



Request for Proposals
To Investigate Opportunities for Forming a Cooperative,
For the Cape Light Compact

RFP Issue Date: February 21, 2006

Proposal Due Date: March 27, 2006

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1. General Information and Overview of the RFP

1.1 The Cape Light Compact

The Cape Light Compact (the Compact) was formed in 1997 as an electricity consumer advocacy organization, authorized by votes of town meeting, boards of selectmen, town council, and county commissioners. It consists of all twenty-one Cape and Vineyard towns and Barnstable and Dukes counties. It is governed by the Compact Governing Board, which provides ongoing policy and budget oversight of all Compact initiatives.

The Compact's articles of organization are composed of a formal Intergovernmental Agreement (Agreement) signed by each participating town or county member. Membership provides voting rights and inclusion for planning, analysis, and participation in Compact programs. The organization relies on the existing structure of local and county government, cooperation between government agencies, and the professional expertise provided by staff and contractors.

The purpose of the Compact is to advance the interests of consumers in a competitive electric power supply market. This purpose includes development and implementation of energy efficiency plans and programs.

As the fiscal agent for the Compact, Barnstable County provides the day-to-day management and supervision of the business affairs of the Compact under an Administrative Services Agreement. The County serves as the procurement agent for the Compact.

1.2 The Current Functions of the Compact

The Compact's goals (as noted in the Agreement) include the following:

- to provide the basis for [opt-out] aggregation of all consumers on a non-discriminatory basis;
- to acquire the best market rate for electricity;
- to provide and enhance consumer protection and options for service under contract provisions and to allow consumers who choose not to participate to opt out.

In addition, the Agreement includes goals relating to quality of service, environmental protection, renewable energy development, demand side management and energy efficiency. To achieve some of these goals, the Compact has participated in several proceedings before the Massachusetts Department of Telecommunications and Energy and in stakeholders meetings convened to discuss energy efficiency programs.

Specific Compact activities to date have included:

- Power supply procurement for an aggregated load;

- Development and provision of Cape Light Compact Green—optional products with 100% or 50% renewable energy content;
- Other renewable energy support functions;
- Consumer advocacy, including legislative and regulatory advocacy and education;
- Planning and delivery of comprehensive energy efficiency programs for all customer classes and a variety of end uses;
- Energy education as part of the National Energy Education Development project which provides energy education at the primary, secondary, and high school levels.

1.3 Objective of This Investigation

The Compact is interested in exploring the formation of an electric cooperative pursuant to G.L. c. 164, § 136. A copy of that statute is included as Attachment 1. Such a cooperative could be formed in order to carry out one or more of the following, as well as other possible activities:

- Purchase energy from renewable energy projects, including, but not limited to, land based community wind projects, on a wholesale basis under long term contracts.
- Purchase renewable energy certificates on a long-term basis.
- Purchase energy on a wholesale basis for the Compact's basic power supply needs to satisfy the demand of its Cape Cod and Martha's Vineyard consumers.
- Facilitate or undertake the construction and/or operation of renewable energy and other distributed generation projects, including possible ownership.

To our knowledge, no cooperative exists in Massachusetts under the statutory framework cited above.

1.4 Two Phase Project

The Compact recognizes that there may be a large number of Co-op Models to investigate. (The concept of a Co-op Model and some of the possible variations are described further in Section 2 of this RFP.) A thorough analysis of all the plausible Co-op Models could result in an unwieldy project. Therefore, the investigation will be divided into two Phases.

Phase I will be a screening analysis to review a selection of Co-op Models covering a wide range of possibilities, to identify any fatal flaws of those models, and to recommend a subset of Co-op Models that appear to be most promising for the Compact's purposes.

Phase II will provide a detailed feasibility and cost/benefit analysis of a few leading candidate Co-op Models selected by the Compact, based on the results of Phase I. Please note that the purpose of the Phase II analysis is to provide the information that the

Compact and its members need in order to decide whether to commit further time and resources to development of one or a few leading Co-op Models.

The Co-op Models to be analyzed in Phase II will be chosen from those analyzed in Phase I that pass a “fatal flaw” test, although others suggested by the results of Phase I may be considered for inclusion in Phase II. Selection of Co-op Models to be analyzed in Phase II will be negotiated with the Contractor (or Contractors) after the conclusion of Phase I. The Contractor (or Contractors) should offer suggestions in the Phase I report as to which Co-op Models are recommended for further consideration in Phase II.

The Phase II analysis will be optional at the discretion of the Compact. The Compact’s decision regarding execution of Phase II will depend on the results of Phase I and will be made promptly upon completion of Phase I. However, the Contractor (or Contractors) who performed Phase I will also perform Phase II (if carried out).

1.5 Period of Services

The purpose of this RFP is to select one or more Contractors to provide services beginning as early as April, 2006. The Compact will execute contracts with the winning Bidder (or Bidders) for a duration of six (6) months.

The Compact's draft schedule for the Investigation is included in Attachment 5 to this RFP. The Compact expects to review the dates in that draft schedule with the Contractor or Contractors and to negotiate adjustments as needed.

1.6 Confidentiality

The Contractor (or Contractors) will be required to execute a confidentiality agreement with the Compact, and to keep all work products confidential. A copy of a typical confidentiality agreement is included as Attachment 4. The Compact in its discretion, and in accordance with law, may deem to make some of the work products a matter of public record.

2. Potential Cooperative Models

2.1 The Cooperative Model Concept

The Compact understands that there are many options for the organizational structure and scope of activity of the proposed cooperative. One of the challenges of this investigation will be to determine which cooperative models offer the greatest potential for the Compact, and the extent to which each of the most promising models should be investigated.

This section describes the concept of a “Co-op Model.” That concept is later used to define the Scope of Work for this RFP. For purposes of this RFP, the term “Co-op Model” means some combination of certain factors, such as cooperative organizational objective, cooperative membership, the type of generation products to be purchased, and

the type of generation services to be provided, as set out below, but not necessarily limited to the options shown below.

Organizational Objective

The Compact expects that a cooperative would take one of the following five organizational models:

- I. Cooperative procures all or a portion of the Compact’s power supply at the wholesale level, and works with marketers/suppliers for retail services and any additional power supply.
- II. Cooperative procures local renewable power or distributed generation for the Compact. That procurement could range from purchases, long- or short-term, to developing or even owning and operating units.
- III. Cooperative does both I and II.
- IV. Cooperative takes the place of the Compact as a municipal aggregator, *and* performs I, II or both.
- V. Cooperative neither replaces marketers nor procures local renewable power, but does act to facilitate development of local renewable resources or distributed generation, e.g., by arranging financing.

Cooperative Membership

There are several options for structuring the membership of the Cooperative. The most obvious option is for the Towns and Counties that are currently members of the Compact to become the members of the Cooperative. Another option is for some or all of the retail electricity customers of the Compact to be the members of the Cooperative. While the Compact wishes to have this option considered in the study, it will also obtain a legal analysis of the tax, regulatory, and other issues involved in determining whether such an option is feasible. A third option would be to include not only the Towns and Counties that are currently members of the Compact as members of the Cooperative, but also other governmental entities that wish to join. Finally, there may be other membership options that merit consideration as well.

Types of Generation Products to be Purchased

The proposed cooperative could procure power in a number of methods. For example, some of the ways in which power could be procured include:

- Purchases from the New England electricity spot market. This option may make sense only in combination with one of the other options below.
- Procurement under one-year or even shorter contracts, as the Compact does now.
- Medium-term purchases (e.g., longer than one year but not more than five years) of power, possibly as a laddered portfolio including multiple start and end dates and multiple term lengths.

