

**COUNTY OF BARNSTABLE**  
**PURCHASING**  
**DEPARTMENT OF FINANCE**

**Elaine Davis**  
Chief Procurement Officer

SUPERIOR COURT HOUSE  
P.O. BOX 427  
BARNSTABLE, MASSACHUSETTS 02630

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

**Invitation for Bids**

**Barnstable County is soliciting sealed bids for food and beverage vending machine services and maintenance for the Barnstable County Complex, the Barnstable County Second District Courthouse in Orleans, MA, the Fire Training Academy and the Rest Area on Route 6A (East) in Barnstable, MA.**

Bids 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 **April 30, 2015 at 10:30 AM, no exceptions.**

Bid specifications may be obtained from the Barnstable County Purchasing Department, Superior Court House, P.O. Box 427, Barnstable, Massachusetts 02630.

Sealed envelopes containing bids shall be clearly marked "**Bid – Vending Machines- 15**".

**NOTE: One original and one (1) copy of each bid shall be submitted. NO faxed proposals will be accepted.**

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

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 April 10, 2015.

Elaine Davis  
**Chief Procurement Officer**

**COUNTY OF BARNSTABLE**  
**Beverage and Food Vending Machine Services and Maintenance**

**INSTRUCTIONS TO BIDDERS**

Barnstable County is soliciting sealed bids for food and beverage vending machine services and maintenance for the Barnstable County Complex, the Barnstable County Second District Courthouse in Orleans, MA, the Fire Training Academy and the Rest Area on Route 6A (East) in Barnstable, MA for the period of July 1, 2015 through June 30, 2016, with the option to renew for two additional one year periods.

Bids must be submitted on the enclosed Bid Form (Attachment B) in a sealed envelope clearly labeled “**Bid – Vending Machines 15**” and addressed to Elaine Davis, Chief Procurement Officer, Barnstable County Purchasing Department, 3195 Main Street, Barnstable, MA 02630. All bids must contain one original and one copy of the bid documents, a Certificate of Non-Collusion and Tax Compliance (Attachment B), Bid Form (Attachment A) and all other documents required in the following bid documents. The deadline for receipt of bids is **April 30, 2015 at 10:30AM**. *No bid shall be considered if it arrives after the time set for the receipt of bids. No faxed copies will be accepted.*

**Award will be made to the responsive and responsible bidder offering the highest percentage of the gross profits. Percentage will remain firm for the entire contract period.**

The award will be made within thirty (30) calendar days of the bid opening or all bids shall be rejected. Extensions of time may be made by the mutual written consent of the County and the lowest responsible bidder. If the lowest bidder withdraws their bid, or refuses award of Contract, the County shall have the right to award the Contract to the next lowest responsible bidder or to reject all bids and re-bid the Contract.

If, at the time of the scheduled bid opening, County Offices are closed due to uncontrolled events, such as national or local disaster, fire, snow, ice, wind, or building evacuation, the bid opening will be postponed until 9:00AM on the next normal business day. In that case, bids will be accepted until that time.

The bidder shall sign the bid forms correctly. If an individual submits the bid, his/her complete business address shall be given in addition to his/her signature. If submitted by a firm or partnership, the signature and complete business address of each member of the firm or partnership must be given. If submitted by a corporation, the person signing the bid documents shall be duly authorized (e.g. an officer or other signatory) to sign for the corporation; the signing individual's certificate or authority to execute such papers shall accompany the bid documents.

It is the responsibility of every bidder who receives this bid electronically to check for any addenda or modification to this solicitation, if they intend to respond. Barnstable County accepts no liability to provide accommodation to bidders who submit a response based upon an out of date solicitation document.

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

**CHANGES TO BID:**

If any changes are made to this Invitation for Bids, an addendum will be issued. Addenda will be emailed, faxed or mailed to all bidders of record. Bidders shall include a statement in their bid packages that they acknowledge receipt of all such clarifications and have incorporated them in their bids.

**REQUEST FOR INFORMATION:**

All requests for information during the bidding period shall be submitted in writing to the County no later than **April 23, 2015**. Answers to all questions will be answered by addenda sent to all bidders of record. Bidders shall include a statement in their bid packages that they acknowledge receipt of all such clarifications and have incorporated them in their bids. Requests for Information shall be sent attention to:

Elaine Davis, Chief Procurement Officer  
Barnstable County Purchasing Department  
PO Box 427, 3195 Main Street  
Barnstable, MA 02630  
FAX: (508) 362-4136  
Email: edavis@barnstablecounty.org

**WITHDRAWAL OF BIDS:**

A bidder may correct, modify, or withdraw a bid by written notice received by the County prior to the time and date set for the bid opening. After the bid opening, a bidder may not change any provision of the bid in a manner prejudicial to the interests of the County or fair competition. Minor informalities may be waived or the bidder will be allowed to correct them. If a mistake and the intended bid are clearly evident on the face of the bid document, the mistake will be corrected to reflect the intended correct bid, and the bidder will be notified in writing; the bidder may not withdraw the bid. A bidder may withdraw a bid if a mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident.

