material change in the scope of work, the TOWN and the ENGINEER shall mutually agree to an adjustment in the Contract Price.
- C. If the TOWN authorizes the ENGINEER to perform additional services, the ENGINEER shall be compensated in an amount mutually agreed upon, in advance, in writing. Except in the case of an emergency, the ENGINEER shall not perform any additional services until such compensation has been so established.

7. Reimbursement

Except as otherwise included in the Contract Price or otherwise provided for under this Agreement, the ENGINEER shall be reimbursed by the TOWN: (a) at 1.0 times the actual cost to the ENGINEER of consultants retained to obtain information pursuant to Article 5 hereof or otherwise. No such reimbursement shall be made unless the rates of compensation have been

approved, in advance, by the TOWN; or (b) at 1.0 times the actual cost of additional or specially authorized expense items, as approved by the TOWN.

8. Final Payment, Effect

The acceptance of final payment by the ENGINEER shall constitute a waiver of all payment-related claims by the ENGINEER arising under the Agreement.

9. Terms Required By Law

This Agreement shall be considered to include all terms required to be included in it by the Massachusetts General Laws, and all other laws, as though such terms were set forth in full herein.

10. Indemnification

- A. General Liability: The ENGINEER shall indemnify and hold harmless the TOWN, to the proportionate extent of its liability, from and against claims, damages, losses, and expenses, including reasonable attorney's fees, to the extent directly related to the performance of this Agreement and to the extent the same relate to matters of general commercial liability, when such claims, damages, losses, and expenses are caused, in whole or in part, by the negligent or wrongful acts or omissions of the ENGINEER or his employees, agents, subcontractors or representatives.

- B. Professional Liability: The ENGINEER shall indemnify and hold harmless the TOWN, to the proportionate extent of its liability, from and against claims, damages, losses, and expenses, including reasonable attorney's fees, directly related to the performance of this Agreement and to the extent the same relate to the professional competence of the ENGINEER's services, when such claims, damages, losses, and expenses are caused, in whole or in part, by the negligent acts, negligent errors or omissions of the ENGINEER or his employees, agents, subcontractors or representatives.

Limitation of Liability: Notwithstanding anything to the contrary in this Agreement, neither party to this Agreement shall be liable to the other for any consequential, special, indirect, incidental or punitive damages arising from this Agreement including but not limited to loss of use, revenue, profits and goodwill. The foregoing disclaimer of liability shall apply regardless of whether such liability is based on breach of contract, tort (including without limitation negligence), strict liability, breach of a fundamental term, fundamental breach, or otherwise.

11. Insurance

- A. The ENGINEER shall at his own expense obtain and maintain a Professional Liability Insurance policy for errors, omissions or negligent acts directly related to the performance of this Agreement in a minimum amount of \$1,000,000.00.

- B. The coverage shall be in force from the time of the agreement to the date when all construction work for the Project is completed and accepted by the TOWN. If, however, the policy is a claims made policy, it shall remain in force for a period of three (3) years after completion.

Since this insurance is normally written on a year-to-year basis, the ENGINEER shall notify the TOWN should coverage become unavailable.

- C. The ENGINEER shall, before commencing performance of this Agreement, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with M.G.L. c.152, as amended, to all its employees and shall continue such insurance in full force and effect during the term of the Agreement.
- D. The ENGINEER shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the work covered by this Agreement in the event of loss or destruction until the final fee payment is made or all data are turned over to the TOWN.
- E. The ENGINEER shall also maintain public liability insurance, including property damage, bodily injury or death, and personal injury and motor vehicle liability insurance against claims for damages because of bodily injury or death of any person or damage to property.
- F. Evidence of insurance coverage and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Agreement. Any cancellation of insurance, whether by the insurers or by the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the TOWN at least fifteen days prior to the intended effective date thereof, which date shall be expressed in said notice.
- G. Upon request of the ENGINEER, the TOWN reserves the right to modify any conditions of this Article.
- H. Liability is limited to the proceeds of the applicable insurance policies taken out by ENGINEER under this Agreement, but not to exceed the minimum amounts of those policies specified in this Agreement.

12. Notice

All notices required to be given hereunder shall be in writing and delivered to, or mailed first class to, the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

13. Termination

- A. Each party shall have the right to terminate this Agreement in the event of a failure of the other party to comply with the terms of the Agreement. Such termination shall be effective upon seven days' notice to the party in default and the failure within that time of said party to cure its default.
- B. The TOWN shall have the right to terminate the Agreement without cause, upon ten (10) days' written notice to the ENGINEER. In the event that the Agreement is terminated pursuant to this subparagraph, the ENGINEER shall be reimbursed in accordance with the Agreement for all work performed up to the termination date.

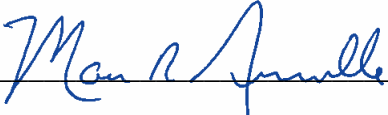
14. Miscellaneous

- A. Assignment: The ENGINEER shall not assign or transfer any of its rights, duties or obligations under this Agreement without the written approval of the TOWN.
- B. Governing Law: This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, the TOWN by its authorized representative who, however, incurs no personal liability by reason of the execution hereof or of anything herein contained, as of the day and year first above written.

ENGINEER:

TOWN OF HARWICH:

By: 

By: _____

Name: Marc Drainville, P.E.

Name: _____

Title: Vice President

Title: _____

519856/KOPE/0003

GHD's Services

GHD shall provide Basic Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Specific Project Data

Title: TOWN-WIDE SEWER MODELING OF TOWN OF HARWICH

Description: To develop a SewerCAD model for the proposed and existing sewers within the Town of Harwich (Town). The following tasks outline what is required to develop a SewerCAD Model of the existing sewers recently installed and the future sewer systems proposed as part of the Town's CWMP. Exhibit C identifies areas where the sewer model will be developed. Only shaded areas will be included in the sewer model. Non-shaded (white) parcels will not be included in the sewer model development.

The following scope of services identifies the tasks as part of this Agreement:

Task 1. Internal Chartering. Meet internally with project team members. Develop critical success factors, review past relevant information, develop proposed project schedule, and prepare for Town kick-off meeting.

Task 2. Town Kick Off Meeting. Meet with the Town and discuss the schedule, goals, milestones, and deliverables of the project. Specific modeling-related items that will be discussed at the kick-off meeting will include location of proposed pump stations, design requirements, and development of order-of-magnitude costs for new sewers.

Submittals include: Meeting Minutes.

Task 3. Flow Development. Develop a "per parcel" flow based on water use data provided by the TOWN. GHD will utilize up to the past five (5) years of water use information to develop "per parcel" flows. Flow anomalies will be reviewed on a parcel-by-parcel basis. Actual water use will be used to develop flows per parcel for buildout conditions for applicable residential, commercial, and industrial flow.

Task 4. Drawing Conversion. Develop GIS database that shall be used to import model information based on record drawing information. The database will be imported into the sewer model to populate required information for model completion. GHD will provide developed shapefiles of the existing sewer systems to the Town's Water and Sewer Department for use on the Town's GIS platform.

Task 5. Model Development – Existing System. Develop a sewer model for the existing sewer areas in the Town of Harwich. Modeling software used will be SewerCAD by Bentley. Model input shall be from record drawing information provided by the Town.

The Following Tasks apply only to the proposed sewer areas shown in Exhibit C:

Task 6. Model Development – Proposed System. Develop a sewer model for the proposed sewer areas in Exhibit C using the pump station and design information developed in Tasks 1 and 2 along with water use data from Task 3. Modeling software used will be SewerCAD by Bentley.

Model will focus on maximizing gravity sewers where feasible to a depth of no more than 20-feet below grade. Pump station sites will identify the type of station that may be used at each site based on design parameters

including either submersible, suction lift, or wet pit/dry pit style stations. Pipe sizing, slope, and system design will follow the guidelines of TR-16.

Incorporate previous model that was developed for the four (4) DHY areas—north, central, southeast, and southwest.

Task 7. Draft Cost Estimate. Prepare a draft cost estimate. Cost estimate to include:

- Unit price items at the discretion of GHD, similar to previously provided cost estimates for the four (4) DHY areas.
- 30% contingency and 30% fiscal/engineering/legal placeholder.
- Project estimates for future years based on a percent inflation rate as determined by GHD and the Town.

Task 8. Final Cost Estimate. Prepare a final cost estimate based on written comments from Town. Cost estimate to include:

- Unit price items at the discretion of GHD, similar to previously provided cost estimates for the four (4) DHY areas.
- 30% contingency and 30% fiscal/engineering/legal placeholder.
- Project estimates for future years based on a percent inflation rate as determined by GHD and the Town.

Task 9. Draft Memorandum. Prepare a draft memorandum of findings based on feedback from the above tasks. Memorandum to include:

- Summary of Design Criteria.
- Figure of proposed sewer layout showing limits of gravity mains, low pressure mains, and pump station sites. Manholes to be color-coded based on depth of sewers.
- Quantities of gravity and low pressure sewers based on linear foot.

Submittals include: Draft Memorandum.

Task 10. Final Memorandum. Prepare a final memorandum of findings based on feedback from the above tasks and written comment from the Town. Memorandum to include:

- Summary of Design Criteria.
- Figure of proposed sewer layout showing limits of gravity mains, low pressure mains, and pump station sites. Manholes to be color-coded based on depths of sewers.
- Quantities of gravity and low pressure sewers based on linear foot.

Submittals include: Final Memorandum and SewerCAD Model.

*Included in the above scope of work will be:

- The preparation and presentations of up to two (2) workshops with the Town and representation at requested Town Board Meetings.
- A construction phasing plan (CPP) for all proposed areas of new sewer construction. Up to three (3) plans will be provided including a CPP focusing on construction contracts under \$10M, a CPP focusing on construction contracts under \$20M, and a third CPP based on guidance from the Town. Duration of the CPP will be based on guidance from the Town (either 20-year, 30-year or other duration).

- Assistance with the preparation and drafting of Town Meeting articles associated with funding for new sewer infrastructure.

PART 2 - TOWN RESPONSIBILITIES

A2.01 Services Required by TOWN

- A. Water Flows: Town to provide water use data for parcels within the sewer modeling areas. Data to be provided on a “per parcel” basis with quantity of water use per parcel and parcel identifier in Excel format.
- B. Design Criteria: Town shall provide the preferred maximum depth of sewer installation. Other applicable design criteria identified in TR-16 shall be considered for the model development including minimum pipe sizes, slopes, and minimum cover requirements.
- C. Record Drawings of the existing sewer system.
- D. Comments: Town shall provide comments on submittals within five (5) days of receipt.

PART 3 - OUT OF SCOPE WORK

A3.01 The following is considered out of scope work:

- A. Conceptual, preliminary, or final design plans for sewers within any of the study areas.

PART 4 – PAYMENTS TO GHD FOR SERVICES

TOWN shall pay GHD for Basic Services set forth in Exhibit A as follows:

- A. TOWN shall pay GHD a Lump Sum fee of One Hundred and Fifty Thousand Dollars (150,000.00) for work performed under this Agreement.
- B. GHD may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the TOWN.
- C. The Lump Sum includes compensation for GHD’s services and services of GHD’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and reimbursable expenses.
- D. GHD shall submit invoices on a monthly basis.

PART 5 - PERIOD OF SERVICE

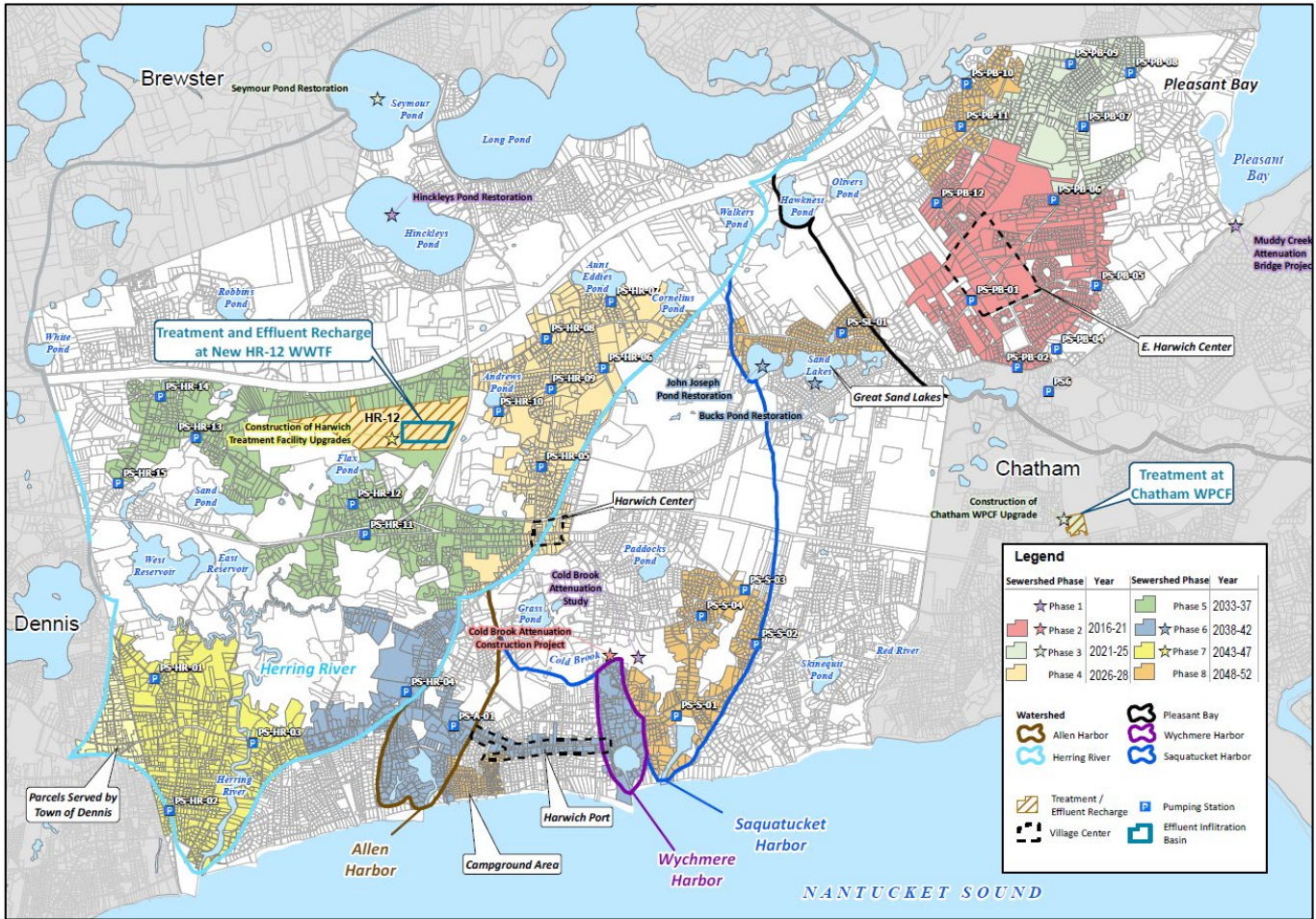
The compensation amount stipulated above for all project tasks is anticipated to be completed within 210 calendar days of authorization.

Exhibit B
Proposed Budget for
Town-Wide Sewer Model Development
Town of Harwich, Massachusetts

TASK	Project Director Marc Drainville, P.E., BCEE	Project Manager Russell Kleekamp	Project Engineers Anastasia Rudenko, P.E. Jeff Bellino, P.E.	Staff Engineers Craig Curtin Lenna Quackenbush	Managing Designer James Fosdick	Admin	Total Hours	GHD Labor Cost	GHD Expenses	GHD Total Cost
1 Internal Chartering	2	4	0	4	4	0	14	\$2,404	\$0	\$2,404
2 Client Kick-Off Meeting	2	4	0	4	4	1	15	\$2,494	\$0	\$2,494
3 Flow Development	0	8	8	40	40	0	96	\$13,354	\$0	\$13,354
4 Convert Existing Drawings - Existing System Model	0	8	0	16	60	0	84	\$13,196	\$0	\$13,196
5 Model Development - Existing System	8	16	8	60	40	0	132	\$19,032	\$0	\$19,032
6 Model Development - Future System	8	16	16	140	172	0	352	\$49,899	\$0	\$49,899
7 Cost Estimate - Draft	2	50	2	50	8	0	112	\$17,378	\$0	\$17,378
8 Cost Estimate - Final	8	22	8	22	4	0	64	\$10,614	\$0	\$10,614
9 Memorandum - Draft	6	12	14	48	30	8	118	\$16,445	\$0	\$16,445
10 Memorandum - Final	2	4	2	12	10	8	38	\$5,184	\$0	\$5,184
TOTAL	38	144	58	396	372	17	1025	\$150,000	\$0	\$150,000

Notes:

1. Mileage based on \$0.58 per mile



Town of Harwich
Town-Wide Sewer Modeling



Exhibit C – Sewer Modeling Area

Project No.
Report No.
Date 10/27/20



TOWN OF HARWICH
OFFICE OF THE TREASURER/COLLECTOR
732 MAIN STREET, HARWICH, MA 02645
TEL: 508-430-7501 FAX: 508-430-7504

Amy Bullock
Treasurer / Collector

Nancy Knepper
Assistant Treasurer/Collector

December 14, 2020

As of December 11 there are 283 active tax lien accounts, 38 of which are Owners Unknown and 40 are Unknown Location. Combined, those 2 categories make up 52.3% of the total amount owed-\$1,849,753.24. Subtracting those leaves a balance due of 882,594.64.

Looking at the past 10 years of takings, there were a total of 294 properties liened, of which 201 have been redeemed. The remaining 93 make up 564,058.83, just under 64% of the 882k.

Current tax year collections at 91.4% are down approximately 6% from the same time frame last year (July-November). As of 12/11, there are still 98 FY 2020 unpaid bills. 205 letters were sent 8/31/20 resulting in 105 payoffs. The tax lien process on those properties will begin after the holidays. The list will be sent to Attorney Coppola, who will send final notices advising of the imminent tax taking.

Attorney Bloom has stepped back from daily operations and we are working with her associate Attorney Leahy. They have 14 open cases and 10 filed in Land Court, 3 of which are contested and need hearings to move forward. Since working with this firm we have added 52,753.65 in attorney fees to tax lien accounts, with just under half of that amount being collected. We have 15 payment plans in place, with 8 currently making regular on time payments.

Due to Covid, in March we stepped back from actively communicating with owners, but have recently begun to resume more communication. Additionally, we've been unable to meet with Attorney Leahy to go over which properties the firm should pursue.

I have changed the format of my monthly report to break out tax lien collections from other tax/water bill collections, beginning with December's report.

TAX LIENS	283	1,849,753.24			882,594.64
OWNERS UNKNOWN	38	867,144.63	0.469	0.134	
	245				
UNKNOWN LOCATION	40	100,013.97	0.054	0.141	
		967,158.60	0.523		

FY 2020

8/31/2020	205 OVERDUE LETTERS MAILED	455,176.27
12/11/2020	98 REMAIN UNPAID	<u>195,295.70</u>
		259,880.57

AS OF 11/30/2020 15 PAYMENT PLANS, 3 OF THOSE HAVE BEEN FILED FOR FORECLOSURE. 8 MAKING PAYMENTS.

AS OF 11/30/2020	% COLLECTED
REAL ESTATE/CPA/PERSONAL PROPERTY	
FY 2021	91.4
FY 2020	<u>97.6</u>
	-6.2

	8/27/2020	INT/FEES	RE	CPA	WATER	TOTAL
2019 NEW TAKINGS	22	14,955.96	40,592.34	1,140.53	721.22	57,410.05
2020 SUBSEQUENTS		22,571.13	184,390.82	5,482.38	2,233.81	214,678.14
	10/17/2019					
2018 NEW TAKINGS	23	10,590.55	28,074.05	813.57		
2019 SUBSEQUENTS		6,568.57	50,022.24	1,500.67	121.29	

10 YEAR HISTORY OF TAKINGS	FY	DATE OF TAKING	COUNT	# REDEEMED	# REMAINING		
	2010	11/10/2011	39	37	2		
	2011	7/27/2012	64	51	13		
	2012	11/7/2013	24	21	3		
	2013	10/16/2014	28	25	3		
	2014	8/7/2015	30	19	11		
	2015	10/13/2016	25	21	4		
	2016	3/15/2018	16	10	6		
	2017	1/31/2019	23	3	20		
	2018	2/1/2019	23	13	10		
	2019	8/27/2020	22	1	<u>21</u>		
					93	0.329	
					564,058.83	0.305	0.639
			294	201	<u>93</u>		

**REGULATIONS OF THE
CAPE COD AND ISLANDS WATER PROTECTION FUND
MANAGEMENT BOARD**

Adopted October 7, 2020

1.0 Introduction and Purpose.

The Cape Cod and Islands Water Protection Fund Management Board adopts these regulations pursuant to its authority under M.G.L. c. 29C, §§ 19 and 20. The Board¹ was established by the Enabling Act, which added two sections – §§ 19 and 20 – to M.G.L. c. 29C. The Enabling Act creates the Water Protection Fund and makes the Board responsible for determining the method for allocating subsidies from the fund, including, but not limited to, an equitable distribution among participating municipalities consistent with revenue deposited from each municipality into the fund. The Board also is responsible for ensuring that the Water Protection Fund is spent only for the purposes set forth in M.G.L. c. 29C, § 19.

The Board's regulations govern the manner in which the Board awards a subsidy to a water pollution abatement project, as defined in M.G.L. c. 29C and the Department of Environmental Protection's regulation at 310 CMR 44.03. The Board's regulations are to be construed and applied in conjunction with the Clean Water State Revolving Fund (SRF) Program established by M.G.L. c. 29C and 310 CMR 44.00 (DEP Selection, Approval and Regulation of Water Pollution Abatement Projects Receiving Financing Assistance from the State Revolving Fund).

The Board can only use the Water Protection Fund to award subsidies to Participating Local Government Units, *i.e.*, Local Government Units who are members of the Water Protection Fund under the Enabling Act. These subsidies are in addition to, not in place of, any financial assistance awarded under the SRF Program. The Water Protection Fund can be expended only with the Board's approval and only for projects that have obtained all other approvals required by M.G.L. c. 29C.

A broad array of projects are eligible for financing under the SRF Program and thus for subsidies from the Water Protection Fund. These projects include, but are not limited to, the use of innovative strategies and alternative septic system technologies, the completion and update of water quality and wastewater management plans, the construction of sewer collection systems and wastewater treatment plants, and the implementation of drainage improvements and water

¹ Capitalized terms in Section 1.0 (Introduction and Purposes) have the meaning set forth in Section 2.0 (Definitions).

treatment programs to improve water quality in fresh water ponds and marine resources. The Board may keep “Information Releases” regarding the Projects that have been awarded Subsidies to help guide future projects.

2.0 Definitions.

As used in these regulations, capitalized terms have the meanings set forth below. Where a definition is followed by a citation to 310 CMR 44.03, the definition is substantially the same as set forth in 310 CMR 44.03. Capitalized but undefined terms shall have the meaning set forth in M.G.L. c. 29C.

“Board” means the Cape Cod and Island Water Protection Fund Management Board established by the Enabling Act.

“Calendar Year Allocation” means the amount of the Water Protection Fund that, for a given calendar year, is conditionally committed to (a) Subsidies for Qualified Projects first appearing on the Intended Use Plan Project Listing published in the same calendar year as the year in which the Board makes conditional commitments to subsidize these Qualified Projects, (b) Pre-existing Projects considered in that same calendar year.

“Cape Cod Commission” means the commission established pursuant to Chapter 716 of the Acts of 1989, as amended by Chapter 2 of the Acts of 1990, as further amended from time to time, which shall provide administrative and technical support to the Board.

“Clean Water Act,” or “CWA” means the Federal Water Pollution Control Act, Public Law 92-500, 33 USC § 1251, *et seq.* (310 CMR 44.03)

“Clean Water Trust” or “Trust” means the Massachusetts Clean Water Trust established by M.G.L. c. 29C.

“Department” means the Massachusetts Department of Environmental Protection. (310 CMR 44.03)

“Eligibility Notice” means a written notice from the Board, acting through the Cape Cod Commission, informing a Participating Local Government Unit that a Qualified Project or Pre-existing Project is eligible for a Subsidy.

“Enabling Act” means Chapter 337 of the Acts of 2018, as amended by Chapter 5 of the Acts of 2019, codified in M.G.L. c. 29C, §§ 19 and 20.

“EPA” means the United States Environmental Protection Agency. (310 CMR 44.03)

“Intended Use Plan” means the annual plan submitted by the Trust to EPA pursuant to § 606(c) of the CWA which identifies the intended use of the amounts

available to the Water Pollution Abatement Revolving Fund as determined by the Trust and derived from the federal capitalization grant, state match amounts, loan repayments, investment earnings and any other moneys deposited by the Trust available to fund projects eligible for funding under Title VI of the CWA. The Intended Use Plan includes a project listing, a description of short and long term goals for the use of the funds, information on the activities to be supported, assurances for meeting certain Title VI requirements, and the criteria and method for the distribution of funds. (310 CMR 44.03)

“Intended Use Plan Project Listing” means a listing of those projects identified by the Department for inclusion on the fundable portion of the Project Priority List pursuant to 310 CMR 45.05(2). (310 CMR 44.03)

“Loan Agreement” means an agreement entered into between the Trust and a Local Governmental Unit pertaining to a loan or local governmental obligations. (310 CMR 44.03)

“Loan Commitment” means a written commitment by the Trust to make a loan to a Local Governmental Unit to finance a project approved by the Department on terms consistent with the Department's Project Approval Certificate. (310 CMR 44.03)

“Local Government Unit” or “Local Governmental Unit” means any town, city, district, commission, agency, authority, board or other instrumentality of the commonwealth or of any of its political subdivisions, including any regional local government unit defined in M.G.L. c. 29C, which is responsible for the ownership or operation of a Water Pollution Abatement Project and is authorized by a bond act to finance all or any part of the costs thereof through the issuance of bonds. (310 CMR 44.03)

“Participating Local Government Unit” means a Local Government Unit that is or is part of a municipality that is a member of the Water Protection Fund pursuant to M.G.L. c. 29C, §§ 19 and 20.

“Pre-existing Debt” means debt incurred prior to the enactment of the Enabling Act in connection with a Project apart from the Trust by a Participating Local Government Unit that is or is part of the towns of Nantucket, Edgartown, Tisbury, Oak Bluffs, Falmouth, Chatham and Provincetown, or is or is part of the city of Barnstable.

“Pre-existing Project” means a project financed through Pre-existing Debt.

“Project Approval Certificate” means the certificate issued by the Department to the Trust certifying that a project is approved for financing by the Trust and that the costs of the project are eligible for financial assistance pursuant to M.G.L. c. 29C, § 6. (310 CMR 44.03)

“Project Approvals” mean all approvals required for a Qualified Project by M.G.L. c. 29C, including the Loan Commitment, Loan Agreement, Project Approval Certificate, and Project Regulatory Agreement.

“Project Priority List” means the annual list of projects prioritized to receive financial assistance pursuant to 310 CMR 44.00, as described in more detail in 310 CMR 44.05.

“Project Regulatory Agreement” means an agreement between the Department and a Local Governmental Unit, executed and delivered to the Trust on or prior to the date of a loan from the Trust to the Local Governmental Unit to finance a Project approved by the Department, which includes a disbursement schedule, procedures for approval and payment of requisitions, conditions related to the borrower’s compliance with the Department’s regulations and other federal and state statutes and regulations applicable to the construction and operation of the Project, and provision for the Department’s supervision of the Project in accordance with 310 CMR 44.00. (310 CMR 44.03)

“Qualified Project” means a Water Pollution Abatement Project undertaken by a Participating Local Government Unit and identified on the Intended Use Plan Project Listing after the enactment of the Enabling Act.

“Section” means a section of these regulations unless followed by an express reference to a different law.

“State Revolving Fund (SRF) Program” means the financial assistance program for Water Pollution Abatement Projects and drinking water projects as set forth in M.G.L. c. 29.

“Subsidy” means a grant awarded by the Board to a Qualified Project or a Pre-existing Project to be paid using funds in the Water Protection Fund.

“Term of Any Financial Assistance Award” means the period of time during which the Participating Local Government Unit pays off its debt to the Trust.

“Uncommitted Funds” mean the available funds for the current year within the Water Protection Fund that are not committed to be (a) paid to a Participating Local Government Unit for a Qualified Project or Pre-existing Project previously approved for a Subsidy from the Water Protection Fund or (b) restricted as reserve, as established by Section 8.1.

“Water Pollution Abatement Project” or “Project” means any abatement facilities, including without limitation rehabilitation of abatement facilities to remove, curtail or otherwise mitigate infiltrations and inflow, collection system, treatment works and treatment facilities as defined in M.G.L. c. 21, § 26A, and any eligible

facilities for implementation of a nonpoint source pollution control management program or estuary conservation and management plan pursuant to the CWA. (310 CMR 44.03)

“Water Protection Fund” means the Cape Cod and Islands Water Protection Fund established by M.G.L. c. 29C, § 19.

“Withdrawal Notice” means a written notice from a Participating Local Government Unit withdrawing its Qualified Project or Pre-existing Project from consideration for a Subsidy from the Water Protection Fund.

3.0 Form of Subsidy.

- 3.1. Grants Only. All Subsidies shall take the form of grants. The Board shall not use the Water Protection Fund to make loans to Participating Local Government Units for Qualified Projects or Pre-existing Projects.
- 3.2. Terms of Subsidy. Subsidy shall be provided as a grant for a Qualified Project allocated in equal annual installments over four years commencing from the Board’s vote to allocate the Subsidy according to the Project Regulatory Agreement and only for projects that have obtained all other Project Approvals required by M.G.L. c. 29C. The Subsidy process requires two steps, as described in Sectionos 5.0 and 6.0. At its annual meeting, or at a subsequent meeting called by the Chair, the Board, based on the estimated project costs identified in the published Intended Use Plan for that given year, shall make a preliminary percentage subsidy commitment to all Qualified Projects, provided that the same percentage subsidy shall be provided to all Qualified Projects with a project cost greater than \$1 million equally in a given year. Projects with a project cost less than \$1 million shall receive twice the annual percentage applied to projects over \$1 million. The final allocation shall be approved by a vote of the Board using the percentage Subsidy commitment established based on the project costs identified in the Intended Use Plan multiplied by the total cost of a Qualified Project set forth in the Project Regulatory Agreement. The annual portion of the Subsidy shall be transferred from the Water Protection Fund to the Trust upon final approval by the Board and the Trust shall hold such amount in a segregated fund. The Trust shall apply such Subsidy to fund portions of a Qualified Project in lieu of making a permanent loan to the Participating Local Government Unit for such amount or shall be used to reduce the amount of any interim or permanent loan made by the Trust for such Qualified Project.

4.0 Qualifications for Subsidy.

- 4.1. Application. Consideration for a Subsidy does not require a formal application. The Board will rely on the expertise of the Department and

the Trust and their evaluations of a proposed Project under the SRF Program.