- Long-term or life-of-unit purchases from specific units, including renewable units located within Compact towns.
- Direct investment in or ownership of specific units as noted above.
- Other types of purchases proposed by the Bidder or Bidders.
- Purchase of various hedges.
- Combinations of the above, or variations on the above.

Types of Generation Services to Be Provided

The types of power purchases a Cooperative might make interacts with the types of customers and retail agreements it has.

For example, the Compact is interested in the possibility of the Cooperative taking on the role of purchasing local renewable wind power. If it were to do so, the Cooperative might also seek to purchase the *rest* of the power needed by the Compact's retail customers from a marketer, as the Compact now does for *all* of the power needed by those customers. The Cooperative might then ask a selected wholesale power marketer to blend or "bundle" the Cooperative's renewable purchases with the marketer's other resources to serve the Compact's retail customers. The power supplied by that marketer to make up the difference between the Cooperative's renewable purchases and the needs of the Compact's retail customers can be thought of as an "all requirements *residual* supply." Other approaches to meeting the Compact customers' full power needs while the Cooperative also purchases selected renewable power might also be appropriate to consider.

Another important consideration is the portion of the Compact's current customers that can be considered "core" customers. The term "core" customers is used herein to refer to those customers that are unlikely to opt-out of the Compact's or the Cooperative's supply service under most, if not all, foreseeable price conditions. If it can be determined that a large portion of the Compact's customers are core customers, then there will be greater opportunities for making medium-term and long-term power commitments.

In addition, it is possible that certain customers, such as municipalities, might choose to make binding commitments to purchase power from a cooperative for a period of time. Examples might include municipal or other local government loads and the loads of other institutional or commercial customers who choose to make such commitments. It is possible that such commitments might be acquired for up to 10 percent of the Compact's peak load and corresponding energy.

With these points in mind, some further variations on how a cooperative might operate in the wholesale market include the following:

- Purchase all requirements service for all customers who have not opted-out, as the Compact does now.
- Purchase certain, specific resources, such as local renewable generation, and then purchase all requirements *residual* service for the remaining power needs of those same customers. Under this approach, the Cooperative *might* wish the entity

chosen to supply the all requirements residual service to blend the Cooperative's local renewable purchases together with the all requirements residual service and deliver a single, bundled product to the Compact's customers.

- As mentioned above, it may be that certain of the Compact's customers would commit to take their retail electric supply from the Compact for a certain period of time, say three, five or ten years. For example, some or all of the Compact's municipal customers might make such a choice, perhaps to lock in a fixed retail price, to access locally produced renewable power, or for other reasons. In that case, a Cooperative might wish to purchase a portfolio of medium-term generation services, with or without hedges, to the extent comparable with that committed load.
- In addition to or instead of the commitments described in the preceding bullet, it may be reasonable to estimate the number of core customers who could be counted on to remain with the Compact and a Cooperative. If so, it may be appropriate for a Cooperative to purchase a portfolio of medium-term generation services, with or without hedges, to the extent comparable with the load of those core customers. It is possible that the core customer load would be comparable to or greater than the load that might make formal commitments as described in the previous bullet.
- Other types of generation services proposed by the Contractor or Contractors to be analyzed in this study.
- Combinations of the above, or variations on the above.

One of the tasks of the Contractor or Contractors will be to assist the Compact in identifying what portion of its customers could be considered core customers. The Compact may conduct an assessment of its customers that it hopes would provide data to assist in this task. We expect to discuss this assessment with the selected Contractor or Contractors in advance of final decisions about its execution.

2.2 Development of Cooperative Models to Investigate

Clearly, a wide variety of Co-op Models could be constructed from different combinations of the factors listed above. There may also be additional considerations to defining a particular Co-op Model that the Compact has not identified yet.

Bidders are encouraged to present in their proposals a set of Co-op Models for investigation that they expect would provide the greatest opportunities for meeting the Compact's objectives. As described in Section 4 below, a broad range of such Co-op Models will be investigated in Phase I, and a limited subset of the most promising Co-op Models will be investigated in Phase II (if carried out).

We expect that a significant portion of the Bidders Conference, described in Section 5 below, will be dedicated to a discussion of Co-op Models and how they will be used in the investigation. Furthermore, we expect that the development of Co-op Models to be analyzed will be an important issue for discussion with the Contractor (or Contractors) at the commencement of this investigation.

3. Project Management, Support and Reporting

3.1 Project Manager

The Compact has retained Synapse Energy Economics, Inc. (Synapse), as Project Manager for this Investigation.¹ Synapse will assist the Compact in the following activities:

- Responding to questions from Bidders.
- Review of proposals, and assistance with the selection of the Contractor (or Contractors).
- Identification of Co-op Models for analysis in Phases I and II.
- Oversight of work by the Contractor (or Contractors).
- Coordination of support to Contractor (or Contractors) from Compact staff and counsel.
- Assistance in review of outlines, drafts and final reports.
- Assistance in development of Compact staff's presentations and recommendations.
- Optional preparation of technical and synthesis memoranda.
- Other tasks as assigned by the Compact.

The Compact expects that Synapse will be the Contractor's primary contact for administrative and substantive matters during this project, except for the formal meetings identified in Section 4 of this RFP or in the event that unusual circumstances arise. Synapse will designate a primary and an alternate staff member for the duration of the project, one of whom will be generally available to confer with the Contractor (or Contractors) and assist in resolving any questions that arise.

3.2 Reporting

Progress reports will be provided weekly to the Project Manager, either by telephone or by email. The Contractor (or Contractors) shall promptly report to Project Manager any concerns or material delays that may arise.

3.3 Support

As discussed above, the Compact is considering conducting an assessment of its customers that we hope would provide data to assist in this task. We expect to discuss this assessment with the selected Contractor or Contractors.

¹ Information about Synapse can be obtained from its web site at www.synapse-energy.com.

The Compact's counsel has prepared confidential memoranda addressing the various organizational and policy issues (such as powers and purpose, membership and governance, tax status and financing) involved in the formation of a cooperative under G.L. c. 164, § 136. The Compact will provide these memoranda to Bidders in a package of materials to be sent after Bidders execute a confidentiality agreement. The Compact's counsel will be available to provide consultation and to complete any research necessary on any legal aspects that arise throughout this Investigation. (See, also, Section 5.3 Narrative Requirements, Item (h) in this RFP.)

The Project Manager will coordinate requests for support or information from the Compact.

4. Scope of Work

4.1 Analysis Performed as Discrete Tasks

The scope of work includes several tasks, as described below. Such tasks will be considered independent of the others, and the Compact reserves the right to select different Contractors to provide the services associated with different tasks. Bidders are requested to include in their proposals separate, independent bids for each of the tasks. Parties can bid on any number of the tasks, according to their areas of expertise and interest. In order to encourage efficiency of operations, the Compact may give preference to a Contractor that can provide services for all, or most, of the tasks, but will nonetheless seriously consider proposals from Bidders that are especially well-qualified for only one or a small number of the tasks.

Bidders are allowed to include Subcontractors as a part of their project team, if those Subcontractors are better qualified and able to address certain tasks. The role of any such Subcontractor(s) must be clearly identified and explained in the proposal for each task.

Each proposal should include at least the following information separately for each of the tasks described below. However, labor charge rates, labor costs, non-labor costs, and proposed budgets for the tasks must be provided in a separate sealed document as described in Section 5 of this RFP.

