

**FIRST AMENDED  
ADMINISTRATIVE SERVICES AGREEMENT  
BETWEEN BARNSTABLE COUNTY AND CAPE LIGHT COMPACT**

**SECTION I. PREAMBLE**

This Administrative Services Agreement (“Agreement”) is entered into between Barnstable County (“the County”) and the Cape Light Compact (“Compact”). The purpose of this Agreement is to allow the County to provide the Compact with a variety of administrative and financial services under the terms specified below.

Within this document, the term “party” refers to the County or the Compact and the term “parties” refers to the County and the Compact.

**SECTION II. INTERPRETATION**

This Agreement is not intended to expand upon or alter any authority that the Compact has under the Sixth Amended and Restated Inter-Governmental Agreement of the Cape Light Compact” dated November 18, 2015 (“Inter-Governmental Agreement”), as amended from time to time, or any successor Inter-Governmental Agreement, nor expand upon or alter any authority that the County has under the Barnstable County Charter (“Charter”), St. 1988, ch. 163 or any successor Charter. This Agreement shall be interpreted to be in accordance with M.G.L. Chapter 40, Section 4A,, the Charter, the policies and procedures of the County, and other relevant provisions of the Massachusetts General Laws. If any terms of this Agreement shall be deemed in conflict with the Inter-Governmental Agreement, the Charter, the policies and procedures of the County, or any provisions of the General Laws, this Agreement shall yield.

This Agreement is entered into pursuant to M.G.L. Chapter 40, Section 4A, the “Intergovernmental Agreement” between the County and the Compact, Section 1-5 and 1-6 of the Barnstable County Charter.

**SECTION III. MANAGEMENT OF COMPACT FUNDS; COUNTY AS FISCAL ADMINISTRATOR**

A. The parties agree that the County will act as fiscal administrator for the Compact. The County may set up one or more accounts (“Accounts”) as directed by the County Director of Finance to hold any funds which may be due or owing to the Compact or its members (whether in the nature of payment, grants, financial contributions, or otherwise), provided, however, that the County shall segregate those funds from all other funds that it controls or maintains and shall hold those funds solely for the benefit of the Compact. For these purposes, the County shall act only as fiscal administrator for the Compact, and shall not gain any right or title to such funds, other than interest earned thereon. Interest earned thereon shall accrue to the benefit of the

County. The Compact agrees that, whenever necessary to carry out the intent of this Agreement, it shall instruct third parties to direct their payments due and owing to the Compact to the Accounts. The banking costs or fees for the maintenance of said Accounts, if any, shall be deducted from funds in the Accounts.

**B.** At the direction of the Compact, the County will draw upon or otherwise expend any of the funds in any of the Accounts to make payments on bills, debts and obligations of the Compact, provided that sufficient funds are available in the Accounts as determined by the County Director of Finance.

**C.** The County shall provide the Compact with an accounting of the funds in the Accounts on a periodic basis, and as reasonably determined by the County Director of Finance. All books and records of the County relating to the fiscal administration services provided to the Compact under this Agreement shall be available to the Compact for inspection. The County shall include a review of the Compact's Accounts in its annual audit, as determined by the County's auditor. Nothing herein shall limit the ability of the Compact to undertake independent annual audits

**D.** The Compact, or the County, may terminate the County's fiscal administration services under this Section III, upon six months' prior written notice and such termination shall take effect at the end of the calendar year.

#### **SECTION IV. NOTICES**

All notices and other communications required by this Agreement or which are necessary in carrying out the terms of this Agreement shall be made:

To the County:

County Administrator  
Superior Courthouse  
Barnstable, MA 02630

To the Compact:

Cape Light Compact  
Attention: Administrator  
P.O. Box 427  
Open Cape Building  
Barnstable, MA 02630

Either party may specify a different address by sending notice as provided in this section.

#### **SECTION V. TERM OF AGREEMENT, TERMINATION AND MODIFICATION**

**A.** This Agreement shall be effective as of the date that the last of the of the parties signs below, and shall continue in effect unless notice of termination is given by either party. A notice of termination shall be in writing, delivered to the other party pursuant to the “Notices” provisions above, and shall only take effect upon the end of a calendar year upon six months prior notice.

