

COUNTY OF BARNSTABLE

PURCHASING

DEPARTMENT OF FINANCE

SUPERIOR COURT HOUSE

P.O. BOX 427

BARNSTABLE, MASSACHUSETTS 02630

Elaine Davis
Chief Procurement Officer

Phone: (508) 375-6637
Fax: (508) 362-4136
edavis@barnstablecounty.org

REQUEST FOR PROPOSALS

Barnstable County requests proposals for consulting services to conduct a regional market analysis and to develop a fiscal impact model for use by municipalities on Cape Cod.

Proposals will be received at the Superior Court House, Office of the County Commissioners, Purchasing Department, 3195 Main Street, P.O. Box 427, Barnstable, MA 02630, on or before **Wednesday, February 20, 2013 before 12 noon. No exceptions.**

NOTE: One original and six (6) copies of each proposal shall be submitted. As per MA General Law, Chapter 30B, proposals are to be submitted in two separate envelopes. One envelope must contain the technical proposal and be clearly labeled "Market & Fiscal Impact Project – Technical Proposal". Price proposals are to be submitted in a separate envelope, clearly labeled "Market & Fiscal Impact Project - Price Proposal". **NO faxed submissions will be accepted.**

The County of Barnstable reserves the right to accept or reject any or all proposals, to waive any informality contained therein, and to award the contract as decided to be in the best interest of the County.

All proposals submitted for this project are subject to the provisions of Massachusetts General Laws, Chapter 30B as amended.

The County of Barnstable fully complies with federal, state, and local laws and directives governing equal opportunity, affirmative action and non-discrimination in all county activities and actively solicits bids/proposals from MBE/WBE businesses in accordance with County policy.

Dated at Barnstable, Massachusetts, this 21st day of January, Two Thousand and Thirteen.

Elaine Davis
Chief Procurement Officer

**REQUEST FOR PROPOSALS
BARNSTABLE COUNTY
CONSULTING SERVICES FOR REGIONAL MARKET ANALYSIS AND FISCAL IMPACT
MODEL DEVELOPMENT**

Barnstable County, Massachusetts, through its Chief Procurement Officer and on behalf of the Cape Cod Commission is seeking proposals from qualified contractors to provide consulting services to complete a regional market analysis and develop a fiscal impact model for use by towns on Cape Cod, as described in the Contract attached hereto, in accordance with the terms and conditions of the attached Contract Documents.

Barnstable County reserves the right to cancel this RFP at any time until the proposals are opened and to reject any or all proposals if its Chief Procurement Officer determines that such action is in the best interest of Barnstable County. Barnstable County is an equal opportunity /Americans with Disabilities Act (ADA) employer.

This request includes the following sections:

- I. Background
 - II. Project Description/Scope of Work
 - III. Proposal Submission/Requirements
 - IV. Proposal Evaluation Process
- Attachment A – Certificate of Non-Collusion and Tax Compliance
Attachment B – Reference Form
Attachment C – Agreement

I. BACKGROUND

The Cape Cod Commission (Commission) is the regional land use planning and regulatory agency created in 1990 to serve the citizens and the 15 towns of Barnstable County, Massachusetts, which is more familiarly known as Cape Cod. The Commission is a department of Barnstable County and is funded by the Cape Cod Environmental Protection Fund.

The Cape Cod Commission Act, established by the Massachusetts General Court (the state legislature) and confirmed by a majority of Barnstable County voters, found that the region possesses unique natural, coastal, historical, cultural, and other values that are threatened by uncoordinated or inappropriate uses of the region's land and other resources. Among many other activities, the Commission is charged with preparing and implementing the Cape Cod Regional Policy Plan, reviewing and regulating Developments of Regional Impact, and recommending designations of certain areas as Districts of Critical Planning Concern.

The agency's mission is to keep a special place special and to protect the unique values and quality of life on Cape Cod by coordinating a balanced relationship between environmental protection and economic progress. The Commission carries out this mission by leading, supporting, and enforcing the development of regional plans, policies, regulations, and infrastructure to guide and manage growth, and by supporting the 15 towns with professional and cost-effective planning and technical support services.