- A description of how the tasks will be performed. This should include detailed descriptions of the activities and types of services that the Bidder offers for each task. For those tasks that require coordination with other tasks, the Bidder should describe how the tasks would be coordinated.
- Identification of the individual staff members that the Bidder will assign to perform the services. For each staff member, the Bidder must include a description of his or her experience and qualifications related to services required. A more detailed discussion of Bidder qualification requirements is presented in Section 5 of this RFP.
- The labor charge rate for each staff member assigned to perform the services.

- A proposal for the number of hours that each staff member would dedicate to performing the services.
- A proposed budget necessary to perform the services. The budget should separately identify the labor costs of each staff member, as well as any and all non-labor costs that would be needed to perform the services.

The tasks for which the Compact is seeking services are listed below.

4.2 Phase I Scope of Work

Phase I will be a screening analysis to review a wide range of Co-op Models, identify any fatal flaws of those models, and recommend a subset of Co-op Models that appear to be most promising for the Compact's purposes.

The Contractor (or Contractors) will participate in a Phase I initial meeting with the Project Manager and Compact staff to plan Phase I and to determine the Co-op Models that will be studied in Phase I.

Task 1. Define Co-op Models

In addition to working with the Project Manager and the Compact to select Co-op Models to be analyzed in Phase I, this task will include definition of the detailed assumptions necessary to define each selected Co-op Model with sufficient precision to support the remaining tasks for Phase I. At this stage, Co-op Models may be grouped into sets of related Models for ease of analysis. Some effort should be made to ensure that a full range of potentially feasible Models is at least considered for inclusion in Phase I.

Task 2. Assess Power Procurement Options

The main purpose of this task is to analyze the ways in which a given Co-op Model affects the Cooperative's ability to implement the Compact's power supply goals and the Compact's ability to pursue additional power supply options. Renewable energy development and procurement, especially local renewables must be considered. Each Co-op Model's impact on the Compact's ability to meet its customers' needs for competitively priced power must also be considered.

The potential under each Co-op Model to use portfolio management and other techniques to manage the types of risks (e.g., contract, market price, customer migration, regulatory and technology risks) faced by the Cooperative, the Compact, and its member Towns and Counties should be analyzed. This applies both to any new risks that might arise from the Co-op Model under consideration and to risks the Compact and its member Towns and Counties now face.

This task should also provide a thorough appreciation of how the range of Co-op Models affects the opportunities and challenges; risks and benefits faced by the Compact in wholesale power procurement.

Task 3. Assess Financial Issues and Opportunities

This task’s fundamental purpose is to assess how each Co-op Model would affect the Cooperative’s ability to finance its activities, including specific projects and ongoing operations. Financing includes bank financing or other conventional loans, issuance of bonds or other debt instruments, and other credit instruments. It may also include, under some circumstances, ability to access equity participation. Financing requirements may include some or all of the following:

- working capital
- funds required by seasonal variations in cash flow and income-expense lag
- credit requirements for wholesale power market activities
- project financing (e.g., for promotion of local renewable generation),
- funding purchases of power,
- hedging instruments or
- combinations of the above.

This task should also analyze the Cooperative’s ability to access special types of financing opportunities relating to a Co-op Model or to the general nature of a cooperative as organized under the Massachusetts law set out in Attachment 1 to this RFP. In addition, there may be particular types of financing or financial incentives available for potential Cooperative projects, such as renewable generation, or other sources of funds targeted to certain technologies or geographic regions of interest. This task should identify and include such special opportunities.

Taxation issues, both in general and specific to the cooperative form of organization and a given Co-op Model, should also be assessed for their impact on feasibility and risk.

Furthermore, the Compact is particularly interested in investigating the advantage that tax-exempt financing might offer a Cooperative relative to competitive power suppliers.

Task 4. Assess Other Aspects of Cooperative Models

Other advantages, disadvantages, challenges or opportunities created by the cooperative form of organization or a given Co-op Model should be assessed. These might include special management and staffing requirements, reporting requirements, difficulties in fulfilling ISO-NE or federal requirements, and others.

Task 5. Apply Fatal Flaw Analysis

For purposes of this RFP, “fatal flaw” is defined as a characteristic of a Co-op Model that

- (1) renders the Co-op Model impossible or impracticable to finance;
- (2) necessarily imposes on the Compact Towns excessive risks that could not be mitigated at a reasonable cost;

(3) presents legal, administrative, budgetary, or other practical barriers to successful implementation that are absolute or could not be overcome at a reasonable cost; and

(4) any combination of these characteristics.

Bidders should include in their proposals an explanation of how they will determine whether a fatal flaw is present. Bidders are encouraged to comment on this definition or to identify additional fatal flaws that should be considered in the Phase I analysis.

Task 6. Recommend Subset of Co-op Models for Further Review in Phase II

This task should prioritize Co-op Models for further study. This task should identify those Co-op Models that are not suitable for further study and those that show the best promise of meeting the Compact's goals. Conclusions and prioritization, as well as analytical challenges, if any, for Phase II should also be noted.

Phase I Deliverables

The Compact's draft schedule for tasks and major deliverables is included in Attachment 5 to this RFP.

- Definitive work plans and schedule for Phase I immediately following initial project meeting.
- Phase I list of Co-op Models to be studied (developed jointly with Compact and Project Manager).
- Phase I report outline.
- Phase I draft report.
- Phase I final report.
- Weekly e-mail or telephone updates to Project Manager.

4.3 Phase II Scope of Work

Phase II is intended to provide a detailed feasibility and cost/benefit analysis of a limited set of the most promising Co-op Models. Please note that the purpose of the Phase II analysis is to provide the information that the Compact and its members need in order to decide whether to commit further time and resources to development of one or a few leading Co-op Models. Selection of Co-op Models to be analyzed in Phase II will be negotiated with the winning Bidder. The Contractor (or Contractors) should offer suggestions in the Phase I report as to which Co-op Models it recommends for further consideration in Phase II.

The Contractor (or Contractors) will participate in a Phase II initial meeting with the Project Manager and Compact staff to plan Phase II and to determine the Co-op Models that will be studied in Phase II.

Task 1. Further Define Promising Co-op Models

Based on the results of Phase I and the Phase II initial meeting, it may be necessary to perform initial definition work for additional or modified Co-op Models. For any such new or modified Co-op Models and for those selected from Phase I, this task will include further specification of the detailed assumptions necessary to define each selected Co-op Model with sufficient precision to support the remaining tasks for Phase II. Again, Co-op Models may be grouped into sets of related Models for ease of analysis. Effort should be focused on the most promising Co-op Models with an eye towards those that the Compact and its member Towns and Counties are likely to consider implementing.

Task 2. Assess Power Procurement Options

The purpose of this task is to analyze in detail how each Phase II Co-op Model would affect the Cooperative's ability to implement the Compact's power supply goals and the Compact's ability to pursue additional power supply options. Practical considerations, feasibility and risk management should be paramount.

This task should also provide a final appreciation of how each Phase II Co-op Model would affect the opportunities and challenges, risks and benefits faced by the Compact in wholesale power procurement.

Task 3. Assess Financial Issues and Opportunities

The purpose of this task is to analyze in detail how each Phase II Co-op Model would affect the Cooperative's ability to finance its activities, including specific projects and ongoing operations. As in Task 2, practical considerations, feasibility and risk management should be paramount.

Also, as in Task 2, this task should provide a final appreciation of how each Phase II Co-op Model would affect the financial opportunities and challenges; risks and benefits faced by the Compact in wholesale power procurement.