- 4.2. Water Protection Funding Qualification. When a Qualified Project first appears on the Intended Use Plan Project Listing, it shall automatically be eligible for a Subsidy, except as set forth in this section. Within 30 days of the Department's publication of the Intended Use Plan, the Board, through the Cape Cod Commission, shall send an Eligibility Notice to all Participating Local Government Units with a Qualified Project on the Intended Use Plan Project Listing. The Participating Local Governmental Unit may opt out of consideration for a Subsidy by sending the Board a Withdrawal Notice within 30 days of receiving the Eligibility Notice. Unless the Board receives a Withdrawal Notice, the Qualified Project shall remain eligible for a Subsidy so long as it meets the requirements set forth in Section 6.0.

5.0 Board Meetings to Determine Subsidy Allocation.

- 5.1 Annual Meeting. The Board shall meet no less than once annually to allocate Subsidies. The annual meeting will be held within 60 days of the Department's publication of the Intended Use Plan Project Listing. Additional meetings will be held within 30 days of execution of the final Project Regulatory Agreement to adopt final allocations. The Board's Chair, in his or her discretion, may schedule additional meetings as needed for additional reasons that require action by the Board.
- 5.2 Commitments of Subsidies. At the annual meeting, or at a subsequent meeting called by the Chair, the Board shall make a contingent commitment to award a Subsidy for each Qualified Project first appearing on the Intended Use Plan Project Listing in that calendar year, unless the Board has received a Withdrawal Notice within the time frame required by Section 4.2. The commitment shall be contingent on the Qualified Project satisfying the requirements set forth in Section 6.0.
- 5.3 Amount of Subsidy Awarded for Qualified Projects. The Subsidy for each Qualified Project shall be stated as a percentage equally applied to all projects receiving initial subsidy determinations, as described in Section 3.2, and established at the time of the Departments publication of the Intended Use Plan for a given year. The final Subsidy dollar amount shall be based on a calculation of the percentage established above times the total cost of a Qualified Project set forth in the Project Regulatory Agreement. The Subsidy amount (the Subsidy percentage times the total Project cost as established in the Project Regulatory Agreement) shall be set at the time of the award, and shall not be adjusted except to the extent

the Project no longer qualifies as set forth in Section 7.3 or it is determined there is insufficient funding as set forth in Section 7.2.²

5.4 Subsidies for Pre-existing Projects.

5.4.1. Participating Local Government Units Only. The Board shall not award a Subsidy for a Pre-Existing Project unless (a) there are still amounts outstanding with respect to Pre-existing Debt at the time the Board considers making a commitment to grant a Subsidy; and (b) the obligor on such Pre-existing Debt is a Participating Local Government Unit.

5.4.2. Timing of Commitment. At its first Board meeting to approve Subsidies, the Board also shall consider Subsidies for Pre-existing Projects for Participating Local Government Units. For eligible towns or cities that become Participating Local Government Units after such meeting, the Board shall consider Subsidies for the applicable Pre-existing Projects in the first calendar year after such eligible Local Government Unit becomes a Participating Local Government Unit. The Board, through the Cape Cod Commission, shall notify Participating Local Government Units with Pre-existing Projects of their eligibility for a Subsidy at the same time and in the same manner as set forth in Section 4.2, and the Participating Local Government Unit likewise shall send a Withdrawal Notice within the time required by Section 4.2 if it does not wish to be considered for a Subsidy. At the written request of the Participating Local Government Unit, the Board, in its complete discretion, may defer consideration of a Subsidy for a Pre-existing Project to a subsequent calendar year.

5.4.3. Amount of Subsidy. The Board shall consider Subsidies for Pre-existing Projects on equal footing with Qualified Projects appearing on the Intended Use Plan Project Listing in the same calendar year. Subsidies for Pre-existing Projects shall be determined in the same manner as set forth in Section 5.3, provided that the Subsidy amount shall be a percentage of the outstanding loan amount at the time of the approval by the Board, as opposed to the total original project costs.

5.4.4. Nature of Commitment. Commitments made for Subsidies for Pre-existing Projects shall not be contingent on final approval under Section 6.1, but shall be subject to the funding condition set forth

² For example, if the total Project costs approved by the Project Regulatory Agreement is \$10 million and the Subsidy approved by the Board is 25%, the total Subsidy shall be \$2,500,000, applied in four annual installments of \$625,000.

in Section 7.2 and the calculations required for Section 8.2. Payment of subsidies for Pre-existing Projects shall commence in the calendar year in which the Board commits to the Subsidy.

6.0 Subsidy Commitment and Approval.

- 6.1. Contingent Commitment. For Qualified Projects eligible for an equal percentage Subsidy, as determined annually by the Board, the Board shall issue a contingent commitment in the first calendar year in which the Project appears on the Intended Use Plan Project Listing, unless the Board has received a Notice of Withdrawal for the Project. A contingent commitment means that the Subsidy is contingent upon the receipt of an executed Project Regulatory Agreement for the Project.
- 6.2. Final Approval. For a Qualified Project receiving a contingent commitment, the Board shall issue a final approval upon receipt of a fully executed Project Regulatory Agreement by the Cape Cod Commission. Final approval shall be granted by the Board based upon the project cost as appearing in the final Project Regulatory Agreement entered into by the Trust and the Participating Local Government Unit.

7.0 Conditions for Subsidy; Breach of Conditions.

- 7.1 No Agreement. The Board shall not require a Participating Local Government Unit to enter into an agreement with the Board. By accepting a Subsidy payment, the Participating Local Government Unit agrees that the terms of the Subsidy are governed by these regulations, as they may be amended from time to time, for the entire duration of the Trust loan.
- 7.2 Funding Condition. Each contingent commitment and each Subsidy is a commitment of future revenues from the Water Protection Fund solely to the extent available. The Board retains discretion to discontinue, reduce or suspend Subsidies if the Uncommitted Funds are insufficient to meet the total Subsidy commitments – both ongoing obligations for Subsidies awarded in prior years and new awards. When deciding to discontinue, reduce or suspend Subsidies, the Board shall treat all Qualified Projects and Pre-existing Projects as equally as practicable.
- 7.3 Breach of Conditions of Project Approvals. The Board will suspend or discontinue a Subsidy if the Participating Local Government Unit has breached any of the conditions of the Project Regulatory Agreement or Loan Agreement in a manner that causes the Trust to call back the loan, suspend the Participating Local Government Unit's ability to draw down the loan funds, or require that the Participating Local Government Unit repay any loan funds previously provided. The Board shall compel a Participating Local Government Unit to pay back any Subsidy already

provided. The Board may, in its discretion, reinstate the Subsidy if the Participating Local Government cures its breach of the Project Regulatory Agreement or Loan Agreement in a manner that causes the Trust to reinstate the loan.

8.0 Management of Use of Water Protection Fund.

- 8.1 Reserve. In the first calendar year in which the Board makes contingent commitments to subsidize Projects, the Board may establish a reserve from uncommitted funds in an amount that the Board, in its complete discretion and with assistance from a qualified financial consultant, determines is sufficient to ensure that the Water Protection Fund does not become insolvent due to variability in annual deposits to the Water Protection Fund. In each calendar year, prior to determining the Calendar Year Allocation, the Board, in its complete discretion, shall decide whether to restrict and/or utilize funds from the reserve.
- 8.2 Calendar Year Allocation. Each calendar year, the Board shall consider the amount of deposits into the Water Protection Fund and the amounts required to maintain sufficient reserves per Section 8.1 to determine and establish the amount of any Uncommitted Funds. The Board has complete discretion to determine the portion of the Water Protection Fund that comprises Uncommitted Funds, including discretion to withdraw funds from reserve so that they are deemed Uncommitted Funds. The Uncommitted Funds that the Board, in its discretion, determines are available in a given calendar year shall be the Calendar Year Allocation to be awarded to Participating Local Government Units for Qualified Projects first appearing on the Intended Use Plan Project Listing for that year and to Pre-existing Projects. The Board will monitor revenues and subsidies amongst member communities over the life of the fund and provide this information in the annual report. The Board may evaluate and amend these regulations from time to time.

9.0 Withdrawal from Water Protection Fund.

- 9.1 Withdrawal of Eligible Local Government Unit. If a Participating Local Government Unit obtains final approval of a Subsidy for a Qualified Project or is granted a Subsidy for a Pre-existing Project, it may not withdraw from the Water Protection Fund during the Term of Any Financial Assistance Award.
- 9.2 Reentry to the Water Protection Fund. A Local Government Unit that has withdrawn from the Water Protection Fund may rejoin the Water Protection Fund at any time after satisfying the requirements of M.G.L. c. 29C, §§ 19 and 20. In accordance with M.G.L. c. 29C, § 19, the Board shall not grant any subsidies to a Local Government Unit that returns to

the Water Protection Fund (thus becoming a Participating Local Government Unit) for a period of two years from the date on which the legislative body of the Local Government Unit voted to return to the Water Protection Fund.

Tabled for Future Discussion and Potential Amendment of Regulations: The board, subject to a memorandum of understanding with the department of environmental protection, may direct the comptroller to transfer a specified amount not to exceed 10 per cent of the annual revenue deposited into the fund to the department for the department to contract with a regional planning agency, institution of higher education or non-profit corporation to evaluate and report on the efficacy of adaptive management measures to reduce nitrogen pollution of coastal waterways undertaken pursuant to an area wide wastewater management plan or a suitable equivalent plan, to monitor the water quality and watersheds of areas subject to the study and to support further assessment and water quality modeling to further refine area wide wastewater management plans or suitable equivalent plans in Barnstable and Nantucket counties and the county of Dukes County. *See M.G.L. c. 29C, § 19.*

3225 MAIN STREET • P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630



CAPE COD
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

November 12, 2020

Cape Cod Town Managers and Administrators
Cape Cod Select Board Chairs
Barnstable Town Council President
Members of the Cape Cod and Islands Water Protection Fund Management Board

RE: Cape Cod and Islands Water Protection Fund Regulations

Good afternoon,

As you know, in 2018, the Massachusetts Legislature established the Cape Cod and Islands Water Protection Fund (CCIWPF) to help municipalities fund critical wastewater infrastructure and water quality remediation projects. The CCIWPF began collecting funds in July 2019 and, to date, the revenues deposited total more than \$10 million.

As members of the CCIWPF, each of your communities is represented on its Management Board. The Management Board is responsible for determining the method for allocating subsidies from the fund. At its October 7, 2020 meeting, the Management Board voted unanimously to adopt regulations that govern distribution of the funds. Adoption of these regulations was the result of months of work by the Management Board, in coordination with the Massachusetts Clean Water Trust, the Massachusetts Department of Environmental Protection, and the Cape Cod Commission.

Attached is a copy of the regulations, along with a two-page summary that articulates the process and schedule by which communities can access funds.

The Commission looks forward to continuing to provide administrative and technical support to the Management Board, and to the distribution of funds to support Cape Cod communities in addressing water quality challenges across the region.

Please do not hesitate to reach out to me directly if you have any questions.

Sincerely,

Kristy Senatori
Executive Director

CAPE COD AND ISLANDS WATER PROTECTION FUND

Summary of Regulations and Guidelines

In 2018, the Massachusetts Legislature established the Cape Cod and Islands Water Protection Fund (CCIWPF) to help Cape Cod and Islands towns pay for wastewater infrastructure and water quality remediation projects. The CCIWPF is part of the Clean Water State Revolving Fund (CWSRF) program, which authorizes the CCIWPF Management Board to grant subsidies for water pollution abatement projects undertaken by member communities. To reduce administrative burden, the CCIWPF is a dedicated fund within the state's Clean Water Trust (CWT). As a result, municipalities must apply for and receive financing through the CWSRF, and act by certain state-imposed deadlines to secure a grant.

The following is a summary of the CCIWPF program that the Management Board administers through its regulations.

Member Municipalities and Management Board Composition

The 15 Cape Cod municipalities are members of the CCIWPF. The Town of Nantucket and the towns within Dukes County may become members if and when they adopt an approved area-wide wastewater management plan under Section 208 of the federal Clean Water Act or an equivalent plan approved by the Massachusetts Department of Environmental Protection (MassDEP).

The Management Board currently has 18 members. Each member municipality appoints one voting representative. The executive directors of the Cape Cod Commission and Martha's Vineyard Commission and the Nantucket town manager are non-voting members. Members will be added as more municipalities join the CCIWPF program.

Grants

The Management Board provides grants to member municipalities for new projects. In some instances, the Board may also provide subsidies to member municipalities for debt incurred prior to the establishment of the fund in Barnstable, Falmouth, Chatham, and Provincetown (and in Nantucket, Edgartown, Tisbury, Oak Bluffs, if and when they become members). The grant is used to pay down the principal amount of a CWSRF loan for an eligible project. The Board applies the same formula to determine the grant amount for each project. Each year, eligibility for CCIWPF subsidies is determined by which member municipality projects appear on MassDEP's publication of the Intended Use Plan (IUP) for the CWSRF program. The Board determines a "subsidy percentage" to apply to the principal of all projects costing over \$1 million. The total monetary value of each grant equals the subsidy percentage times the final project cost, as included in the Project Regulatory Agreement (PRA) to be executed between the respective municipality and the CWT. The Board sets aside the amount allocated to each qualifying project in four installments, one in each of the four years after the Board grants its final approval. For projects costing less than \$1 million, the Board doubles the subsidy percentage provided, while all other aspects of the process remain the same. Grants for pre-existing projects, as described below, will be determined by applying the subsidy percentage provided to all new projects in a given year to the principle amount of the loan still outstanding when the grant is awarded.

Eligible Projects

To be eligible for a grant, a project must be for a member municipality. In addition, the project must appear on the IUP for the year in which the Board makes its grants, or it must be a qualified "pre-existing project":

CAPE COD AND ISLANDS WATER PROTECTION FUND

Summary of Regulations and Guidelines

i.e., a project for the current member municipalities of the towns of Barnstable, Falmouth, Chatham or Provincetown (and Nantucket, Edgartown, Tisbury, and Oak Bluffs should they become members), for which debt was incurred before the CCIWPF program was created in 2018. The Board may only award grants for projects that MassDEP determines are “water pollution abatement projects” under the federal Clean Water Act.

Process and Timeline

The Board will consider grants for projects appearing on the IUP. The Board will also consider grants for ongoing debt for pre-existing projects in member municipalities. If a qualifying municipality (i.e., Nantucket, Edgartown, Tisbury, and Oak Bluffs) with a pre-existing project becomes a member later, the Board will consider a grant for the pre-existing project at its first opportunity after the municipality becomes a member.

Summarized below are the timelines and steps for grants to be considered in 2021. For each annual round of grant awards, the schedule will be similar, with the same deadlines for action each year for new projects that appear on the annual IUPs.

- On July 1, 2020, MassDEP solicited project evaluation forms for new projects. The solicitation period ended on August 21st.
- In January 2021, MassDEP will publish the IUP, which will list the projects eligible to receive CWSRF loans.
- Within 30 days of the IUP publication, the Board will notify municipalities of their eligibility for a CCIWPF grant; a municipality may withdraw its project from consideration for a grant within 30 days of receiving this notice.
- Within 60 days of the IUP publication date, the Board will meet to decide upon the subsidy percentage for eligible projects. In 2021, this will include all pre-existing projects for member municipalities.
- By June 30, 2021, the municipality must approve funding for the project through a town meeting or town council vote.
- By October 15, 2021, the municipality must submit a loan application; the CWT will issue a loan commitment by December 31st.
- After the municipality completes its procurement process, if necessary, MassDEP must issue a Project Approval Certificate, which it incorporates into a PRA with the municipality. This is an existing requirement to obtain a CWSRF loan.
- Within 30 days of the date of the fully-executed PRA, the Board will meet to grant its final approval of the final grant amount for a project.
- On or after the date of the PRA, the municipality must enter into the loan agreement with the CWT. This should happen by July 2022.

AGREEMENT ESTABLISHING THE DHY CLEAN WATERS COMMUNITY PARTNERSHIP

Draft 08/06/2020

This Agreement is made and entered into this _____ day of _____, 2020 (the “Agreement”) by and between the Towns of Dennis, Harwich, and Yarmouth, municipal corporations within the Commonwealth of Massachusetts, and herein referred to as “Member Towns” for the establishment of a public, regional wastewater district, to be known as the “DHY Clean Waters Community Partnership” and commonly referred to in this Agreement as the “Partnership.”

Whereas, the annual town meeting votes of each Member Town taken in 2020 and the terms of the special act of the General Court of the Commonwealth entitled “*An Act Establishing The DHY Clean Waters Community Partnership for the Towns of Dennis, Harwich and Yarmouth*” approved by the Governor on October 11, 2019 and known as Chapter 88 of the Acts and Resolves of 2019 (herein referenced as the “Enabling Act”) authorize execution of this Agreement.

Whereas, the Partnership shall own, manage, operate and control the wastewater treatment plant, common interceptors, pumping stations and force mains, effluent recharge and reuse system, and appurtenances needed to treat wastewater; it shall act as a Community Partnership with all the powers and privileges granted to it by this Agreement and by the Enabling Act and shall provide for the common collection, conveyance, and treatment of wastewater, and recharge and reuse of treated effluent for the Member Towns.

Now therefore, in consideration of the mutual benefits to each Member Town derived from the formation of this Partnership and in fulfillment of their duties given by their respective town meetings and in further consideration of the mutual exchange of promises and obligations as set forth herein, and to complete the requirements of the Enabling Act, the Member Towns form this Agreement and agree as follows:

Effective date: This Agreement shall become effective on _____, 2020 (the “Effective Date”) and supersedes and rescinds any prior wastewater agreements entered between the member towns.

Term of Agreement: The Member Towns intend that the Agreement in its present form or as it may be amended from time to time be coterminous with the life of the Partnership.

Agreement:

Basic Terms and Conditions

Section 1 Definitions

Section 2 Wastewater Characteristics

- Section 3 Location of Partnership Facilities
- Section 4 Wastewater Services to Member Towns
- Section 5 Measurement of Flow
- Section 6 Sampling of Wastewater Flow
- Section 7 Notice of Flow Changes
- Section 8 Pretreatment

Governance Terms and Conditions

- Section 9 Wastewater Partnership Commission
- Section 10 Amendments to Agreement
- Section 11 Admission of New Member Town(s) or Transfer of Capacities
- Section 12 Withdrawal from Partnership
- Section 13 Contract Administration
- Section 14 Procurement of Professional Services

Cost Terms and Conditions

- Section 15 Apportionment and Payment of Costs
- Section 16 Partnership Budget
- Section 17 Incurring of Debt
- Section 18 Treatment Plant Decommissioning – Cost Impacts

Appendices

- Appendix A Exhibits
- Appendix B Transition Items
- Appendix C Enabling Act; Chapter 88 of the Acts of 2019
- Appendix D Description of Partnership Facilities
- Appendix E Agreement to Convey Real Property and Transfer Assets (Example)
- Appendix F Management and Operations Agreement between Partnership and Dennis (Example)

Basic Terms and Conditions

Section 1: Definitions

- 1.1 For the purpose of this Agreement, the following terms are defined:
- 1.1.1 “Average Annual Flow” shall mean the average flow of the previous 12 individual months calculated monthly (12-month rolling average) and shall be used to define the flow capacity owned and used by a Member Town in the Partnership’s treatment facility.
 - 1.1.2 "Average Daily Flow" shall mean the total flow period as measured at the metering location(s) divided by the number of days in that flow period.
 - 1.1.3 "Biochemical Oxygen Demand" (BOD) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five (5) days at 20 degrees centigrade (68 degrees Fahrenheit) expressed in milligrams per liter by weight (or pounds per day).
 - 1.1.4 "Combined Sewer" shall mean a drain or sewer specifically designed to receive stormwater run-off, groundwater, and wastewater and/or industrial wastes
 - 1.1.5 “Common Partnership System” shall mean those wastewater conveyance and treatment facilities owned and operated by the Partnership as described in Section 3 herein. Conveyance facilities include interceptor sewers and any pumping stations or force mains within the defined Partnership facilities that are utilized to convey Member Towns’ wastewater to the Partnership’s treatment plant. Treatment facilities include the treatment plant, effluent recharge sites, and any related facilities.
 - 1.1.6 “Customer” or “User” shall mean a residence, business or other approved entity that is approved for a wastewater connection to and deriving a benefit (either actual or potential) from the sewer system within a Member Town. Customer/ User shall include an approved flow from adjacent towns that connect into the sewer system of a Member Town.
 - 1.1.7 “Dennis” is the Town of Dennis, a municipal corporation of the Commonwealth of Massachusetts. The “Dennis Board” shall be the Board of Selectmen acting as Sewer Commissioners of the Town of Dennis, or its successors.
 - 1.1.8 “DHY Clean Waters Community Partnership” shall refer to Chapter 88 of the Acts and Resolves of 2019.
 - 1.1.9 “District” or “Partnership” as used herein, shall mean the Clean Waters Partnership Commission to govern the DHY Clean Waters Community Partnership, as defined herein.
 - 1.1.10 “Effective Date” shall be , 2020.

- 1.1.11 “Enabling Act” means Chapter 88 of the Acts of 2019, as may be amended from time to time.
- 1.1.12 “EPA” means the United States Environmental Protection Agency or its successor agency.
- 1.1.13 "Harwich" is the Town of Harwich, a municipal corporation of the Commonwealth of Massachusetts. The "Harwich Board" shall be the Board of Selectmen, of the Town of Harwich, acting as Sewer Commissioners or its successors.
- 1.1.14 "Industrial Wastes" are the liquid, gaseous, or solid wastes or a combination thereof, other than wastewater, resulting from any process of manufacturing, trade and/or industrial operations or from the development or recovery of any natural resources.
- 1.1.15 “Infiltration” shall mean water entering a sewer system from the ground through such means as defective pipe, pipe joints, connections, or manhole walls. Infiltration does not include and is distinguished from inflow.
- 1.1.16 “Infiltration/ Inflow” (I/I) is the total quantity of water entering a sewer system from both infiltration and inflow.
- 1.1.17 “Inflow” shall mean water discharged to a sewer system (including service connections) from such sources as roof leaders, basements, yards, and area drains; foundation drains; sump pump connections; drains from springs and swampy areas; manhole covers; cross-connection from storm sewers and combined sewers; catch basins; stormwater run-off; and drainage in general.
- 1.1.18 "Local Wastewater System" shall mean that portion of the sewer/ wastewater system located either in Dennis and used exclusively by Dennis or its customers, in Harwich and used exclusively by Harwich or its customers, or in Yarmouth and used exclusively by Yarmouth or its customers, or located in any other municipality and used exclusively by such municipality’s residents/rate payers and not owned by the Partnership. A Local Wastewater System is not part of the Common Partnership System.
- 1.1.19 “MassDEP” means the Massachusetts Department of Environmental Protection or its successor agency.
- 1.1.20 "Maximum Daily Flow" shall mean the maximum flow recorded at a metering station during a 24-hour period.
- 1.1.21 “Member Town” shall mean either the town of Dennis, Harwich or Yarmouth, or any other municipality that may join the Partnership in accordance with the terms herein.
- 1.1.22 "MGD" is the abbreviation of million gallons per day.

- 1.1.23 "pH" shall mean the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
- 1.1.24 "SCADA" (Supervisory Control and Data Acquisition) shall mean the instrumentation to allow for conveying remote signals to electronic controls and computer system to assist with monitoring data.
- 1.1.25 "Sewer Use Regulations" shall mean the latest edition of the Partnership regulations which shall be developed and adopted prior to the treatment plant being operational. Each Member Town must adopt within 120 days of the Effective Date of the Partnership regulations, as a minimum, the Sewer Use Regulations in use by the Partnership. Definitions of terms within that document shall be interpreted in accordance with EPA and/or MassDEP Regulations.
- 1.1.26 "Shall" is mandatory, "may" is permissive.
- 1.1.27 "Slug" shall mean any discharge of water, wastewater, or industrial waste which in concentration of any constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes, more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation.
- 1.1.28 "Total Flow" shall mean the total amount of wastewater flowing into the Common Partnership System and includes the wastewater and I/I contributed to such system by the Member Towns and all of their users. Total flow for each Member Town shall be based on measured flows from each Member Town plus (or minus) a flow proportional adjustment for Infiltration/Inflow (I/I) in Common Partnership System components. Estimated I/I flows should be periodically checked at a frequency to be determined by the Commission.

Total flow shall be the recorded flow received each day. The Average Annual Flow shall be reported as the monthly average flow for the previous 12 months.
- 1.1.29 "Total Flow Allocation" shall mean the amount of wastewater treatment facility capacity dedicated and reserved for use (owned) by each Member Town.
- 1.1.30 "Total Suspended Solids" (abbreviated TSS) shall mean solids that either float on the surface of, or are in suspension in water, or wastewater, or other liquids and which are removable by laboratory filtering, expressed in milligrams per liter by weight (or pounds per day).
- 1.1.31 "User Charges" shall mean a charge levied on Member Towns of the Partnership for the cost of operation and maintenance, repairs and associated capital payment costs for the Common Partnership System.
- 1.1.32 "Wastewater" shall mean spent water of the Member Towns and may be a combination of the liquid and water carried wastes from residences, commercial

buildings, industrial plants and institutions, together with any ground, storm, and surface waters that may be present.

- 1.1.33 "Yarmouth" is the Town of Yarmouth, a municipal corporation of the Commonwealth of Massachusetts. The "Yarmouth Board" shall be the Board of Selectmen acting as Sewer Commissioners of the Town of Yarmouth, or its successors.

Section 2: Wastewater Characteristics

- 2.1 The Partnership shall receive, treat and dispose of Member Towns' wastewater in accordance with this Agreement and all applicable local, state and federal laws, regulations, water quality standards, orders and decrees of any state and/or federal governmental authority having jurisdiction over the treatment, and disposal/ recharge of wastewater. The Partnership shall comply at all times with the Partnership's Groundwater Discharge Permit(s).

- 2.2 Member Towns shall adopt as a minimum the rules, regulations and requirements of the Partnership proscribing and limiting the content of wastewater discharged into the sewers that convey flow to the Common Partnership System. The rules, regulations and requirements include but are not limited to:

- 2.2.1 Sewer Use Regulations (Partnership to develop and adopt regulations prior to treatment plant being operational)

The Partnership shall send written notice of any proposed revisions to the Partnership's Sewer Use Regulations to the Member Towns 30 days prior to such revision(s) being enacted or adopted.

- 2.3 It is recognized that under extreme wet weather events or high groundwater periods that increased Infiltration and/or Inflow (I/I) may occur. In recognition of this, each Member Town shall work cooperatively with the Partnership to investigate and reduce its flows so that I/I flow by Member Towns is maintained to be within industry (Water Pollution Control Federation or other) and regulatory (MassDEP or other) guidelines. It is the responsibility of each Member Town to pay for its own I/I evaluations, studies, construction, and related work to reduce I/I within each Member Town's respective Local Wastewater System.
- 2.4 Any Member Town accepting wastewater from an adjacent customer community shall be responsible for requiring the customer community to adopt and adhere to any and all Partnership requirements regarding wastewater regulations, permits or Partnership operations as defined herein. The Partnership shall have the authority to require that a Member Town pursues appropriate actions in this regard and may charge any costs the Partnership incurs for this enforcement to said Member Town.

Section 3: Location of Partnership Facilities

3.1 Location

Initially, all Partnership facilities shall be located within the limits of the Member Towns and are as described below: Conveyance System – initially there is no common Partnership conveyance system. In the future there may be common pumping stations, forcemains or other related items.

Treatment Plant – a wastewater treatment facility located adjacent to the Dennis DPW facility will treat wastewater to standards established by the MassDEP in order to meet a Groundwater Discharge Permit.

Effluent Recharge Sites – treated effluent will be pumped in force mains to effluent recharge sites located in Dennis, Harwich and Yarmouth as shown in **Appendix A, Exhibit A** or to any other approved reuse alternatives.

Refer to **Figure 1** of **Appendix D** for an overview of the Partnership System.

3.2 Plans

The District shall maintain a description, plan, title information or combination thereof, identifying and describing the Partnership facilities owned or leased by the Partnership, and the location of those facilities.

Each Member Town shall provide the Partnership annually in July an updated electronic copy of the Local Wastewater System within that Member Town that is ultimately connected to the Partnership facilities. Flow metering locations shall be shown on the sewer system map shown in **Exhibit D**.

3.3 Conveyance and Transfer

Each of the Member Towns shall enter into a ground lease with the Partnership for a term of no more than ninety-nine (99) years for nominal consideration of One Dollar (\$1.00) to lease certain real property, personal property, equipment and other assets to the Partnership (including property and assets to establish the Common Partnership System) for the wastewater treatment plant site and effluent recharge sites, and to grant non-exclusive perpetual easements for sewer purposes to the Partnership by or on the Effective Date and in accordance with an agreement entitled, “Agreement to Convey Real Property and Transfer Assets”, or any other arrangements, both attached hereto as **Appendix E** on their respective properties as follows:

Town of Dennis

- a. 120 Theophilus F. Smith Road, shown on Assessor’s Map 165 as Lot 1-for wastewater treatment plant site and effluent recharge;

- b. 30 Bob Crowell Road, shown on Assessor's Map 173 as Lot 36, for effluent recharge site;
- c. 825 Old Bass River Road, shown on Assessor's Map 284 as Lot 4, for effluent recharge site;
- d. 350 Paddocks Path, shown on Assessor's Map 310 as Lot 13, for effluent recharge site;
- e. 50 Golf Course Road, shown on Assessor's Map 315 as Lot 1, for effluent recharge site.

Town of Yarmouth

- a. 62 Highbank Road, shown on Assessor's Map 80-17, for effluent recharge site.

Town of Harwich

- a. 205 Queen Anne Road, shown on Assessor's Map 58-M-1, for effluent recharge site.

Land Use Agreements – Construction by the Partnership on a parcel identified in this section for use by the Commission shall require the development of a Memorandum of Understanding (MOU), Inter-Municipal Agreement (IMA) or similar instrument between the Commission and that town's Board of Selectmen that as a minimum defines the operating requirements for use of the site, the apportionment of construction costs including any project lost revenues during construction, the schedule for construction to help minimize costs and neighborhood impacts, the routing of construction vehicles and time of operation, and any other specific land use issues.

3.4 Taxes

The DHY Clean Waters Community Partnership shall be a tax-exempt entity, and not be subject to local real estate property taxes, personal property taxes, host community fees, excise taxes or any other similar type fees for any of the facilities located in the three member towns. There shall also be no Payments in Lieu of Taxes (PILOT) or fees.

Section 4: Wastewater Services to Member Towns

4.1 Additional Services

The Partnership shall provide wastewater treatment and disposal services to the Member Towns. The Partnership may provide additional wastewater related equipment and services to its Member Towns. Costs for all wastewater related equipment and services not provided to all Member Towns by the Partnership shall be the responsibility of the individual Member Town(s) receiving said equipment and services. The Partnership shall maintain a separate accounting of costs for that equipment and services and the individual Member Town(s) shall be fully responsible for payment for use of that equipment or services which shall be additionally billed on the quarterly invoice in which the equipment and services were incurred.