**REJECTION OF BIDS:**

The County reserves the right, at their sole discretion, to cancel this Invitation for Bids, or reject in whole or in part any and all bids. Bids may be rejected if they show any omission, alterations of form, addition or deductions not called for, conditional or uninvited alternate bids, or irregularities of any kind.

Bids must be submitted unconditionally. No bidder may withdraw bid within thirty (30) days after the scheduled closing time for receipt of bids.

**BID SUBMISSION REQUIREMENTS:**

Failure to provide any of the requested documents with your bid may result in the determination that the bidder is non-responsive unless the County deems such failure to be a minor informality. The County will contact references to determine whether the bidder is responsible.

1. A list of all entities with whom the bidder had had vending contracts over the last three years including name of company, contact person, telephone number and scope, duration and amount of the contract.
2. Descriptive literature for vending machine supplies, sample list of vending items and prices that the contractor proposes to implement for the various vending machines. (see sample)
3. Bidder must provide the manufacturer, brand, model number, catalog cut or product literature, age serial number, energy consumption data and documentation of energy consumption data for each machine to be installed.
4. Contact person for this contract and a person who can supply additional information on request (includes name, title, address, and telephone number of the individual(s)).
5. Bidder must include a detailed description of the proposed services to be supplied by the bidder, the sequence and scheduling of those services, and the information on project staffing and management.
6. Certificate of Non-collusion and Tax Compliance (statutory requirement of MGL Chapter 30B).

**SCOPE OF SERVICES:**

In the preparation of your bid proposal, the following should be taken into consideration.

**BACKGROUND INFORMATION:**

1. The County wishes vending service to be available on the Barnstable County Complex in Barnstable, MA, at the Second District Courthouse in Orleans, MA, at the Fire Academy in Barnstable, MA and at the Rest Area on Route 6 (East), Barnstable, MA beginning July 1, 2015 and ending June 30, 2016, with an option to renew for two 1-year fiscal year periods (July 1, 2016 through June 30, 2017), and (July 1, 2017 through June 30, 2018) unless terminated as herein provided.
2. The daily number of persons estimated to be at the County Complex is approximately 1000 to 1,500 personnel and visitors.
3. The Barnstable County buildings are open from 8:00 A.M. to 4:30 P.M. daily, excluding weekends and holidays.
4. This contract grosses approximately \$25,000.00 per year.

**LOCATION AND CONTENTS**

1. The contractor shall have the ability to provide vending equipment at various locations as determined and requested by the Barnstable County Director of Facilities. Such machines may include cold drinks, food, candy and snack foods. Cigarette machines will not be permitted.

Vending machines are requested at the following locations:

## **SUPERIOR COURTHOUSE**

**Basement Level:** Cold Drink (fruit juices, soda, water)  
Snack Machine (healthy snacks, cookies, crackers, chips, gum, mints)  
**Second Level:** Soda/Snack Combo Machine

## **REGISTRY OF DEEDS/PROBATE BUILDING**

**Basement Level:** Snack Combo Machine  
Cold Drink (fruit juices, soda, water)

## **FIRST DISTRICT COURTHOUSE**

**1<sup>st</sup> Level:** Cold Drink (fruit juices, soda, water)  
Snack Machine (healthy snacks, cookies, crackers, chips, gum, mints)  
**2<sup>nd</sup> Level:** Snack/Soda Combo Machine

## **SECOND DISTRICT COURTHOUSE**

**Basement Level:** Snack Machine (healthy snacks, cookies, crackers, chips, gum, mints)  
Cold Drink (fruit juices, soda, water)