Task 4. Assess Other Aspects of Cooperative Organization

As in Phase I, other advantages, disadvantages, challenges or opportunities created by the cooperative form of organization or a given Co-op Model should be assessed, but in final form with a focus on practical operational and management issues and feasibility.

Task 5. Recommendations for the Most Promising Models

This task should summarize the nature, strengths and weaknesses of the various Co-op Models studied and provide specific recommendations about which Model or Models merit further consideration by the Compact and its member Towns and Counties. It should also provide a thorough explanation of the reasons for the recommendations.

Phase II Deliverables

The Compact's draft schedule for tasks and major deliverables is included in Attachment 5 to this RFP.

- Definitive work plan for Phase II following approval by Compact of models for study under Phase II.
- Phase II list of Co-op Models to be studied (developed jointly with Compact and Project Manager).
- Phase II report outline.
- Phase II draft report.
- Phase II final report.
- Weekly e-mail or telephone updates to Project Manager.
- Assistance to the Project Manger in addressing comments and redrafting as needed.
- Final presentation to the Cape Light Compact Board (open meeting in Barnstable) with slides (that will not be confidential).
- Assistance to Project Manager and Compact in review of final report and development of recommendations for further action.

The Project Manager may also prepare for the Compact a technical memorandum summarizing the study purposes, process and conclusions and, possibly, offering further observations or recommendations for the Compact's consideration. The Project Manger may also provide a synthesis memorandum to the Compact, at the Compact's discretion.

5. Proposal Filing Requirements

5.1 Proposal

Proposals, to be entitled for consideration, must be submitted in accordance with the following instructions. The Bidder shall be responsible for submitting one (1) electronic copy; (1) paper original and nine (9) paper copies of the proposal in such form as set forth below. The electronic version should be sent via email to Margaret Downey at mags@cape.com.

Proposals shall be:

- Typewritten on 8 1/2" x 11" paper;
- The pages numbered; and
- The Proposal must also be signed in longhand in accordance with the instructions as stated in Attachment 3, "Certificate."

The electronic version should be submitted in Microsoft Word or RTF format. Spreadsheets may be submitted in Microsoft Excel format or a format that can be imported by Microsoft Excel.

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

5.2 Submission and Review

The Proposal will consist of two parts: a Technical Proposal and a Financial Proposal. The bound Proposal (both parts) must be signed and shall be delivered to Barnstable County within the time set forth in this RFP.

Technical proposals must include all bid material other than the financial aspects of the proposal and are to be enclosed in sealed envelopes and marked as follows:

RFP Title:	Cooperative Investigation - Technical Proposal
Dated:	March 27, 2005
Bidder's Name:	_____
Delivered to:	Barnstable Superior Courthouse 3195 Main Street Barnstable MA, 02630
Attention:	Margaret Downey Cape Light Compact Procurement Officer

Financial Proposals must include all financial aspects of proposals, such as labor rates, task cost breakdowns, and the total budget. The Financial Proposal must be in a separate document and submitted in a separate sealed envelope marked and delivered in the same manner as the Technical Proposal, but marked: "RFP Title: Cooperative Investigation -- Financial Proposal."

The electronic version of the Proposal must be submitted in the form of two separate files, one containing the Technical Proposal and the other the Financial Proposal.

Bids must be received by March 27, 2006 by 2:00 p.m. Proposals received after this time will not be considered.

Rights to Modify This Specification

Barnstable County reserves the right to modify any aspect of this RFP if the change will improve the outcome of this Investigation.

Qualified Bidders

Only qualified Bidders with knowledge and experience as described below are invited to submit proposals.

5.3 Contents

Narrative Requirements

Bidders must submit a proposal narrative containing the following information. Please note that Barnstable County reserves the right to reject any proposal, which, in its judgment, is incomplete. Please provide the following:

- a. A brief description of the business nature of the Bidder, its purpose, and its general history. Include a summary of contracts held similar in nature to the services described in this RFP.
- b. A detailed description of the proposed approach for implementing each of the tasks outlined in the Scope of Services.
- c. A proposal for all the costs required to perform the services offered by the Bidder, according to the Budget and Pricing Structure described in Section 5.4. As noted in Section 4.1, Bidders are requested to include a separate, independent cost proposal for each of the tasks.
- d. A complete description of your company's capabilities in the areas of power supply and power market operations; public power and cooperative expertise and experience, especially regarding how cooperatives have sought to achieve their goals; utility finance expertise and experience, including finance for public power and cooperatives; deregulation, especially as it has occurred in Massachusetts; delivery of sound customer service and meeting community needs; and other experience related to the services listed in this RFP. Please include the geographic region where this experience was developed.
- e. A listing of all staff proposed to provide the indicated services and summary of their qualifications, including technical training, licensing, and installation experience. If existing positions are to be used, indicate the percentage of time to be devoted to this project. Include a summary of qualifications and references for each subcontractor, if any. If the Bidder intends to hire additional staff in order to provide the proposed services, a description of its approach to hiring and the qualifications it will require of prospective employees should be included.
- f. The names and contact information of references to be contacted regarding your company's job performance for activities that are comparable or analogous to those requested in this RFP.
- g. Detailed description of ability and commitment to meet all reporting requirements in accordance with the form, content and timeliness proscribed by the Compact.
- h. An explanation of any additional legal analysis the Bidder expects will be necessary to support the Investigation. (See Section 3.3.)

- i. Attachment 2 to this RFP presents a sample contract template that the Compact typically uses for its program vendors. The Compact plans to execute a similar contract with the Contractor(s). The Bidder's proposal must include a complete description of any exceptions that the Bidder might have to the sample contract.

Qualification of Bidders

The competency and responsibility of Bidders and of any proposed Subcontractors will be considered in making the award. Barnstable County expressly reserves the right to reject any or all Proposals (either generally or in a particular instance and either retroactively or prospectively) and to waive any informalities or regularities in Proposals, and to accept that Proposal whether it be the lowest bid or not, which in the unilateral judgment of Barnstable County best serves the Compact's purpose and intent provided, that, no course of dealing or delay or omission on the part of the Barnstable County in exercising such right shall operate as a waiver thereof.

Subcontracts

The Bidder shall submit with its Proposal the names and addresses of any Subcontractors proposed for principal parts of the Scope of Services and their price. The cost of services proposed by each said Subcontractor shall be included in this information. Barnstable County reserves the right to substitute other Subcontractors to provide like services or materials.

Detailed Bid Information

Where specific information is requested on the Proposal such as names, addresses, and prices of any Subcontractor; number of working days and/or calendar days required to complete the Work; or other data specifically requested in the written Proposal is omitted, the Bidder may be automatically eliminated from consideration for the Contract at the discretion of Barnstable County.

5.4 Budget and Pricing Structure

Bidders shall provide a fixed, not-to-exceed budget for all costs associated with services offered. Bidders shall provide complete documentation and detailed assumptions to support budget proposals. The not-to-exceed-budget shall include all costs that the Bidder would charge to the Compact, including direct and indirect costs, all administrative costs, direct labor costs, labor burden, travel expenses, overhead costs, profit and other indirect costs associated with the labor requirements.

The Compact expects to pay no more than \$100,000 for the Phase I and Phase II services outlined in this RFP. Bidders are encouraged to submit competitive, efficient, and creative budget proposals.

As noted in Section 4.1, Bidders are required to provide separate budgets for each task for which they propose to provide services. The budget for each task must include at least the following information:

- Identify each staff member that will perform the services included in the task.