**B.** This Agreement may only be amended or modified by a written instrument signed by both parties.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2016,

By, Barnstable County Commissioners:

\_\_\_\_\_  
Mary Pat Flynn  
Chair

\_\_\_\_\_  
Sheila Lyons  
Vice Chair

\_\_\_\_\_  
Leo Cakounes  
Commissioner

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2016, for the Cape Light Compact.

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(TITLE)

**FIRST AMENDED AND RESTATED  
ADMINISTRATIVE SERVICES AGREEMENT  
BETWEEN BARNSTABLE COUNTY AND CAPE LIGHT COMPACT**

**SECTION I. PREAMBLE**

This Administrative Services Agreement (“Agreement”) is entered into between Barnstable County (“the County”) and the Cape Light Compact (“Compact”). The purpose of this Agreement is to allow the County to provide the Compact with a variety of administrative and financial services under the terms specified below.

Within this document, the term “party” refers to the County or the Compact and the term “parties” refers to the County and the Compact.

**SECTION II. INTERPRETATION**

This Agreement is not intended to expand upon or alter any authority that the Compact has under the Sixth Amended and Restated Inter-Governmental Agreement of the Cape Light Compact” dated November 18, 2015 (“Inter-Governmental Agreement”), as amended from time to time, or any successor Inter-Governmental Agreement, nor expand upon or alter any authority that the County has under the Barnstable County Charter (“Charter”), St. 1988, ch. 163 or any successor Charter. This Agreement shall be interpreted to be in accordance with M.G.L. Chapter 40, Section 4A, the Inter-Governmental Agreement, the Charter, the policies and procedures of the County, and other relevant provisions of the Massachusetts General Laws. If any terms of this Agreement shall be deemed in conflict with the Inter-Governmental Agreement, the Charter, the policies and procedures of the County, or any provisions of the General Laws, this Agreement shall yield.

~~If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances, other than those to which it is held invalid, shall not be affected. This Agreement is entered into pursuant to M.G.L. Chapter 40, Section 4A, the “Intergovernmental Agreement” between the County and the Compact, Section 1-5 and 1-6 of the Barnstable County Charter.~~

**SECTION III. MANAGEMENT OF COMPACT FUNDS; COUNTY AS FISCAL ADMINISTRATOR**

A. The parties agree that the County will act as fiscal administrator for the Compact. The County may set up one or more accounts (“Accounts”) as requested by the Compact ~~directed by the County Director of Finance~~ to hold any funds which may be due or owing to the Compact or its members (whether in the nature of payment, grants, financial contributions, or otherwise),

provided, however, that the County shall segregate those funds from all other funds that it controls or maintains and shall hold those funds solely for the benefit of the Compact. For these purposes, the County shall act only as fiscal administrator for the Compact, and shall not gain any right or title to such funds, other than interest earned thereon. Interest earned thereon shall accrue to the benefit of the County. The Compact agrees that, whenever necessary to carry out the intent of this Agreement, it shall instruct third parties to direct their payments due and owing to the Compact to the Accounts. The banking costs or fees for the maintenance of said Accounts, if any, shall be deducted from funds in the Accounts.

**Commented [AAE1]:** This is intended to apply solely to fees charged by the bank. To the extent Barnstable County incurs administrative costs in maintaining the Accounts, those should be reimbursed per Section IV (D).

**B.** At the direction of the Compact, the County will draw upon or otherwise expend any of the funds in any of the Accounts to make payments on bills, debts and obligations of the Compact, provided that sufficient funds are available in the Accounts as determined by the County Director of Finance. ~~The County will not draw upon such funds without the consent of the Compact (other than to deduct costs or fees associated with the Accounts). In no event will the County be required to provide funding to cover any shortfall of funds in the Accounts, unless such shortfall is due to mistake or negligence of the County in the maintenance of the Accounts. The Compact will include an indemnification clause in all of its contracts for which the County is a party solely in its role as fiscal administrator for the Compact, pursuant to which the Compact's vendor will hold the County harmless from any and all claims unrelated to the County's direct fiscal management under such contract. Additionally, the Compact agrees to procure its own liability insurance, including, but not limited to, Public Officials Liability, Automobile Liability, General Liability and other commercially reasonable coverages that both parties (upon consult with their respective insurance advisors) mutually agree is appropriate and reasonable to cover any potential exposure to the County now and continuing as a result of its fiscal administration services.~~