**FIRE ACADEMY** Snack Machine (healthy snacks, cookies, crackers, chips, gum, mints)

## **REST AREA**

**Outside Area:** Refrigerated Candy Machine  
Ice Cream Machine  
Cold Drink (fruit juices, soda, water)

## **VENDING SALES BID SPECIFICATIONS**

1. **SITE VISITATION:** The contractor must visit the Barnstable County Complex sites to fully acquaint themselves with all existing conditions, facilities, and restrictions and to assure themselves that the sites are adequate for their operations. To schedule an appointment for visiting the sites prior to the bid opening, you should contact Mr. Steve Tebo, Director of Facilities, Barnstable County (508) 375-6603.
2. **BIDDER'S QUALIFICATIONS:** Consideration will only be given to those companies who have at least three years prior experience in operating vending enterprises and have demonstrated experience to satisfactorily provide the proposed services. A list of all institutions currently under contract shall be provided. Certified financial statements, including a balance sheet and a profit and loss statement, from the most current fiscal year, will be required when the bid proposal is submitted. The bidder must not be in default to the Commonwealth of Massachusetts or its agencies.
3. **SECURITY**  
The County property site designated for the vending operation will be safely guarded from loss and the company selected will be responsible for all damage to such property. The County will provide the same type and level of security service for the vending equipment as it provides for the rest of the complex.
4. **CONDITIONS OF OPERATION**  
The contractor shall, for the period of this contract, have the sole and exclusive right to operate and conduct county vending, which shall be the official county vending service, serving the needs of the county's personnel and visitors.
5. **SAMPLING AND ANALYSIS**  
Each bidder must state the commercial name of the product quoted, name, and address of operator or agent from whom the product will be purchased and in addition shall furnish an analysis of the product, date of analysis, by whom made and their address.

Samples of the product to be delivered may be taken by a representative of the County, either prior to delivery or while it is being delivered in the storage facilities at destination, or will be taken from the storage facilities to which the product has been delivered as determined from time to time by the Purchasing Agent. Bidder agrees to

furnish the necessary manual labor, without additional cost required to assemble the physical samples, which is to be performed under the direction of the County representative.

The representative of the County taking the samples, shall be given the opportunity, while sampling, to affix his signature to the delivery slip each item represented in his sample.

Any product after the sampling and analysis, not found meeting the requirements of the contract shall be sufficient cause for the cancellation of the contract at the option of the Purchasing Agent.

If any product is found that does not meet the analysis submitted by the bidder in his proposal, the Purchasing Agent may at his option exercise his right to reject the product and require that all or any part thereof shall be removed promptly by and at the expense of the contractor and replace it forthwith with a product satisfactory to the Purchasing Agent, or to retain the product and compensate the contractor in an amount as determined by the Purchasing Agent and the County Commissioners.

## **6. CONTRACTOR RESPONSIBILITIES**

The contractor will procure and maintain at his expense, all permits, licenses, or other authorities necessary for the lawful performance of this contract.

The contractor shall operate the vending machine service in an efficient, business like manner, offering for sale such foods, confections, beverages, and miscellaneous items for which there is a reasonable demand. All products offered for sale shall be subject to approval by the County.

The contractor shall maintain food on the premises to provide sufficient quantities for 48 hours of operation at the site. The contractor shall agree to stock the machines with food and drink of quality and character that shall at all times meet with the approval of the County. No signs or advertisements are to be erected on the premises without the prior consent of the County Commissioners. The outside logo on the vending machines will be a standard corporate logo.

All merchandise kept or sold shall be subject to inspection and approval or rejection by the County during all times that the vending service is in operation. Rejected merchandise shall be removed from the vending machines and shall not be returned for sale.

The Contractor shall keep the areas under its jurisdiction clean and sanitary. Machines shall be serviced/filled upon request; this level of service may require more than once a week service. Contractor must respond to a call for replenishing machines no more than 24 hours after receiving such a call from the County.

The Contractor shall accept full responsibility for the installation and efficient operation of all equipment used. The contractor must have trained competent, service personnel available within twenty-four hours notice to make repairs as needed. Contractor's employees shall, at all times, be polite and courteous in their dealing with patrons of the vending machines. Bidders must detail a guaranteed repair response time during all operating hours, including weekends and holidays.

The Contractor is engaged as an independent contractor and will be responsible for any federal, state and local taxes and fees applicable to payments hereunder. The County is exempt from federal excise taxes. Exemption certificates will be signed when necessary, following the award of the contract.

**The Contractor shall agree that any breach of contract duties or failure to perform contract duties, as set forth herein shall entitle the County of Barnstable to recover from the contractor all lost profits, or, when lost profits cannot be determined with certainty, the County shall be entitled to recover an amount equal to twenty-five percent 25% of the gross receipts by all vending machines in the facility for the period affected by the contractor's breach or failure to perform. For the purpose of calculating the amount, gross receipts shall be computed by multiplying the highest gross sales for any month of the contract by the number of months the contract is affected by the contractor's breach or failure to perform. The County's recovery shall be equal to twenty-five percent 25% of that amount.**

**The contractor shall provide a means, acceptable to the County for patrons to receive refunds for faulty machines and for any product that is not up to standard.**

The County will pay existing services of electricity and water supplied to the vending areas. The vendor shall pay any other utilities (telephone, etc), but without liability on the County's part arising from temporary interruption thereof on account of breakdown, power failure or like causes. Successful bidder agrees, in the use of such utilities, that they will exercise the same degree of care and economy as would be exercised if they were paying for such utilities.