- Present the daily labor charge rate that will be charged to the Compact for each individual staff member that will perform the services included in the task.
- Estimate the number of days that each individual staff member will require to perform the services included in the task.
- Estimate the total labor cost for each individual staff member performing the services, as well as a total labor cost for all staff members performing the services included in the task.
- Identify separately any and all other costs that may be required to perform the services included in the task.
- Identify the total, not-to-exceed budget for the task.

5.5 Acceptance of Proposals and Award of Contract

Barnstable County, at its sole discretion, may accept entire proposals submitted by a Bidder, or accept portions of proposals submitted by a Bidder, or reject proposals in whole or in part. Screening Proposals for Compliance with Submission Requirements and Minimum Evaluation Criteria will include utilizing the proposal submission requirements and the minimum criteria incorporated herein. The Chief Procurement Officer, shall screen proposals as to their responsiveness, and identify those which are responsive. Any proposal, which in the opinion of the Chief Procurement Officer, fails to include the information or documentation specified in the submission requirements shall be determined to be non-responsive and shall be rejected. Any Bidder who fails to meet any of the standards set forth as minimum criteria shall be determined to be non-responsive and shall be rejected. All other proposals meeting both the submission requirements and minimum evaluation criteria shall be considered qualifying proposals.

Barnstable County reserves the right to waive portions of the RFP for all Bidders and to waive minor informalities as defined by Chapter 30B, or allow the Bidder to correct them.

The remaining responsive proposals shall be evaluated using the comparative evaluation criteria incorporated herein. Each proposal shall be assigned: a) a separate rating for each comparative evaluation criterion; and b) a composite rating.

Methodology for Determining Best Price

Taking into consideration price and other factors the Chief Procurement Officer shall determine the most advantageous proposal.

Selection Criteria

The final selection of a consultant shall be based on the following sets of criteria:

Minimum Evaluation Criteria

- a. Submission of all required documentation and certifications detailed in Proposal Contents.

- b. Demonstrated capacity to provide a full range of services to address the issues facing the Cape Light Compact.
- c. Demonstrated understanding of the Massachusetts Department of Telecommunications and Energy and the Division of Energy Resources.
- d. Demonstrated understanding of electric utility restructuring issues.
- e. A minimum of five (5) years related experience in the area of utility policy and power procurement, wholesale power market operations, and utility finance.
- f. Submitted proposal responds to the issues identified in the RFP.

Comparative Evaluation Criteria

1. Experience of Project Team with Issues Relevant to Massachusetts Electric Restructuring

- a. **Highly Advantageous:** The Bidder has demonstrated an exceptional background and greater than five years experience with Massachusetts electric restructuring issues, utility policy, power procurement, wholesale power market operations, and utility finance.
- b. **Advantageous:** The Bidder has demonstrated an adequate background and up to five years experience with Massachusetts electric restructuring issues and power supply procurement.

2. Experience and Knowledge of Cooperative Formation

- a. **Highly Advantageous:** The Bidder has extensive knowledge and greater than one year experience in working with a municipal aggregation program; has extensive knowledge and greater than one year of experience with electric cooperative power supply; or both.
- b. **Advantageous:** The Bidder has adequate knowledge and up to one year of experience in working with a municipal aggregation program; has extensive knowledge and up to one year of experience with electric cooperative power supply; or both.

3. Experience of Project Team with Barnstable County Issues

- a. **Highly Advantageous:** The Bidder has experience working with more than one town in Barnstable County on energy policy, public finance, energy supply, or other energy related issues.
- b. **Advantageous:** The Bidder has experience working with one town in Barnstable County or another Massachusetts municipality on energy policy, public finance, energy supply, or other energy related issues.

Contract negotiations will commence in order to complete a signed contract within 15 days of contract award. All contracts will incorporate the general terms and conditions included with the bid package and the written documents provided by the Bidder in its bid.

If a contract is not executed by the chosen Bidder within 15 days of contract award, Barnstable County reserves the right to negotiate with an alternative Bidder in order to execute a contract in a timely manner. All exceptions to the Sample Contract Template included as Attachment 2 to this RFP must be noted in writing and included within the body of the proposal.

5.6 Confidentiality

All proposals will become the property of the Compact. Once the contract is awarded, all proposals will become a matter of public record.

Return of Proposal Materials

Proposal materials will not be returned to Bidders. All costs incurred by Bidders in the preparation and submission of a proposal and/or oral presentation shall be the sole responsibility of Bidders.

5.7 Bidders Conference and Answers to Bidders' Questions

The Compact will hold a Bidders Conference commencing at 1:00 p.m. on February 28, 2006, at the offices of Bernstein, Cushner and Kimmell, 585 Boylston Street, Boston, MA. At the Bidders Conference, Compact Staff and the Project Manager will be available to answer questions concerning the RFP's goals, terms and conditions, Scope of Work, and other relevant issues. All interested Bidders are invited to attend. In order that the Compact may arrange logistics, ensure sufficient space, and notify Bidders of any changes, any one who wishes to attend the Bidders' Conference must provide the names, telephone numbers and email addresses of all attendees to the Compact by 1:00 p.m. on February 24, 2006 by email to Margaret Downey at mags@cape.com. Bidders may participate by conference call. The same procedures listed above are required to participate via conference call.

All Bidders wishing to attend the Bidders Conference must first sign a confidentiality agreement, the form of which is attached as Attachment 4. The Compact, in its discretion, may also require Bidders submitting questions by e-mail to execute the confidentiality agreement.

The Compact will also accept written questions from potential Bidders concerning the RFP by email *only* and no later than 1:00 p.m. on March 10, 2006. The Compact will provide all questions and the Compact's answers to all potential Bidders via email by March 15, 2006. Any potential Bidder who wishes to receive such emails must provide the Compact with the name and email address of a designated recipient.

All notifications and questions submitted under this subsection shall be sent to:

Barnstable Superior Courthouse
3195 Main Street
Barnstable MA, 02630 Att: Margaret Downey

or by email to Margaret Downey, Chief Procurement Officer, at mags@cape.com.

Statements and answers to questions at the Bidders Conference or answers provided in response to email questions from potential Bidders are intended to assist Bidders in providing a complete and responsive Proposal and are provided for that purpose only. No such answer shall be deemed to have altered the terms of this RFP unless Bidders are so notified in writing of a change pursuant to subsection 5.2 of this RFP.

5.8 Presentations

A Bidder whose proposal is deemed competitive may be required, upon request, to make an oral presentation either by phone or in person after receipt of the bids. The location of the presentation will be stated on the invitation; presentations will be limited to two (2) hours. The Bidder will allocate the first half-hour to a formal presentation. The balance of the presentation period will be devoted to questions by and discussion with Barnstable County's representatives.

The oral presentation will be arranged through Barnstable County. Bidders will receive at least 48 hours notice to prepare for the presentation. Attendance must include the person on the Bidder's staff who will be responsible for execution of the Project. Barnstable County may disqualify a Bidder on the basis of its refusal to honor its request for an oral presentation.

Results of the oral presentations will be used in part to arrive at ranking the finalist(s) and may result in adjustments to the final rankings assigned. In addition to, or as an alternative to additional technical data provided in a written or oral format, the Compact reserves the right to request a "best and final offer" from said Bidders in order to arrive at a final selection.

Based upon all information, the Compact will select a finalist with which contract negotiations will commence.

Attachment 1. Massachusetts Statute on Formation of a Cooperative.