**C.** The County shall provide the Compact with an accounting of the funds in the Accounts on a periodic basis, and as reasonably requested by the Compact determined by the County Director of Finance. All books and records of the County relating to the fiscal administration services provided to the Compact under this Agreement shall be available to the Compact for inspection. The County shall include a review of the Compact's Accounts in its annual audit, as determined by the County's auditor. Nothing herein shall limit the ability of the Compact to undertake independent annual audits. ~~Solely as a courtesy and with a goal of increasing transparency and public awareness, the Compact agrees to present its annual operating budget to the County Commissioners for their review and comment on an annual basis at such time that the Compact's Governing Board reviews and approves the Compact's annual operating budget. The Compact will consider comments from the County Commissioners in good faith but the Compact will have no obligation to make any changes to its operating budget as a result of such comments. The parties acknowledge and agree that such annual review does not grant the County Commissioners any independent review or approval authority over the Compact's operating budget that is in addition to the County's role in reviewing the operating budget as a member of the Compact with a representative appointed to the Compact's Governing Board, and no further review by the County is required.~~

**D.** The Compact, or the County, may terminate the County's fiscal administration services under this Section III, upon six months' prior written notice and such termination shall

take effect at the end of the calendar year. If the Compact issues a termination notice, then at least sixty (60) days in advance of the termination date identified in such notice, the Compact will provide written notice to the County of the entity that will assume fiscal administration for the Compact upon termination of the County's services and the County and the Compact will use commercially reasonable efforts to ensure the proper transition of funds from the Accounts. The Compact will also provide proper notice of its new fiscal administrator to all contractual counterparties for contracts in which the County is serving in such role. Upon termination of the fiscal administration services, the Compact and County will amend and restate this Agreement to reflect the remaining services to be provided by the County.

~~B. The Compact acknowledges that consistent with the County's obligation to fund the employees benefit plans in accordance with Section IV(D) of this Agreement, it is the Compact's obligation to fully fund said benefits. The County agrees to create an OPEB trust fund (under M.G.L. c. 32B, § 20) and the Compact agrees to provide the following annual funding of its OPEB obligation, net of the reimbursement to the County for actual Compact retiree health insurance costs, which will be based on a certified actuarial valuation that specifically provides the results for the Compact:~~

- ~~1. Normal cost — 100%~~
- ~~2. Amortization of the unfunded actuarial accrued liability — 30 years beginning July 1, 2016~~

~~Additionally, the Compact agrees to fund a unemployment reserve account to be created by the County Finance Department. Said unemployment reserve fund shall not exceed the maximum amount of \$10,000 or, the Compact's previous average three-year trend in annual unemployment claims, whichever is greater. The Compact's unemployment reserve fund shall only be used for Compact related unemployment claims. The Parties agree that the Compact's contributions shall not be reduced except for unemployment claims and only with the approval of the County Commissioners.~~

#### ~~SECTION IV. ADDITIONAL SERVICES TO BE PROVIDED BY THE COUNTY~~

~~A. The parties agree to the following process for the procurement of goods and services related to the Cape Light Compact:~~

- ~~1. Upon request of the Compact, the County will provide administrative services necessary for procuring goods and services on behalf of the Compact. The County, in its sole discretion, may designate one or more of its employees to serve as staff for the Compact and to provide the services set forth in this Agreement. The parties agree that such purchase of goods and services for the Compact shall comply with the County's procurement process and applicable procurement laws.~~
- ~~2. The County shall have the authority to sign contracts on behalf of the Compact solely as fiscal administrator. The Compact's Administrator will submit contracts and amendments to contracts to the County for execution as the Compact's fiscal agent after review and a determination that such contracts and/or amendments are~~

consistent with the Compact's current budget approved by the Compact's Governing Board ("Governing Board"), and/or the Massachusetts Department of Public Utilities. The Governing Board shall thereafter ratify the Treasurer's actions in accordance with the policy adopted by the Governing Board on March 11, 2015 (or any subsequent policy as may be duly adopted by the Governing Board from time to time). The parties acknowledge and agree that the County shall assume no liability to the Compact or any third party under any contract it executes solely as fiscal agent for the Compact.