An example of these types of additional services might include work at a Member Town's pumping station or use of a piece of Partnership equipment to assist in cleaning or rehabilitating a Member Town's Local Wastewater System.

4.2 Equipment

The Partnership may purchase equipment or procure use of equipment that would be utilized by the Member Towns and charged to each Member Town in proportion to the use by that Member Town. The Commission must approve each equipment purchase or procurement and rate to be charged for equipment use. Similarly, the Partnership may utilize equipment owned by a Member Town and reimburse that town at an approved rate.

Section 5: Measurement of Flow

5.1 The Partnership measurement of wastewater flow shall be as follows:

5.1.1 The volume of flow used in computing the flow variable portion of operation and maintenance costs shall be based upon readings obtained by metering equipment approved by the Partnership, installed by each Member Town, and located at each point of discharge into the Common Partnership System or each Member Towns' shared wastewater conveyance system. Such metering equipment shall be installed by the respective Member Towns and shall include a SCADA system (not to be used for control unless contracted for by a Member Town) for sending metering data to the Partnership's treatment plant. The collection of flow meter readings for the purpose of computing and distributing charges shall be done locally at each meter and shall be the responsibility of Partnership and/or its authorized agent, and all costs related to the collection of the data and the calculation of the charges shall be a part of the Operating Costs of the Common Partnership System. Once a quarter, as a minimum, the Partnership will provide each Member Town with the monthly wastewater volume for the preceding quarter, based upon the meter readings. Each Member Town will have access to said meter readings during the Partnership's normal business hours.

5.1.2 Each Member Town shall provide a flow measuring system at its own expense to measure all wastewater flows from the Member Town which enter the Common Partnership System. The general arrangement, equipment and physical location of these flow measuring stations shall be subject to Partnership's review and approval. The cost of maintaining those flow measuring stations shall be borne by each respective Member Town.

The Partnership shall provide and maintain a SCADA system (not to be used for control unless contracted for by a Member Town) at its expense to assist with monitoring the measured flows from each flow measuring station that discharges into a shared wastewater system within a Member Town or that discharges directly into the Common Partnership System.

Each Member Town shall be responsible for checking the accuracy and reliability of the flow metering equipment on at least a semi-annual (twice per year) basis and agrees to keep such equipment functional, operational and accurate. The Partnership shall be advised of the results of any tests on the equipment and the methods employed.

The Partnership shall have the right to check the operation and accuracy of all system meters and the cost of these checks shall be borne by the Partnership. System meters are defined as those meters utilized to calculate the flow received from each Member Town. Should a flow discrepancy of more than the accepted industry accuracy standard for that given meter type be detected pursuant to this Partnership check, then the Member Town shall recheck their meter within 60 days of the detection at their costs and within 30 days of the recheck take any appropriate action to rectify or correct discrepancy so that accuracies are again within the industry standard. The Partnership shall maintain a listing of the agreed upon industry accuracy standards by meter type.

- 5.1.3 The Partnership operates and maintains a metering and automatic sampling station at the wastewater treatment facility inlet area. The general arrangement, equipment, maintenance and operation of this metering station shall be subject to periodic inspection by the Member Town. Any costs incidental to the operation and maintenance of the metering station, including the wastewater sampling and analysis, shall be borne by the Partnership and be included as a part of the Operating Costs of the Common Partnership System.
- 5.1.4 Determination of the volume of each Member Town's wastewater flows shall be determined directly from the metering conducted at the flow monitoring stations.
- 5.1.5 In the event the metering equipment is temporarily out of order or service for any reason, the volume of wastewater will be estimated by the Partnership on the basis of recent correct readings and past experience using a mutually agreed upon formula or flow period.
- 5.1.6 All flows in this Agreement are and shall be based on actual flows and not 310 CMR 15.00 State Environmental Code Title 5 flows.

Section 6: Sampling of Wastewater Flow

- 6.1 The Partnership shall have the right to sample wastewater flow at any location within a Member Town's Local Wastewater System and shall do so at its (the Partnership's) own costs. A copy of sampling results shall be provided to the appropriate Member Town. Member Towns shall provide full and free access to their collection system sampling locations for Partnership use.

In the event that wastes of unusually high strength (per industry standards) are detected by the Partnership, then the appropriate Member Town shall be responsible for determining the source and/or cause of the high strength waste and shall take appropriate actions to make

sure it is in accordance with the Partnership's Industrial Pretreatment Program contained within the Partnership's Sewer Use Regulations.

Section 7: Notice of Flow Changes

- 7.1 Each Member Town agrees to notify the Partnership as far in advance as possible of any anticipated or planned significant (greater than 25,000 gpd) increases or decreases in wastewater flow discharged into the Common Partnership System by that Member Town.
- 7.2 Each Member Town agrees to provide to the Partnership, on a semi-annual (twice per year) basis, a summary of connection permit data for new sewer connection permits issued by the Member Town. Said information shall include an estimate of capacity to that particular new user.
- 7.3 Each Member Town hereby agrees to take all appropriate actions necessary to enforce conformance with all Partnership wastewater regulations by all customers within the Member Town's sewer service area. Each Member Town shall be responsible for any fines or penalties issued to the Partnership as a result of that Member Town's failure to act in accordance with this provision.

Section 8: Pretreatment

- 8.1 Each Member Town shall adopt and enforce the Partnership's Pretreatment Regulations (within 120 days of the Effective Date of those regulations) as a minimum standard. Each Industrial User in each Member Town shall provide necessary treatment as required to comply with said Regulations, including the Local Discharge Limitations set forth therein and all applicable National Categorical Pretreatment Standards and General Pretreatment Standards.
- 8.2 Each Member Town reserves the right at any time to pretreat or improve the quality of the wastewater or to otherwise give preliminary treatment to its wastewater prior to discharge to the Common Partnership System.
- 8.3 In accordance with the Partnership's Sewer Use Regulations, the Partnership may require pretreatment of high strength wastes by individual sewer users. Each Member Town recognizes and agrees to the Partnership's authority to require such pretreatment and agrees to work with the Partnership and apply its full authority, as well to enforce such requirements.

Governance Terms and Conditions

Section 9: Wastewater Partnership Commission

9.1 Appointment

The powers and duties of the Partnership shall be vested in and exercised by a Wastewater Partnership Commission hereinafter sometimes referred to as the “Commission,” whose seven (7) members shall be appointed by the Member Towns in the following manner:

Yarmouth shall have three (3) Commission members appointed by the Board of Selectmen or their designated local authority; Dennis shall have two (2) Commissioner members one appointed by the Board of Selectmen and one appointed by the Finance Committee and Harwich shall have two (2) Commission members appointed by the Board of Selectmen or their designated local authority.

The Commission members shall be appointed from the following categories of appointees for each Member Town: Town Administrator, DPW Director, Wastewater Superintendent (or equivalent), Board of Selectmen, Water and Sewer Commissioner, Finance Committee, and/or qualified Town Resident. Only one member shall be appointed from any one category by the appointing authority of a Member Town.

9.2 Term

The initial appointments of a member of the Commission shall be for Yarmouth terms of three years, two and (in case of Yarmouth) one year; for Dennis terms of three and two years; and for Harwich terms of three and one years. Upon completion, each of those terms shall be followed by a successive three-year term. Terms shall begin on July 1st and end on June 30th of the appropriate year. The initial appointments to the one year terms shall be until June 30th of the Fiscal Year in which the appointment is initially made. The initial two year appointments shall be for the first full Fiscal Year after the Fiscal Year in which the initial appointment is made. The three year appointment shall be for the full two Fiscal Years after the initial appointment is made. Each member shall serve on the Commission until his/her successor is duly appointed and sworn into office by the Town Clerk of the Member Town.

Member Towns shall make appointments to the Commission annually, by June 1st. Initial appointments to the Commission shall be made not later than 60 days after the effective date of this agreement.

9.3 Resignation and Removal

A member of the Commission may resign by filing with the Commission a written notice of resignation with a copy thereof to his/her appointing board, the Board of Selectmen and Town Clerk of the Member Town. A member of the Commission may be removed from that office, with or without cause, by vote at a posted open meeting or executive session as may be required, of the appointing authority, acting in its sole discretion. Such removal

shall become effective upon the date of receipt by the Commission of written notice from the Town Clerk of the Member Town of the removal of such person from the Commission.

Appointment of a new Commission member to fill a vacancy shall be for the balance of the unexpired term of the former Commission member who has been removed.

9.4 Vacancy

In the event of a vacancy on the Commission the Member Town with such vacancy shall within forty-five (45) days appoint a member in the manner of the previous appointment to that position, and the substitute member shall serve for the balance of the unexpired term.

Should the appropriate board fail to fill the vacancy within the appropriate time, that vacant member's position shall not negatively impact any Commission actions and the Commission may continue to act provided the necessary quorum is present.

9.5 Organization

Promptly upon the appointment and qualification of the initial members of the Commission and annually thereafter at the first regular fiscal year meeting of the Commission, to be held no later than July 31st, the Commission shall organize and elect a chairman, vice-chairman and secretary from among its membership. At least one officer shall be appointed from each of the Member Towns unless a vacancy occurs prior to expiration of a term of service.

At the same meeting or at any other meeting, the Commission shall appoint the following additional officers: a treasurer, who shall not be a member of said Commission, and may appoint such other officers, including Executive Director, as it deems advisable and describe the powers and duties of any of its officers, fix the time for its regular meetings and provide for the calling of special meetings. Prior to the appointment of a Treasurer or an Executive Director or other administrative staff, the Commission may, pursuant to **Appendix B** if this Agreement, contract with a Member Town for the provision of administrative services, including the services of a Treasurer and an Executive Director.

The Partnership's treasurer shall receive and take charge of all funds belonging to the Partnership and shall pay any bill of the Partnership which shall have been approved by the Commission. The treasurer may, as authorized by vote of said Commission, be compensated for his/her services. The treasurer of the Partnership shall be subject to Sections 35, 39B, 52, and 109A of Chapter 41 of the Massachusetts General Laws, and Chapter 88 of the Acts of 2019 to the extent applicable.

9.6 Powers and Duties

The Commission shall have all the powers and duties conferred and imposed upon such commissions by law and conferred and imposed upon it by Chapter 88 of the Acts of 2019 and this Agreement, and as may be provided in any other applicable Massachusetts general law or special act hereinafter enacted. The Commission shall have the authority to enact, and to amend from time to time, such regulations as it deems necessary to provide the

services and to operate and maintain the facilities covered by this Agreement, which regulations may include management of the sewer collection, pumping, treatment, reuse and recharge facilities, and any directly related facilities in the Member Towns.

As authorized in Section 4 of the Enabling Act, the Commission has all rights and powers to prosecute violations of the regulations within the political bounds of each Member Town.

9.7 Quorum

Non-financial Business Matters – For transaction of non-financial business matters, a quorum shall be a majority (four) of the Commission with at least one representative present from each of the Member Towns.

Financial Business Matters – For transaction of financial business matters, a quorum shall be at least five (5) of the Commission members authorized by the terms of this Agreement to vote thereon with at least one representative present from each of the Member Towns. For purposes of this paragraph, the term “financial business matters” shall be those matters that involve or concern an expenditure, liability, claim, or other thing of value in an amount of \$30,000 or more.

If a member of the Commission from a Member Town does not attend for two consecutive regularly scheduled meetings of the Commission, then the requirement to have a voting member present from each Member Town shall be deemed waived for the next regularly scheduled meeting (i.e. the third consecutive meeting) and for each consecutive meeting that member misses thereafter.

Once a vote to approve a “Financial Business Matter” has been passed, then future votes on that specific item shall only require a majority quorum be present.

Section 10: Amendments to Agreement

10.1 Limitation

This Agreement may be amended from time to time in the manner hereinafter provided, but no such amendment shall be made which shall substantially impair the rights of the holders of any bonds or other notes or other evidence of indebtedness of the Partnership then outstanding, or the rights of the Partnership to procure the means for payment thereof, provided that nothing in this section shall prevent the admission of a new town or towns to the Partnership subject, however, to the provisions of Section 11 of this Agreement and the reapportionment of Capital Costs of the Partnership represented by the bonds or notes of the Partnership then outstanding and of the interest thereon.

10.2 Procedure

Any proposal for Amendment, except a proposal for Amendment providing for the withdrawal of a Member Town (which shall be governed by Section 12) may be initiated by a favorable vote of two-thirds of the members of the Commission, with at least one affirmative vote coming from each Member Town. The Commission shall mail or deliver a

notice in writing to the Chairman of the Sewer Commissioners or Board having such authority, and to the Board of Selectmen of each of the Member Towns that a proposal to amend this Agreement has been received by the Commission and shall enclose a copy of such proposal. This notice shall be sent 60 days prior to any vote by the Commission on the proposed amendment after which the Commission may proceed to vote on the proposed Amendment.

The amendment shall be adopted upon the occurrence of all the following approvals in the order stated:

1. An affirmative vote on the amendment by two-thirds of the Commission members;
2. The subsequent ratification of the Commission vote by all of the Member Towns acting by majority vote at their next Annual or Special Town Meeting.

The amendment shall be effective 30 days following the date of the last required vote of a Member Town's Town Meeting, to ratify the Commission's action.

10.3 Programmed Reviews

The Commission shall undertake a formal review of this Agreement within five (5) years of the substantial completion date of the initial treatment plant construction and, thereafter, at least once every ten (10) years. A formal review document shall be developed explaining the review process, findings and any recommendations and distributed to each Member Town. Any Amendments to the Agreement in the interim shall reset the review period and specifically state the review date in that amendment.

Section 11: Admission of New Member Town(s) or Transfer of Capacities

11.1 Admission Requirements

By an Amendment to this Agreement in accordance with Section 10 above, any other town or towns may be admitted to the Partnership.

Any town requesting to be admitted to the Partnership must first obtain approval from the appropriate board within the Member Town through which the new town would be connecting. The proposed new town may then negotiate with the Commission for the necessary flow allocation adjustments or expansion.

Each new Member Town acting through its Board of Selectmen and Sewer Commission or board having the authority of sewer commissioners will become a signatory to this Agreement as amended following the amendment process as set out in Section 10.2 above and upon ratification of the Agreement as amended by majority vote of the town meeting of the new Member Town.

11.2 Admission Costs

All costs associated with the addition of a new town to the Partnership shall be negotiated between the Commission and the proposed new town. Any costs borne by the Partnership to evaluate or implement the proposal shall be paid for by the proposing town.

For all new treatment capacity requests or transfer of capacities among Member Towns, the buy-in cost shall include a negotiated payment representing recovery of the cost of the Common Partnership System up to that date and any additional expansion costs required to accommodate the flow request.

Section 12: Withdrawal from Partnership

12.1 Limitations

A Member Town may withdraw from the Partnership by an Amendment to this Agreement in the manner provided by this Section. Any Member Town seeking to withdraw shall, by vote at an Annual or Special Town Meeting, request the Commission to prepare an Amendment to this Agreement setting forth the terms by which such Member Town may withdraw from the Partnership, provided that the said Member Town shall be liable to the Partnership as defined in the following paragraphs for its share of the indebtedness of the Partnership outstanding at the time of such withdrawal, for interest thereon, to the same extent and in the same manner as though the Member Town had not withdrawn from the Partnership

12.2 Procedure

A Commissioner of the Member Town seeking to withdraw shall notify the Commission in writing that such Member Town has voted (by the appropriate governing body) to request the Commission to prepare an Amendment to the Agreement (enclosing a certified copy of such vote). Thereupon, the Commission and withdrawing Member Town shall prepare a proposed Amendment to the Agreement setting forth such terms of withdrawal including timeframe, subject to the limitation contained in subsection 12.1. The terms of withdrawal shall insure that the withdrawing Member Town will pay its share of borrowing in anticipation of revenue which may be outstanding at the time of withdrawal and operating costs as described in Section 12.4. The Commission shall mail or deliver a notice in writing to the Chairman of the Sewer Commissioners and to the Board of Selectmen of the Member Town seeking to withdraw that the Commission has prepared a proposed Amendment to the Agreement providing, for the town's withdrawal (enclosing a copy of such Amendment). The Board of Selectmen of the Member Town seeking to withdraw shall include in the Warrant for the next Annual or Special Town Meeting, an Article stating the Amendment or the substance thereof. If approved by the Member Town, the Amendment shall take effect as stipulated.

12.3 Cessation of Terms of Office of Withdrawing Town's Members

Upon the effective date of withdrawal, the terms of office of the members serving on the Commission from the withdrawing Member Town shall terminate and the total membership of the Commission shall be decreased accordingly. If a non-municipal customer purchases the capacity of the Member Town leaving, then the Commission membership will remain at the reduced level. If a new Member Town purchases the capacity of the former Member Town, then the new Member Town will be allowed to appoint an appropriate number of member(s) to the Commission based on flow capacity purchased from the departing or former Member Town.

12.4 Apportionment of Costs After Withdrawal

Any future installment or portion thereof, of any principal and interest on debt obligations outstanding on the effective date of withdrawal of a Member Town, which obligations were incurred by the Partnership as a local service cost attributable to such withdrawing Member Town, shall continue to be assessed to such withdrawing Member Town until the outstanding debt obligations are satisfied or appropriately transferred to an authorized successor. Due dates of payment shall be as specified in Section 15.

The withdrawing Member Town's maximum annual share of operating costs shall be paid based on the most recent fiscal year's share of operating costs over the subsequent three year period with payments declining by one-third each year unless another town or customer purchases the capacity of the withdrawing Member Town. Due dates of payment shall be as specified in Section 15.

12.5 In no event shall withdrawal by any Member Town take place prior to the expiration of fifteen (15) years next following the effective date of this Agreement.

Section 13: Contract Administration

13.1 The responsibility for enforcement and administration of this Agreement shall be assigned to the Partnership's Executive Director, subject to oversight by the Commission. All reports, requests, permit issues, questions, etc. shall be addressed to the Executive Director in the first instance.

13.2 In the event that a dispute arises regarding the Executive Director's enforcement or interpretation of the terms of this Agreement, the aggrieved party may petition the Commission. The petition shall be submitted through the appropriate Member Town's Board of Sewer Commissioners or board having such authority and shall be addressed to the attention of the Partnership's Executive Director, who shall present it to the Commission at its next regularly scheduled meeting. The Member Town's Board of Sewer Commissioners or equivalent authority and the Commission will attempt to resolve the dispute; however, the final decision rests with the Commission, subject to the provisions in 13.3, below.

- 13.3 If the matter is not resolved to Member Town’s satisfaction, the Member Town may then seek to utilize the dispute resolution provisions hereinafter provided:

If any dispute and/or claim (“dispute” or “claim”) arises out of the scope, interpretation, operation or alleged or actual breach of this Agreement, the Partnership, acting by and through the Commission, and the Member Town(s) (collectively the “Parties” and separately, a “Party”) agree that the dispute will be subject to the following dispute resolution process.

- (a) The Parties to the dispute shall endeavor to resolve the same amicably and directly with each other, by conducting a meeting(s) between or among the designated representatives of the involved Parties. A Party claiming to be aggrieved by a dispute shall first send written notice thereof to the other relevant Party or Parties, detailing the nature or basis of the claim and citing this Dispute Resolution Provision. Upon receipt of such written notice, the Parties shall work cooperatively to schedule a meeting to attempt to amicably resolve the dispute. In any event, the meeting shall be held within twenty (20) business days of the date of delivery of said written notice of the claim (if the dispute involves multiple Parties, the effective date shall be the date of delivery of notice to the last Party to receive it).
- (b) If, after twenty (20) days from the date of the first meeting held in accordance with subparagraph (a), above, the Parties are unable to resolve the dispute between them, the aggrieved Party shall make written demand upon the other Party or Parties to submit the matter to mediation. The Parties shall begin promptly, but not later than fourteen (14) days after receipt of a written demand to mediate, to engage in selection of a mediator and scheduling of a mediation session. The mediation shall be governed by the mediation rules of the American Arbitration Association then in effect, unless an alternative method of mediation is mutually agreed upon by all Parties in writing. If the Parties cannot agree on the selection of a mediator, either Party may seek appointment of a mediator by the local office of the American Arbitration Association, who shall promptly schedule the matter for mediation.
- (c) If the dispute cannot be resolved through mediation and the dispute involves fines, penalties, permit and connection fees, contractual terms, or damages of \$100,000.00 or less or any question involving the sum of \$100,000.00 or less or if a Party fails to engage in mediation as required herein, the Commission and the aggrieved party shall enter into binding arbitration governed by the rules of the American Arbitration Association and the decision of the arbiter shall be the final and binding, and the sole remedy of the Parties at law or in equity.
- (d) As to all other disputes, the aggrieved party may submit the dispute to a court of competent jurisdiction in the Commonwealth of Massachusetts for resolution or court order.

13.4 This Agreement and all acts performed or required to be performed hereunder shall be interpreted under the laws of the Commonwealth of Massachusetts and jurisdiction shall vest in said Massachusetts' courts.

Section 14: Procurement of Professional Services

14.1 When the Commission engages legal counsel, financial advisors, engineers, accountants, consultants and other advisors, they shall follow appropriate Massachusetts procurement laws as they relate to goods and professional services. It is the general policy of the Commission that procurement for goods, professional services or construction contractors shall be done in a competitive manner to the maximum extent possible.

14.2 Commissioners shall be required to establish a dollar threshold that determines when competitive procurements are required for professional services.**Cost Terms and Conditions**

Section 15: Apportionment and Payment of Costs

15.1 Classification of Costs

For the purpose of the Partnership apportioning assessments against Member Towns, costs shall be divided into two categories: Capital Costs and Operating Costs, as defined herein.

15.2 Capital Costs

Capital Costs shall include all expenses in the nature of capital outlay, including but not limited to the cost of acquiring land, the cost of constructing, reconstructing or adding to buildings, the treatment plant, effluent recharge or reuse facilities, roads, pipelines and utility lines, the cost of consulting/ engineering services, related legal costs, the cost of any equipment necessary for the operation of the Common Partnership System and any other related costs. Capital Costs shall also include payment of principal and interest on short-term borrowing, bonds and notes or other obligations issued by the Partnership to finance Capital Costs adjusted to reflect interest earnings on reinvestment of borrowings. Capital Costs shall include a reserve fund as a percentage ("the reserve fund percentage") of Capital Cost expenditure to be determined as part of the Partnership budget pursuant to Section 16, below. The minimum cash reserve fund shall be as approved by the Commission but shall not exceed 20 percent of the annual budget.

The minimum threshold to be defined as a Capital Cost shall be \$30,000, unless as otherwise established by the Commission.

15.3 Operating Costs

Operating Costs shall include all costs incurred by the Partnership not included in Capital Costs as defined in Section 15.2. Operating Costs shall include a cash reserve determined by multiplying operating cost expenditures by the cash reserve percentage approved by the Commission.

- 15.3.1 The Partnership shall maintain an adequate and separate cost accounting system which shall be the basis for the determination and allocation of costs for the operation, maintenance and repair of the Common Partnership System. The accounting system shall be available for inspection by Member Towns via their appointed Commission representatives, during normal business hours. Quarterly statements (financial and flow data) shall be sent to Member Towns by the Partnership within 30 days of the end of each quarter.
- 15.3.2 The Partnership shall maintain detailed cost accounting records for the operation, maintenance, repair and/or replacement of each of the following facilities or group of facilities:
- a) Conveyance System: The term "Common Partnership System" (also known as conveyance facilities) shall mean the interceptor sewers and any other sewers and pumping stations and force mains utilized to convey Member Towns' wastewater through the Common Partnership System to the Partnership's wastewater treatment facility. The costs of operating and maintaining the Common Partnership System shall be apportioned on the basis of the actual total quarterly flows through the Common Partnership System conveyance facilities from each Member Town. There is currently no common conveyance system proposed by the Partnership but that could change in the future.
 - b) Wastewater Treatment Facility and Effluent Recharge /Reuse Sites: The cost of operating the Partnership's wastewater treatment facility and land/ groundwater recharge facilities shall be apportioned as described in Section 15.3.6 and Section 15.3.7.
- 15.3.3 In the event that financial assistance from state and/or federal agencies not otherwise provided for herein becomes available toward the annual operating costs of the Common Partnership System, then such assistance shall be used to reduce the appropriate operation, maintenance and repair costs of the Partnership.
- 15.3.4 User Charges shall be due quarterly on July 31, October 15, January 15 and April 15, each year.

The Partnership shall submit to each Member Town its estimated Operating Costs of the Common Partnership System for the next fiscal year, in writing, by December 1st of each year so that the Member Towns may budget accordingly. The final assessment of each respective Member Town's User Charges, as approved by the Commission, shall be delivered to each Member Town on or about February 1st.

Each Member Town's User Charge for any quarter shall be estimated from the Partnership's flow records of the previous quarter and from the Partnership's budget for that quarter.

In July of each year, the Partnership shall determine the actual Operating Costs of the Common Partnership System for the previous fiscal year (based on a 12-month

rolling average wastewater flow calculated on a monthly basis). In the event that the total amount of the quarterly payments exceeds the annual Operating Costs due from a Member Town, any excess shall be credited to the subsequent quarterly bill.

In the event that the total amount of quarterly payments for User Charges from a Member Town is less than the actual annual Operating Cost, the difference shall be payable within sixty (60) days of the due date. If payment is not received within that period, then the amount due shall be the carrying costs based on an interest rate of up to 12 percent annually on the past due amount or the actual cost, if greater.

- 15.3.5 Operating Costs for the Common Partnership System shall also include the cost of operating and maintaining the flow measuring equipment, the wastewater sampling equipment, the analysis of wastewater samples and the collecting of flow meter readings from the main monitoring station at the treatment facility site. These shall be considered semi-fixed costs.
- 15.3.6 Operating Costs for the use of the Common Partnership System shall be divided between semi-fixed costs and flow variable costs. Each Member Town's User Charge shall include its share of semi-fixed costs based on total flow allocation available and online at that time and its share of flow variable costs based on actual use by the Member Town.
- 15.3.7 For the purpose of this Agreement, the various elements or components of the Operating Costs shall be defined and categorized as "semi-fixed" or "flow variable" as follows:
- a) Semi-fixed costs
 - 1) The overall administrative expenses to operate the Common Partnership System and include office supplies, rental of office equipment, postage, any statutory assessments, employee computer expenses, insurance, consultant/ engineering/ legal expenses and retirement insurance.
 - 2) The overall administrative and operational salaries, including overtime to operate the Common Partnership System.
 - 3) Common Partnership System conveyance facilities salaries and expenses.
 - 4) Treatment facility overhead expenses such as telephone, building heat and water, laboratory supplies and uniforms.
 - 5) Treatment facility overhead expenses for equipment maintenance costs, including gas and oil for vehicles.
 - 6) Staff training and development salaries and expenses for Partnership personnel.

- 7) Common Partnership System conveyance facilities Infiltration and Inflow (I/I) maintenance salaries and expenses.
 - 8) Capital Costs
 - b) Flow variable costs
 - 1) Liquid sludge hauling and disposal expenses
 - 2) Electricity and chemical expenses of the Common Partnership System.
 - c) A sample table depicting semi-fixed and flow variable costs is included in **Appendix A, Exhibit B.**
- 15.3.8 Any Operating Costs that have not been considered under this Article that may arise in the future will be designated as semi-fixed or flow variable by the Commission. Each Member Town shall be notified in writing ninety (90) days prior to being charged for such costs not previously considered under this Article.
- 15.3.9 In the event that a Member Town's total wastewater annual flow entering the Common Partnership System within any quarter exceeds ninety percent (90%) of the Member Town's total wastewater annual flow allocation (defined as a 12-month rolling average calculated on a monthly basis) assigned to it under this Agreement, then that Member Town's wastewater authority and the Commission shall enter into negotiations to either (i) allocate more capacity from another Member Town per Section 11 of this Agreement; (ii) define measures to reduce the quarterly flow increase to keep the existing flow total of the Member Town within its allocation; (iii) plan for expansion of appropriate facilities to be paid for by that Member Town; or (iv) take any other appropriate action as required to enforce flow capacity allocations.
- 15.3.10 In the event a Member Town's total wastewater annual flow allocation is exceeded in any month within a three month billing quarter, then that Member Town shall meet with the Commission to review progress relative to a plan developed in accordance with Section 15.3.9, above. If the Member Town's total wastewater annual flow capacity exceeds the 12-month rolling average annual flow allocation (not the average monthly flow) for any month within a quarter, then the Member Town shall pay its semi-fixed cost at the actual percentage flow of that Member Town's allocation plus an additional five (5) percent of that cost as a penalty, with the other Member Town(s) receiving proportional payment credits based on their respective capacity owned. This penalty payment shall occur each quarter until the 12-month rolling average annual flow of the violating Member Town is below its flow capacity for all three months in a quarter. In addition, if there is a resultant permit violation and fine, attributed to the increased flow, then the responsible Member Town shall pay the entire fine and any other related costs (legal, engineering, etc.).

Refer to **Appendix A, Exhibit C** for an example calculation of the Flow Payment Penalty Scenario.

15.4 Apportionment of Capital Costs

In the event the Partnership must undertake an expansion, major repairs, replacement, or add to the Common Partnership System, or is directed or ordered to provide a higher degree of treatment in the future, or any other related expense, then the net capital cost related thereto shall be apportioned between the Member Towns on the basis of Total Flow Allocation (capacity owned), unless said further or additional treatment is caused by wastewater of a special character, in which case the added cost shall be borne by the Member Town in which the wastewater originates, or, if expansion is required, the percentage of the expanded facilities available to each Member Town. A reasonable payment schedule shall be established by the Partnership prior to the completion of said replacement, repairs or additional facilities.

Each Member Town is allocated and hereby owns a specific wastewater capacity in the Partnership’s treatment facilities. Average daily flow in million gallons per day (mgd) is utilized as the unit measure for capacity owned.

Capital Costs shall be apportioned among the Member Towns and charged annually as depicted in the following examples:

15.4.1 Projected Initial Phase Flow Capacity Allocation (3 phases)

<i>Member Town</i>	<i>Total Flow Allocation</i>	<i>Percent Owned</i>
Dennis	1.15 mgd	34 %
Harwich	0.45 mgd	14 %
Yarmouth	1.75 mgd	52 %
Total	3.35 mgd	100 %

15.4.2 Projected Buildout Flow Capacity Allocation (after all 8 phases)

<i>Member Town</i>	<i>Total Flow Allocation</i>	<i>Percent Owned</i>
Dennis	1.96 mgd	30 %
Harwich	0.98 mgd	15 %
Yarmouth	3.54 mgd	55 %
Total	6.48 mgd	100 %

15.4.3 Example Interim Expansion Flow Capacity Allocation

Member Town	Total Flow Allocation	Interim Expansion	Total New Capacity
Dennis (mgd/%)	1.15 /34	0.25 / 17	1.40 / 29.0
Harwich (mgd/%)	0.45 /14	0.25 / 17	0.70 / 14.5
Yarmouth (mgd/%)	1.75 /52	1.00 / 66	2.75 / 56.5
Total	3.35 /100	1.50 / 100	4.85 / 100

The Initial phase flow shown in Section 15.4.1 is for description purposes only and reflects an approximation of the first three phases of flow from the Member Towns. The actual flow capacity that each Member Town requests will ultimately decide the size of the initial treatment facility to be constructed and the percentage each community would pay based on capacity owned.