More information can be found on the Commission website: <http://www.capecodcommission.org>

With the economic downturn the Cape has had a reprieve from large scale commercial development. Recent reports, however, suggest that investors and developers are again interested in the region as a location for large scale, national chain dominated, retail development. Where this entails mixed use redevelopment of existing and underperforming retail plazas this attention may be welcome, the assumption being that this sort of development is more consistent with our community character and goals for a balanced economy.

The Cape is a tourism destination. It is important to our economy that the product – Cape Cod – be unique, not just in terms of the natural environment, but in terms of the communities and businesses therein from restaurants to hotels to gift shops. The Regional Policy Plan (RPP), the overarching planning and regulatory ordinance for the county, outlines four basic principles for economic development:

- Protect and build on your competitive advantage
- Use your resources efficiently
- Foster balance and diversity
- Expand opportunity and regional wealth

There are three economic development goals in the RPP that reflect these principles. These goals are:

Low-impact and Compatible Development - To promote the design and location of development and redevelopment to preserve the Cape's environment and cultural heritage, use infrastructure efficiently, minimize adverse impacts, and enhance the quality of life for Cape Codders

A Balanced Economy - To promote a balanced regional economy with a broad business, industry, employment, cultural, and demographic mix capable of supporting year-round and quality employment opportunities

Regional Income Growth - To promote economic activity that retains and attracts income to the region and benefits residents, thus increasing economic opportunity for all

II. PROJECT DESCRIPTION/SCOPE OF WORK

This Request for Proposals seeks a consultant to perform the following services: market analysis, fiscal impact modeling and analysis, and training within six months of the fully executed contract.

THE PROJECT

This is a two part project to provide a better understanding of the Cape Cod economy and what the impact would be if significantly more retail space is added to the existing business mix. The two parts are to complete a market study of the Cape and to design a fiscal impact model that can be used by Cape Cod municipalities. The specific research questions for this project to try to answer are:

- How much more retail business can this market support?
- How much will new retail rely on capturing existing demand rather than filling new or un-met demand?

- How much office space and of what type can the market support?
- How much formula business can the Cape afford before local supporting businesses or competitors are lost?
- How valuable in terms of jobs and property tax revenues are formula businesses relative to independent, locally owned businesses?

TASK 1 – BASELINE ANALYSIS

Review the Regional Policy Plan and review existing studies and models – Tishler Barnstable study, FXM fiscal spreadsheet for Sandwich, Federal Reserve FIT model, RKG market analysis for Hyannis and for Buzzards Bay, and any others identified as relevant.

TASK 2 – MARKET ANALYSIS

Assess supply and demand for retail and office space on Cape Cod. Differentiate between the market dynamics of the Upper- and Mid-Cape and that of the Lower- and Outer-Cape. The assessment should include the demographic and socioeconomic characteristics of the local and second home population. *DELIVERABLES*: Cape-wide Market Analysis Report both in hard copy and digital

TASK 3 – FISCAL ANALYSIS & MODELS

Design a fiscal impact model that can be used in multiple towns to evaluate the net fiscal impact of proposed commercial development projects. Collect primary data from and run the model for the towns of Sandwich, Bourne, Barnstable, Yarmouth, and Dennis. This will involve data collection on the cost of services and service capacity in these towns. *DELIVERABLES*: Fiscal Impact Model with data on cost of services for five towns

TASK 4 – TRAINING ON USE OF FISCAL IMPACT MODEL

Provide two training sessions for Commission and municipal staff in the structure and use of the fiscal impact model developed. Be available for two months after the model is complete to answer questions regarding the use of the model. *DELIVERABLES*: Fiscal Impact Model Manual and 2 training sessions.

III. PROPOSAL SUBMISSION REQUIREMENTS

General Information

One original and six (6) copies of the original proposal shall be delivered to the Office of the County Commissioners at the address below no later than February 20, 2013 at 12:00 noon. Late proposals will not be accepted.