GENERAL LAWS OF MASSACHUSETTS

PART I.

ADMINISTRATION OF THE GOVERNMENT

TITLE XXII.

CORPORATIONS

CHAPTER 164. MANUFACTURE AND SALE OF GAS AND ELECTRICITY

INSPECTION OF GAS AND METERS

Chapter 164: Section 136 Cooperatives

Section 136. (a) Any number of persons may associate themselves together as a cooperative, with or without capital stock, for the transaction of any lawful business associated with the purchase, acquisition, distribution, sale, resale, supply, and disposition of energy or energy-related services to wholesale or retail customers, subject to federal and state laws and regulations. Unless otherwise served by a municipal light plant constructed or acquired pursuant to the provisions of this chapter or special law, any natural person, firm, corporation, business trust, partnership, public or private agency, non-profit organization or corporation, cooperative, or local municipality may become a member or shareholder of a cooperative. Such member or shareholder may thus access any services the cooperative has to offer and participate in the governance of the cooperative as provided in this subsection or by the bylaws of the cooperative.

(b) A cooperative may be established for any purpose outlined in subsection (a) of this section that may lawfully be carried out by any other corporation; provided, that a cooperative shall be organized and shall conduct its business primarily for the mutual benefit of its members as patrons of the cooperative. A cooperative shall have all of the powers of a natural person, including the power to participate with others in any partnership, joint venture, or other association, transaction, or arrangement of any kind. In addition, each cooperative subject to this chapter shall have the following powers:

(i) To have perpetual succession by its corporate name unless a limited period of duration is stated in the articles of incorporation;

- (ii) To sue and be sued, complain, and defend its corporate name;
- (iii) To have and use a corporate seal;
- (iv) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and deal in and with real or personal property or any interest therein, wherever situated;
- (v) To sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its property and assets;
- (vi) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, use, and deal in and with shares or other interest in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or any other government, state, territory, governmental district, or municipality, or any instrumentality thereof;
- (vii) To make contracts and incur liabilities, borrow money at rates of interest the cooperative may determine, issue notes, bonds, certificates of indebtedness, and other obligations, receive funds from members and pay interest thereon, issue capital stock and certificates representing equity interests in assets, allocate earnings and losses at the times and in the manner the articles of incorporation or bylaws or other contract specify, create book credits, capital funds, and reserves, and secure obligations by mortgage or pledge of any of its property, franchises, and income;
- (viii) To lend money for corporate purposes, invest and reinvest funds, and take and hold real and personal property as security for the payment of funds loaned or invested;
- (ix) To conduct business, carry on operations, have offices, and exercise the powers granted by this subsection, within or without this commonwealth;
- (x) To elect or appoint officers and agents of the corporation, define their duties, and fix their compensation;
- (xi) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this commonwealth, for the administration and regulation of the affairs of the cooperative;
- (xii) To make donations for the public welfare or for charitable, scientific, or educational purposes;
- (xiii) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, and other incentive plans for any or all of its directors, officers, and employees;
- (xiv) To be a partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise;
- (xv) To cease corporate activities and surrender its corporate franchise;

(xvi) To purchase, acquire, distribute, sell, resell, supply, and dispose of energy or other services;

(xvii) To purchase, acquire, distribute, sell, resell, supply, and provide any energy or energy-related services to wholesale or retail customers;

(xviii) To have access on comparable terms to energy transportation systems for delivery of energy to its members and other customers;

(xix) To sell electricity to any consumer, including, but not limited to, a consumer that receives electric distribution, transmission, or other services from an entity other than the cooperative organized under subsection (a), other than consumers served by municipal light plants, that is selling such electricity to such consumer; provided, that an entity providing such distribution, transmission, or other services shall provide non-discriminatory access and pricing for the use of its property and services and shall otherwise facilitate such transactions;

(xx) To contract with natural persons, firms, corporations, business trusts, partnerships, public and private agencies, non-profit organizations and corporations, other cooperatives, and local municipalities to accomplish any purposes of the cooperative; and

(xxi) To have and exercise all powers necessary or convenient to effect its purposes.

(c) A cooperative organized pursuant to this section shall be managed by a board of not less than three directors. The directors shall be elected by and from the members of the cooperative at such time, in such manner, and for such term of office as the bylaws may prescribe and shall hold office during the term for which they were elected and until their successors are elected and qualified. Any vacancy occurring in the board of directors, and any directorship to be filled by reason of an increase in the number of directors, may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of the predecessor in office.

(d) Any cooperative organized pursuant to the provisions of this section may enact bylaws to govern itself in the implementation of the provisions of this section which are not inconsistent with the provisions of this section.

(e) The right of a member of a cooperative to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or bylaws. Unless so limited, enlarged, or denied, each member shall be entitled to one vote on each matter submitted to a vote of members.

(f) A member of the board of directors or an officer of any cooperative subject to the provisions of this section shall have immunity from liability equivalent to that granted to directors and officers of for-profit corporations in the commonwealth. Except for debts lawfully contracted between a member and the cooperative, no member shall be liable for the debts of the cooperative to an amount exceeding the sum remaining unpaid on his or her membership fee or subscription to capital stock.

Attachment 2. Sample Contract Template

**FORM OF
CONSULTING AGREEMENT
between
BARNSTABLE COUNTY
and
[CONSULTANT]**

This Consulting Agreement (the "Agreement") is made by and between [CONSULTANT], a [x] corporation located at [x] (the "Consultant") and Barnstable County, Massachusetts (the "County"), located at Superior Court House, P.O. Box 427, Barnstable, MA 02630, acting on behalf of the Cape Light Compact, and is effective as of [_____] [], 2006. The Consultant and the County may be referred to in this Agreement as a "Party" and collectively as the "Parties."

RECITALS

A. The Cape Light Compact (the "Compact") is an intergovernmental organization established under Massachusetts law by 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, Barnstable County and Dukes County (collectively, the "Member Municipalities") to, *inter alia*, acquire the best market rate for electricity supply for participating consumers within the Member Municipalities.

B. The County provides certain fiscal and administrative services for the Member Municipalities, acting together as the Compact.

C. The Compact is interested in exploring the process of forming a Cooperative Corporation ("Cooperative") under G.L. c. 164, § 136 as a practical approach to, among other things, purchasing energy on a long-term basis in the wholesale market from renewable energy projects, purchasing energy in the wholesale market for a basic power supply program, and constructing, owning and/or operating renewable energy and other distributed generation projects (the "Investigation").

D. The Compact requires specialized expert consulting services to complete the Investigation.

E. The Consultant is experienced in the financial and or structural and or organizational components of cooperatives.

F. The Consultant was selected by the County pursuant to a Request for Proposals (the "RFP") issued in February 2006 after an extensive review and evaluation as part of a competitive process designed to comport with G.L. c. 30B.

G. The Compact and the County wish to keep the work and report of Consultant confidential and proprietary to the maximum extent permitted by law.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. SCOPE OF WORK

The Investigation will be a two-phased project, the second of which will be at the option of the County, as set forth herein. The scope of work and Consultant's work plan ("Scope of Work") is set forth in Exhibit A attached hereto. The Consultant shall prepare and deliver to the County and the Compact a Phase I Report, and, if requested by the County and the Compact, a Phase II Report. The Compact has retained the services of Synapse Energy Economics, Inc. to work as project manager ("Project Manager") to assist the Compact during the Investigation. The Consultant's primary contact for administrative and substantive matters during the Investigation shall be the Project Manager, to the extent set forth in Exhibit A.