In the above example shown in Section 15.4.3, once the Commission approved moving forward with facilities expansion to accommodate increased wastewater flow the Member Towns would pay for capital costs of the expansion based on the ownership of the expansion (shown in the Interim Expansion column). Member Towns would continue to pay their percentage share of the initial facility costs until paid off and would pay their share of the expanded capital costs of the expansion until paid off.

Once construction of the expansion facilities reached substantial completion then the percent capacity ownership would be recalculated to reflect overall ownership in the facilities and semi-fixed operating costs (described in Section 15.5) for future charges would be based on the new aggregate percent ownership for each Member Town (shown in the Total New Capacity column).

15.5 Apportionment of Operating Costs

Operating Costs after the Effective Date and for every fiscal year thereafter shall be apportioned by the Partnership to each Member Town in the following manner:

15.5.1 Semi-fixed operating costs: Semi-fixed Operating Costs will be apportioned annually to the Member Town in the same ratio based on capacity owned, as provided for Capital Costs.

5.5.2 Flow-variable operating costs: Upon the commencement of operations of any Partnership facility, flow based Operating Costs for the Common Partnership System will be assessed to the Member Towns based upon the average daily flow as measured at the Partnership flow meters and adjusted by the same ratio for Capital

Costs for Infiltration/Inflow (I/I) in Common Partnership System, and for any metered recycle flows at the treatment facility.

15.6 Times of Payment of Apportioned Costs

Each Member Town shall pay to the Partnership in each fiscal year its proportionate share of the Capital Costs and Operating Costs. The annual share of each Member Town shall be paid in such amounts and at such times that at least the following percentages of such annual share shall be paid on or before the dates indicated, respectively:

July 30 th	25%
October 15 st	50%
January 15 st	75%
April 15 st	100%

Bills to Member Towns shall be issued by the Partnership no less than 30 days prior to the due date.

Section 16: Partnership Budget

16.1 Fiscal Year

The fiscal year of the Partnership shall commence July 1 and end on June 30. The annual budget shall be based on this fiscal year,

16.2 Draft Operating and Maintenance Partnership Budget

The Commission shall annually prepare a draft budget for the ensuing fiscal year, including provisions for any installment of principal or interest to become due in such fiscal year on any bonds or other evidence of indebtedness of the Partnership and any other Capital Costs to be apportioned to the Member Towns. The Commission shall mail (or email if requested) a copy thereof to the Chairman of the Sewer Commission or Board having such authority and to the Board of Selectmen of each Member Town, on or before November 1st, and in such detail as the Commission may deem advisable.

16.3 Final Operating and Maintenance Partnership Budget

The Commission shall adopt an annual operating and maintenance budget, including debt and interest charges and any other current Capital Costs and cash reserve as separate items, on or before January 15th for the ensuing fiscal year. The Commission shall assess the amounts necessary to be raised in order to meet the said budget in accordance with the provisions of Section 15 of this Agreement. The amount so assessed to each Member Town shall, prior to February 1st of each year preceding the fiscal year to which said budget relates, be certified by the Partnership treasurer to the treasurer of each Member Town. The

Member Towns shall, at the next annual town meeting (if required), seek an appropriation of the amounts so certified.

Refer to **Appendix A, Exhibit D** for an example Fiscal Year Partnership Budget

16.4 Projected Five Year Budget

The Commission shall prepare a five year budget projection by Member Town once the draft operation and maintenance budget has been prepared. This budget shall include each of the line items shown in the budget as well as any other known items projected to be incurred during that planning period. The Commission shall mail (or email if requested) a copy thereof to the Chairman of the Sewer Commission or Board having such authority, and to the Board of Selectmen of each Member Town, on or before November 1st, so that each Member Town may utilize this information for budgeting and rate setting purposes. A final five year budget projection shall be adopted once the final operation and maintenance budget is approved and then a copy mailed (or emailed if requested) to the Chairman of the Sewer Commission or Board having such authority, and to the Board of Selectmen of each Member Town.

16.5 Budget Process

1. The Commission budget process shall be initiated on or about November 1st and shall provide an opportunity for the Sewer Commission or Board having such authority, the Board of Selectmen and the Finance Committee of each Member Town to have input into its preparation at a formally noticed public hearing. The draft budget available at that time shall be approved by majority vote of the Commissioners.
2. Upon request by the Sewer Commission or Board having such authority, the Board of Selectmen or the Finance Committee of a Member Town, the Commission shall arrange to meet with said Boards/Committees to present and discuss the proposed draft budget at a joint meeting in that community. Meetings shall be noticed locally and on the Commission website.
3. In December or early January, the Commission shall conduct a joint three-town Board of Selectmen meeting to present the proposed annual draft budget and capital plan. This shall be a publicly noticed meeting pursuant to the requirements of section 20 of chapter 30A of Massachusetts General Law. A quorum for this meeting shall be at least two Selectmen from each town and at least a total of eight Selectmen from the three towns. The annual budget shall be deemed approved if a majority of the Selectmen present and voting so vote. If the Selectmen vote to reject the proposed budget, they shall state their specific reasons for doing so and the Commission shall be required to respond to those reasons and put forth a revised budget or respond accordingly to the reasons. A revised vote can take place at this meeting or another meeting can be conducted by the member towns in the same manner as provided herein.

If no joint three-town Board of Selectmen meeting is held between November 1st and January 15th, then the proposed budget by the Commission shall be considered approved.

4. The Commission by January 15th shall adopt by a minimum of five positive votes a final operation and maintenance budget for the upcoming fiscal year which is reflective of key issues raised at the joint three-town Board of Selectmen meeting.
5. In the event the three town Board of Selectmen meeting does not affirmatively vote to adopt the Commission’s proposed budget by January 15th or if the Commission cannot obtain the required positive votes, the parties are required to follow the dispute resolution provisions of section 13.3 of this Agreement in an attempt to resolved the issues and to obtain the required approvals. In the event that the required approvals are not obtained by March 1st, the budget of the prior fiscal year shall remain in effect until such time as an agreement is reached.

16.6 Budget Schedule

Schedule	Submittal
November 1	Commission sends draft budget for ensuing fiscal year to member towns
November 1	Commission sends draft five-year budget plan to each member town
November/ December	Commission has budget discussions with member towns
December	Commission and member towns conduct a joint three-town Board of Selectmen meeting to approve Partnership annual budget.
January 15	Commission adopts final fiscal year budget and five-year budget plan
February 1	Commission treasurer certifies budget to treasurer of each member town
Annual Town Meetings	Member towns (if required) raise and appropriate certified budget for each member town share.

Section 17: Incurring of Debt

Within seven (7) days after the date on which the Commission authorizes the incurring of debt, other than temporary debt in anticipation of revenue to be received from Member Towns, the Commission shall cause written notice of the date of said authorization, the sum authorized and the general purpose or purposes for authorizing such debt, to be given to the Chairman of the Sewer Commission and to the Board of Selectmen of each Member Town. The notice shall be deemed to have been duly given to a Board of Selectmen of a Member Town if delivered to said Board or, if mailed, by registered or certified mail within the time specified, postage prepaid and addressed to the Board at the Selectmen's office.

Section 18: Treatment Plant Decommissioning – Cost Impacts

Should the DHY Clean Waters Community Partnership decide to disband in the future the following decommissioning process shall occur:

1. Conduct an appraisal of all of the Commission facilities;
2. Identify regulatory processes and transitional costs; and
3. Identify costs to restore sites to as close to original condition as feasible.

If the facilities have a market value, the assets (excluding leased property) shall be sold by the Commission and the net proceeds shall be distributed to the member towns based on percent ownership.

If the facilities are deemed to have no market value, then the net cost to restore the sites to as close to original condition as feasible shall be borne by each member community based on percent ownership.

Each member town shall be required to pay any of their remaining capital or operation and maintenance costs until paid in full.

[Signature pages follow]

IN WITNESS WHEREOF, THIS Agreement has been executed by the Board of Selectmen acting as Sewer Commissioners for the Town of Dennis, Massachusetts as of the _____ day of _____, 2020.

BOARD OF SELECTMEN
for the Town of Dennis

By _____

IN WITNESS WHEREOF, THIS Agreement has been executed by the Board of Selectmen acting as Sewer Commissioners of the Town of Harwich, Massachusetts as of the _____ day of _____, 2020.

BOARD OF SELECTMEN
for the Town of Harwich

By _____

IN WITNESS WHEREOF, THIS Agreement has been executed by the Board of Selectmen acting as Sewer Commissioners of the Town of Yarmouth, Massachusetts as of the _____ day of _____, 2020.

BOARD OF SELECTMEN
for the Town of Yarmouth

By _____

Appendix A – Exhibits

Exhibit A – Effluent Recharge Sites

Exhibit B – Example of Fixed versus Semi-Fixed Costs

Exhibit C – Example Flow Penalty Calculation

Exhibit D – Example Wastewater Treatment Plant Budget

Appendix B – Transition Items

B.1 Initial Plan of Action

B.1.1 Once the Commissioners are appointed from each Member Town, an official Commission meeting shall be held within 30 days at which time the Commission shall be organized per Section 9.5.

B.1.2 Once the Commission is officially organized, it shall develop a list of actions required to get the Partnership operational on a daily basis and to accomplish the other subtasks listed below including when to hire an executive director to oversee the day-to-day operations and when to hire an Owners Project Manager (OPM) to help guide it through the permitting, design and construction process for the initial treatment plant and effluent recharge facilities.

B.2 Initial Budget

B.2.1 Once the Commission is official organized, it shall begin the process of developing a budget for the initial year of operation and working with Member Towns as to how to best fund those operations. Local Member Town funds, short term borrowing and access to the Environmental Bond Bill authorization are potential sources of funding.

B.2.2 For planning purposes, the Commission shall estimate initial fiscal year budgets for the treatment plant and effluent recharge sites during their initial year of operation, or portion thereof, and shall work to create a five year budget plan according to the timelines stated herein.

B.3 Schedule for Construction and Start-up of Partnership Facilities

B.3.1 Flow Commitment. Each Member Town shall commit in writing to the Partnership within 120 days of the effective date of this agreement the amount of wastewater flow capacity it wants to own in the initial treatment plant construction phase.

B.3.2 Design. Design of the Partnership treatment plant and effluent recharge facilities will occur in 2021 through 2023.

B.3.3 Construction. Construction of the Partnership treatment plant and effluent recharge facilities will occur in 2023 through 2026 with full operation beginning by the end of year 2026.

B.4 Initial Permitting, Design, Engineering, Construction and Related Services

All services related to permitting, design, engineering, construction and related services of the original plant shall be competitively procured.

B.5 Initial Management and Operation of Partnership Facilities

The Enabling Act authorizes the Partnership to enter into contracts for the operation and management including administrative services of Partnership facilities. Initially, the Partnership will enter into a Management and Operations Agreement with the **Town of Dennis** (to be confirmed), Massachusetts in substantially the form attached here to as Appendix F.

B.6 Pretreatment and Sewer Use Regulations

The Partnership shall develop and adopt by simple majority vote of the Commission its own pretreatment and sewer use regulations prior to the treatment plant being placed into operation.

Appendix C – Enabling Act: Chapter 88 of the Acts of 2019

(Add final act)

Appendix D – Description of Partnership Facilities

(Add table of facilities and sites)

(Add Figure 1 of showing partnership system)

Appendix E – Agreement to Convey Real Property and Transfer Assets (Example)

(To be developed)

Appendix F – Management and Operations Agreement between Partnership and Dennis (Example)

(To be developed)

OLD BUSINESS



*Your Trusted, Local
Energy Resource*

Municipal Power Supply Procurement

Cape Cod Town Managers Monthly Meeting

August 13, 2020

Maggie Downey, Compact Administrator
Austin Brandt, Sr. Power Supply Planner

Background

- Prior to 2010, most municipal electric accounts were served through CLC's standard aggregation power supply program or by utility basic service
 - Both generally have six-month pricing cycles
- Towns wanted longer-term pricing stability for budgeting purposes
- Municipal entities asked CLC to bundle municipal load and put it out to bid to obtain longer-term pricing with favorable terms and conditions
- Beginning in 2010, municipal participants' accounts were opted out of the aggregation and included on fixed-price supply contracts
 - CLC has arranged for a total of six power supply contracts on behalf of municipal participants since 2010



Key Benefits of Muni Contracts

- Fixed pricing over multi-year period: stability for budget purposes
 - 1-3 years, depending on bids received and term length selection of evaluation group
- Zero ability for supplier to pass through any extra costs
 - For example, if cost to serve tripled versus supplier's prediction, supplier could not pass through any of that cost increase to participants
 - Cannot pass through any costs due to changes in law during contract term
- Supplier required to serve all new accounts opened by town during contract period (subject to overall usage change limits)
- Generous usage change “bandwidth” – 25% in aggregate for month versus rolling 3-year month average
 - Provides protection against changes in usage due to building projects, weather, *pandemic*, etc.
 - Allows towns to aggressively pursue energy efficiency and behind-the-meter solar



Municipal RFP Process

Highlighted = input or action required from participating entity

1. Assess municipal entity interest
 - a. Obtain letter of agency from entity authorizing CLC to act as agent in issuing RFP
2. Verify account listings
 - a. Accurate account list/load data is critical for valid pricing
 - b. CLC pulls current account listing for each entity and sends to entity for confirmation of accuracy or updates so it can be included in the RFP
3. Issue RFP on behalf of participating entities
4. Negotiate form of Competitive Electric Supply Agreement w/ suppliers
 - a. Terms and conditions impact price and must be finalized prior to bid due date



Municipal RFP Process

5. Ask entities whether they will be directly participating in bid evaluation
 - a) If not attending, obtain Letter of Authorization for CLC Administrator to execute on their behalf
6. Evaluate bids and select winner
 - a) Pricing is time-sensitive; CESA must be executed on bid day
 - b) CLC staff, counsel, consultant review bidders' pricing in context of CESA terms and make recommendation to entity reps participating in evaluation process
 - c) CLC Administrator and participating entity representatives make decision and execute contracts
 - *Bid must be accepted or rejected as a group. If an entity pulls out of process after bids are due, bids are invalid and must be resolicited*



Municipal RFP Constraints

- Current process does not allow for taking advantage of short-term market downturns due to level of involvement necessary from many participating entities
- Option: Build in contract term for automatic extension for [X] months/years if supplier drops price by [X] cents or [X] percent of original contract price
 - Could build in condition that extension be subject to CLC approval
- ***Discussion. Other suggestions?***



Current State of Market

ISO-NE wholesale energy market forwards have declined since early 2020, largely due to COVID impacts

Pricing shown is ONLY for energy. Does not include other wholesale and retail costs such as capacity, ancillary services, renewable energy certificates, supplier fees, line losses, etc.

Chart provided by NextEra Energy Marketing. Does not reflect load-weighted pricing.

2020 YTD trend in market forward pricing for 1 MW of around-the-clock power at MassHub (\$/MWh)



Next Steps

- Current CESA expires with July 2021 meter read dates
- CLC recommends issuing RFP on behalf of participating entities in September-October timeframe
 - CLC staff will be reaching out to all current participants by end of August to start process/assess interest
 - Will have pricing in time to determine impact on FY '21 budgets
 - ***Discuss timing preference***
- New (or extended) municipal CESA will begin with July 2021 meter read dates and run between 1-3 years, depending on bids received and selection of evaluation group





Cape Light Compact JPE
261 Whites Path, Unit 4, South Yarmouth, MA 02664
Energy Efficiency 1.800.797.6699 | Power Supply 1.800.381.9192
Fax: 774.330.3018 | capelightcompact.org

October 1, 2020

Dear Joseph Powers:

The Town of Harwich (“Participant”) has indicated an interest in participating in the Cape Light Compact JPE Request for Proposals for All-Requirements Retail Electric Power Supply for Municipal/Government Rate Accounts (the “RFP”). The RFP will be issued by the Cape Light Compact JPE (“Compact”) on behalf of participating Compact members and other governmental entities with municipal and governmental accounts located within the Compact’s member municipalities. Issuance of the RFP is a power supply procurement activity authorized by the Compact’s First Amended and Restated Joint Powers Agreement dated as of December 13, 2017 (the “JPA”).

By signing this letter, Participant hereby authorizes the Compact, through its Administrator and Chief Procurement Officer, effective as of October 9, 2020, to act as agent on its behalf in issuing the RFP, reviewing proposals from bidders, negotiating the form of municipal competitive electric supply agreement (“MCESA”) with bidders, evaluating, with assistance from expert consultants and legal counsel, the proposals and terms of the modified MCESA, recommending a contract award, notifying the winning bidder on behalf of participants in the RFP and taking other actions which are convenient or reasonably necessary in carrying out the foregoing tasks. The Participant has designated the accounts set forth in Attachment A to be included in this authorization. This letter agreement does not constitute a binding obligation of any kind by the Participant or the Compact to award a contract to a competitive supplier if the bids, in the Compact’s judgment, are not favorable or in the best interest of the Participant and other participants taking part in the RFP, nor does it obligate the Participant to execute an MCESA. Participant understands that if it elects to execute the MCESA recommended by the Compact, or provides the Compact the right to execute the MCESA on its behalf via a separate authorization, the MCESA will have a term anywhere from 12 months to 36 months, will have pricing fixed for each contract year and will commit the Participant to purchase all of the generation for the electricity accounts it designates for participation in the RFP from the chosen competitive supplier for such term, without any right to opt-out during such term.

This letter may be executed in counterparts, each of which, when executed, will be deemed to be an original, but all of which together will constitute one and the same instrument. The parties agree that a scanned or electronically reproduced copy or image of this letter bearing the signatures of the parties hereto will be deemed an original.

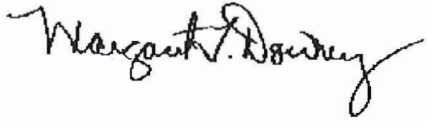
The Compact is enthusiastic about moving forward on this RFP and looks forward to working with you. ***If you are in agreement with the foregoing, please sign and scan your***

Working Together Toward A Smarter Energy Future

Aquinnah | Barnstable | Bourne | Brewster | Chatham | Chilmark | Dennis | Dukes County | Eastham | Edgartown | Falmouth
Harwich | Mashpee | Oak Bluffs | Orleans | Provincetown | Sandwich | Tisbury | Truro | Wellfleet | West Tisbury | Yarmouth

signature page to this letter and return it to Margaret T. Downey at mdowney@capelightcompact.org.

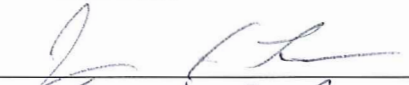
Very truly yours,



Margaret T. Downey
Compact Administrator and Chief Procurement Officer

AGREED AND ACCEPTED THIS 8th DAY OF October, 2020 BY ITS DULY AUTHORIZED OFFICER:

Joseph F. Powers
Interim Town Administrator
Town of Harwich

By: 
Name: Joseph F. Powers
Title: Interim Town Administrator

CAPE LIGHT COMPACT JPE Request for Proposals
For
All-Requirements Retail Electric Power Supply for Municipal and
Government Accounts

1. Introduction

Originally formed in 1997 by the twenty-one Cape Cod and Martha’s Vineyard towns and Barnstable and Dukes Counties, the Cape Light Compact JPE (the “Compact”) reorganized as a joint powers entity in 2017 through a joint powers agreement of the twenty-one Cape Cod and Martha’s Vineyard towns and Dukes County in the Commonwealth of Massachusetts (the “Member Municipalities”) with the objectives, among other things, of securing competitive power supply, encouraging renewable energy development, administering energy efficiency programs, and providing for consumer advocacy. For further information on the Compact and its programs, go to <http://www.capelightcompact.org>.

In issuing this Request for Proposals (“RFP”), the Compact is acting as agent for the Member Municipalities and for other government electric account holders located within the Member Municipalities (collectively, the “Participants”). There are approximately 1500 electric accounts for the Participants located on Cape Cod and Martha’s Vineyard, which represents approximately 75,000 MWh of annual retail sales. The Compact seeks proposals to serve this electric load with all-requirements retail electric power supply. As part of the proposals submitted, the Compact also seeks options for supporting renewable energy beyond state-mandated requirements by meeting an additional percentage of the load served with RPS Class I Renewable Generation Attributes, as such term is defined in 225 C.M.R. §14.02 (“MA Class 1 RECs).” All-requirements retail power supply for all Participant accounts will commence with the July 2021 meter read dates. Bidders are invited to propose contract delivery periods of a minimum of one (1) year to a maximum of three (3) years, with one or more options for additional MA Class 1 REC content. As described below, price offers must be fixed annually for each contract year; seasonal, time-of-day, variable, or indexed pricing will not be permitted. Bidders may propose an adder to the fixed price for each 1% of Participants’ retail sales met with additional MA Class 1 RECs.

The selected bidder must execute a Municipal Competitive Electric Supply Agreement (“MCESA”), as supplied or amended, for the provision of all-requirements retail power supply, the form of which is available for bidder review as set forth below.

2. General Provisions

2.1. RFP Dates

- RFP issued Thursday, November 5, 2020

- Inquiries concerning RFP submitted by 5:00 p.m. EST on Friday, November 20, 2020 (by email only)
- Responses to inquiries circulated on a rolling basis, but no later than Tuesday, November 24, 2020
- Proposed modifications to the MCESA submitted by 5:30 p.m. EST on Wednesday, November 25, 2020
- Proposals due by 10 a.m. EST on Thursday, December 17, 2020

2.2. Contact Information

Inquiries concerning this RFP must be submitted **by e-mail only** to:

Margaret Downey, Compact Administrator and Chief Procurement Officer
Email: mdowney@capelightcompact.org

With a copy to:

Austin Brandt, Senior Power Supply Planner
Email: austin.brandt@capelightcompact.org

Inquiries must be received by 5:00 p.m. EST on Friday, November 20, 2020.

Telephone or other such inquiries will not be answered. Written responses will be e-mailed on a rolling basis (but no later than Tuesday, November 24) to all bidders on record as having executed and submitted the Confidentiality Agreement (see Section 2.3). Other than to discuss proposed modifications to the MCESA, bidders should not contact the Compact's or Participants' officers, directors, employees, counsel or technical consultants regarding this RFP prior to the Compact's acceptance of a bid under this RFP.

2.3. Confidentiality Agreement

Bidders must execute and submit the Confidentiality Agreement attached to this RFP as Appendix A prior to receiving load data, regardless of the product(s) ultimately offered by bidder. Bidders will not be eligible to submit proposals until a Confidentiality Agreement has been executed and received at the address provided in Section 2.2.

2.4. Proposal Submission Date

Proposals must be received by 10:00 a.m. EST on Thursday, December 17, 2020.

Proposals must be sealed and clearly marked **“ALL-REQUIREMENTS RETAIL ELECTRIC POWER SUPPLY FOR MUNICIPAL AND GOVERNMENT ACCOUNTS.”** No responsibility shall be attached to any person or persons for the premature openings of proposals not properly marked.

Proposals must be submitted to:

Cape Light Compact RFP for All-Requirements Retail Electric Power Supply
for Municipal and Government Accounts

Attn: Margaret T. Downey

261 Whites Path, Suite 4

S. Yarmouth, MA 02664

mdowney@capelightcompact.org

Two (2) original Proposals must be delivered in hard copy and one must be submitted by e-mail. Any supporting documents must be attached in both hard copy and by e-mail. Bid Forms and Binding Bid Agreements shall only be delivered by e-mail. Any proposal submitted and not complete at that time in the format specified in this RFP will not be considered.

2.5. Modification/Withdrawal of Proposals

Proposals are final once submitted. Unilateral modifications or withdrawals of proposals are not permitted once they have been submitted.

2.6. Terms of Submission

All proposals will be considered an offer to provide supplies and services to the Participants. Proposals shall be executed by a person who has the authority to legally bind the bidder.

3. Services Requested

3.1. All-Requirements Retail Electric Power Supply

The Compact is requesting proposals for delivery of all-requirements retail electric power supply. All-requirements retail electric power supply generally includes, but may not be limited to, electrical energy; capacity; ancillary services; renewable energy resources as mandated by: (i) G.L. c. 25A, §§11F, 11F 1/2 and any regulations, orders or policies adopted pursuant thereto; and (ii) the Clean Energy Standard requirements set forth in 310 C.M.R. §7.75 and any orders or policies adopted pursuant thereto; and transmission and distribution losses. The specific definition of all-requirements retail electric power supply and associated responsibilities are stated in the MCESA, which will be provided to bidders upon receipt of a signed Confidentiality Agreement (see Section 2.3).

A supplier of all-requirements retail electric power supply will be responsible for all load and supply scheduling, scheduling of network and other transmission service, and all other transactions and communications with ISO New England and the New England Power Pool necessary for the delivery of firm power supply to Participants. In addition, a supplier of all-requirements retail electric power supply will be obligated to provide all services, directly or through contract, in order for the local distribution company to be able to bill customers; handle customer complaints and service calls; arrange all EDI and other functions and otherwise provide competitive supply to end-use customers.

A supplier of all-requirements retail electric power supply will have an obligation to serve all load for Participants that agree to purchase power pursuant to the executed MCESA. Many Participants have installed or will install renewable energy projects within their municipalities. Some of these renewable energy facilities are behind the meter, i.e. energy consumption has been reduced, and some are virtual net metered pursuant to Massachusetts law (G.L. c. 164, §§138 – 140 and 220 C.M.R. §18.00), i.e. actual energy consumption has not been reduced. Bidders should carefully review usage information since usage can vary widely over time due to the installation of these renewable energy facilities. Electric account information for the Participants will be provided to bidders upon receipt of the signed Confidentiality Agreement (see Section 2.3).

3.2. Term Options

Delivery of all-requirements retail electric power must commence on the July 2021 meter read dates for each electric account. Bidders may propose contract terms of a minimum of one (1) year and a maximum of three (3) years.

3.3. Renewable Energy Support Options

Several Participants have expressed interest in purchasing an all-requirements power supply product that includes a greater percentage of renewable energy content. The Compact invites bidders to include in their proposal an option to support renewable energy above state-mandated Renewable Portfolio Standard (RPS) and Clean Energy Standard (CES) requirements through the procurement and retirement of additional MA Class 1 RECs. Bidders that choose to include this option in their proposal should provide a price per megawatt-hour of retail sales for each 1% of Participant load met with Class 1 RECs above the RPS & CES requirements (“Renewable Adder”). Bidders may propose different Renewable Adders for each year of the proposed contract term. However, the Renewable Adder offered in any one year may not vary during the year. The Renewable Adder will be considered an adder to the price(s) the bidder provides for the state-minimum renewable content all-requirements power supply product (“Base Price”) over each proposed term length. Those Bidders choosing to propose a renewable option should submit a Renewable Adder price for each proposed contract term length. By way of example only, if the Base Price is \$100/MWh for each year of a two-year term and the Renewable Adder price is \$1/MWh for each year, the price for a Participant that chooses to buy 5% more Class 1 RECs would be \$105/MWh in each year of the two-year term.

Please note that the inclusion and/or proposed pricing of a Renewable Adder will not be the primary basis for the selection of the winning proposal. Once the winning proposal is selected (see Section 7), each Participant will have the option to choose their own percentage of additional renewable content (if any) at the offered Renewable Adder price if the winning bidder has provided the option for additional renewable content. Participants that choose to purchase additional renewable content will be required to maintain the same additional percentage over the entire term of the contract. For the

avoidance of doubt, note the inclusion of additional renewable energy content is at the discretion of Participants; some Participants may choose not to incorporate any additional renewable energy content.

4. Proposal Format

4.1. Qualifications

Proposals must include the following information:

- a. Contact(s). Name, business address, phone number, fax number, and e-mail address for the principal officer responsible for submission of the proposal and for the principal officer responsible for administration of the contract.
- b. Business Information. Legal trade name; date of incorporation or organization; state of incorporation or organization; list of officers and directors; list of affiliates, if any; a copy of previous two years of Annual Reports to Stockholders, or other audited annual report; copies of final year-end FERC Form 1 filings for 2018 and 2019, if applicable; current bond rating(s) by Moody's Investor Services, or other rating agencies, if applicable; latest audited financial statement(s) with confirmation of no material or adverse changes since the date of statement(s).
- c. Business Qualifications. Registration from the Massachusetts Department of Public Utilities as a competitive supplier in Massachusetts; New England Power Pool membership; certification of other regulatory approvals necessary to provide all-requirements retail electric power supply; Certificate of Good Standing from the Massachusetts Department of Revenue, or similar certification that all state taxes have been paid in state of incorporation or organization, if applicable; evidence of qualification to do business in Massachusetts, if applicable.
- d. Business Status. Statement as to whether bidder or any affiliate has commenced, or been forced into, any insolvency proceeding within the last five (5) years; statement as to whether bidder or any affiliate has been a party to litigation in connection with the provision of retail electric supply or related to a retail electric supply agreement within the past five (5) years; statement as to whether bidder or any affiliate has been subject to any investigation by a state or federal agency within the last five (5) years; statements as to the number, if any, of consumer complaints filed with a state, federal, or local agency, against the bidder or affiliate within the last five (5) years.
- e. Credit Requirements. Evidence that bidder or its affiliate or parent if such entity is providing financial surety to the Participants under the CESA has a current, investment grade bond rating by Moody's Investor Services or other similar rating agencies.

4.2. Price Proposals

Bidders shall submit their price proposals by completing a Bid Form, which will be provided via e-mail to bidders upon receipt of a signed Confidentiality Agreement (see Section 2.3). Price proposals must be expressed in dollars per megawatt-hour of retail sales.

Bidders may submit price proposals for contract terms that range from a minimum of one (1) year to a maximum of three (3) years. Bidders may offer prices that differ in each year of the proposed contract term. However, the price offered in any one year may not vary during the year. Bidders are invited to submit price proposals for one or more contract terms.

Bidders' price proposals must conform to the provisions of the MCESA, as supplied, or amended through contract negotiation. In order to submit a price proposal, Bidders must accept the Compact's language in Sections 2 (Accounts) and 3 (Material Deviation in Use) of Exhibit A to the MCESA. The Compact will not accept a bidder's contract as a complete substitution of its MCESA. As a general matter, bidders proposing prices with no or limited amendments to the form of MCESA will be preferred to prices conditioned upon more extensive amendments to the form of MCESA.

Prices quoted for any contract year of the MCESA term must be fixed for the duration of the contract year; seasonal, time-of-day, variable, or indexed pricing will not be permitted. All price proposals must include all costs related to supplying the required services, except as otherwise set forth herein. Since prices are fixed for the duration of the contract year, the Participants will not pay any separate or additional costs which are considered as pass-through for reliability or other costs associated with delivery of all-requirements retail electric power supply in the SEMA load zone, except as otherwise set forth herein. Price proposals for any contract year of the MCESA term will apply uniformly to all Participants, regardless of rate class.