Barnstable County Purchasing Department
 Superior Courthouse
 3195 Main Street, P.O. Box 427
 Barnstable, MA 02630

Consistent with MA General Law, Chapter 30B, **proposals are to be submitted in two separate envelopes**. One envelope must contain the technical proposal and be clearly labeled

“Market & Fiscal Impact Project – **Technical Proposal.**” Price proposals are to be submitted in a separate envelope, clearly labeled “Market & Fiscal Impact Project - **Price Proposal.**”

Addenda - Any supplemental instructions, amendments or changes in the Request for Proposals, or attached documents, shall be in the form of written addenda to this Request. If issued, such addenda shall be sent by email or fax to all persons on record as having received a Request for Proposals.

The Chief Procurement Officer shall unconditionally accept a proposal without alteration or correction, except as provided in this paragraph. A Proposer may correct, modify or withdraw a proposal by written notice received in the County Commissioner’s Office prior to the time and date for the opening of proposals. After the opening of proposals, a Proposer may not change any provision of the proposal in a manner prejudicial to the interests of the Chief Procurement Officer, fair competition, and in compliance with MGL chapter 30B. The Chief Procurement Officer shall waive minor informalities or allow the Proposer to correct them.

The Chief Procurement Officer shall not open the proposals publicly per M.G.L. c. 30B Section 6, but shall open them in the presence of one or more witnesses at the time specified herein. Until the completion of the evaluation process or until the time for acceptance specified herein, the contents of the proposals shall remain confidential and shall not be disclosed to competing Proposers.

It is the responsibility of every respondent who receives this RFP electronically to check for any addenda or modification to this solicitation. Barnstable County accepts no liability to provide accommodation to respondent who submit a proposal based upon an out of date solicitation document.

Respondents may not alter (manually or electronically) the RFP language or any documents. Unauthorized modifications to the body of the RFP, specifications, terms or conditions, or which change the intent of this RFP are prohibited and will disqualify a proposal.

The Chief Procurement Officer may cancel the Request for Proposal, or may reject in whole or in part any and all proposals if, she determines the cancellation or rejection serves the best interests of the County. Should funds for the services called for in this RFP and any resulting contract not be appropriated or be significantly reduced, Barnstable County reserves the right to cancel any contract between said agencies and the Selected Proposer.

Non-Price Technical Proposal Requirements

1. Cover letter including name, address, and telephone number of consultant team, firm, or individual and principal contact person.
2. Signed (original and handwritten) Certificate of Non-Collusion and Tax Compliance (Attachment A.)
3. Type of organization (i.e. corporation, partnership, joint venture, sole proprietor, etc.), history, ownership and background including experience that clearly demonstrates the respondent is qualified to provide these services with respect to work being requested.
4. Project narrative indicating an understanding of the project scope, approach, and other comments the Proposer deems relevant.
5. Scope of Services to be provided outlining specific tasks and deliverables including a timeline detailing project milestones, meetings and deliverables.
6. Resumes for each individual to be assigned to the project and a staffing plan linking

individuals to specific portions of the project scope.

7. Listing and description of previous similar assignments including: location and project description, consultant team's involvement, start/end dates of project. A minimum of three client references are to be provided using Attachment B – Reference Form.

Price Proposal

Under separate sealed cover, clearly marked "Market & Fiscal Impact Project - Price Proposal" the proposer should submit a price proposal. Proposers should provide either a fixed fee or not-to-exceed fee. Proposals should clearly identify all tasks to be performed and the basis for fees charged, billing rates for personnel to be assigned to the project, direct cost expenses, and any other costs.

Insurance Requirements

Each Proposer shall submit a sample "Certificate of Insurance" for the items listed below. Before the selected proposer begins work, the insurance company shall provide to the County a Certificate of Insurance indicating that such insurance is in force. Arrangements will be made with the insurance company to notify the County of any termination or material change in the aforementioned insurance at least ten days prior to the date on which the termination or change takes place.

Workers Compensation: The selected proposer will furnish the County with Certificates of Insurance showing that all of its employees who will be providing services on this project are protected under Workers' Compensation Insurance Policies, in statutorily required amounts.