3. After being so directed by the Compact, the County shall prepare solicitation of quotes, Requests for Proposals ("RFP") or Invitations for Bids ("IFB") for goods and services on behalf of the Compact.

B. Nothing in this section shall be interpreted to limit the ability of the Compact or any Compact member to sign contracts in its name or to conduct its own procurements.

C. Nothing in this Agreement shall be interpreted to limit the fiduciary responsibility and authority of the County Treasurer under Massachusetts General Laws, or local laws and ordinances.

D. In connection with the County's role as fiscal administrator to the Compact, the County will provide the Compact with office space, payroll management, administrative and information technology support and will include Compact employees in its insurance, retirement and health benefit policies. The Compact will reimburse the County at a minimum on an annual basis for the County's reasonable and documented costs and expenses associated with the provision of such services to the Compact. In furtherance of the foregoing, the County and the Compact may enter into separate agreements to document the services provided by the County and the timing and terms of the reimbursement provided by the Compact. For purposes of this Section IV (D), while Compact employees are on the County payroll, Compact staff will generally be subject to County personnel policies and rules.

#### **SECTION V. RESPONSIBILITIES OF THE COMPACT**

1. The Governing Board shall ratify all actions of the Compact Treasurer requesting the County to execute contracts on the Compact's behalf, or take such other contract authorization or ratification actions that it deems desirable, necessary or appropriate.

2. The Compact authorizes the County to prepare solicitation of quotes, or RFPs or IFBs for goods and services, upon request. The Compact agrees as part of this process to appoint a review or advisory committee where appropriate. The Compact shall approve all specifications for RFPs and bid documents. The Compact shall authorize the County to award IFBs and RFPs on its behalf, subject to the conditions within this Agreement.

**SECTION ~~VI~~ IV. NOTICES**

All notices and other communications required by this Agreement or which are necessary in carrying out the terms of this Agreement shall be made:

To the County:

~~Barnstable County Commissioners~~ County Administrator  
Attention: Chair P.O. Box 427  
Superior Courthouse  
Barnstable, MA 02630

To the Compact:

Cape Light Compact  
Attention: Administrator  
P.O. Box 427  
Open Cape Building  
Barnstable, MA 02630

Either party may specify a different address by sending notice as provided in this section.

**SECTION ~~VII~~ V. TERM OF AGREEMENT, TERMINATION AND MODIFICATION**

A. This Agreement shall be effective as of the date that the last of the of the parties signs below, and shall continue in effect unless notice of termination is given by either party. A notice of termination shall be in writing, delivered to the other party pursuant to the "Notices" provisions above, and shall only take effect upon the end of a calendar year upon six months prior notice.

B. This Agreement may only be amended or modified by a written instrument signed by both parties.

**~~SECTION VIII. MISCELLANEOUS~~**

~~A. This Agreement shall be deemed the collective work product of the parties hereto, and shall not be construed against either party by reason thereof.~~

~~B. 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.~~

~~C. From time to time and at any time at and after the execution of this Agreement, each party shall execute, acknowledge and deliver contracts, deeds, assignments, conveyances, other instruments and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other party for the purpose of effecting or confirming any of the activities, purposes or transactions contemplated by this Agreement.~~

~~D. This Agreement is entered into under the authority set forth in G.L. c. 40, §4A. The County shall keep accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received and shall provide the Compact with copies of the County's annual audit that includes a review of the Accounts. The County shall comply with all other applicable provisions of G.L. c. 40, §4A.~~

~~E. 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.~~

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2016,

By, Barnstable County Commissioners:

\_\_\_\_\_  
Mary Pat Flynn  
Chair

\_\_\_\_\_  
Sheila Lyons  
Vice Chair

\_\_\_\_\_  
Leo Cakounes  
Commissioner

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2016, for the Cape Light Compact.

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(TITLE)