The Compact and Participants will also pay no costs, fees or other expenses incurred by the bidder in preparing its response to this RFP. These costs, expenses or other amounts may not be included in a price proposal and may not be recouped under the MCESA.

Bidders should not place any additional written conditions on their price proposals beyond what is required on the forms provided. The Compact anticipates that the accepted bidder will enjoy participation by a substantial majority of the Participants, if not all. Price proposals will be considered binding on a bidder only if all Participants accept the proposal. If one or more Participants decline to accept a price proposal that the remaining Participants wish to accept, a bidder may, at its option, honor the proposal for the interested Participants.

4.3. Proposal Expiration

Price proposals will be deemed valid until 4:00 p.m. EST on Thursday, December 17, 2020. Bidders must indicate how long beyond the minimum period proposals will be held

open at the price(s) offered. Given the time frame for evaluation, the Compact reserves the right to request that bidders re-price their proposals. At its sole discretion, the Compact may opt to negotiate with multiple bidders, as shall be considered in the best interest of the Participants.

Accompanying each proposal, each bidder must include a signed Binding Bid Agreement. The Binding Bid Agreement will be provided to bidders upon receipt of a signed Confidentiality Agreement (see Section 2.3). The signatory to the Binding Bid Agreement must certify that he/she has the authority to act on behalf of, and to bind the bidder to perform the terms and conditions of the MCESA at the prices and for the load amounts specified in its proposal(s).

5. Supply Agreement

A form of the MCESA, to be executed as a result of this RFP, will be provided via e-mail to bidders upon receipt of a **signed** Confidentiality Agreement (see Section 2.3). The MCESA contains the parties' rights and obligations for providing and receiving all-requirements retail electric power supply.

Proposed amendments to the MCESA are to be provided by bidders by close of business on Wednesday, November 25, 2020. It is the Compact's intent to have a conference call with bidders proposing amendments to the MCESA before price proposals are submitted. Bidders should have their team/decision-makers available during this time frame. Bidders are strongly encouraged to propose only non-substantive changes to the MCESA.

6. RFP INFORMATION

The RFP will be posted to the Compact's website at www.capelightcompact.org/rfp/. The Compact will provide the following additional information to bidders that have submitted a signed Confidentiality Agreement (see Section 2.3):

1. Form of MCESA
2. Bid Form for All-Requirements Retail Electric Power Supply
3. Binding Bid Agreement
4. Authorization Form authorizing EVERSOURCE to release account usage data
5. Electric account numbers for all the Participants
6. Annual usage data for each Participant account
7. Estimated aggregate hourly load data for the Participants' accounts

The Compact makes no representations whatsoever as to the accuracy or completeness of the load data for the Participants' electric accounts which will be provided by

EVERSOURCE. Bidders are expressly cautioned that they must independently test and/or verify such data to the extent they believe appropriate. The Compact assumes no duties or responsibilities to check, update or otherwise assess the data provided.

7. Evaluation of Proposals

The Compact may choose more than one proposal from responsive and responsible bidders for further consideration and evaluation. Proposals that are incomplete, not properly endorsed, or signed, or which are otherwise contrary to these instructions may be rejected as non-responsive by the Compact. **Conditional proposals will not be accepted.**

The Compact will negotiate the form of amendments to the MCESA, if any, with each of the selected bidders. The Compact, in its sole discretion, will select the winning bid in consideration of the Base Price, the terms of the modified MCESA, if any, and other factors described in this RFP. The Compact may accept any portion of a bid, waive any irregularities and/or formalities, investigate the ability of the bidder to honor a bid, select a bidder who does not submit the lowest bid and accept any bid as shall be considered in the best interest of the Participants.

8. Notification of Award

Any contract resulting from this RFP shall be deemed as having been awarded when formal written notice of acceptance of the bidder's proposal has been duly served on the successful bidder.

9. Execution of the MCESA

All Participants that choose to accept a price bid will either participate in the Compact's virtual bid evaluation on the bid due date and execute an MCESA or will execute a binding written agreement in advance of the bid due date authorizing the Compact to accept a bid and execute the MCESA on behalf of such Participant on the bid due date.

NOTE TO BIDDERS: USE SEPARATE CONFIDENTIALITY AGREEMENT DOCUMENT

RFP Appendix A

Confidentiality Agreement for All-Requirements Retail Electric Power Supply for Municipal and Government Accounts

between

THE CAPE LIGHT COMPACT JPE

and

[Redacted] [Company]¹

for

This Confidentiality Agreement (“Agreement”) is entered into by and between the Cape Light Compact JPE, a joint powers entity organized pursuant to G.L. c. 40, §4A½ (“Compact”) and **[Redacted]**, a **[insert jurisdiction and state of organization]** (the “Company”) and is effective as of the date of execution by the Company as set forth below.

WHEREAS, pursuant to G. L. c. 40, § 4A½, 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 Dukes County (collectively, the “Members”) entered into a joint powers agreement to organize and act collectively as the Compact;

WHEREAS, the Compact, issued a request for proposals (the “RFP”) for all-requirements competitive retail electric power supply for the municipal accounts of the Members of the Compact and for certain other government rate electric accounts located within the members of the Compact (collectively, the “RFP Participants”);

WHEREAS, the Compact, acting as agent for the Participants in issuing the RFP, desires to supply certain confidential information to the Company so that the Company may submit a proposal in response to the RFP;

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

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

¹ Bidders: Please type in your company name and other company information where appropriate.

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

1. *Confidential Information.* The term “Confidential Information” means all trade secrets, or confidential, competitively sensitive or other proprietary information provided by either party in connection with the RFP and/or the execution or performance of the Municipal Competitive Electric Supply Agreement that the parties may enter into (the “Purpose”), whether disclosed directly or indirectly, in writing or orally, and which, if in tangible form, is marked by the disclosing party with the words “Confidential” or “Proprietary” or marking of similar import, or if disclosed orally, is identified as confidential at the time of disclosure and in a written notice delivered to the non-disclosing party promptly following disclosure. Confidential Information also includes customer account load data which is being made available to the Company from the Compact’s current supplier and/or NSTAR Electric Company d/b/a Eversource Energy in connection with the RFP (the “Confidential Load Data”). Confidential Information does not include:

(i) information already in the possession of the non-disclosing party at the time of disclosure by the disclosing party, as long as such information was not provided by the disclosing party;

(ii) information that is now or later becomes publicly available, unless such information becomes publicly available as a result of any action or inaction on the part of the non-disclosing party;

(iii) information received by the non-disclosing party from a third party, unless such third party was under a duty of confidentiality with respect to such information;

(iv) information for which disclosure is required under the Massachusetts Public Records Act, including, without limitation, G.L. c. 4, §7, cl. 26 and G.L. c. 66, §10 or the Massachusetts Open Meeting Law, M.G.L. c. 30A §§18-25; or

(v) information that is not designated or identified by the disclosing party as “Confidential” or “Proprietary” at the time of its initial submission. Such information shall be presumptively subject to disclosure under the Public Records Act.

2. *Use of Confidential Information.* The parties shall use the Confidential Information exclusively in connection with the Purpose. Each party shall receive all Confidential Information in strict confidence and shall protect the Confidential Information against disclosure using the same degree of care, but no less than a reasonable degree of care, that each party uses to protect its own confidential information. Each party shall disclose the Confidential Information only to those of its employees, members, consultants, authorized representatives, and attorneys that have a “need to know” such information to carry out their functions in connection with the Purpose, all of which entities shall agree to maintain the confidentiality of Confidential Information.

3. *Disclosure to Third Parties.* The non-disclosing party agrees that it will not disclose any Confidential Information to any third party (other than as allowed in accordance with Section 2, herein) without the prior written consent of the disclosing party. After having obtained the written consent of the disclosing party, the non-disclosing party agree(s) that it will: (i) advise the third party of the terms of this Agreement; (ii) advise such party that it will be bound by the terms of this Agreement; and (iii) have such party execute a Non-Disclosure Certificate in the form attached to this Agreement as Exhibit A. The non-disclosing party may disclose Confidential Information only to consultants and contractors and other agents of the non-disclosing party who execute Non-Disclosure Certificates.

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

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

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

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

such information shall be entitled to be treated as Confidential Information under this Agreement.

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

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

10. *Required Disclosures.* Anything in this Agreement to the contrary notwithstanding, the non-disclosing party may disclose Confidential Information to the extent that it is required to do so by law, a court, or other governmental or regulatory authorities; provided, however, that the non-disclosing party shall give the disclosing party written notice of such a required disclosure prior to making such disclosure so that the disclosing party may seek a protective order or other relief with respect to such Confidential Information, and shall limit the disclosure to the minimum required to comply with the law, court order, or governmental or regulatory authority. The Company acknowledges that the Compact and the Participants are subject to public records laws, including without limitation, G. L. c. 4, §7, cl. 26 and G. L. c. 66, §10 and the Massachusetts Open Meeting Law, M.G.L. c. 30A §§18-25.

11. *Representations and Warranties.*

- (a) The Compact hereby represents and warrants to the Company as follows:
 - (i) the Compact shall use the Confidential Information only in connection with the Purpose;
 - (ii) this Agreement constitutes the legal, valid and binding obligation of the Compact enforceable in accordance with its terms; and
 - (iii) the Compact has taken all necessary action to authorize and approve the execution and delivery of this Agreement and the performance of the obligations hereunder.
- (b) The Company hereby represents and warrants to the Compact as follows:

- (i) the Company shall use the Confidential Information only in connection with the Purpose;
- (ii) this Agreement constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms; and
- (iii) the Company has taken all necessary action to authorize and approve the execution and delivery of this Agreement and the performance of the obligations hereunder.

The representations and warranties contained in this Agreement shall survive execution and delivery of this Agreement.

12. *Governing Law; Enforcement; Liquidated Damages for Certain Breaches.* The validity, construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to its choice of law rules. The parties agree that venue for judicial enforcement of this Agreement shall be Barnstable County Superior Court. The parties acknowledge and agree that the extent of damage to the disclosing party in the event of a breach by the non-disclosing party of any of the covenants contained in this Agreement will be difficult or impossible to ascertain and that there may be no adequate remedy at law available to the disclosing party. The parties therefore agree that, in the event of such breach, the disclosing party, in addition to receiving damages for breach, shall be entitled to enforce any and all of the covenants contained in this Agreement by injunctive or other equitable relief. In addition, in the event of disclosure of Confidential Load Data in violation of this Agreement, the Company shall pay the Compact fifty thousand dollars (\$50,000.00) as liquidated damages. The sum is agreed upon as liquidated damages and not as a penalty. The parties hereto have computed, estimated, and agreed upon the sum as an attempt to make a reasonable forecast of probable actual loss of the Compact's competitive advantage because of the difficulty of estimating with exactness the damages which will result.

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

FOR THE COMPACT:

Margaret T. Downey, Administrator and Chief Procurement Officer
Cape Light Compact JPE
261 Whites Path, Suite 4
S. Yarmouth, MA 02664
(508) 375-6636 (phone)
(774) 330-3018 (facsimile)
mdowney@capelightcompact.org (email)

FOR THE COMPANY:

[insert contact information]

With a copy to:

[insert contact information]

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.

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

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

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

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

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

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

20. *Counterpart Execution; Scanned Copy.* This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the parties

hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

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

FOR THE COMPACT:

FOR THE COMPANY:

Margaret T. Downey
Administrator/Chief Procurement Officer
Dated: _____

Name: _____
Title: _____
Dated: _____

**NOTE TO BIDDERS: USE EXHIBIT A OF SEPARATE CONFIDENTIALITY
AGREEMENT DOCUMENT**

EXHIBIT A
NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that the Confidential Information, as that term is defined in the Confidentiality Agreement for All-Requirements Retail Electric Power Supply for Municipal and Government Accounts between the Cape Light Compact JPE and the [Company] dated _____, 2020 (the “Agreement”), is being provided to me pursuant to the terms and restrictions of the Agreement. I also certify that I have been given a copy of the Agreement, have read its terms and conditions, and agree to be bound by them. I understand that the contents of the Confidential Information and any parts of notes, abstracts, memoranda, or any other form of information that contains such Confidential Information shall not be disclosed to anyone nor copied other than in accordance with the Agreement, and shall be used only for the limited purposes stated therein. I also agree to protect the confidential and proprietary nature asserted for the Confidential Information.

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

By: _____

Name: _____

Title: _____

Organization: _____

Representing: _____

Date: _____

MUNICIPAL COMPETITIVE ELECTRIC SUPPLY AGREEMENT

WHEREAS, all of the municipalities in Barnstable County and Dukes County formed the Cape Light Compact JPE (“Compact”) and entered into a “Joint Powers Agreement of the Cape Light Compact JPE” (“Compact Agreement”), for the purposes, *inter alia*, of acting as a municipal aggregator and negotiating the best terms and conditions for the supply of electricity to consumers located on Cape Cod and Martha’s Vineyard;

WHEREAS, all twenty-one Barnstable County and Dukes County towns and Dukes County presently belong to the Compact (the “Member Municipalities”);

WHEREAS, the Compact issued a request for proposals (“RFP”) on September 24, 2018, for a supplier to provide All-Requirements Power Supply to certain municipal and other government electric account holders within the Member Municipalities;

WHEREAS, NextEra Energy Services Massachusetts, LLC, a limited liability company duly authorized to conduct business in the Commonwealth of Massachusetts (“Supplier”) was chosen by the Compact from among several competitive suppliers to be the supplier for the term set forth in this Municipal Competitive Electric Supply Agreement (“Agreement”); and

WHEREAS, Supplier desires to provide All-Requirements Power Supply to Town of Harwich (“Participant”), pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, IT IS AGREED THAT, the Compact, the Participant and Supplier hereby enter into this Agreement subject to the terms and conditions below.

ARTICLE 1 DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

1.1 **Accounts** - The electric accounts of Participant to be served by Supplier under this Agreement, as set forth in Exhibit A hereto.

1.2 **Agreement** - This Municipal Competitive Electric Supply Agreement.

1.3 **All-Requirements Power Supply** - Service under which Supplier provides all of the electrical energy, capacity, reserves, ancillary services, transmission and distribution losses, congestion management, and such other services or products necessary for firm power supply to Participant at the Point of Sale, including, without limitation, compliance with the Renewable Portfolio Standard requirements set forth in G.L. c. 25A, §§11F, 11F ½ and cognate regulations and compliance with the Clean Energy Standard requirements set forth in 310 C.M.R. §7.75.

1.4 **Bankruptcy** - Bankruptcy means with respect to a Party that such Party (i) ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any action to authorize or that is in contemplation of the actions set forth in this clause (i) or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule and, such proceeding is not dismissed within ninety (90) days after the commencement, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal or otherwise within ninety (90) days after the appointment, or, within ninety (90) days after the expiration of any such stay, has not been vacated, *provided that*, notwithstanding the foregoing, the exercise of rights to take over operation of a Party's assets, or to foreclose on any of a Party's assets, by a secured creditor of such Party (including the appointment of a receiver or other representative in connection with the exercise of such rights) shall not constitute a Bankruptcy.

1.5 **Commercially Reasonable** - Any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations.

1.6 **Compact** - The Cape Light Compact JPE, formed in October 1997, by an intergovernmental agreement under the Massachusetts General Laws and presently organized and operating collectively under a joint powers agreement consistent with Massachusetts General Laws, consisting of twenty-one (21) towns in Barnstable and Dukes Counties and Dukes County, for which the Compact acts as agent.

1.7 **Compact Agreement** - The Joint Powers Agreement of the Cape Light Compact JPE, as in effect on April 12, 2017 and as may be amended from time to time.

1.8 **Distribution Company** - NSTAR Electric Company d/b/a Eversource Energy, or any successor company(ies) or entity(ies) providing electricity distribution services in each Member Municipality.

1.9 **DPU** - The Massachusetts Department of Public Utilities, or any successor state agency.

1.10 **Effective Date** - The effective date of this Agreement, pursuant to Article 3 (Term of Contract and Termination) below.

1.11 **Force Majeure** - Any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the Compact or a Participating Municipality may not be asserted as an event of *Force Majeure* by the Compact or a Participating Municipality as the case may be; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse any Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

1.12 **General Communications** - The type of communications described and defined in Article 4.7 (Approval of General Communications) herein.

1.13 **Governmental Authority** - Any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, excluding the Compact and all Participating Municipalities.

1.14 **Governmental Rule** - Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, or similar form of decision of any Governmental Authority having the effect and force of law.

1.15 **Green Power** - Electric energy generated by equipment or facilities including solar power, biomass, landfill gas, wind turbine, hydro power or other renewable energy generating resource or technology, as may be defined by G.L. c. 25A, §11F or G.L. c. 164, §1 or, that may be otherwise added by mutual agreement of the Parties.

1.16 **ISO** - The New England Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New England and the bulk transmission of electricity throughout the New England power grid.

1.17 **kWh, kW** - Kilowatt-hour and kilowatts, respectively.

1.18 **Member Municipalities** - The twenty-one (21) towns and Dukes County which are presently members of the Compact as of the Effective Date of this Agreement. The Member Municipalities include the following towns in Barnstable County: Barnstable, Bourne, Brewster, Chatham, Dennis, Eastham, Falmouth, Harwich, Mashpee, Orleans, Provincetown, Sandwich, Truro, Wellfleet and Yarmouth, and the following towns in Dukes County: Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury.

1.19 **NEPOOL** - The New England Power Pool.

1.20 **Participant**- As set forth in the Recitals to this Agreement, Town of Harwich.

1.21 **Parties** - The Compact, the Participant and Supplier, as the context requires. In the singular, “Party” shall refer to any one of the preceding.

1.22 **Point of Delivery** - The point of interconnection between NEPOOL Pool Transmission Facilities and the transmission facilities of the Distribution Company.

1.23 **Point of Sale** - The electric meter(s) for Participant’s Accounts, as designated by the Distribution Company.

1.24 **Supplier** – NextEra Energy Services Massachusetts, LLC, a Delaware limited liability company duly authorized to conduct business in the Commonwealth of Massachusetts.

ARTICLE 2 RIGHTS GRANTED

2.1 **General Description and Limitations** - Supplier is hereby granted the exclusive right to provide All-Requirements Power Supply to Participant pursuant to the terms and conditions set forth in this Agreement. In accepting this grant, the Parties recognize that Supplier is only authorized to supply All-Requirements Power Supply to Participant, and that the Distribution Company presently has the right and obligation to distribute and deliver electricity to individual customers, until changes in law, regulation or policy may allow otherwise. Supplier further recognizes that it is only authorized by this Agreement to supply All-Requirements Power Supply to Participant. As between the Parties, Supplier has the sole obligation of making appropriate arrangements with the Distribution Company, and any arrangements which may be necessary with the ISO so that Participant receives the electricity supplies to be delivered pursuant to this Agreement. The Participant specifically authorizes the Distribution Company to provide, and Supplier the right to obtain and utilize as required, all billing and energy consumption information for the Participant’s Accounts that are reasonably available from the Distribution Company. Supplier acknowledges that Participant may have installed, or plan to install within the term of this Agreement, renewable energy projects within its municipality. Some of these renewable energy facilities are behind the meter, i.e. energy consumption has been reduced, and some are virtual net metered pursuant to Massachusetts law (G.L. c. 164, §§138 – 140 and 220 C.M.R. §18.00), i.e. actual energy consumption has not been reduced. Supplier acknowledges that it is responsible for carefully reviewing energy consumption information. The Compact and Participant assume no responsibility for, nor do they make any representation or warranty to check, update, or otherwise assess, the data provided. If further action is required by the Distribution Company to authorize Supplier to receive such historical energy consumption and billing data, the Compact and Participant agree to use reasonable efforts, at Supplier’s cost, to assist Supplier, if so requested by it, in obtaining such information; and with respect to Participant, including, without limitation, assisting Supplier, at Supplier’s cost, in obtaining permission from such Participant and/or the DPU, where necessary as a prerequisite to the provision of such information. Notwithstanding the foregoing paragraph or anything else in this Agreement to the contrary, the Participants may construct, directly or jointly with others, Green Power projects located within their boundaries.

2.2 Compliance with Laws - By entering into this Agreement, Supplier specifically represents that it has exercised due diligence to review and has fully complied with all relevant regulations and orders of the Federal Energy Regulatory Commission (“FERC”), the DPU, the Attorney General of the Commonwealth, and the Massachusetts Department of Energy Resources (“DOER”) and any other Governmental Authority having jurisdiction over any element of the transactions contemplated by this Agreement.

2.3 Further Conditions and Limitations - The Compact and the Participant expressly reserve the right to adopt such local bylaws, ordinances, rules, regulations and policies as they may deem necessary in the exercise of their governmental powers, and nothing in this Agreement shall be interpreted as limiting the governmental powers of the Compact or of the Participant as may be granted by law.

2.4 Conditions Precedent -

The obligations of the Compact and Participant under this Agreement shall be conditioned upon Supplier fulfilling the following requirements:

- (i) maintaining its Competitive Supplier license from the DPU (as such term is defined in the Distribution’s Company’s Terms and Conditions - Competitive Suppliers);
- (ii) executing a Competitive Electric Supplier Service Agreement with the Distribution Company in a form reasonably satisfactory to Supplier;
- (iii) executing all appropriate ISO applications and agreements; and
- (iv) obtaining authorization from the FERC to sell power at market-based rates.

If Supplier has not fulfilled all such requirements by the date of this Agreement, any Party may terminate this Agreement without any liability to the other Parties.

2.5 Ownership and Use of Participant Data –

- (i) **Supplier’s Obligations** - Supplier shall use Participant data solely to provide All-Requirements Power Supply to Participant and to render other services expressly required or permitted under this Agreement. Any other use of Participant data without the prior written consent of the Compact and the Participant is strictly prohibited. Except as expressly provided in this Agreement, Supplier shall not disclose any data of the Participant to any third-party that has not executed a non-disclosure certificate in the form set forth in Exhibit A to the Confidentiality Agreement (defined in Article 15), and Supplier shall take all reasonable measures to protect Participant data from access by, or beneficial use for, any third-party. Notwithstanding the foregoing, the Parties agree that contract employees and entities with which Supplier contracts to provide contract employees shall not be deemed third-parties for purposes of this Section 2.5. To

Agreement (defined in Article 15), and Supplier shall take all reasonable measures to protect Participant data from access by, or beneficial use for, any third-party. Notwithstanding the foregoing, the Parties agree that contract employees and entities with which Supplier contracts to provide contract employees shall not be deemed third-parties for purposes of this Section 2.5. To the extent that the provision of All-Requirements Power Supply or other services under this Agreement requires that Supplier have access to or make use of any Participant data, Supplier shall treat such Participant data as confidential information. Supplier may use Participant data to engage in direct marketing only during the term of this Agreement and subject to the terms forth in Article 16.2 (Direct Marketing). A violation of this Article 2.5 shall be grounds for termination under Article 3.2(1). Supplier agrees violation of this Article 2.5 shall constitute irreparable harm.

- (ii) The Compact's Obligations - the Compact shall afford all Participant data confidential treatment as required by this Agreement and Governmental Rule

ARTICLE 3 TERM OF CONTRACT AND TERMINATION

3.1 **Term** - This Agreement and the rights granted under it to Supplier shall commence on ~~July 1, 2019~~ ^{October 25, 2018} (the "Effective Date") and terminate on July 31, 2021, unless the Agreement is terminated before such date under the provisions of Article 3.2 (Termination). The term of this Agreement may be extended in accordance with the provisions of Article 3.4 (Extension). (m) Bh

3.2 **Termination** - This Agreement may be terminated at any time upon written notice:

(1) by the Participant or Compact (acting on behalf of Participant), or Supplier, if the breaching Party fails to remedy or cure any breach or default of any material provision or condition of this Agreement (including but not limited to Article 8 (Service Protections) and Article 2.5 (Ownership and Use of Participant Data) within sixty (60) days following written notice to do so by the nonbreaching Party; or

(2) by the Participant or Compact (acting on behalf of the Participant), or Supplier, if any material provision or condition of this Agreement be finally adjudged invalid by any court of competent jurisdiction, or if the DPU exercises any lawful jurisdiction so as to invalidate or disapprove this Agreement in whole or in significant part; or

(3) notwithstanding the foregoing, the failure of Supplier to provide or arrange for All-Requirements Power Supply to Participant, in the absence of *Force Majeure* or Participant's failure to perform, shall constitute an act of default, and the Participant or Compact (acting on behalf of the Participant) may terminate this Agreement upon the giving of written notice but without providing any cure period. In the event Supplier has performed its obligations hereunder and its failure to provide or arrange All-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Distribution Company, or the ISO, Supplier's failure shall not be deemed an act of immediate default; or

(5) by any Party if an event of *Force Majeure* continues for a period of one hundred eighty (180) days or longer, as set forth in Article 16.6.

3.3 Obligations upon Termination - Following termination of this Agreement, the Parties shall each discharge by performance all obligations due to any other Party that arose up to the date of termination of the Agreement. Upon the effective date of termination of the Agreement, all rights and privileges granted to Supplier shall cease, with the exception of the right to collect all monies due for services rendered to that date.

3.4 Extension - This Agreement may be extended beyond the original term by mutual, written agreement of the Parties. Any new pricing terms shall be added to and replace Exhibit A as Exhibit A-2. Upon any such extension, this Agreement shall continue to be in effect, and all provisions of the Agreement shall retain the same force and effect as before the extension, unless it is terminated by any of the Parties pursuant to the provisions of Article 3.2 (Termination) or until the date stated in such extension.

ARTICLE 4 CONTINUING COVENANTS

Supplier agrees and covenants to perform each of the following obligations during the term of this Agreement.

4.1 Standards of Management and Operations - In performing its obligations hereunder, during the term of this Agreement, Supplier shall exercise reasonable care to assure that its facilities are prudently and efficiently managed; that it employs an adequate number of competently trained and experienced personnel to carry out its responsibilities; that it delivers a safe and reliable supply of such amounts of electricity to the Point of Delivery as are required under this Agreement; that it complies with all relevant industry standards and practices for the generation and supply of electricity to Participant; and that, at all times with respect to Participant, it exercises the highest commercial standards and employs Commercially Reasonable skills, systems and methods available to it.

4.2 Local Customer Service Access - Supplier agrees to provide, or cause to be provided, certain customer services to Participant. Such services shall be reasonably accessible to Participant, shall be available during normal working hours, shall allow Participant to transact business they may have with Supplier, and shall serve as a communications liaison among Supplier, the Compact, Participant and the Distribution Company. A toll-free telephone number will be provided for Participant to contact Supplier to resolve concerns, answer questions and transact business with respect to the service received from Supplier. Such toll-free phone line shall be attended by service personnel during regular business hours (8:00 AM – 5:00 PM) and routed to a voice message after hours.

If a toll-free number is not already in existence, Supplier shall meet above requirements with a toll-free number.

4.3 Responding to Requests for Information - To the extent authorized by the Participant and to the extent such individual permission is required by law, Supplier shall, during normal

business hours, respond promptly and without charge therefore to reasonable requests of the Compact for information or explanation regarding the matters covered by this Agreement and the supply of electricity to Participant. Supplier agrees to designate a service representative or representatives (the "Service Contacts") who shall be available for these purposes, and shall identify the office address and telephone number of such representative(s). Whenever necessary to comply with this Article 4.3, the Service Contacts shall call upon other employees or agents of Supplier to obtain such information or explanation as may be reasonably requested. Nothing in this Article 4.3 shall be interpreted as limiting the obligation of Supplier to respond to complaints or inquiries from Participant, or to comply with any regulation of the DPU or the Attorney General of the Commonwealth regarding customer service.

4.4 Arranging for Firm All-Requirements Power Supply - Supplier shall participate in or make appropriate arrangements with the ISO, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of reliable, safe, firm, All-Requirements Power Supply to the Distribution Company for delivery to Participant, and take Commercially Reasonable steps to cooperate with the NEPOOL, the ISO or any other entity to ensure a source of back-up power in the event that the facilities owned or controlled by Supplier's affiliates or other sources of power supply are unable to generate and/or deliver All-Requirements Power Supply to the Point of Delivery. In the event Supplier is unable to deliver sufficient electricity to the grid to serve Participant, Supplier shall utilize such arrangements as may be necessary to continue to serve Participant under the terms of this Agreement, and shall bear any costs it may incur in carrying out these obligations. Supplier shall not be responsible to the Compact or any Participant in the event the Distribution Company disconnects, curtails or reduces service to Participant (notwithstanding whether such disconnection is directed by the ISO) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Distribution Company's facilities, to maintain the safety and reliability of the Distribution Company's electrical system, or due to any other reason, including emergencies, forced outages, potential overloading of the Distribution Company's transmission and/or distribution circuits, *Force Majeure* or the non-payment of any distribution service costs or other such costs due for services provided by the Distribution Company to a Participant.

4.5 Non-Discriminatory Provision of Service - Supplier shall supply electric energy to the Point of Delivery for the Participant. Subject to the prices and terms contained in Exhibit A, electricity shall be provided on a non-discriminatory basis. To the extent applicable, Supplier's prices, terms and conditions shall be in accordance with the Massachusetts General Laws, the regulations of the DPU, and other applicable provisions of law.

4.6 Consumer Lists - To the extent not prohibited by any Governmental Rule or expressly by Participant, Supplier shall, upon request of the Compact, provide a list of the Participant's Accounts being served by Supplier, including such reasonable identifying and aggregate consumption information as the Compact may also request to the extent such information is available to Supplier. Supplier shall provide such consumer lists in an electronic format reasonably acceptable to both Parties and with no more frequency than once a month.

4.7 **Compliance with Laws** - The Parties shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this Agreement.

4.8 **Consent** - Whenever performance of an obligation of any Party hereto requires the consent or approval of any Governmental Authority, such Party shall make Commercially Reasonable efforts to obtain such consent or approval. In the event Supplier requests the Compact's and/or Participant's assistance in obtaining such consent or approval and the Compact and/or Participant anticipates that it will incur costs in fulfilling Supplier's request, it shall give Supplier an estimate of such costs. Upon receiving the cost estimate, Supplier shall determine if it continues to request the Compact's and/or Participant's assistance, and if so, Supplier shall reimburse the Compact and/or Participant for all costs, up to the estimated dollar amount, reasonably incurred by the Compact and/or Participant in connection with such efforts.

ARTICLE 5 ROLE OF THE COMPACT

Under this Agreement, the Compact shall not actually receive, take title to, or be liable for the supply or delivery of All-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the Compact is to a) set the terms and conditions under which All-Requirements Power Supply will be provided by Supplier under this Agreement and to ensure that Supplier complies with those terms and conditions, and b) act as agent for the Participant with respect to the matters addressed in this Agreement. It is the sole obligation of Supplier to arrange for delivery of All-Requirements Power Supply to the Participant. The Parties agree that neither the Compact nor the Participant are "aggregators," "distribution companies," "electric companies," "generation companies" or "transmission companies" within the meaning of G.L. c. 164, §1 as a result of this Agreement, unless a court, the DPU, or other lawful authority shall adjudicate to the contrary. Supplier hereby agrees that it will take no action that would make the Compact or its agents liable to the Participant due to any act or failure to act on the part of Supplier relating to the delivery or supply of All-Requirements Power Supply.