General Liability: The selected proposer will furnish the County with Certificates of Insurance that provide a limit of liability as follows for claims arising from incidents involving employees and others acting on behalf or under the direction of the selected proposer.

Bodily Injury: not less than \$500,000 per person, \$1,000,000 per accident/occurrence

Property Damage: not less than \$500,000 per accident/occurrence.

Questions Regarding Request for Proposals

All questions as to the interpretation of the Request for Proposal, Purchase Description and Specifications, Evaluation Criteria and all other Contract Documents shall be submitted in writing no later than **February 11, 2013** to:

Elaine Davis, Chief Procurement Officer
3195 Main St., Box 427
Barnstable, MA 02630
Email: edavis@barnstablecounty.org
Phone: (508) 375-6637
FAX: (508) 362-4136

Written answers to such questions shall be issued as an addendum and sent to each person on record as having received a Request for Proposal via email or fax.

IV. EVALUATION PROCESS

Basis for Acceptance: Any proposal made will be accepted only on the basis that the Proposer

represents that it is made in good faith without fraud, collusion or connection of any kind with any other Proposer for the same work; that the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person, firm or corporation; that no other person, firm or corporation has any interest in the contract; that no officer, agent or employee of the County is financially interested in the contract; that the Proposer is fully informed in regard to all provisions of the Contract Documents, including, without limitation, the specifications and drawings, if any; the damages, bonds and insurance, if any. No proposal shall be deemed responsive unless a Proposer has certified and signed the statutory required Non-Collusion Certificate (Attachment A.) In accordance with M.G.L. c.30B, the awarding of the contract is subject to the approval of the Barnstable County Commissioners.

Rule for Award: Award will be made to the most responsive, responsible Proposer or Proposers offering the most advantageous proposal response, based on the evaluative criteria.

Contract Award: The Chief Procurement Officer shall award the contract by written notice to the selected Proposer within 60 days of the RFP deadline. The parties may extend the time for acceptance by mutual agreement. In accordance with M.G.L. c.30B, the awarding of the contract is subject to the approval of the Barnstable County Commissioners.

Contract Terms and Conditions: If awarded the contract, the selected proposer will be expected to execute a contract substantially the same as in Attachment C. This contract will incorporate by reference the specifications of this RFP and approved scope of services submitted by the selected proposer. The consultant contract resulting from this RFP is expected to expire one year from execution date. Barnstable County may choose to renew this contract up to two times for additional one year periods; however, this renewal or extension option shall be exercised at the sole discretion of the Barnstable County Commissioners and shall not be subject to the agreement or acceptance of the contractor, pursuant to Chapter 30B, Section 12. Exercise of this option shall be based on a determination that it is more advantageous to renew or extend the contract than to undertake a new procurement. The contract resulting from this RFP shall be canceled if funds are not appropriated or otherwise made available to support continuation of this agreement.

Screening Proposals: Utilizing the proposal submission requirements and minimum (quality) criteria incorporated herein, the Evaluation Committee, to be designated by 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 Evaluation Committee, fails to include the information or documentation specified in the submission requirements shall be determined to be non-responsive and shall be rejected.

Any Proposer who fails to meet any of the standards set forth as minimum (quality) criteria shall be determined to be non-responsible and shall be rejected.

The County reserves the right to request additional information, should a proposal reach the state of final evaluation.

Minimum (Quality) Criteria:

1. A complete proposal including all items listed under Proposal Submission Requirements

- including all required documentation and certifications.
2. A Non-Price Technical proposal that clearly demonstrates an understanding of the Project Description/Scope of Work outlined in the RFP.
 3. Proposer must have and demonstrate a minimum of five years' experience with specific expertise in:
 - Market Research
 - Market Impact Analysis
 - Fiscal Impact Analysis
 4. Satisfactory references (attachment B).

Comparative Criteria:

1. Understanding and responsiveness to the requirements outlined in the RFP

Highly Advantageous - Submission of an outstanding proposal that exceeds the minimum requirements defined in this document and provides an innovative approach to meeting the work requested in this RFP.