Except for utilities, the contractor shall be responsible for all bills for materials, supplies, equipment taxes, etc., to or at such designated premises.

The contractor shall be responsible for any or all damage to site resulting from its operation, and shall be promptly repaired by the contractor at its own expense.

The contractor shall consider any recommendations by the County regarding dismissal of any of the contractor's employees whom the County finds undesirable. In this matter, the County's recommendation shall be final and binding unless there are mitigating circumstances which will be made known to the County.

The contractor shall not sublet any of the premises assigned to him for conducting his business without the written permission of the County.

The contractor shall be responsible for all breakage and damage to property (real and personal) that may occur as a result of the fault, negligence, or non-performance of duty on the part of him or his employees in connection with the performance of the work herein specified. Repair or replacement of any such damage shall be commenced by the contractor within forty-eight (48) hours of notification of such damage, and shall be completed expeditiously to the satisfaction of the Director of Facilities.

The Director of Facilities or (designee) will conduct periodic inspections to determine that the vendor is complying with all provisions of the vendor contract.

**7. PRICING POLICIES:**

The contractor shall have absolute and exclusive management authority in all respects of the business of the County vending services. However, the selling price of food shall be consistent with that of vending services in the state system and other municipal buildings. The price on products in the vending machines shall remain unchanged. A Contractor may petition the County Commissioners for a price change due to **EXTREME** market fluctuations.

**8. COMMISSIONS PAYABLE TO THE COUNTY:**

- a. In consideration for the privilege of operating the County vending services, the contractor agrees to pay the County a commission based on gross sales. Gross sales are defined as total receipts less returns and allowances. All taxes applicable to a sale shall not constitute a part of gross sales for the purpose of calculations of the percentage payment herein provided.
- b. **Commissions shall be calculated and paid monthly.** Each commission shall be remitted no later than the tenth (10<sup>th</sup>) day of the following month. Commission checks shall be made payable to the Barnstable County and forwarded to the Barnstable County Finance Department at P.O. Box 427, Barnstable, MA 02630. Said commission check shall be substantiated by a detailed report of sales by vending machine, number of products sold and price of the product sold and shall clearly state the dates covered by this report.
- c. The contractor agrees that all accounts and records pertaining or relating to its operation under the terms of the agreement shall be open to inspection during ordinary business hours by the Barnstable County Treasurer and/or her duly authorized representative.
- d. The contractor shall maintain proper accounts and records pertaining or related to its operation under the terms of this contract. Records shall include cash register tapes of daily transactions.

**9. ENERGY EFFICIENCY REQUIREMENTS: Barnstable County complies with the current Energy Star Eligibility**

Criteria and purchases Energy Star qualified products. All vending machines must be Energy Star compliant as stated below for the entire term of the contract.

**The Vendor Must:**

Provide vending machines that earn the ENERGY STAR and meet the ENERGY STAR specifications for energy efficiency as outlined below. The vendor is encouraged to visit [energystar.gov](http://energystar.gov) for complete product specifications. An updated list of qualifying products can be found at:

[http://www.energystar.gov/ia/products/prod\\_lists/vending\\_prod\\_list.xls](http://www.energystar.gov/ia/products/prod_lists/vending_prod_list.xls)

Energy Consumption	
Current Criteria—Effective April 1, 2004	New Criteria—Effective January 1, 2007
$Y = 0.55 [8.66 + (0.009 \times C)]$	$Y = 0.45 [8.66 + (0.009 \times C)]$

Y = 24 hr energy consumption (kWh/day) after the machine has stabilized

C = vendible capacity

Low Power Mode: In addition to meeting the 24-hour energy consumption requirements listed above, qualifying models shall come equipped with hard wired controls and/or software capable of automatically placing the machine into a low power mode during periods of extended inactivity while still connected to its power source to facilitate the saving of additional energy, where appropriate. The machine shall be capable of operating in each of the low power mode states described below:

1. Lighting low power state – lights off for an extended period of time.
2. Refrigeration low power state – the average beverage temperature is allowed to rise above approximately 40°F for an extended period of time.
3. Whole machine low power state – the lights are off and the refrigeration operates in its low power state.