ARTICLE 6 PRICES AND SERVICES; BILLING

6.1 **Schedule of Prices and Terms** - Supplier agrees to provide All-Requirements Power Supply and other related services as expressly set forth herein in accordance with the prices and terms included in Exhibit A to this Agreement, which Exhibit is hereby incorporated by reference into this Agreement.

6.2 **Obligation to Serve** - As between the Parties, Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide All-Requirements Power Supply for Participant. Supplier shall make appropriate arrangements to obtain such capacity, electrical energy, and ancillary services for load-following purposes, including, but not limited to, spinning reserves, supplemental reserves, backup supplies and services as may be needed in the event of outages or emergencies, and all other ancillary services as necessary to

provide a firm, reliable, and safe All-Requirements Power Supply for Participant to the Point of Delivery.

6.3 Metering and Billing - As between the Parties, Supplier bears sole responsibility for any metering which may be required to bill Participant, and for rendering of any bills to Participant. Supplier shall discharge this obligation by making appropriate arrangements with the Distribution Company. Any metering and billing functions carried out by Supplier shall be conducted in compliance with relevant rules and regulations of the DPU and the Attorney General of the Commonwealth.

6.4 Terms and Conditions Pertaining to Service -

A. Title

Title to All-Requirements Power Supply will transfer from Supplier to Participant at the Point of Sale. Possession of, and risk of loss related to, All-Requirements Power Supply will transfer from Supplier to the Distribution Company at the Point of Delivery.

B. Term

Delivery of All-Requirements Power Supply will begin on the first Participant meter read date in **July, 2019** as specified in Exhibit A, or as soon as necessary arrangements can be made with the Distribution Company thereafter and will end on the last Participant meter read date in **July, 2021** unless extended or modified in accordance with Article 3.4 (Extension). Supplier has the right to request a “special” meter reading by the Distribution Company to initiate energy delivery and agrees to accept all costs (if any) for such meter reading.

C. Billing and Payment

Unless otherwise specified in an Exhibit to this Agreement, all billing under this Agreement shall be based on the meter readings of the Participant’s meter(s) performed by the Distribution Company. Supplier shall cause the Distribution Company to prepare and mail bills to Participant monthly. Supplier shall adopt the billing and payment terms offered by the Distribution Company. The Participant will pay a late charge of 1.5% per month, or the maximum rate allowed by state law if that rate is less, for payments received after the due date.

D. Regional and Local Transmission

The prices quoted in Exhibit A do not include current and future charges for distribution service costs collected by the Distribution Company under its distribution service tariff or local transmission costs as may be imposed by the regional power pool or individual electric utilities that have FERC transmission tariffs. It is Supplier’s understanding that these costs will be collected by the Distribution Company under its transmission tariff charge. If in the future Supplier becomes responsible for distribution costs, Supplier shall be entitled to collect such costs from Participant to the extent permitted by any Governmental Rules. These costs are “pass through” costs as determined by the appropriate regulatory agencies.

E. Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of All-Requirements Power Supply shall be included on each Participant's bill and shall be remitted to the appropriate taxing authority by Supplier. Participant shall be responsible for all taxes (except for taxes on Supplier's income) associated with sales under the Agreement. Participant shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Supplier.

ARTICLE 7 RENEWABLE PORTFOLIO STANDARDS AND NET METERING

7.1 Renewable Portfolio Standards - Supplier hereby agrees that it will comply with the applicable provisions of G.L. c. 25A, §§11F, 11F ½ and any regulations, orders or policies adopted pursuant thereto. The Parties agree that in view of opportunities to reduce the environmental cost of electric power generation, the Parties have a mutual interest in advancing the use of Green Power. Supplier further agrees that it will comply with the applicable provisions of 310 C.M.R. §7.75 and any orders or policies adopted pursuant thereto. Supplier and Participant agree that the price set forth in Exhibit A may include Green Power in addition to Supplier's obligation to comply with the applicable provisions of G.L. c. 25A, §§11F, 11F ½, 310 C.M.R. §7.75 and any regulations, orders or policies adopted pursuant thereto, such that a percentage of Participant's annual retail sales may be matched with RPS Class I Renewable Generation Attributes, as such term is defined in 225 C.M.R. §14.02, in addition to the requirements of G.L. c. 25A, §§11F, 11F ½ and 310 C.M.R. §7.75.

7.2 Net Metering - Nothing in this Agreement shall prohibit Participant from net metering any or all of its supply in accordance with G.L. c. 164, §§138-139. Supplier must cooperate with the Participant and the Compact during the term of this Agreement to allow Participant to net meter.

ARTICLE 8 SERVICE PROTECTIONS

Supplier shall, on or before July 31, 2019, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Compact (which approval shall not be unreasonably withheld). Such written description shall also include Supplier's plans for maintaining "service quality standards," as that phrase is used in §1F(7); for complying with the "affirmative choice" requirements of §1F(7); and for handling customer complaints, including any arbitration procedures. If the Participant so permit(s) to the extent such permission is required by law, Supplier agrees to provide notice to the Compact of any customer complaints received from a Participant, and to grant the Compact the right to participate in resolution of the dispute, to the extent permitted by DPU regulations and other applicable law. The failure to timely submit such written description, or the submission of practices and procedures which materially fail to comply with DPU regulations and policies, shall be deemed grounds for termination of this

Agreement, at the discretion of the Compact after providing written notice of such failure to Supplier and allowing Supplier sixty (60) days to cure such failure.

ARTICLE 9 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

Supplier agrees to conduct its operations and activities under this Agreement in accordance with all applicable state and federal laws regarding non-discrimination in hiring and employment of employees.

ARTICLE 10 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

10.1 Power Supply Information -

A. Reports of Sales

Upon written request, the Supplier will provide the Compact with a report of sales which will contain: (i) the actual kWh sales for each calendar month of the reporting period; (ii) the number of customer Accounts active in each calendar month of the report; and (iii) the hourly load data from the Supplier's ISO load asset(s) for the Participant during the period of the report. The report will be due to the Compact within fourteen (14) days of the date of the written request from the Compact. The kWh sales and number of customer Accounts shall be listed in the report both by rate code and rate name as shown on their electric bill. This information shall be provided in electronic format.

B. Additional Information

Upon request, Supplier shall provide to the Compact, within a reasonable time, information regarding efforts to comply with the Green Power provisions of this Agreement; and such other matters as may be mutually agreed upon by the Parties, acting in good faith.

C. Standard of Care

The Supplier shall use good industry practice in preparing and providing any information or data required under this Agreement. To the extent the Supplier determines that any information or data provided hereunder is in error, it shall provide such information or data to the Compact within a Commercially Reasonable time.

10.2 Disclosure Label - In accordance with 220 C.M.R. §11.06, Supplier shall prepare and provide to Participant the "Disclosure Label" required by the DPU of all competitive suppliers to be disclosed to their customers which includes information pertaining to their power supply and a reasonably detailed description of the sources of Supplier's power supply used to serve Participant pursuant to this Agreement. Upon reasonable request, Supplier shall provide the Compact a copy of the Participant's current disclosure label.

10.3 Books and Records - Supplier shall keep its books and records in accordance with any applicable regulations or guidelines of the DPU, the FERC, and any other Governmental Authority. The Compact and the Participant will have access to all reports mandated by the Securities and Exchange Commission which are available on the Internet "EDGAR" system. Upon reasonable request by the Compact or Participant and at the Compact's or the Participant's expense, Supplier shall provide back-up for any charge under this Agreement questioned by the Compact or the Participant.

10.4 Copies of Regulatory Reports and Filings - Upon reasonable request, Supplier shall provide to the Compact and/or Participant a copy of each public periodic or incident-related report or record relating to this Agreement which it files with any Massachusetts or federal agency regulating rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements, unless Supplier is required by law or regulation to keep such reports confidential from the other Parties. The Compact and/or the Participant shall treat any reports and/or filings received from Supplier as confidential information subject to the terms of Article 15 (Confidentiality). Supplier shall be reimbursed its reasonable costs of providing such copies.

ARTICLE 11 RESOLUTION OF DISPUTES; CHOICE OF LAW

11.1 Choice of Law - This Agreement and the rights of the Parties shall be interpreted and determined in accordance with the laws of the Commonwealth of Massachusetts.

11.2 Dispute Resolution - Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Article 11.2 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party(ies) involved in the dispute a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties involved in the dispute. In the event that the parties involved in the dispute cannot resolve a dispute by informal negotiations, the Parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by all Parties involved in the dispute. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, any Party may seek judicial enforcement. Notwithstanding the foregoing, injunctive relief may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. In any judicial

proceeding, the “Prevailing Party” shall be entitled to payment from the opposing party of its reasonable costs and fees, including but not limited to attorneys' fees and travel expenses, arising from the civil action. As used herein, the phrase “Prevailing Party” shall mean the party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the venue for judicial enforcement shall be the United States Federal District Court in Boston, Massachusetts, provided that where federal jurisdiction does not apply, the venue shall be Barnstable County Superior Court or any other Massachusetts state court of competent jurisdiction.

ARTICLE 12 INDEMNIFICATION

12.1 Indemnification by Supplier - Supplier shall indemnify, defend and hold harmless the Participant and the Compact (collectively “Indemnified Parties” and singularly “Indemnified Party”) and each Indemnified Party’s members, officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys’ fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising, directly or indirectly, from or in connection with (i) any material breach by Supplier of its obligations, covenants, representations or warranties contained in this Agreement and not resulting from the actions of the Distribution Company, the Compact or Participant or their employees or agents, or (ii) Supplier’s actions or omissions taken or made in connection with Supplier’s performance of this Agreement. Supplier further agrees, if requested by the Compact or Participant, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article 12.1.

12.2 Notice of Indemnification Claims - If the Compact or Participant seeks indemnification pursuant to this Article 12, the Compact shall notify Supplier of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. Upon written acknowledgment by Supplier that it will assume the defense and indemnification of such claim, Supplier may assert any defenses which are or would otherwise be available to the Compact and/or Participant, as the case may be.

12.3 Survival - Notwithstanding any provision contained herein, the provisions of this Article 12 and the Financial Sureties and Guaranties provided by Supplier pursuant to Article 14.2 (Additional Financial Sureties and Guarantees) shall survive the termination of this Agreement for a period of three (3) years with respect to a) any claims which occurred or arose prior to such termination and b) any losses occurring as a result of the termination.

12.4 Duty to Mitigate – All Parties agree that they have a duty to mitigate damages and covenant that they will use Commercially Reasonable efforts to minimize any damages they may incur as a result of any other Party’s performance or non-performance of this Agreement.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES

13.1 Representations and Warranties by Supplier - As a material inducement to entering into this Agreement, Supplier hereby represents and warrants to the Compact and Participant as of the Effective Date of this Agreement as follows:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this Agreement;

(ii) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;

(iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;

(iv) subject to the conditions set forth in Article 2.4 (Conditions Precedent), this Agreement constitutes a legal, valid and binding obligation of Supplier enforceable against it in accordance with its terms, and Supplier has all rights such that it can and will perform its obligations to Supplier in conformance with the terms and conditions of this Agreement, subject to Bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

(v) no Bankruptcy is pending against it or to its knowledge threatened against it;

(vi) none of the documents or other written information furnished by or on behalf of Supplier to the Compact and/or the Participant pursuant to this Agreement, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and

(vii) all information furnished by Supplier in response to the RFP for competitive electric supply services is true and accurate.

13.2 Representations and Warranties by the Compact - As a material inducement to entering into this Agreement, the Compact hereby represents and warrants to Supplier as of the Effective Date of this Agreement as follows:

(i) the Compact is organized as a joint powers entity operating under a joint powers agreement in accordance with the laws of the Commonwealth of Massachusetts;

(ii) this Agreement will constitute the legal, valid and binding obligation of the Compact enforceable in accordance with its terms;

(iii) the execution, delivery and performance of this Agreement are within the Compact's powers, have been or will be duly authorized by all necessary action and the Compact is the duly authorized agent of the Participant with respect to the matters addressed in this Agreement;

(iv) the Compact has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and

(v) no Bankruptcy is pending or threatened against it or any Member Municipality.

13.3 Representations and Warranties by the Participant - As a material inducement to entering into this Agreement, Participant hereby represents and warrants to Supplier as of the Effective Date of this Agreement as follows:

(i) this Agreement will constitute the legal, valid and binding obligation of the Participant enforceable in accordance with its terms;

(ii) the execution, delivery and performance of this Agreement are within the Participant's powers, have been or will be duly authorized by all necessary action;

(iii) the Participant has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and

(iv) for itself only, no Bankruptcy is pending or threatened against it.

ARTICLE 14 INSURANCE AND OTHER FINANCIAL SURETIES AND GUARANTEES

14.1 Insurance - In order to help support the indemnifications provided in Article 12 (Indemnification), and its other promises and covenants stated herein, Supplier shall secure and maintain, at its own expense, throughout the term of this Agreement, commercial general liability insurance of at least \$5,000,000 combined single limit and excess liability coverage of at least \$5,000,000 with insurers and with the Compact and Participant named as additional insureds. Supplier shall provide the Compact and the Participant with evidence, reasonably satisfactory to the Compact and the Participant, of its insurance hereunder, upon request. The detailed terms of Supplier's insurance are set forth in Exhibit B attached hereto.

14.2 Additional Financial Sureties and Guarantees - In addition to the insurance set forth in Article 14.1, above, Supplier shall, within two (2) days of the Effective Date of this Agreement, deliver to the Compact financial security for its obligations hereunder, including, without limitation, the indemnification set forth in Article 12 (Indemnification), in the form of a payment guarantee (to be given by Supplier's corporate parent or other affiliate, subject to the Compact's

approval in its sole discretion) substantially in the form as the form of payment guarantee attached hereto as Exhibit C.

Supplier may change the type and amount of its financial security provided hereunder with the consent of the Compact, such consent not to be unreasonably withheld.

Upon reasonable request during the term of this Agreement and on a continuing basis, Supplier will provide the Compact and the Participant with Commercially Reasonable proof of its ability to meet its indemnification obligations to the Compact and the Participant pursuant to this Agreement. Supplier will provide the Compact and the Participant with a copy of its parent's annual report. Supplier also agrees to notify the Compact and the Participant in the event that its parent's unsecured, senior long-term debt or current corporate credit rating (not supported by third-party credit enhancements) is less than BBB- by Standard & Poor's Rating Group or less than BBB- by Fitch Investor Services, Inc. (a "Downgrade Event"). Should a Downgrade Event occur, the Compact may request that Supplier provide a substitute form of security in a form and an amount reasonably satisfactory to the Compact. Upon receipt of such notice, Supplier shall have three (3) business days in which to provide such substitute form of security to the Compact and the Participant.

ARTICLE 15 CONFIDENTIALITY

The Compact and the Supplier's confidentiality obligations are governed by a Confidentiality Agreement dated as of October 3, 2018 (the "Confidentiality Agreement").

ARTICLE 16 MISCELLANEOUS

16.1 No Assignment Without Permission - Supplier shall not assign its rights and privileges under this Agreement without the prior written approval of the Compact and the Participant. Such approval may be denied in the reasonable discretion of the Compact and the Participant if they determine that the proposed assignee does not have at least the same financial and technical ability as the assigning Supplier. Notwithstanding the foregoing, the Compact and the Participant may not unreasonably withhold their consent to an assignment to an affiliated entity under common control or management with Supplier. Supplier's assignee shall agree in writing to be bound by the terms and conditions of this Agreement.

The Compact and the Participant may assign this Agreement without the prior consent of Supplier. The rights and obligations created by this Agreement and the Compact Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

16.2 Direct Marketing - Prior to the introduction of any new product or service which Supplier may wish to make available to Participant, Supplier agrees to (i) give the Compact written notice of such new product or service and (ii) subject to the entry into reasonable confidentiality terms to the extent permitted by law and mutually acceptable to the Parties, discuss with the Compact the possible inclusion of such new product or service in this or another

program undertaken by the Compact and Participant in the geographic area encompassing the Member Municipalities. The Parties agree to negotiate in good faith the terms, conditions, and prices for such products and services which the Parties agree should be included in a Compact aggregation program.

Supplier also agrees not to engage in any direct marketing to any Participant that relies upon Supplier's unique knowledge of, or access to, Participant's data gained as a result of this Agreement. For the purposes of this provision, "direct marketing" shall include any telephone call, mailing, electronic mail, or other contact between Supplier and the Participant. Broad-based programs of Supplier that do not rely on unique knowledge or access gained through this Agreement will not constitute such "direct marketing."

16.3 **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 addressed to:

if to Supplier to:

NextEra Energy Services Massachusetts, LLC
 ATTN: Legal Department
 20455 State Highway 249 – Suite 200
 Houston, TX 77070
 Fax: 866.620.4392
 Email: contracts@nexteraenergyservices.com

with a copy to:

NextEra Energy Marketing, LLC
 ATTN: Legal Department
 700 Universe Boulevard, CTR/JB
 Juno Beach, FL 33408-2683
 (561) 625-7504 (facsimile)

For Operational Issues Only:

NextEra Energy Services Massachusetts,
 LLC
 ATTN: President
 20455 State Highway 249 – Suite 200
 Houston, TX 77070
 Email:
brian.landrum@nexteraenergyservices.com

if to the Compact to:

Ms. Margaret Downey
 Administrator
 Cape Light Compact JPE
 261 Whites Path, Suite 4
 S. Yarmouth, MA 02664
 (508) 375-6636 (voice)
 (774) 330-3018 (fax)
mdowney@capelightcompact.org

Mr. Austin Brandt
 Sr. Power Supply Planner
 Cape Light Compact JPE
 261 Whites Path, Suite 4
 S. Yarmouth, MA 02664
 (508) 375-6623 (voice)
 (774) 330-3018 (fax)
austin.brandt@capelightcompact.org

with a copy to:

Jeffrey M. Bernstein, Esq.
BCK Law, P.C.
271 Waverley Oaks Road, Suite 203
Waltham, MA 02452
jbernstein@bck.com

if to Participant to:

Christopher Clark
Town Administrator
PO Box 993
Harwich, MA 02645
cclark@town.harwich.ma.us

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Notices may also be transmitted by electronic mail, provided that any notice transmitted solely by electronic mail which is not confirmed as received by the receiving party shall be followed up by personal delivery or overnight delivery within forty-eight (48) hours. Any Party may change its address and contact person for the purposes of this Article 16.3 by giving notice thereof in the manner required herein.

16.4 Changes in Emergency and Service Contact Persons - In the event that the name or telephone number of any emergency or Service Contact for Supplier changes, Supplier shall give prompt notice to the Compact and the Participant in the manner set forth in Article 16.3 (Notices). In the event that the name or telephone number of any such contact person for the Compact or a Participant changes, prompt notice shall be given to Supplier in the manner set forth in Article 16.3 (Notices).

16.5 Entire Agreement; Amendments - This Agreement and the Confidentiality Agreement constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written instrument signed by all Parties hereto.

16.6 Force Majeure - If by reason of *Force Majeure* any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the *Force Majeure*, gives all other Parties hereto written notice

describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure*; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If an event of *Force Majeure* continues for a period of one hundred eighty (180) days or longer, any Party may terminate this Agreement by sending the other Parties a written notice as set forth in Article 3.2 (Termination); *provided, however*, that such termination shall not constitute a default under this Agreement and shall not give rise to any damages.

16.7 Expenses - Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including without limitation, all attorneys' fees and expenses.

16.8 No Joint Venture - Supplier will perform all services under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of any other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Compact, the Participant, and Supplier hereunder are individual and neither collective nor joint in nature.

16.9 Joint Workproduct - This Agreement shall be considered the workproduct of all Parties hereto, and, therefore, no rule of strict construction shall be applied against any Party.

16.10 Counterparts; Scanned Copy - This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which 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. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

16.11 Waiver - No waiver by any Party hereto of any one or more defaults by any 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 any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party(ies) 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.

16.12 Advertising Limitations - Supplier agrees not to use the name of the Cape Light Compact or Participant, or make any reference to the Cape Light Compact or Participant in any advertising or other information to be distributed publicly for marketing or educational purposes,

unless the Compact expressly agrees to such usage. Any proposed use of the name of the Cape Light Compact or the Participant must be submitted in writing for agreement and prior approval, which shall not be unreasonably withheld. The Compact acknowledges that Supplier's corporate affiliates own the exclusive right to the trademarked logo and trade name used by Supplier. No right, license or interest in this trademark and/or trade name is granted to the Compact hereunder, and the Compact agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

16.13 Press Releases - The Parties shall not issue a press release or make any public statement with respect to this Agreement without the prior written agreement of the other Parties with respect to the form, substance and timing thereof, except that any Party may make any such press release or public statement when the releasing Party is advised by its legal counsel that such a press release or public statement is required by law, regulation or stock exchange rules, provided however, in such event, the Parties shall use their reasonably good faith efforts to agree as to the form, substance and timing of such release or statement.

16.14 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.

16.15 Survival of Obligations - Termination of this Agreement for any reason shall not relieve the Compact or Supplier of any obligation accrued or accruing prior to such termination.

16.16 Remedies -

A. General - Subject to the limitations set forth in Article 16.16(B) below, the Compact, the Participant, and the Supplier reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other parties hereto under this Agreement.

B. 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, Supplier acknowledges that the preceding sentence shall not limit the Compact's or Participant's rights under Article 12.1 (Indemnification by Supplier) to seek indemnification from Supplier or consequential, punitive, or incidental damages or other such losses claimed by third-parties, subject to any limitations set forth in the Payment Guarantee.

16.17 Cooperation - The Parties agree that they shall use Commercially Reasonable efforts in good faith and in full cooperation with the other Parties to secure any approvals required to implement this Agreement and to otherwise carry out their obligations hereunder.

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

NEXTERA ENERGY SERVICES MASSACHUSETTS, LLC

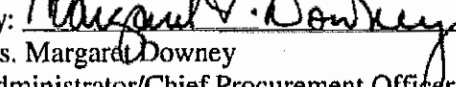
By: 
Brian Landrum
President



20455 State Highway 249, Ste. 200
Houston, TX 77070

Dated: October 25, 2018

CAPE LIGHT COMPACT JPE

By: 
Ms. Margaret Downey
Administrator/Chief Procurement Officer

Cape Light Compact JPE
261 Whites Path, Suite 4
S. Yarmouth, MA 02664
(508) 375-6636 (voice)
(508) 362-4166 (fax)
mdowney@capelightcompact.org

Dated: October 25, 2018

PARTICIPANT: Town of Harwich

By: Margaret J. Downey

Name: Margaret Downey for Town of Harwich

Title: Compact Administrator

Address: 732 Main St, Harwich, MA 02645

Dated: October 25, 2018

**[PARTICIPANT SIGNATURE PAGE TO
MUNICIPAL COMPETITIVE ELECTRIC SUPPLY AGREEMENT]**

OFFICE OF THE TOWN ADMINISTRATOR

Christopher Clark, Town Administrator

Phone (508) 430-7513

Fax (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



September 13, 2018

Margaret T. Downey
Cape Light Compact JPE, Chief Procurement Officer
261 Whites Path, Suite 4
S. Yarmouth, MA 02664

RE: *Authorization to Execute Municipal Competitive Electric Supply*

Dear Ms. Downey,

I understand that the Cape Light Compact JPE (the "Compact") issued a Request for Proposals ("RFP") for municipal and other governmental electric accounts for all requirements power supply starting in July 2019 meter read dates and extending up to three years. The Compact issued this RFP for municipal accounts at the request of the municipalities to maximize the benefits of negotiating electricity prices as a single entity with a diverse electric load profile.

I recognize that the bids are due Thursday, October 25, 2018 and in order to avoid any premiums being included in the bid price the price for electricity is valid only until 4:00PM that day. I understand that prior to accepting the most responsive bid, the Compact will have reviewed and vetted the contract terms and conditions with both its outside technical consultant and legal counsel. The term of the contract will be anywhere from 12 months to 36 months and will commit the municipality/governmental entity to purchase all of the generation for the provided electricity accounts from the chosen competitive supplier for such term, without any right to opt-out.

I am unable to attend in person and execute the recommended contract on Thursday, October 25, 2018 and as a result I am authorizing Margaret T. Downey, Compact Administrator and Chief Procurement Officer, to act as my agent and execute the contract recommended by you on behalf of the municipality or other governmental entity set forth below. I further attest that I have been duly authorized to undertake this action on behalf of my Town and/or other governmental entity set forth below.

Signed: _____

Name: Christopher Clark
Title: Town Administrator
Organization: Town of Harwich
Date: September 13, 2018

EXHIBIT A

PRICES AND TERMS

Delivery of All-Requirements Power Supply will begin on the first meter read dates in July of 2019 and will end on the last meter read dates in July of 2021 for the Accounts listed in this Exhibit A, subject to the following terms:

- 1. Price** - The price shall be **\$96.51**/megawatt hour (“MWh”).
- 2. Accounts** - Participant must notify Supplier within sixty (60) days of its establishment of a new electric account during the term of supply set forth in this Exhibit A and Supplier shall be obligated to serve such electric account under the price terms and conditions set forth in this Exhibit A. Participant shall not be responsible for any error or delay of the Distribution Company in adding such new account to the power supply under this Agreement. Participant must notify Supplier of any electric account to be removed from this Exhibit A during the term of supply. Supplier may not pass through to the Participant any cost to Supplier associated with Participant’s removal of an account set forth on this Exhibit A that is due to the termination of the account in the ordinary course of business by the Participant, including, but not limited to, decommissioning of a building or sale of property. Participant may not obtain electric generation service from any other competitive supplier of electricity for any new electric account added during the term of supply under this Exhibit A or for any electric account that Participant removes from this Exhibit A during the term of supply. Nothing in this Section 2 shall prevent a Participant from net metering as authorized in Article 7 of the Agreement.
- 3. Material Deviation in Use** – A material deviation in use shall have occurred if, in the aggregate for any particular month, the electric usage (with the exception of municipal street lighting accounts) of the Participant has increased or decreased by twenty-five percent (25%) when compared to the average of the Participant’s electric consumption in that same month in the three years preceding such month (“Material Deviation in Use”). If a Material Deviation in Use has occurred in two or more consecutive months, the damages due to Supplier or Participant, as the case may be, shall be the difference between the market price for wholesale electricity and the price for electricity set forth on this Exhibit A multiplied by the number of megawatt hours of consumption in excess of the absolute value of the Material Deviation in Use.

LIST OF ACCOUNTS

<u>Customer Name</u>	<u>UAN</u>	<u>Service Street</u>	<u>Service City</u>	<u>Service Zip Code</u>
TOWN OF HARWICH	13996180017	715 MAIN ST	HARWCHPORT	02601
TOWN OF HARWICH	13996740018	40 HARBOR RD	HARWCHPORT	02601
TOWN OF HARWICH	13997310027	MAIN ST	HARWICH	02525
TOWN OF HARWICH	14003950020	203 BANK ST	HARWCHPORT	02525
TOWN OF HARWICH	14022560016	161 BAY RD	E HARWICH	02525
TOWN OF HARWICH	14022570015	161 BAY RD	HARWICH	02601
TOWN OF HARWICH	14044200013	446 QUEEN ANNE RD	HARWICH	02645
TOWN OF HARWICH	14045280014	265 SISSON RD	HARWICH	02525
TOWN OF HARWICH	14045290013	80 PARALLEL ST	HARWICH	02601
TOWN OF HARWICH	14113290010	85 DEPOT ST	S HARWICH	02525
TOWN OF HARWICH	14115150014	343 LOWER COUNTY RD	HARWCHPORT	02646
TOWN OF HARWICH	14128240018	RTE 137	E HARWICH	02525
TOWN OF HARWICH	14128260016	149 RTE 137	E HARWICH	02601
TOWN OF HARWICH	14132340010	196 CHATHAM RD	HARWICH	02525
TOWN OF HARWICH	14149500010	12 POST OFFICE SQ	HARWCHPORT	02601
TOWN OF HARWICH	14159560011	80 FOREST ST	HARWCHPORT	02601
TOWN OF HARWICH	14163990014	9 OAK ST	HARWICH	02525
TOWN OF HARWICH	14164030018	732 MAIN ST	HARWICH	02525
TOWN OF HARWICH	14164040017	725 MAIN ST	HARWICH	02525
TOWN OF HARWICH	14164110026	MAIN ST	HARWICH	02645
TOWN OF HARWICH	14181160012	OFFOAK ST	HARWICH	02601
TOWN OF HARWICH	14181170011	OFFOAK ST	HARWICH	02601
TOWN OF HARWICH	14181180010	183 OAK ST	HARWICH	02525
TOWN OF HARWICH	14181190019	183 OAK ST	HARWICH	02601
TOWN OF HARWICH	14190910019	177 GREAT WESTERN RD	N HARWICH	02601
TOWN OF HARWICH	14217550012	LOWER COUNTY RD	W HARWICH	02525
TOWN OF HARWICH	14218020015	LOWER COUNTY RD	W HARWICH	02601
TOWN OF HARWICH	14231560013	DEPOT ST	W HARWICH	02525
TOWN OF HARWICH	14476020020	QUEEN ANNE RD	HARWICH	02525
TOWN OF HARWICH	14476090015	QUEEN ANNE RD	HARWICH	02525
TOWN OF HARWICH	14476880019	OFFQUEEN ANNE RD	HARWICH	02525
TOWN OF HARWICH	15754660023	WHTHSE FLD OFF OAK ST	HARWICH	02525
TOWN OF HARWICH	15869040012	183 OAK ST	HARWICH	02601
TOWN OF HARWICH	15933540070	4 UNC VENIES RD	S HARWICH	02525
TOWN OF HARWICH	15935240018	RTE 137	E HARWICH	02601
TOWN OF HARWICH	15971680010	139 N WESTGATE RD	N HARWICH	02601
TOWN OF HARWICH	16007460013	196 CHATHAM RD	HARWICH	02645
TOWN OF HARWICH	16056770015	15 BANK ST	HARWCHPORT	02601
TOWN OF HARWICH	16275400022	739 MAIN ST	HARWICH	02601
TOWN OF HARWICH	16314860012	273 QUEEN ANNE RD	HARWICH	02601
TOWN OF HARWICH	16374510010	OFFOAK ST	HARWICH	02645
TOWN OF HARWICH	16493870022	100 OAK ST	HARWICH	02601
TOWN OF HARWICH	16499930010	205 PLEASANT BAY RD	HARWICH	02601
TOWN OF HARWICH	26836220017	15 ISLAND POND RD	HARWICH	02525
TOWN OF HARWICH	26837430029	CEMETARY RD	HARWICH	02525


TOWN OF HARWICH	26918920013	209 QUEEN ANNE RD	HARWICH	02601
TOWN OF HARWICH	27261760014	OAK ST	HARWICH	02525
TOWN OF HARWICH	27753010019	OAK ST	HARWICH	02645
TOWN OF HARWICH	28079280013	EARLE RD	W HARWICH	02525
TOWN OF HARWICH	28139550017	QUEEN ANNE RD	HARWICH	02601
TOWN OF HARWICH	28311400015	183 SISSON RD	HARWICH	02601
TOWN OF HARWICH	28647370015	1403 ORLEANS RD	HARWICH	02525
TOWN OF HARWICH	28731930013	270 CHATHAM RD	HARWICH	02525
TOWN OF HARWICH	14048580022	204 SISSON RD SCHOOL	HARWICH	02645
TOWN OF HARWICH	28806350014	PLEASANT RD	HARWICH	02525
TOWN OF HARWICH	28842290026	732 MAIN ST	HARWICH	02525
TOWN OF HARWICH	13768770011	732 MAIN ST	HARWICH	02525
 TOWN OF HARWICH	15396410019	OFF RTE-28, STREETLIGHT	HARWICH	02645
SAQUATUCKET MARINA	13996200088	RTE-28	S HARWICH	02646
TOWN OF HARWICH	15396350017	Harwich Park & Rec, Sisson Road		
TOWN OF HARWICH	15396670018	Bells Neck Road		
HARWICH T OF REC DEPT	29120840011	Long Pond Dr Beach	Harwich	02645
TOWN OF HARWICH	29481370012	72 Parallel St. Barn	Harwich	02645
TOWN OF HARWICH	15396380014	183 Sisson-Public Safety Bldg.		