Advantageous – Submission of a well written, clear proposal that responds to all aspects of the RFP and shows a standard understanding of the work requested in this RFP.

Not Advantageous – Submission of a proposal that simply meets minimum requirements.

2. Knowledge, experience and training

Highly Advantageous – Demonstrated knowledge of seasonal economies and experience working on project identical to those requested in region's similar to Cape Cod.

Advantageous – Strong examples of work similar to that requested in this RFP over a period in excess of the minimum requirements.

Not Advantageous – Submission of a proposal that simply meets minimum requirements.

3. References

Highly Advantageous - Five or more highly positive references from projects similar in size and scope to that being requested, one of which is a municipal or other government agency

Advantageous - Three positive references from projects similar in size and scope to that being requested, at least one of which is a municipal or other government agency

Not Advantageous – Submission of a proposal that simply meets minimum requirements.

4. Market Analysis

Highly Advantageous - Clear and exemplary documentation illustrating experience and skill in market research and analysis with examples of work included.

Advantageous - Complete documentation illustrating experience and skill in market research and analysis.

Not Advantageous – Submission of a proposal that simply meets minimum requirements.

5. Fiscal Impact Modeling

Highly Advantageous - Clear and exemplary documentation illustrating experience and skill at the development of fiscal impact models and fiscal impact analysis for municipalities.

Advantageous - Complete documentation illustrating experience and skill at the development of fiscal impact models and fiscal impact analysis for municipalities.

Not Advantageous – Submission of a proposal that simply meets minimum requirements.

6. Timeframe

Highly Advantageous – Proposer is able to begin work on this project immediately upon contract execution and complete work within 3 months.

Advantageous – Proposer is able to begin work on this project within one month of contract execution.

Not Advantageous – Submission of a proposal that simply meets minimum requirements.

7. Experience with Government agencies

Highly Advantageous - Vendor has had significant, 10+ years, working with similar sized or larger government agencies.

Advantageous - Vendor has had experience working with similar sized or larger government agencies.

Not Advantageous - Submission of a proposal that simply meets minimum requirements.

ATTACHMENT A
CERTIFICATE of NON-COLLUSION AND TAX
COMPLIANCE

Pursuant to MGL Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

I certify under the penalties of perjury that this 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 Proposal, or Corporate Officer:

X _____

Telephone: _____

Social Security Number Or Federal Identification Number:

SSN or EIN _____

Date: _____

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

ATTACHMENT B:
REFERENCE FORM

Contractor: _____

Contractor must provide references for:

All current clients for which the Proposer is providing services.

Reference: _____ Contact: _____
Address: _____ Phone: _____
_____ Fax: _____

Description and date(s) of supplies or services provided:

Reference: _____ Contact: _____
Address: _____ Phone: _____
_____ Fax: _____

Description and date(s) of supplies or services provided:

Reference: _____ Contact: _____
Address: _____ Phone: _____
_____ Fax: _____

Description and date(s) of supplies or services provided:

Attach additional sheets if necessary.

ATTACHMENT C

AGREEMENT

AGREEMENT
BETWEEN

Barnstable County through
Cape Cod Commission
3225 Main Street
Barnstable, MA 02630

and

THIS AGREEMENT, made this _____ day of _____ 2013 by and between _____ (hereinafter referred to as Contractor), and Mary Pat Flynn, Sheila Lyons and William Doherty as they are the Commissioners of Barnstable County, acting by and through the Cape Cod Commission (hereinafter referred to as the Commission) but without any personal liability.