The schedule for completion of the Investigation is set forth in Exhibit A. Delivery of the Phase I Report Outline shall occur no later than [_____] [____], 2006. Delivery of the Phase I Draft Report shall occur no later than [_____] [____], 2006. Delivery of the Phase I Final Report shall occur no later than [_____] [____].

If the Phase II Report is requested, delivery of the Phase II Report Outline shall occur no later than [_____] [____], 2006. Delivery of the Phase II Draft Report shall occur no later than [_____] [____], 2006. Delivery of the Phase II Final Report shall occur no later than [_____] [____].

The schedule for completion of the Investigation may be adjusted, as necessary, upon mutual agreement of the Parties.

2. TERM

The contract period shall commence upon the effective date of this Agreement, as specified above, and shall continue through September 30, 2006 unless terminated sooner by either party pursuant to Section 6 of this Agreement.

3. COMPENSATION

The County shall compensate Consultant in accordance with the fixed, not-to-exceed budget (the "Budget") for all costs associated with services offered, as set forth in

Exhibit B attached hereto. The County shall not be responsible for compensating the Consultant for any costs that exceed the Budget.

Consultant shall provide the County with a detailed invoice itemizing the work and expenses incurred on a monthly basis. The County agrees to process said invoice and remit payment to Consultant within thirty (30) days of receipt of such invoice. The County shall promptly inform Consultant of any questions concerning the invoiced amount, and may withhold payment for any amount related to such questions. The County, the Compact and the Consultant will cooperate in good faith to resolve promptly any questions concerning Consultant's invoice.

4. INDEPENDENT CONTRACTOR

Consultant undertakes the performance of this Agreement as an independent contractor and shall be wholly responsible for the methods followed in the performance of the work set forth in Section I of this Agreement.

5. ASSIGNMENT AND SUBCONTRACTING

The Consultant shall not assign or subcontract the performance of the Scope of Work (to the extent that such assignment or subcontract was not identified in the Consultant's winning bid), in whole or in part, without the prior written consent of the County, in its sole discretion.

6. TERMINATION

The County may terminate this Agreement with or without cause by providing at least five (5) business days prior written notice to Consultant. In the event of such termination, the Consultant shall be entitled to just and equitable compensation for satisfactory work completed, for services performed and for reimbursable expenses necessarily incurred in the performance of this Agreement up to and including the date of termination, taking into account the cost for the County to obtain a substitute contractor to complete the Scope of Work.

7. OWNERSHIP OF DOCUMENTS AND DATA

All documents, data, and information of any kind developed by Consultant pursuant to this Agreement shall be the sole property of the County and the Compact, and upon the request of the County or the Compact shall be returned to the County or the Compact. In addition, all results or products of the services provided by Consultant hereunder shall become the property of the County and the Compact, which shall have the right and discretion to determine the time and manner of the use thereof, if any. Consultant shall not disclose any of the documents, data, information, results or report(s)

developed pursuant to this Agreement without prior written consent of the County, in its sole discretion, and in accordance with the terms of Section 16 (Confidentiality) of this Agreement.

8. REPRESENTATIONS AND WARRANTIES

As a material inducement to entering into this Agreement, the Consultant hereby represents and warrants to the County as of the date of execution 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 state, federal or local law or any governmental rule applicable to it;

(iv) this Agreement constitutes a legal, valid and binding obligation of the Consultant enforceable against it in accordance with its terms, 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 the Consultant to the County and/or the Compact 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 the Consultant in response to the RFP is true and accurate.

9. INDEMNIFICATION

The Consultant shall indemnify, defend and hold harmless the County and the Compact (collectively "Indemnified Parties" and singularly "Indemnified Party") and

each Indemnified Party's officers, employees, agents, members, 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 breach by the Consultant of its obligations, covenants, representations or warranties contained in this Agreement; and/or (ii) the Consultant's actions or omissions taken or made in connection with the Consultant's performance of this Agreement.

10. DISPUTE RESOLUTION AND GOVERNING LAW

Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 10 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. The dispute shall be considered to have arisen when one Party sends the other Party 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 both Parties. In the event that the Parties 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. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by both Parties. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, either 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. Venue for any judicial proceeding involving a dispute arising from this Agreement shall be Barnstable County Superior Court, Massachusetts.

11. COMPLIANCE WITH LAWS

The Consultant shall promptly comply with all applicable laws, rules, regulations, ordinances, orders and requirements of the Commonwealth, including without limitation, the Massachusetts State Ethics Act, G.L. c. 268A, and any local, regional or federal government authority relating to the delivery of the services described in this Agreement, subject to Section 10, above. Unless otherwise provided by law, the Consultant shall promptly pay all fines, penalties and damages that may arise out of or are imposed because of the Consultant's failure to comply with the provisions of this section and, shall indemnify the Compact and the County against any liability incurred as a result of a violation of this Section.

12. MODIFICATION

This Agreement may be modified only with the prior written consent of Consultant and the County.

13. AUDIT

Consultant agrees to keep full and accurate records of all costs, fees, charges and other amounts incurred by it under this Agreement. Such records will be maintained and available for inspection only by the County, or its designee or agent (including, without limitation, a representative of the County or the Compact) for a period of three years after completion of the scope of work set forth in Section I hereof.

14. COORDINATING REPRESENTATIVES

The coordinating representatives for this Agreement shall be [William Steinhurst] for the Project Manager and [x], for Consultant.

15. NOTICES

All correspondence and notices between the County and Consultant shall be directed to the following:

If to County:

Margaret T. Downey
Assistant County Administrator
Barnstable County
Superior Courthouse
P.O. Box 427
Barnstable, MA 02630
(508) 375-6636 (voice)
(508) 362-4136 (fax)
mags@cape.com

and to:

William Steinhurst
Senior Consultant
Synapse Energy Economics
45 State St. #394
Montpelier, VT 05602
(802) 223-2417 (voice)
wsteinhurst@synapse-energy.com

If to Consultant:

16. CONFIDENTIALITY

Consultant understands that all work performed pursuant to this Agreement shall be performed in the strictest of confidentiality, and that Consultant shall not share any information, analysis, or opinion with any third party without the prior authorization of the County. Consultant agrees that all work performed pursuant to this Agreement shall be subject to the terms and conditions of the Confidentiality Agreement (“Confidentiality Agreement”) between the Consultant and the Compact, dated [_____], [___], 2006, a copy of which is attached hereto as Exhibit C.

17. ENTIRE AGREEMENT

This Agreement, along with the Scope of Work, the Budget, any other approved work plans, and the Confidentiality 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.

18. ENFORCEABILITY

All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

19. JOINT WORK PRODUCT

This Agreement shall be considered the joint work product of the parties hereto, and shall not be construed against any party by reason thereof.

20. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

[Signature Page Follows Next]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date set forth above.

Margaret T. Downey
authorized to sign for
Barnstable County, Massachusetts

[x]
authorized to sign for
 [x]

EXHIBIT A

SCOPE OF WORK

EXHIBIT B

BUDGET

EXHIBIT C

CONFIDENTIALITY AGREEMENT

Attachment 3. "Certificate"

CERTIFICATE

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

In accordance with MGL Chapter 30B, Section 10, I certify under penalties of perjury that this bid/proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certificate, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club or other legal organization, entity or group of individuals.