EXHIBIT B

INSURANCE

1. Supplier shall maintain commercial general liability insurance throughout the term of the Agreement and for a period of at least two years following the contract term.
2. The insurance may be provided on a claims made basis. Any applicable retroactive date under such claims made insurance shall precede the effective date of this Agreement. In the event such insurance is cancelled or non-renewed, Supplier agrees to provide a 36-month discovery period endorsement for obligations under this Agreement.
3. The insurance shall include coverage for bodily injury liability, property damage liability, advertising injury liability and personal injury liability.
4. To the extent available at commercially reasonable terms and conditions, personal injury liability coverage shall include non-employment discrimination in accordance with AEGIS form 8100 (1/1/98), or its more recent edition if applicable, or their equivalent in scope.
5. To the extent available at commercially reasonable terms and conditions, the commercial general liability insurance shall include Failure to Supply coverage and such coverage shall be in accordance with AEGIS form 8100(1/1/98), or its more recent edition if applicable, or their equivalent in scope.
6. The insurance shall include blanket contractual liability coverage, including the Competitive Municipal Electric Supply Agreement between Supplier, the Cape Light Compact and Participant.
7. The limits of commercial general liability and excess (umbrella) liability insurance limits shall apply per occurrence/accident or incident. Separate aggregate limits may be applicable to products and completed operations liability coverage, wild fire liability coverage and failure to supply liability coverage.
8. Such commercial general liability insurance shall include the Compact and Participant as additional insureds, but only for obligations arising out of this Agreement or otherwise pursuant to the operations of the Supplier. Such insurance shall provide for defense expenses in addition to the limits. Any self-insured retentions or deductibles under Supplier's insurance which may be applicable to coverage for the Compact and the Participant as additional insureds shall be fully funded (paid for) by Supplier. Further, such coverage shall be provided to the Compact and the Participant on a primary/noncontributory basis as to any insurance they may separately maintain.

9. The policies shall include a blanket endorsement to require that such additional insureds receive at least 30 days' notice of cancellation or non-renewal.
10. Such commercial general liability insurance shall contain a standard separation of insureds clause, whereby the actions of one insured will not negate coverage for another insured.
11. Supplier shall provide the Compact or Participant with a certificate of insurance to evidence compliance with the requirements. Renewal certificates shall be provided automatically within 30 days of policy renewal throughout the term of the contract and two years following the contract term.

EXHIBIT C

FORM OF PAYMENT GUARANTEE FIRST AMENDMENT TO GUARANTY

This FIRST AMENDMENT TO GUARANTY (this “**First Amendment**”) is made and entered into as of this [DATE] by NEXTERA ENERGY CAPITAL HOLDINGS, INC. (“**Guarantor**”) for the benefit of CAPE LIGHT COMPACT JPE (the “**Counterparty**”).

Recitals

A. Guarantor made and issued that certain Guaranty dated as of November 16, 2016 for the benefit of Counterparty (the “**Underlying Guaranty**”).

B. NextEra Energy Services Massachusetts, LLC is an indirect subsidiary of Guarantor, and Guarantor will derive benefit from amending the Underlying Guaranty as provided by this First Amendment.

Agreement

NOW, THEREFORE, in consideration of the benefits recited above, the sufficiency of which the Guarantor acknowledges, Guarantor hereby agrees as follows:

1. The Underlying Guaranty is hereby amended by replacing the phrase “CAPE LIGHT COMPACT” with the phrase “CAPE LIGHT COMPACT JPE”.
2. The First Paragraph of the Underlying Guaranty is hereby deleted in its entirety and inserting the following in lieu thereof:

This Payment Guarantee (the “**Guarantee**”) is made by **NextEra Energy Capital Holdings, Inc.** (“**Guarantor**”), a Florida corporation, in favor of the **Cape Light Compact JPE** (“**Compact**”), a Massachusetts joint powers entity consisting of 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 county of Dukes County (“**Member Municipalities**”). This Guarantee is given in favor of each municipal and other government electric account holders within the Member Municipalities that are party to certain Municipal Competitive Electric Supply Agreement(s) with Supplier (“**Participants**”) as a result of the Compact’s request for proposals dated October 18, 2016 and September 24, 2018.

3. A new paragraph number 17 is added to the end of the Underlying Guaranty as follows:

“Delivery of an executed signature page of this Guaranty, and any subsequent amendment(s), by facsimile transmission or other electronic transmission (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed signature page hereof.”

4. Guarantor hereby ratifies the Underlying Guaranty as amended by this First Amendment, and declares the same to be in full force and effect.

5. This document may be executed in any number of counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

WITNESS THE EXECUTION HEREOF effective as of the date first set forth above.

NEXTERA ENERGY CAPITAL HOLDINGS, INC.

Accepted by
CAPE LIGHT COMPACT JPE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

[FORM OF]
MUNICIPAL COMPETITIVE ELECTRIC SUPPLY AGREEMENT

WHEREAS, all of the municipalities in Barnstable County and Dukes County formed the Cape Light Compact JPE (“Compact”) and entered into a “Joint Powers Agreement of the Cape Light Compact JPE” (“Compact Agreement”), for the purposes, *inter alia*, of acting as a municipal aggregator and negotiating the best terms and conditions for the supply of electricity to consumers located on Cape Cod and Martha’s Vineyard;

WHEREAS, all twenty-one Barnstable County and Dukes County towns and Dukes County presently belong to the Compact (the “Member Municipalities”);

WHEREAS, pursuant to the Compact Agreement, the Compact has the authority to perform power supply procurement services within the region of Barnstable County and Dukes County;

WHEREAS, at the request of and with authority from certain municipal and other government rate electric account holders within the Member Municipalities, the Compact issued a request for proposals (“RFP”) on November 5, 2020, for a supplier to provide All-Requirements Power Supply to such account holders;

WHEREAS, [name of supplier], a [state jurisdiction and form of business organization], duly authorized to conduct business in the Commonwealth of Massachusetts (“Supplier”) was chosen by the Compact from among several competitive suppliers to be the supplier for the term set forth in this Municipal Competitive Electric Supply Agreement (“Agreement”); and

WHEREAS, Supplier desires to provide All-Requirements Power Supply to [name of Participant] (“Participant”), pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, IT IS AGREED THAT, the Compact, the Participant and Supplier hereby enter into this Agreement subject to the terms and conditions below.

ARTICLE 1 DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

1.1 **Accounts** - The electric accounts of Participant to be served by Supplier under this Agreement, as set forth in Exhibit A hereto.

1.2 **Agreement** - This Municipal Competitive Electric Supply Agreement.

1.3 **All-Requirements Power Supply** - Service under which Supplier provides all of the electrical energy, capacity, reserves, ancillary services, transmission and distribution losses, congestion management, and such other services or products necessary for firm power supply to Participant at the Point of Sale, including, without limitation, compliance with the Renewable Portfolio Standard requirements set forth in G.L. c. 25A, §§11F, 11F ½ and cognate regulations and compliance with the Clean Energy Standard requirements set forth in 310 C.M.R. §7.75.

1.4 **Bankruptcy** - Bankruptcy means with respect to a Party that such Party (i) ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any action to authorize or that is in contemplation of the actions set forth in this clause (i) or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule and, such proceeding is not dismissed within ninety (90) days after the commencement, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal or otherwise within ninety (90) days after the appointment, or, within ninety (90) days after the expiration of any such stay, has not been vacated, *provided that*, notwithstanding the foregoing, the exercise of rights to take over operation of a Party's assets, or to foreclose on any of a Party's assets, by a secured creditor of such Party (including the appointment of a receiver or other representative in connection with the exercise of such rights) shall not constitute a Bankruptcy.

1.5 **Commercially Reasonable** - Any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations.

1.6 **Compact** - The Cape Light Compact JPE, formed in October 1997, by an intergovernmental agreement under the Massachusetts General Laws and presently organized and operating collectively under a joint powers agreement consistent with Massachusetts General Laws, consisting of twenty-one (21) towns in Barnstable and Dukes Counties and Dukes County, for which the Compact acts as agent.

1.7 **Compact Agreement** - The Joint Powers Agreement of the Cape Light Compact JPE, as in effect on April 12, 2017 and as may be amended or restated from time to time.

1.8 **Distribution Company** - NSTAR Electric Company d/b/a Eversource Energy, or any successor company(ies) or entity(ies) providing electricity distribution services in each Member Municipality.

1.9 **DPU** - The Massachusetts Department of Public Utilities, or any successor state agency.

1.10 **Effective Date** - The effective date of this Agreement, pursuant to Article 3 (Term of Contract and Termination) below.

1.11 **Force Majeure** - Any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the Compact or a Participating Municipality may not be asserted as an event of *Force Majeure* by the Compact or a Participating Municipality as the case may be; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse any Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

1.12 **General Communications** - The type of communications described and defined in Article 4.7 (Approval of General Communications) herein.

1.13 **Governmental Authority** - Any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, excluding the Compact and all Participating Municipalities.

1.14 **Governmental Rule** - Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, or similar form of decision of any Governmental Authority having the effect and force of law.

1.15 **Green Power** - Electric energy generated by equipment or facilities including solar power, biomass, landfill gas, wind turbine, hydro power or other renewable energy generating resource or technology, as may be defined by G.L. c. 25A, §11F or G.L. c. 164, §1 or, that may be otherwise added by mutual agreement of the Parties.

1.16 **ISO** - The New England Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New England and the bulk transmission of electricity throughout the New England power grid.

1.17 **kWh, kW** - Kilowatt-hour and kilowatts, respectively.

1.18 **Member Municipalities** - The twenty-one (21) towns and Dukes County which are presently members of the Compact as of the Effective Date of this Agreement. The Member Municipalities include the following towns in Barnstable County: Barnstable, Bourne, Brewster, Chatham, Dennis, Eastham, Falmouth, Harwich, Mashpee, Orleans, Provincetown, Sandwich, Truro, Wellfleet and Yarmouth, and the following towns in Dukes County: Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury.

119 **NEPOOL** - The New England Power Pool.

1.20 **Participant**- As set forth in the Recitals to this Agreement, [xx].

1.21 **Parties** - The Compact, the Participant and Supplier, as the context requires. In the singular, "Party" shall refer to any one of the preceding.

1.22 **Point of Delivery** - The point of interconnection between NEPOOL Pool Transmission Facilities and the transmission facilities of the Distribution Company.

1.23 **Point of Sale** - The electric meter(s) for Participant's Accounts, as designated by the Distribution Company.

1.24 **Supplier** – [name of supplier], a [state jurisdiction and form of business organization] duly authorized to conduct business in the Commonwealth of Massachusetts.

ARTICLE 2 RIGHTS GRANTED

2.1 **General Description and Limitations** - Supplier is hereby granted the exclusive right to provide All-Requirements Power Supply to Participant pursuant to the terms and conditions set forth in this Agreement. In accepting this grant, the Parties recognize that Supplier is only authorized to supply All-Requirements Power Supply to Participant, and that the Distribution Company presently has the right and obligation to distribute and deliver electricity to individual customers, until changes in law, regulation or policy may allow otherwise. Supplier further recognizes that it is only authorized by this Agreement to supply All-Requirements Power Supply to Participant. As between the Parties, Supplier has the sole obligation of making appropriate arrangements with the Distribution Company, and any arrangements which may be necessary with the ISO so that Participant receives the electricity supplies to be delivered pursuant to this Agreement. The Participant specifically authorizes the Distribution Company to provide, and Supplier the right to obtain and utilize as required, all billing and energy consumption information for the Participant's Accounts that are reasonably available from the Distribution Company. Supplier acknowledges that Participant may have installed, or plan to install within the term of this Agreement, renewable energy projects within its municipality. Some of these renewable energy facilities are behind the meter, i.e. energy consumption has been reduced, and some are virtual net metered pursuant to Massachusetts law (G.L. c. 164, §§138 – 140 and 220 C.M.R. §18.00), i.e. actual energy consumption has not been reduced. Supplier acknowledges that it is responsible for carefully reviewing energy consumption information. The Compact and Participant assume no responsibility for, nor do they make any

representation or warranty to check, update, or otherwise assess, the data provided. If further action is required by the Distribution Company to authorize Supplier to receive such historical energy consumption and billing data, the Compact and Participant agree to use reasonable efforts, at Supplier's cost, to assist Supplier, if so requested by it, in obtaining such information; and with respect to Participant, including, without limitation, assisting Supplier, at Supplier's cost, in obtaining permission from such Participant and/or the DPU, where necessary as a prerequisite to the provision of such information.

Notwithstanding the foregoing paragraph or anything else in this Agreement to the contrary, the Participants may construct, directly or jointly with others, Green Power projects located within their boundaries.

2.2 Compliance with Laws - By entering into this Agreement, Supplier specifically represents that it has exercised due diligence to review and has fully complied with all relevant regulations and orders of the Federal Energy Regulatory Commission ("FERC"), the DPU, the Attorney General of the Commonwealth, and the Massachusetts Department of Energy Resources ("DOER") and any other Governmental Authority having jurisdiction over any element of the transactions contemplated by this Agreement.

2.3 Further Conditions and Limitations - The Compact and the Participant expressly reserve the right to adopt such local bylaws, ordinances, rules, regulations and policies as they may deem necessary in the exercise of their governmental powers, and nothing in this Agreement shall be interpreted as limiting the governmental powers of the Compact or of the Participant as may be granted by law.

2.4 Conditions Precedent -

The obligations of the Compact and Participant under this Agreement shall be conditioned upon Supplier fulfilling the following requirements:

- (i) maintaining its Competitive Supplier license from the DPU (as such term is defined in the Distribution's Company's Terms and Conditions - Competitive Suppliers);
- (ii) executing a Competitive Electric Supplier Service Agreement with the Distribution Company in a form reasonably satisfactory to Supplier;
- (iii) executing all appropriate ISO applications and agreements; and
- (iv) obtaining authorization from the FERC to sell power at market-based rates.

If Supplier has not fulfilled all such requirements by the date of this Agreement, any Party may terminate this Agreement without any liability to the other Parties.

2.5 Ownership and Use of Participant Data - Supplier shall use Participant data solely to provide All-Requirements Power Supply to Participant and to render other services expressly required or permitted under this Agreement. Any other use of Participant data without the prior

written consent of the Compact and the Participant is strictly prohibited. Except as expressly provided in this Agreement, Supplier shall not disclose any data of the Participant to any third-party and Supplier shall take all reasonable measures to protect Participant data from access by, or beneficial use for, any third-party. To the extent that the provision of All-Requirements Power Supply or other services under this Agreement requires that Supplier have access to or make use of any Participant data, Supplier shall treat such Participant data as confidential information. Supplier may use Participant data to engage in direct marketing only during the term of this Agreement and subject to the terms forth in Article 16.2 (Direct Marketing). A violation of this Article 2.5 shall be grounds for termination under Article 3.2(1). Supplier agrees violation of this Article 2.5 shall constitute irreparable harm.

ARTICLE 3 TERM OF CONTRACT AND TERMINATION

3.1 **Term** - This Agreement and the rights granted under it to Supplier shall commence on **[DATE]** (the “Effective Date”) and terminate on **[DATE]**, unless the Agreement is terminated before such date under the provisions of Article 3.2 (Termination). The term of this Agreement may be extended in accordance with the provisions of Article 3.4 (Extension).

3.2 **Termination** - This Agreement may be terminated at any time upon written notice:

(1) by the Participant or Compact (acting on behalf of Participant), or Supplier, if the breaching Party fails to remedy or cure any breach or default of any material provision or condition of this Agreement (including but not limited to Article 8 (Service Protections) and Article 2.5 (Ownership and Use of Participant Data) within sixty (60) days following written notice to do so by the nonbreaching Party; or

(2) by the Participant or Compact (acting on behalf of the Participant), or Supplier, if any material provision or condition of this Agreement be finally adjudged invalid by any court of competent jurisdiction, or if the DPU exercises any lawful jurisdiction so as to invalidate or disapprove this Agreement in whole or in significant part; or

(3) notwithstanding the foregoing, the failure of Supplier to provide or arrange for All-Requirements Power Supply to Participant, in the absence of *Force Majeure* or Participant’s failure to perform, shall constitute an act of default, and the Participant or Compact (acting on behalf of the Participant) may terminate this Agreement upon the giving of written notice but without providing any cure period. In the event Supplier has performed its obligations hereunder and its failure to provide or arrange All-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Distribution Company, or the ISO, Supplier’s failure shall not be deemed an act of immediate default; or

(4) by the Participant or Compact (acting on behalf of the Participant), in the event that the financial sureties and guaranties provided by Supplier in connection with this Agreement are revoked, terminated or otherwise fail; or

(5) by any Party if an event of *Force Majeure* continues for a period of one hundred eighty (180) days or longer, as set forth in Article 16.6.

3.3 **Obligations upon Termination** - Following termination of this Agreement, the Parties shall each discharge by performance all obligations due to any other Party that arose up to the date of termination of the Agreement. Upon the effective date of termination of the Agreement, all rights and privileges granted to Supplier shall cease, with the exception of the right to collect all monies due for services rendered to that date.

3.4 **Extension** - This Agreement may be extended beyond the original term by mutual, written agreement of the Parties. Any new pricing terms shall be added to and replace Exhibit A as Exhibit A-2. Upon any such extension, this Agreement shall continue to be in effect, and all provisions of the Agreement shall retain the same force and effect as before the extension, unless it is terminated by any of the Parties pursuant to the provisions of Article 3.2 (Termination) or until the date stated in such extension.

ARTICLE 4 CONTINUING COVENANTS

Supplier agrees and covenants to perform each of the following obligations during the term of this Agreement.

4.1 **Standards of Management and Operations** - In performing its obligations hereunder, during the term of this Agreement, Supplier shall exercise reasonable care to assure that its facilities are prudently and efficiently managed; that it employs an adequate number of competently trained and experienced personnel to carry out its responsibilities; that it delivers a safe and reliable supply of such amounts of electricity to the Point of Delivery as are required under this Agreement; that it complies with all relevant industry standards and practices for the generation and supply of electricity to Participant; and that, at all times with respect to Participant, it exercises the highest commercial standards and employs Commercially Reasonable skills, systems and methods available to it.

4.2 **Local Customer Service Access** - Supplier agrees to provide, or cause to be provided, certain customer services to Participant. Such services shall be reasonably accessible to Participant, shall be available during normal working hours, shall allow Participant to transact business they may have with Supplier, and shall serve as a communications liaison among Supplier, the Compact, Participant and the Distribution Company. A toll-free telephone number will be provided for Participant to contact Supplier to resolve concerns, answer questions and transact business with respect to the service received from Supplier. Such toll-free phone line shall be attended by service personnel during regular business hours (8:00 AM – 5:00 PM) and routed to a voice message after hours.

If a toll-free number is not already in existence, Supplier shall meet above requirements with a toll-free number.

4.3 **Responding to Requests for Information** - To the extent authorized by the Participant and to the extent such individual permission is required by law, Supplier shall, during normal business hours, respond promptly and without charge therefore to reasonable requests of the Compact for information or explanation regarding the matters covered by this Agreement and the

supply of electricity to Participant. Supplier agrees to designate a service representative or representatives (the "Service Contacts") who shall be available for these purposes, and shall identify the office address and telephone number of such representative(s). Whenever necessary to comply with this Article 4.3, the Service Contacts shall call upon other employees or agents of Supplier to obtain such information or explanation as may be reasonably requested. Nothing in this Article 4.3 shall be interpreted as limiting the obligation of Supplier to respond to complaints or inquiries from Participant, or to comply with any regulation of the DPU or the Attorney General of the Commonwealth regarding customer service.

4.4 Arranging for Firm All-Requirements Power Supply - Supplier shall participate in or make appropriate arrangements with the ISO, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of reliable, safe, firm, All-Requirements Power Supply to the Distribution Company for delivery to Participant, and take Commercially Reasonable steps to cooperate with the NEPOOL, the ISO or any other entity to ensure a source of back-up power in the event that the facilities owned or controlled by Supplier's affiliates or other sources of power supply are unable to generate and/or deliver All-Requirements Power Supply to the Point of Delivery. In the event Supplier is unable to deliver sufficient electricity to the grid to serve Participant, Supplier shall utilize such arrangements as may be necessary to continue to serve Participant under the terms of this Agreement, and shall bear any costs it may incur in carrying out these obligations. Supplier shall not be responsible to the Compact or any Participant in the event the Distribution Company disconnects, curtails or reduces service to Participant (notwithstanding whether such disconnection is directed by the ISO) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Distribution Company's facilities, to maintain the safety and reliability of the Distribution Company's electrical system, or due to any other reason, including emergencies, forced outages, potential overloading of the Distribution Company's transmission and/or distribution circuits, *Force Majeure* or the non-payment of any distribution service costs or other such costs due for services provided by the Distribution Company to a Participant.

4.5 Non-Discriminatory Provision of Service - Supplier shall supply electric energy to the Point of Delivery for the Participant. Subject to the prices and terms contained in Exhibit A, electricity shall be provided on a non-discriminatory basis. To the extent applicable, Supplier's prices, terms and conditions shall be in accordance with the Massachusetts General Laws, the regulations of the DPU, and other applicable provisions of law.

4.6 Consumer Lists - To the extent not prohibited by any Governmental Rule or expressly by Participant, Supplier shall, upon request of the Compact, provide a list of the Participant's Accounts being served by Supplier, including such reasonable identifying and aggregate consumption information as the Compact may also request to the extent such information is available to Supplier. Supplier shall provide such consumer lists in an electronic format reasonably acceptable to both Parties and with no more frequency than once a month.

4.7 Compliance with Laws - The Parties shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this Agreement.

4.8 **Consent** - Whenever performance of an obligation of any Party hereto requires the consent or approval of any Governmental Authority, such Party shall make Commercially Reasonable efforts to obtain such consent or approval. In the event Supplier requests the Compact's and/or Participant's assistance in obtaining such consent or approval and the Compact and/or Participant anticipates that it will incur costs in fulfilling Supplier's request, it shall give Supplier an estimate of such costs. Upon receiving the cost estimate, Supplier shall determine if it continues to request the Compact's and/or Participant's assistance, and if so, Supplier shall reimburse the Compact and/or Participant for all costs, up to the estimated dollar amount, reasonably incurred by the Compact and/or Participant in connection with such efforts.

ARTICLE 5 ROLE OF THE COMPACT

Under this Agreement, the Compact shall not actually receive, take title to, or be liable for the supply or delivery of All-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the Compact is to a) set the terms and conditions under which All-Requirements Power Supply will be provided by Supplier under this Agreement and to ensure that Supplier complies with those terms and conditions, and b) act as agent for the Participant with respect to the matters addressed in this Agreement. It is the sole obligation of Supplier to arrange for delivery of All-Requirements Power Supply to the Participant. The Parties agree that neither the Compact nor the Participant are "aggregators," "distribution companies," "electric companies," "generation companies" or "transmission companies" within the meaning of G.L. c. 164, §1 as a result of this Agreement, unless a court, the DPU, or other lawful authority shall adjudicate to the contrary. Supplier hereby agrees that it will take no action that would make the Compact or its agents liable to the Participant due to any act or failure to act on the part of Supplier relating to the delivery or supply of All-Requirements Power Supply.

ARTICLE 6 PRICES AND SERVICES; BILLING

6.1 **Schedule of Prices and Terms** - Supplier agrees to provide All-Requirements Power Supply and other related services as expressly set forth herein in accordance with the prices and terms included in Exhibit A to this Agreement, which Exhibit is hereby incorporated by reference into this Agreement.

6.2 **Obligation to Serve** - As between the Parties, Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide All-Requirements Power Supply for Participant. Supplier shall make appropriate arrangements to obtain such capacity, electrical energy, and ancillary services for load-following purposes, including, but not limited to, spinning reserves, supplemental reserves, backup supplies and services as may be needed in the event of outages or emergencies, and all other ancillary services as necessary to provide a firm, reliable, and safe All-Requirements Power Supply for Participant to the Point of Delivery.

6.3 Metering and Billing - As between the Parties, Supplier bears sole responsibility for any metering which may be required to bill Participant, and for rendering of any bills to Participant. Supplier shall discharge this obligation by making appropriate arrangements with the Distribution Company. Any metering and billing functions carried out by Supplier shall be conducted in compliance with relevant rules and regulations of the DPU and the Attorney General of the Commonwealth.

6.4 Terms and Conditions Pertaining to Service -

A. Title

Title to All-Requirements Power Supply will transfer from Supplier to Participant at the Point of Sale. Possession of, and risk of loss related to, All-Requirements Power Supply will transfer from Supplier to the Distribution Company at the Point of Delivery.

B. Term

Delivery of All-Requirements Power Supply will begin on the first Participant meter read date in **July, 2021** as specified in Exhibit A, or as soon as necessary arrangements can be made with the Distribution Company thereafter and will end on the last Participant meter read date in **[MONTH], 20XX** unless extended or modified in accordance with Article 3.4 (Extension). Supplier has the right to request a “special” meter reading by the Distribution Company to initiate energy delivery and agrees to accept all costs (if any) for such meter reading.

C. Billing and Payment

Unless otherwise specified in an Exhibit to this Agreement, all billing under this Agreement shall be based on the meter readings of the Participant’s meter(s) performed by the Distribution Company. Supplier shall cause the Distribution Company to prepare and mail bills to Participant monthly. Supplier shall adopt the billing and payment terms offered by the Distribution Company. The Participant will pay a late charge of 1.5% per month, or the maximum rate allowed by state law if that rate is less, for payments received after the due date.

D. Regional and Local Transmission

The prices quoted in Exhibit A do not include current and future charges for distribution service costs collected by the Distribution Company under its distribution service tariff or local transmission costs as may be imposed by the regional power pool or individual electric utilities that have FERC transmission tariffs. It is Supplier’s understanding that these costs will be collected by the Distribution Company under its transmission tariff charge. If in the future Supplier becomes responsible for distribution costs, Supplier shall be entitled to collect such costs from Participant to the extent permitted by any Governmental Rules. These costs are “pass through” costs as determined by the appropriate regulatory agencies.

E. Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of All-Requirements Power Supply shall be included on each Participant's bill and shall be remitted to the appropriate taxing authority by Supplier. Participant shall be responsible for all taxes (except for taxes on Supplier's income) associated with sales under the Agreement. Participant shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Supplier.

ARTICLE 7 RENEWABLE PORTFOLIO STANDARDS AND NET METERING

7.1 **Renewable Portfolio Standards** - Supplier hereby agrees that it will comply with the applicable provisions of G.L. c. 25A, §§11F, 11F ½ and any regulations, orders or policies adopted pursuant thereto. The Parties agree that in view of opportunities to reduce the environmental cost of electric power generation, the Parties have a mutual interest in advancing the use of Green Power. Supplier further agrees that it will comply with the applicable provisions of 310 C.M.R. §7.75 and any orders or policies adopted pursuant thereto. Supplier and Participant agree that the price set forth in Exhibit A may include Green Power in addition to Supplier's obligation to comply with the applicable provisions of G.L. c. 25A, §§11F, 11F ½, 310 C.M.R. §7.75 and any regulations, orders or policies adopted pursuant thereto, such that a percentage of Participant's annual retail sales may be matched with RPS Class I Renewable Generation Attributes, as such term is defined in 225 C.M.R. §14.02, in addition to the requirements of G.L. c. 25A, §§11F, 11F ½ and 310 C.M.R. §7.75.

7.2 **Net Metering** - Nothing in this Agreement shall prohibit Participant from net metering any or all of its supply in accordance with G.L. c. 164, §§138-139. Supplier must cooperate with the Participant and the Compact during the term of this Agreement to allow Participant to net meter.

ARTICLE 8 SERVICE PROTECTIONS

Supplier shall, on or before June 30, 2021, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Compact (which approval shall not be unreasonably withheld). Such written description shall also include Supplier's plans for maintaining "service quality standards," as that phrase is used in §1F(7); for complying with the "affirmative choice" requirements of §1F(7); and for handling customer complaints, including any arbitration procedures. If the Participant so permit(s) to the extent such permission is required by law, Supplier agrees to provide notice to the Compact of any customer complaints received from a Participant, and to grant the Compact the right to participate in resolution of the dispute, to the extent permitted by DPU regulations and other applicable law. The failure to timely submit such written description, or the submission of practices and procedures which materially fail to comply with DPU regulations and policies, shall be deemed grounds for termination of this Agreement, at the discretion of the Compact after providing written notice of such failure to Supplier and allowing Supplier sixty (60) days to cure such failure.

ARTICLE 9 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

Supplier agrees to conduct its operations and activities under this Agreement in accordance with all applicable state and federal laws regarding non-discrimination in hiring and employment of employees.

ARTICLE 10 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

10.1 Power Supply Information -

A. Reports of Sales

Upon written request, the Supplier will provide the Compact with a report of sales which will contain: (i) the actual kWh sales for each calendar month of the reporting period; (ii) the number of customer Accounts active in each calendar month of the report; and (iii) the hourly load data from the Supplier's ISO load asset(s) for the Participant during the period of the report. The report will be due to the Compact within fourteen (14) days of the date of the written request from the Compact. The kWh sales and number of customer Accounts shall be listed in the report both by rate code and rate name as shown on their electric bill. This information shall be provided in electronic format.

B. Additional Information

Upon request, Supplier shall provide to the Compact, within a reasonable time, information regarding efforts to comply with the Green Power provisions of this Agreement; and such other matters as may be mutually agreed upon by the Parties, acting in good faith.