WITNESSETH THAT:

WHEREAS, the Commission is the regional planning agency charged with ensuring a balanced economy, and

WHEREAS, the Commission is interested in better understanding the retail market on Cape Cod and the fiscal impact of development project on municipal budgets, and

WHEREAS, the Commission is in need of technical expertise in market analysis and fiscal impact analysis, and

WHEREAS, the Contractor has been selected through a competitive procurement process to perform this assistance,

NOW THEREFORE, the Commission, and the Contractor do mutually agree as follows:

1. Employment of Contractor. The Commission hereby agrees to engage the Contractor to perform the services hereinafter set forth in the Scope of Services. Contractor shall not be considered an employee of Barnstable County. Contractor hereby agrees to hold the Commission harmless from any claims regarding worker's compensation benefits, unemployment compensation benefits, retirement benefits, or any other benefit normally attributable to the status of "employee" and Contractor specifically agrees to pay for all damages incurred by the Commission, including costs, benefits, and reasonable attorney fees in the event the Contractor files such claim.

2. Scope of Services. The Contractor shall perform the scope of services as set forth in Barnstable County's Request for Proposals dated _____ and its proposal dated _____, incorporated herein by reference.

3. Time of Performance. Work in connection with the Agreement shall begin upon execution of this Agreement and continue until _____ unless an extension in time is agreed to in writing by

both the Commission and the Contractor.

4. Payment. The Commission shall compensate the Contractor for services provided under Section 2, Scope of Services, a maximum not-to-exceed fee of \$. Travel and other expenses authorized shall be within the total contract limiting fee. Upon acceptance of the Contractor's invoice, payment will be made within thirty (30) days. If an invoice is not accepted by the Commission within fifteen (15) days, it shall be returned to the Contractor with a written explanation for the rejection. At the end of each County fiscal year Contractor must submit any outstanding invoices for services performed or delivered during the fiscal year (July 1-June 30) to the Commission no later than July 31st.

5. Termination or Suspension of Contract for Cause. If through any sufficient cause, the Contractor or the Commission shall fail to fulfill or perform its duties and obligations under this Contract, or if either party shall violate or breach any of the provisions of this Contract, either party shall thereupon have the right to terminate or suspend this Contract, by giving written notice to the other party of such termination or suspension and specifying the effective date thereof. Such notice shall be given at least fifteen (15) calendar days before such effective date.

6. Termination for Convenience of Commission. The Commission shall have the right to discontinue the work of the Contractor and cancel this contract by written notice to the Contractor of such termination and specifying the effective date of such termination. In the event of such termination or suspension of this Contract, the Contractor 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 Contract up to and including the date of termination or suspension.

7. Changes. The Commission may, from time to time, require changes in the Scope of Contractor Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by the Commission and the Contractor, shall be incorporated in written amendments to this Contract.

8. Non-Discrimination in Employment and Affirmative Action. The Contractor shall take affirmative action to ensure that qualified applicants and employees are treated without regard to age, race, color, religion, sex, marital status, sexual orientation, national origin, disability, or Vietnam Era Veteran status. The contractor agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment including but not limited to: Title VII of the Civil Rights Act of 1964, as amended; Massachusetts General Laws Chapter 151B§(1); the Americans with Disabilities Act of 1990; and all relevant administrative orders and executive orders including Executive Order 246.

9. Subcontracting. None of the services to be provided by the Contractor pursuant to this Contract shall be subcontracted or delegated in whole or in part to any other organization, association, individual, corporation, partnership or other such entity without the prior written approval of the Commission. No subcontract or delegation shall relieve or discharge the Contractor from any obligation or liability under this Contract except as specifically set forth in the instrument of approval. If this Contract is funded in whole or in part with federal funds, Contractor further agrees to comply with the provisions of the Office of Management and Budget Circular A-110, as amended, with respect to taking affirmative steps to utilize the services of small and minority firms, women's business enterprises and labor surplus area firms. All subcontracts shall be in writing and shall contain provisions which are functionally identical to, and consistent with, the provisions of this Contract. The Commission shall have the right to obtain a copy of the subcontract upon request.

10. Interest of Members of Commission and Others. No officer, member or employee of the Commission, IT, and no member of its governing body of the locality or localities in which the Project is situated or being carried out who exercises any functions or responsibility in the review or approval of the undertaking or carrying out of the Project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, direct or indirect, in this Contract or the proceeds thereof.

11. Interest of Contractor. The Contractor covenants that it presently has no interest and shall not acquire any interest directly or indirectly which would conflict in any manner or degree with the performance of its services hereunder.