Company: _____

Address: _____

Signature of Individual Signing

Bid, or Corporate Officer: _____

Social Security Number

or Federal Identification Number: _____

Date: _____

*Any person or corporation which fails to execute this document
will be considered a non-responsive bidder
and may be rejected pursuant to MGL Chapter 30B*

Attachment 4. Sample Confidentiality Agreement

**FORM OF
CONFIDENTIALITY AGREEMENT
between
THE CAPE LIGHT COMPACT
and**

_____ [Bidder]²
for
Provision of Information in Conjunction with
the Cape Light Compact's
Investigation into the Formation of a Cooperative Corporation

This Confidentiality Agreement ("Agreement") is entered into by and between the Cape Light Compact (the "Compact") and _____, a [_____] corporation, (the "Bidder") and is effective as of the date of execution by the Bidder.

WHEREAS, pursuant to G. L. c. 40, § 4A, the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County (collectively, the "Members") entered into an inter-governmental agreement to act together as the Cape Light Compact;

WHEREAS, the Compact is interested in exploring the process of forming a Cooperative Corporation ("Cooperative") under G.L. c. 164, § 136 as a practical approach to, among other things, purchasing energy on a long-term basis in the wholesale market from renewable energy projects, purchasing energy in the wholesale market for a basic power supply program, and constructing, owning and/or operating renewable energy and other distributed generation projects (the "Investigation");

WHEREAS, the Compact requires specialized expert consulting services to complete the Investigation;

WHEREAS, the Compact has issued a Request for Proposals ("RFP") and intends to choose a consultant, after extensive review and evaluation, to perform the specialized expert consulting services needed to complete the Investigation;

WHEREAS, the Compact intends to hold a Bidder's Conference in February 2006 to discuss the RFP with interested bidders;

WHEREAS, the Compact may disclose certain confidential information to the Bidder in connection with the Bidder's participation in the Bidder's Conference or in connection with the Bidder's preparation of a response to the RFP; and

WHEREAS, the Compact desires to maintain the confidentiality of such information to the greatest extent allowed by law.

² Please type in your name and other information where appropriate.

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

1. *Confidential Information.* The term “Confidential Information” means all non-public or proprietary customer information, trade secrets, executive session materials, information exempt from the Massachusetts Public Records Law, G.L. c. 4, §7, c. 26 and G. L. c. 66, §10, and commercial and financial information disclosed by the Compact in connection with the Investigation, whether disclosed directly or indirectly, in writing or orally, and which, if in tangible form, is marked by the Compact 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 Bidder promptly following disclosure. Confidential Information does not include:

- (i) information already in the possession of the Bidder at the time of disclosure by the Compact, as long as such information was not provided by the Compact;
- (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 Bidder;
- (iii) information received by the Bidder from a third party, unless such third party was under a duty of confidentiality with respect to such information; or
- (iv) summaries, analyses, or similar information derived by the Bidder from Confidential Information that does not reveal or disclose any proprietary fact of the Compact.

2. *Use of Confidential Information.* The Bidder shall use the Confidential Information exclusively in connection with preparation for and attendance at the Bidder’s Conference or in connection with the Bidder’s preparation of a response to the RFP. The Bidder 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 the Bidder uses to protect its own confidential information.

3. *Disclosure to Third Parties.* The Bidder shall not disclose any Confidential Information to any third party. If the Bidder requires assistance from a subcontractor to prepare for and participate in the Bidder’s Conference or to prepare a response to the RFP, the Bidder agrees that it will not disclose any Confidential Information to such subcontractor without the prior written consent of the Compact in its sole discretion. After having obtained the written consent of the Compact, the Bidder agree(s) that it will: (i) advise the subcontractor 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 Bidder may disclose Confidential Information only to subcontractors who execute Non-Disclosure Certificates.

4. *Ownership and Return of Confidential Information.* The Bidder acknowledges that it has no ownership or proprietary rights in the Compact’s Confidential Information, and that the Confidential Information is the sole property of the Compact. The Bidder shall not retain any materials relating to the Compact’s Confidential Information. The Bidder agrees that upon the

return of the Confidential Information, it shall continue to be bound by the terms of this Agreement.

5. *Scope of Agreement.* This Agreement is binding upon the employees, officers, directors, agents, representatives, attorneys, contractors and consultants of the Bidder. The Bidder understands and agrees that certain Confidential Information disclosed by the Compact may be owned by its Members and that the Compact is disclosing such information in its role as agent for the Members. The Bidder understands and agrees that such information shall be entitled to be treated as Confidential Information under this Agreement.

6. *Consent of the Compact.* As to any instance under this Agreement whereby the Bidder is required to obtain the consent of the Compact prior to taking certain actions, the Compact reserves the right to withhold consent for any reason.

7. *Term.* This Agreement shall become effective when executed by the Bidder and shall continue in effect until 3 years after the winning bid is selected or until sooner terminated by the written agreement of both parties hereto. 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.

8. *Required Disclosures.* Anything in this Agreement to the contrary notwithstanding, the Bidder 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 Bidder shall give the Compact written notice of such a required disclosure prior to making such disclosure so that the Compact 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 Bidder acknowledges that the Compact and its Members are subject to public records laws, including without limitation, G. L. c. 4, §7, cl. 26 and G. L. c. 66, §10.

9. *Representations and Warranties.*

The Bidder hereby represents and warrants to the Compact as follows:

- (i) the Bidder shall use the Confidential Information only in connection with the Bidder's participation in the Bidders Conference or in connection with the Bidder's preparation of a response to the RFP;
- (ii) this Agreement constitutes the legal, valid and binding obligation of the Bidder enforceable in accordance with its terms; and
- (iii) the Bidder 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.

10. *Governing Law; Enforcement.* 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 Compact in the event of a breach by the Bidder 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 Compact. The parties therefore agree that, in the event of such breach, the Compact, 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

11. *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
Cape Light Compact
P.O. Box 427
3195 Main Street
Barnstable, MA 02630
(508) 375-6636 (phone)
(508) 362-4136 (facsimile)
mags@cape.com (email)

FOR THE BIDDER:

[insert contact information]

Any 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.

12. *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 any 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.

13. *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.

14. *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.

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

16. *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.

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

18. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

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

FOR THE COMPACT:

FOR THE BIDDER:

Margaret T. Downey
Administrator
Dated: _____

Name: _____
Title: _____
Dated: _____

EXHIBIT A

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that the Confidential Information, as that term is defined in the Confidentiality Agreement between the Cape Light Compact and the **[Insert Bidder]** dated _____, 2006 (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, 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 **[Insert Bidder]** 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: _____

Attachment 5. Draft Schedule for Investigation

The following schedule is the Compact's current concept for the dates relating to the RFP and both Phases of the Investigation. However, the Compact expects to review these dates with the Contractor or Contractors and will negotiate any necessary adjustments.

Issue RFP	2/21	
Bidders' Conference	2/28	(Boston, MA)
Last date for questions	3/10	
Final answers to questions	3/15	
Proposals due	3/27	
Meeting to choose finalists	4/7	
Notify finalists for oral presentations	4/7	
Oral presentations	4/12	(Barnstable, MA)
Select contractor(s)	4/12	
Contract(s) executed	4/19	
Phase I work commences	4/19	
Phase I Initial Meeting	4/19 or 20	(Barnstable, MA)
Phase I Final Report	5/24	
Phase II work commences	5/25	
Phase II Initial Meeting	6/1	(Barnstable, MA)
Phase II Draft Report	6/22	
Phase II Final Report	6/29	
Additional Synapse memos	7/7	(if needed)
Presentation to Governing Board	7/12	(Barnstable, MA)