C. Standard of Care

The Supplier shall use good industry practice in preparing and providing any information or data required under this Agreement. To the extent the Supplier determines that any information or data provided hereunder is in error, it shall provide such information or data to the Compact within a Commercially Reasonable time.

10.2 Disclosure Label - In accordance with 220 C.M.R. §11.06, Supplier shall prepare and provide to Participant the "Disclosure Label" required by the DPU of all competitive suppliers to be disclosed to their customers which includes information pertaining to their power supply and a reasonably detailed description of the sources of Supplier's power supply used to serve Participant pursuant to this Agreement. Upon reasonable request, Supplier shall provide the Compact a copy of the Participant's current disclosure label.

10.3 Books and Records - Supplier shall keep its books and records in accordance with any applicable regulations or guidelines of the DPU, the FERC, and any other Governmental Authority. The Compact and the Participant will have access to all reports mandated by the Securities and Exchange Commission which are available on the Internet "EDGAR" system.

Upon reasonable request by the Compact or Participant and at the Compact's or the Participant's expense, Supplier shall provide back-up for any charge under this Agreement questioned by the Compact or the Participant.

10.4 Copies of Regulatory Reports and Filings - Upon reasonable request, Supplier shall provide to the Compact and/or Participant a copy of each public periodic or incident-related report or record relating to this Agreement which it files with any Massachusetts or federal agency regulating rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements, unless Supplier is required by law or regulation to keep such reports confidential from the other Parties. The Compact and/or the Participant shall treat any reports and/or filings received from Supplier as confidential information subject to the terms of Article 15 (Confidentiality). Supplier shall be reimbursed its reasonable costs of providing such copies.

ARTICLE 11 RESOLUTION OF DISPUTES; CHOICE OF LAW

11.1 Choice of Law - This Agreement and the rights of the Parties shall be interpreted and determined in accordance with the laws of the Commonwealth of Massachusetts.

11.2 Dispute Resolution - Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Article 11.2 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party(ies) involved in the dispute a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties involved in the dispute. In the event that the parties involved in the dispute cannot resolve a dispute by informal negotiations, the Parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by all Parties involved in the dispute. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, any Party may seek judicial enforcement. Notwithstanding the foregoing, injunctive relief may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. In any judicial proceeding, the "Prevailing Party" shall be entitled to payment from the opposing party of its reasonable costs and fees, including but not limited to attorneys' fees and travel expenses, arising from the civil action. As used herein, the phrase "Prevailing Party" shall mean the party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses

in the civil action. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the venue for judicial enforcement shall be the United States Federal District Court in Boston, Massachusetts, provided that where federal jurisdiction does not apply, the venue shall be Barnstable County Superior Court or any other Massachusetts state court of competent jurisdiction.

ARTICLE 12 INDEMNIFICATION

12.1 Indemnification by Supplier - Supplier shall indemnify, defend and hold harmless the Participant and the Compact (collectively “Indemnified Parties” and singularly “Indemnified Party”) and each Indemnified Party’s members, officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys’ fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising, directly or indirectly, from or in connection with (i) any material breach by Supplier of its obligations, covenants, representations or warranties contained in this Agreement and not resulting from the actions of the Distribution Company, the Compact or Participant or their employees or agents, or (ii) Supplier’s actions or omissions taken or made in connection with Supplier’s performance of this Agreement. Supplier further agrees, if requested by the Compact or Participant, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article 12.1.

12.2 Notice of Indemnification Claims - If the Compact or Participant seeks indemnification pursuant to this Article 12, the Compact shall notify Supplier of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. Upon written acknowledgment by Supplier that it will assume the defense and indemnification of such claim, Supplier may assert any defenses which are or would otherwise be available to the Compact and/or Participant, as the case may be.

12.3 Survival - Notwithstanding any provision contained herein, the provisions of this Article 12 and the Financial Sureties and Guaranties provided by Supplier pursuant to Article 14.2 (Additional Financial Sureties and Guarantees) shall survive the termination of this Agreement for a period of three (3) years with respect to a) any claims which occurred or arose prior to such termination and b) any losses occurring as a result of the termination.

12.4 Duty to Mitigate – All Parties agree that they have a duty to mitigate damages and covenant that they will use Commercially Reasonable efforts to minimize any damages they may incur as a result of any other Party’s performance or non-performance of this Agreement.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES

13.1 Representations and Warranties by Supplier - As a material inducement to entering into this Agreement, Supplier hereby represents and warrants to the Compact and Participant as of the Effective Date of this Agreement as follows:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this Agreement;

(ii) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;

(iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;

(iv) subject to the conditions set forth in Article 2.4 (Conditions Precedent), this Agreement constitutes a legal, valid and binding obligation of Supplier enforceable against it in accordance with its terms, and Supplier has all rights such that it can and will perform its obligations to Supplier in conformance with the terms and conditions of this Agreement, subject to Bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

(v) no Bankruptcy is pending against it or to its knowledge threatened against it;

(vi) none of the documents or other written information furnished by or on behalf of Supplier to the Compact and/or the Participant pursuant to this Agreement, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and

(vii) all information furnished by Supplier in response to the RFP for competitive electric supply services is true and accurate.

13.2 Representations and Warranties by the Compact - As a material inducement to entering into this Agreement, the Compact hereby represents and warrants to Supplier as of the Effective Date of this Agreement as follows:

(i) the Compact is organized as a joint powers entity operating under a joint powers agreement in accordance with the laws of the Commonwealth of Massachusetts;

(ii) this Agreement will constitute the legal, valid and binding obligation of the Compact enforceable in accordance with its terms;

(iii) the execution, delivery and performance of this Agreement are within the Compact's powers, have been or will be duly authorized by all necessary action and the Compact is the duly authorized agent of the Participant with respect to the matters addressed in this Agreement;

(iv) the Compact has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and

(v) no Bankruptcy is pending or threatened against it or any Member Municipality.

13.3 Representations and Warranties by the Participant - As a material inducement to entering into this Agreement, Participant hereby represents and warrants to Supplier as of the Effective Date of this Agreement as follows:

(i) this Agreement will constitute the legal, valid and binding obligation of the Participant enforceable in accordance with its terms;

(ii) the execution, delivery and performance of this Agreement are within the Participant's powers, have been or will be duly authorized by all necessary action;

(iii) the Participant has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and

(iv) for itself only, no Bankruptcy is pending or threatened against it.

ARTICLE 14 INSURANCE AND OTHER FINANCIAL SURETIES AND GUARANTEES

14.1 Insurance - In order to help support the indemnifications provided in Article 12 (Indemnification), and its other promises and covenants stated herein, Supplier shall secure and maintain, at its own expense, throughout the term of this Agreement, comprehensive commercial general liability insurance of at least \$5,000,000 combined single limit and excess liability coverage of at least \$5,000,000 with insurers and with the Compact and Participant named as additional insureds. Supplier shall provide the Compact and the Participant with evidence, reasonably satisfactory to the Compact and the Participant, of its insurance hereunder, upon request. The detailed terms of Supplier's insurance are set forth in Exhibit B attached hereto.

14.2 Additional Financial Sureties and Guarantees - In addition to the insurance set forth in Article 14.1, above, Supplier shall, within two (2) days of the Effective Date of this Agreement, deliver to the Compact financial security for its obligations hereunder, including, without limitation, the indemnification set forth in Article 12 (Indemnification), in the form of a payment guarantee (to be given by Supplier's corporate parent or other affiliate, subject to the Compact's approval in its sole discretion) substantially in the form as the form of payment guarantee attached hereto as Exhibit C.

Supplier may change the type and amount of its financial security provided hereunder with the consent of the Compact, such consent not to be unreasonably withheld.

Upon reasonable request during the term of this Agreement and on a continuing basis, Supplier will provide the Compact and the Participant with Commercially Reasonable proof of its ability to meet its indemnification obligations to the Compact and the Participant pursuant to this Agreement. Supplier will provide the Compact and the Participant with a copy of its parent's or its affiliate's, as the case may be, annual report. Supplier also agrees to notify the Compact and the Participant in the event that its parent's or affiliate's unsecured, senior long-term debt or current corporate credit rating (not supported by third-party credit enhancements) is less than BBB- by Standard & Poor's Rating Group or less than BBB- by Fitch Investor Services, Inc. (a "Downgrade Event"). Should a Downgrade Event occur, the Compact may request that Supplier provide a substitute form of security in a form and an amount reasonably satisfactory to the Compact. Upon receipt of such notice, Supplier shall have three (3) business days in which to provide such substitute form of security to the Compact and the Participant.

ARTICLE 15 CONFIDENTIALITY

The Compact and the Supplier's confidentiality obligations are governed by a Confidentiality Agreement dated as of [REDACTED] (the "Confidentiality Agreement").

ARTICLE 16 MISCELLANEOUS

16.1 No Assignment Without Permission - Supplier shall not assign its rights and privileges under this Agreement without the prior written approval of the Compact and the Participant. Such approval may be denied in the reasonable discretion of the Compact and the Participant if they determine that the proposed assignee does not have at least the same financial and technical ability as the assigning Supplier. Notwithstanding the foregoing, the Compact and the Participant may not unreasonably withhold their consent to an assignment to an affiliated entity under common control or management with Supplier. Supplier's assignee shall agree in writing to be bound by the terms and conditions of this Agreement. The Compact and the Participant may assign this Agreement without the prior consent of Supplier. The rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

16.2 Direct Marketing - Prior to the introduction of any new product or service which Supplier may wish to make available to Participant, Supplier agrees to (i) give the Compact written notice of such new product or service and (ii) subject to the entry into reasonable confidentiality terms to the extent permitted by law and mutually acceptable to the Parties, discuss with the Compact the possible inclusion of such new product or service in this or another program undertaken by the Compact and Participant in the geographic area encompassing the Member Municipalities.

Supplier also agrees not to engage in any direct marketing to any Participant that relies upon Supplier's unique knowledge of, or access to, Participant's data gained as a result of this

Agreement. For the purposes of this provision, “direct marketing” shall include any telephone call, mailing, electronic mail, or other contact between Supplier and the Participant. Broad-based programs of Supplier that do not rely on unique knowledge or access gained through this Agreement will not constitute such “direct marketing.”

16.3 **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 addressed to:

if to Supplier to:

[insert]

if to the Compact to:

Ms. Margaret Downey
 Administrator
 Cape Light Compact JPE
 261 Whites Path, Suite 4
 S. Yarmouth, MA 02664
 (508) 375-6636 (voice)
 (774) 330-3018 (fax)
 mdowney@capelightcompact.org

Mr. Austin Brandt
 Sr. Power Supply Planner
 Cape Light Compact JPE
 261 Whites Path, Suite 4
 S. Yarmouth, MA 02664
 (508) 375-6623 (voice)
 (774) 330-3018 (fax)
 austin.brandt@capelightcompact.org

if to Participant to:

[insert]

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Notices may also be transmitted by electronic mail, provided that any notice transmitted solely by electronic mail which is not confirmed as received by the receiving party shall be followed up by personal delivery or overnight delivery within forty-eight (48) hours. Any Party may change its address and contact person for the purposes of this Article 16.3 by giving notice thereof in the manner required herein.

16.4 **Changes in Emergency and Service Contact Persons** - In the event that the name or telephone number of any emergency or Service Contact for Supplier changes, Supplier shall give prompt notice to the Compact and the Participant in the manner set forth in Article 16.3 (Notices). In the event that the name or telephone number of any such contact person for the Compact or a Participant changes, prompt notice shall be given to Supplier in the manner set forth in Article 16.3 (Notices).

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

16.6 **Force Majeure** - If by reason of *Force Majeure* any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the *Force Majeure*, gives all other Parties hereto written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure*; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If an event of *Force Majeure* continues for a period of one hundred eighty (180) days or longer, any Party may terminate this Agreement by sending the other Parties a written notice as set forth in Article 3.2 (Termination).

16.7 **Expenses** - Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including without limitation, all attorneys' fees and expenses.

16.8 **No Joint Venture** - Supplier will perform all services under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of any other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Compact, the Participant, and Supplier hereunder are individual and neither collective nor joint in nature.

16.9 **Joint Workproduct** - This Agreement shall be considered the workproduct of all Parties hereto, and, therefore, no rule of strict construction shall be applied against any Party.

16.10 **Counterparts; Scanned Copy** - This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which 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. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

16.11 **Waiver** - No waiver by any Party hereto of any one or more defaults by any 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 any Party

hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party(ies) 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.

16.12 Advertising Limitations - Supplier agrees not to use the name of the Cape Light Compact JPE or Participant, or make any reference to the Cape Light Compact JPE or Participant in any advertising or other information to be distributed publicly for marketing or educational purposes, unless the Compact expressly agrees to such usage. Any proposed use of the name of the Cape Light Compact JPE or the Participant must be submitted in writing for agreement and prior approval, which shall not be unreasonably withheld. The Compact acknowledges that Supplier's corporate affiliates own the exclusive right to the trademarked logo and trade name used by Supplier. No right, license or interest in this trademark and/or trade name is granted to the Compact hereunder, and the Compact agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

16.13 Press Releases - The Parties shall not issue a press release or make any public statement with respect to this Agreement without the prior written agreement of the other Parties with respect to the form, substance and timing thereof, except that any Party may make any such press release or public statement when the releasing Party is advised by its legal counsel that such a press release or public statement is required by law, regulation or stock exchange rules, provided however, in such event, the Parties shall use their reasonably good faith efforts to agree as to the form, substance and timing of such release or statement.

16.14 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.

16.15 Survival of Obligations - Termination of this Agreement for any reason shall not relieve the Compact or Supplier of any obligation accrued or accruing prior to such termination.

16.16 Remedies -

A. General - Subject to the limitations set forth in Article 16.16(B) below, the Compact, the Participant, and the Supplier reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other parties hereto under this Agreement.

B. 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, Supplier acknowledges that the preceding sentence shall not limit the Compact's or Participant's rights under Article 12.1 (Indemnification by Supplier) to seek indemnification from Supplier or consequential, punitive, or incidental damages or other such losses claimed by third-parties, subject to any limitations set forth in the payment guarantee.

16.17 **Cooperation** - The Parties agree that they shall use Commercially Reasonable efforts in good faith and in full cooperation with the other Parties to secure any approvals required to implement this Agreement and to otherwise carry out their obligations hereunder.

16.18 **Governmental Immunities** - Supplier understands that the Compact and Participant are governmental entities, and certain legal privileges, defenses and remedies are available to them at law. Nothing in this Agreement shall be construed to waive any of these privileges, defenses or remedies.

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

[SUPPLIER]

By: _____
Name: _____
Title: _____
Address: _____

Dated: _____

CAPE LIGHT COMPACT JPE

By: _____
Ms. Margaret Downey
Administrator/Chief Procurement Officer

Cape Light Compact JPE
261 Whites Path, Suite 4
S. Yarmouth, MA 02664
(508) 375-6636 (voice)
(508) 362-4166 (fax)
mdowney@capelightcompact.org

Dated: _____

PARTICIPANT: [insert participant name]

By: _____
Name: _____
Title: _____
Address: _____

Dated: _____

EXHIBIT A

PRICES AND TERMS

Delivery of All-Requirements Power Supply will begin on the first meter read dates in July of 2021 and will end on the last meter read dates in [xx] for the Accounts listed in this Exhibit A, subject to the following terms:

1. Price - The price shall be \$[xx]/megawatt hour (“MWh”).
[Placeholder for additional contract year pricing and reference to Renewable Adder by contract year, if necessary.]

2. Accounts - Participant must notify Supplier within sixty (60) days of its establishment of a new electric account during the term of supply set forth in this Exhibit A and Supplier shall be obligated to serve such electric account under the price terms and conditions set forth in this Exhibit A. Participant shall not be responsible for any error or delay of the Distribution Company in adding such new account to the power supply under this Agreement. Participant must notify Supplier of any electric account to be removed from this Exhibit A during the term of supply. Supplier may not pass through to the Participant any cost to Supplier associated with Participant’s removal of an account set forth on this Exhibit A that is due to the termination of the account in the ordinary course of business by the Participant, including, but not limited to, decommissioning of a building or sale of property. Participant may not obtain electric generation service from any other competitive supplier of electricity for any new electric account added during the term of supply under this Exhibit A or for any electric account that Participant removes from this Exhibit A during the term of supply. Nothing in this Section 2 shall prevent a Participant from net metering as authorized in Article 7 of the Agreement.

3. Material Deviation in Use – A material deviation in use shall have occurred if, in the aggregate for any particular billed month, the electric usage (with the exception of municipal street lighting accounts) of the Participant has increased or decreased by twenty-five percent (25%) when compared to the average of the Participant’s electric consumption in that same billed month in the three years preceding such month (“Material Deviation in Use”). If a Material Deviation in Use has occurred in two or more consecutive months, the damages due to Supplier or Participant, as the case may be, shall be the difference between the market price for wholesale electricity and the price for electricity set forth on this Exhibit A multiplied by the number of megawatt hours of consumption in excess of the absolute value of the Material Deviation in Use.

4. [Additional Renewable Content – Supplier shall purchase and retire RPS Class I Renewable Generation Attributes, as such term is defined in 225 C.M.R. §14.02 in the amount of [x]% of Participant’s annual retail sales in addition to the then-effective requirements of G.L. c. 25A §§11F, 11F ½, 310 C.M.R. §7.75 and any regulations, orders or policies adopted pursuant thereto (“Additional Renewable Content”). Supplier and

Participant agree that the cost of the Additional Renewable Content is reflected in the Price in Section 1 of this Exhibit A. Upon reasonable request, and within a reasonable time, Supplier shall provide the Compact and/or Participant with documentation sufficient for the Compact and/or Participant to ensure that Supplier has retired the renewable energy certificates associated with Participant's Additional Renewable Content.]

LIST OF ACCOUNTS

EXHIBIT B

INSURANCE

1. Supplier shall maintain commercial general liability insurance throughout the term of the Agreement and for a period of at least two years following the contract term.
2. The insurance may be provided on either an occurrence or a claims made basis. If on a claims made basis, any applicable retroactive date shall precede the effective date of this Agreement. In the event such claims made based insurance is cancelled or non-renewed, Supplier agrees to provide a 36-month discovery period endorsement for obligations under this Agreement.
3. The insurance shall include coverage for bodily injury liability, property damage liability, advertising injury liability and personal injury liability.
4. To the extent available at commercially reasonable terms and conditions, personal injury liability coverage shall include non-employment discrimination in accordance with AEGIS form 8100 (1/1/98), or its more recent edition if applicable, or their equivalent in scope.
5. To the extent available at commercially reasonable terms and conditions, the commercial general liability insurance shall include Failure to Supply coverage and such coverage shall be in accordance with AEGIS form 8100(1/1/98), or its more recent edition if applicable, or their equivalent in scope.
6. The insurance shall include blanket contractual liability coverage, including the Competitive Municipal Electric Supply Agreement between Supplier, the Cape Light Compact and Participant.
7. The insurance shall include coverage for cyber risk in an amount adequate to cover potential expenses, fines and associated liabilities caused by any theft or misappropriation of Participant's electric account data or other private information through cyber breach of Supplier's systems or otherwise through its handling of or access to such information.
8. The limits of commercial general liability and excess (umbrella) liability insurance limits shall apply per occurrence/accident or incident. Separate aggregate limits may be applicable to products and completed operations liability coverage, wild fire liability coverage and failure to supply liability coverage.
9. Such commercial general liability insurance shall include the Compact and Participant as additional insureds, but only for obligations arising out of this Agreement or otherwise pursuant to the operations of the Supplier. Such insurance shall provide for defense expenses in addition to the limits. Any self-insured retentions or deductibles under Supplier's insurance which may be applicable to coverage for the Compact and the

Participant as additional insureds shall be fully funded (paid for) by Supplier. Further, such coverage shall be provided to the Compact and the Participant on a primary/noncontributory basis as to any insurance they may separately maintain.

10. The policies shall be endorsed to require that such additional insureds receive at least 60 days' notice of cancellation or non-renewal.
11. Such commercial general liability insurance shall contain a standard separation of insureds clause, whereby the actions of one insured will not negate coverage for another insured.
12. Supplier shall provide the Compact or Participant with a certificate of insurance to evidence compliance with the requirements. Renewal certificates shall be provided automatically within 30 days of policy renewal throughout the term of the contract and two years following the contract term.

EXHIBIT C

FORM OF PAYMENT GUARANTEE

This Payment Guarantee (the "Guarantee") is made by [REDACTED] ("Guarantor"), a [REDACTED] corporation, in favor of the Cape Light Compact JPE ("Compact"), a Massachusetts joint powers entity consisting of 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 Dukes County ("Member Municipalities"). This Guarantee is given in favor of the Compact, [xx] ("Participant") and each municipal and other government electric account holder within the Member Municipalities that executes a Municipal Competitive Electric Supply Agreement with Supplier as a result of the Compact's request for proposals dated November 5, 2020.

WHEREAS, [REDACTED], a [REDACTED] corporation ("Supplier"), the Participant and the Compact are parties to the Municipal Competitive Electric Supply Agreement dated as of [insert] (the "Agreement");

WHEREAS, Guarantor is the [direct or indirect parent/affiliate] of Supplier, will receive substantial and direct benefits from the extensions of credit contemplated by the Agreement and has agreed to enter into this Guarantee to provide assurance for the performance of Supplier's financial obligations in connection with the Agreement and to induce the Compact and Participant to enter into the Agreement; and

WHEREAS, the execution and delivery of this Guarantee is a condition precedent to the Compact's and Participant's further performance of their obligations under the terms of the Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. **Guarantee.** Guarantor hereby unconditionally and absolutely guarantees the punctual payment when due of Supplier's payment obligations (including, but not limited to, Supplier's indemnification obligations) arising under the Agreement, as such Agreement may be amended or modified from time to time, (collectively, the "Guaranteed Obligations").
2. **Guarantee Absolute.** The liability of Guarantor under this Guarantee shall be absolute and unconditional irrespective of:
 - (a) any lack of validity or enforceability of or defect or deficiency applicable to Supplier in the Agreement or any other documents executed in connection with the Agreement;

- (b) any modification, extension or waiver of any of the terms of the Agreement;
- (c) any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from the Agreement or any other agreement or instrument executed in connection therewith;
- (d) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by the Compact to exercise, in whole or in part, any right or remedy held by the Compact with respect to the Agreement or any transaction under the Agreement; or
- (e) any change in the existence, structure or ownership of Guarantor or Supplier, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Supplier or its assets.

The obligations of Guarantor hereunder are several from Supplier or any other person, and are primary obligations concerning which Guarantor is the principal obligor. There are no conditions precedent to the enforcement of this Guarantee, except as expressly contained herein. It shall not be necessary for the Compact, in order to enforce payment by Guarantor under this Guarantee, to show any proof of Supplier's default, to exhaust its remedies against Supplier, any other guarantor, or any other person liable for the payment or performance of the Guaranteed Obligations.

This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations are annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded or must otherwise be returned, refunded or repaid by the Compact upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Supplier or any other guarantor, or upon or as a result of the appointment of a receiver or conservator of, or trustee for Supplier or any other guarantor or any substantial part of its property or otherwise, all as though such payment or payments had not been made.

3. **Waiver.** This is a Guarantee of payment and not of collection. Guarantor hereby waives:

- (a) notice of acceptance of this Guarantee, of the creation or existence of any of the Guaranteed Obligations and of any action by the Compact or Participant in reliance hereon or in connection herewith;
- (b) notice of the entry into any agreement between Supplier, the Compact, or the Participant and of any amendments, supplements or modifications thereto; or any waiver of consent under the Agreement, including waivers of the payment and performance of the obligations thereunder;

- (c) notice of any increase, reduction or rearrangement of Supplier's obligations under the Agreement or any extension of time for the payment of any sums due and payable to the Compact or Participant under the Agreement;
- (d) except as expressly set forth herein, presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest or any other notice with respect to the Guaranteed Obligations; and
- (e) any requirement that suit be brought against, or any other action by the Compact be taken against, or any notice of default or other notice be given to, or any demand be made on Supplier or any other person, or that any other action be taken or not taken as a condition to Guarantor's liability for the Guaranteed Obligations under this Guarantee or as a condition to the enforcement of this Guarantee against Guarantor.

4. **Expenses.** Guarantor agrees to pay on demand any and all out-of-pocket costs, including reasonable legal fees and expenses, and other expenses incurred by the Compact in enforcing Guarantor's payment obligations under this Guarantee; provided that Guarantor shall not be liable for any expenses of the Compact if it is not successful in such enforcement action.

5. **Subrogation.** Guarantor shall be subrogated to all rights of the Compact or Participant against Supplier in respect of any amounts paid by Guarantor pursuant to the Guarantee, provided that Guarantor waives any rights it may acquire by way of subrogation under this Guarantee, by any payment made hereunder or otherwise (including, without limitation, any statutory rights of subrogation under the United States Bankruptcy Code), reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim or remedy of the Compact or Participant against any collateral which the Compact or Participant now has or acquires, until all of the Guaranteed Obligations shall have been irrevocably paid to the Compact or Participant in full. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all the Guaranteed Obligations in default shall not have been paid in full, such amount shall be held in trust for the benefit of the Compact or Participant and shall forthwith be paid to the Compact or Participant to be applied to the Guaranteed Obligations. If (a) Guarantor shall perform and shall make payment to the Compact or Participant of all or any part of the Guaranteed Obligations and (b) all the Guaranteed Obligations shall have been paid in full, the Compact or Participant shall, at Guarantor's request, execute and deliver to Guarantor appropriate documents necessary to evidence the transfer by subrogation to Guarantor of any interest in the Guaranteed Obligations resulting from such payment by Guarantor.

6. **Reservation of Defenses.** Guarantor agrees that except as expressly set forth herein, it will remain bound upon this Guarantee notwithstanding any defenses which, pursuant to the laws of suretyship, would otherwise relieve a guarantor of its obligations

under a Guarantee. Guarantor does reserve the right to assert defenses which Supplier may have to payment of any Guaranteed Obligation other than defenses arising from the bankruptcy or insolvency of Supplier and other defenses expressly waived hereby. Guarantor's exercise of such defenses shall not delay or excuse its payment obligations under this Guarantee. Such defenses may be asserted in any dispute resolution proceeding pursuant to Section 16 hereof.

7. **Notices.** All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, (a) be in writing addressed to the party receiving the notice at the address set forth below or at such other address as may be designated by written notice, from time to time, to the other party, and (b) be effective upon receipt, when mailed by U.S. mail, registered or certified, return receipt requested, postage prepaid, facsimile or personally delivered. Notices shall be sent to the following addresses:

If to the Compact:

Ms. Margaret Downey
Administrator
Cape Light Compact JPE
261 Whites Path, Suite 4
S. Yarmouth, MA 02664
(508) 375-6636 (voice)
(774) 330-3018 (fax)

Mr. Austin Brandt
Sr. Power Supply Planner
Cape Light Compact JPE
261 Whites Path, Suite 4
S. Yarmouth, MA 02664
(508) 375-6623 (voice)
(774) 330-3018 (fax)

If to Guarantor:

[insert]

with a copy to:

[insert]

8. **Demand and Payment.** Any demand by the Compact (for itself or on behalf of Participant) for payment hereunder shall be in writing, signed by a duly authorized representative of the Compact and delivered to Guarantor pursuant to Section 7 hereof, and shall (a) reference this Guarantee, (b) specifically identify Supplier, the nature of the default, the Guaranteed Obligations to be paid and the amount of such Guaranteed Obligations and (c) set forth payment instructions, including bank name, routing number and bank account number. There are no other requirements of notice, presentment or demand. Guarantor shall pay, or cause to be paid, such Guaranteed Obligations within two (2) business days of receipt of such demand.

9. **No Waiver; Remedies.** Except as to applicable statutes of limitation, no failure on the part of the Compact to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right

hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

10. Term; Termination. This Guarantee shall become effective as of the effective date of the Agreement and shall continue in full force and effect until the third anniversary of date the Agreement is terminated.

11. Assignment; Successors and Assigns. The Compact may, upon notice to Guarantor, assign its rights hereunder without the consent of Guarantor. Guarantor may assign its rights hereunder with the prior written consent of the Compact, which consent shall not be unreasonably withheld. Subject to the foregoing, this Guarantee shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, and legal representatives. Guarantor expressly acknowledges and agrees that the Participant and each municipal and other government electric account holder within the Member Municipalities that executes a Municipal Competitive Electric Supply Agreement with Supplier as a result of the Compact's request for proposals dated November 5, 2020 are intended beneficiaries of this Guarantee.

12. Amendments, Etc. No amendment of this Guarantee shall be effective unless in writing and signed by Guarantor and the Compact. No waiver of any provision of this Guarantee nor consent to any departure by Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by the Compact. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

13. Captions. The captions in this Guarantee have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and provisions of this Guarantee.

14. Representation and Warranties.

Guarantor represents and warrants as follows:

- (a) Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guarantee;
- (b) the execution, delivery and performance of this Guarantee have been and remain duly authorized by all necessary corporate action and do not contravene Guarantor's constitutional documents or any contractual restriction binding on Guarantor or its assets; and
- (c) this Guarantee constitutes the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms,

subject, as to enforcement, to bankruptcy, insolvency) reorganization and other laws of general applicability relating to or affecting the Compact's or Participant's rights and to general equity principles.

15. Limitation by Law. All rights, remedies and powers provided in this Guarantee may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Guarantee are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Guarantee invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

16. Governing Law; Dispute Resolution. THIS GUARANTEE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS. IN THE EVENT A DISPUTE ARISES CONCERNING THIS GUARANTEE, THE PARTIES AGREE TO FOLLOW THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE AGREEMENT.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Guarantor has caused this Guarantee to be duly executed and delivered by its duly authorized officer effective as of the date first above written.

Guarantor:

By: _____

Name:

Title:



TOWN OF HARWICH
OFFICE OF THE TREASURER/COLLECTOR
732 MAIN STREET, HARWICH, MA 02645
TEL: 508-430-7501 FAX: 508-430-7504

Amy Bullock
Treasurer / Collector

Nancy Knepper
Assistant Treasurer/Collector

Monthly Report to the Board of Selectmen

November 2020

Along with our regular weekly duties and responsibilities, which include but are not limited to processing payroll, receiving, reporting and depositing tax/water payments and departmental receipts, processing accounts payable checks, assisting Taxpayers and Employees with any requests and other various customer service, the following took place:

Collections

	FY 2021	FY 2020
Tax/Water Collections:	\$4,143,991.09	\$3,198,967.79
Departmental turnovers:	\$3,083,690.59	\$2,044,892.44
Total:	\$7,227,681.68	\$5,243,860.23

Disbursements

	FY 2021	FY 2020
Accounts Payable	\$7,984,028.94	\$8,321,379.81
Payroll	\$1,402,912.41	\$1,740,105.42
Total:	\$9,386,941.35	\$10,061,485.23

Respectfully submitted,
Amy Bullock
Treasurer/Collector