12. Assignability. The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Commission thereto; provided, however that claims for money due or to become due the Contractor from the Commission under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Commission.

13. Recordkeeping, Audit, and Inspection of Records. The Contractor shall maintain books, records, and other compilations of data pertaining to the requirements of the Contract to the extent and in such detail as shall properly substantiate claims for payment under the Contract. All such records shall be kept for a period of seven (7) years or for such longer period as is specified herein. All retention periods start on the first day after final payment under this Contract. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the applicable retention period, whichever is later. If this contract is funded in whole or in part with state or federal funds, the state or federal grantor agency, the Commission or any of its duly authorized representatives or designees, shall have the right at reasonable times and upon reasonable notice, to examine and copy, at reasonable expense, the books, records and other compilations of data of the Contractor which pertain to the provisions and requirements of this Contract. Such access shall include on-site audits, review and copying of records.

14. Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by the Contractor under this Contract which the Commission requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the Commission.

15. Publication, Reproduction and Use of Material. No material produced in whole or in part under this Contract shall be subject to copyright in the United States or in any other country. The Commission shall have the unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data or other materials prepared under this Contract.

16. Political Activity Prohibited. None of the services to be provided by the Contractor shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

17. Anti-Boycott Warranty. During the term of this Contract, neither the Contractor nor any "affiliated company" as hereafter defined, shall participate in or cooperate with an international boycott, as defined in Section 999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended by the Tax Reform Act of 1986, or engage in conduct declared to be unlawful by Sections 2 and 3 of Chapter 151E, Massachusetts General Laws. As used herein, an "affiliated company" shall be any business entity of which at least 51% of the ownership interested is directly or indirectly owned by the Contractor or by a person or persons or business entity or entities which directly or indirectly own at least 51% of the ownership interests of the Contractor.

18. Choice of Law. This Contract shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Contractor and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which the Commission is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This paragraph shall not be construed to limit any rights a party may have to intervene in any action, wherever pending, in which the other is a party.

19. Force Majeure. Neither party shall be liable to the other nor be deemed to be in breach of this

Contract for failure or delay in rendering performance arising out of causes factually beyond its control and without its fault or negligence. Such causes may include, but are not limited to: acts of God or the public enemy, wars, fires, floods, epidemics, strikes, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

20. Compliance with Laws. The Contractor shall promptly comply with all applicable laws, rules, regulations, ordinances, orders and requirements of the Commonwealth and any state or federal governmental authority relating to the delivery of the services described in this Contract subject to section 18 above. Unless otherwise provided by law, the Contractor shall promptly pay all fines, penalties and damages that may arise out of or are imposed because of the Contractor's failure to comply with the provisions of this section and, shall indemnify the Commission against any liability incurred as a result of a violation of this section. If the Contractor receives federal funds pursuant to this Contract, Contractor understands and agrees to comply with all federal requirements including but not limited to audit requirements. Not-for-Profit entities that receive federal funds from the Commission must comply with the audit requirements outlined in the Office of Management and Budget OMB Circular A-133.

21. Headings, Interpretation and Severability. The headings used herein are for reference and convenience only and shall not be a factor in the interpretation of the Contract. If any provision of this Contract is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law.

22. Licensing. All software provided under this agreement shall be licensed to the Barnstable County Information Technology Department, owned by Barnstable County, and used in agreement with the licensing terms of the software manufacturers.

23. Data ownership. All data contained in the proposed solution shall be and remain the property of Barnstable County and the Cape Cod Commission. The proposer retains no right to use or access the data once the scope of this contract is complete.

IN WITNESS WHEREOF, the Commission and Contractor have executed this Agreement this _____ day of _____ in the year two thousand and thirteen.

BARNSTABLE COUNTY COMMISSIONERS:

FOR THE COMMISSION:

William Doherty, Chair

Paul Niedzwiecki, Executive Director

Mary Pat Flynn

Date

Sheila Lyons

Date

FOR THE CONTRACTOR:

Date