In addition, the machine shall be capable of automatically returning itself back to its normal operating conditions at the conclusion of the inactivity period. The low power mode-related controls/software shall be capable of on-site adjustments by the vending operator or machine owner.

Note: EPA’s goal in including these low power mode requirements is to ensure that existing machine software capabilities are available and may be used to their fullest potential based on the individual requirements of the host site. However, machines that are vending temperature sensitive product, such as milk, must not have the refrigeration low power state enabled on site by the vending operator or machine owner due to the risk of product spoilage.

The County will provide time settings for each low power mode for each machine prior to installation. The contractor shall either program each machine to the requested time settings in the presence of a County Official or shall demonstrate to the County’s satisfaction that the machines have been set to the requested time settings prior to installation. Operators must set software to shut lights off at night.

Snack machines must be de-lamped, have software turn lights off at night, or use a Snack –Miser.

**10. INSURANCE**

The Contractor agrees to indemnify and defend the County and hold harmless from loss, liability, damage, claims, demand and costs and expenses including, but not limited to, court costs, actual expenses and reasonable in-house and outside attorney fees, of any person or persons arising out of, or based upon, personal injury, death or property damage resulting directly from any act of negligence on the part of the contractor, its agents, employees, contractors and licensees in connection with this contract. The County reserves the right to select outside counsel, subject to the approval of the contractor and not to be reasonably withheld, to defend any such actions.

The Contractor must provide an insurance certificate with its contract, evidencing \$250,000.00 Comprehensive General Liability Coverage. The County of Barnstable must be listed as an **ADDITIONAL INSURED** and as a certificate holder on each of the policies obtained pursuant to this contract. The certificate must be submitted with the signed copies of the contract. The Contractor is required to provide evidence of appropriate worker’s compensation for its employees.

11. **ADDITIONAL REQUIREMENTS:**

All food must be prepared and labeled in compliance with all County, state and federal health, sanitary and safety regulations.

Service attendants must be uniformed so as to ensure immediate recognition by the employees and visitors.

The contractor shall make no alteration nor erect any signs on the premises without authority from the Director of Facilities.

The contractor shall not represent himself as an agent of the County. The use of the County's name on letterhead, billheads, signs or in any other manner by the contractor is not permitted.

The contractor shall comply with all policies and procedures promulgated by Barnstable County.

Neither the County nor the contractor shall be held liable for failure to perform if such failure is caused by fire, strike or other causes beyond the control of either. In the event of a total destruction of the building or the part occupied by the contractor is so damaged that the premises are untenable then either party upon ten (10) days written notice to the other, may terminate the agreement.

The County agrees to provide the space, or suitable substitute space as determined by the County, that is currently being used by the present vending service.



# Sample

<u>ITEM</u>	<u>QUANTITY/WEIGHT</u>	<u>VENDING PRICE</u>
Life Savers	_____	_____
Snickers	_____	_____
Fritos	_____	_____
Potato Chips	_____	_____
Cookies	_____	_____
Trail Mix	_____	_____
Junior Mints	_____	_____
Hershey Bar	_____	_____
Almond Joy	_____	_____
M & M's	_____	_____
Snack Cakes	_____	_____
Juice	_____	_____
Soda	_____	_____
Popcorn	_____	_____
Crackers	_____	_____
Coffee	_____	_____
Hot Chocolate	_____	_____
Additional Items	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Authorized Signature: \_\_\_\_\_

**ATTACHMENT A**

**Barnstable County  
Beverage and Food Vending Machine Services and Maintenance  
Bid Sheet**

1. The County reserves the right to accept or reject any or all proposals should such action be deemed in the best interest of the County. The decision to accept a particular proposal shall be made on the basis of type and quality of services offered, financial advantage, and best interest of the personnel and visitors.
2. Contractor verifies that refrigerated vending machines meet Energy Star specifications.
3. The contractor agrees to pay the County a commission of \_\_\_\_\_% on all vending gross sales.

The undersigned agrees to supply and maintain vending machines as per the attached specifications.

Signature of Person Submitting Bid. \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Tel.# \_\_\_\_\_ Fax.# \_\_\_\_\_

Email Address: \_\_\_\_\_

**ATTACHMENT B**  
**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 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:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**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 will be rejected pursuant to MGL Chapter 30B.

AGREEMENT BETWEEN

Barnstable County  
3225 Main Street  
Barnstable, MA 02630

(VENDOR)

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2015 by and between Vendor, (hereinafter referred to as Contractor), and Mary Pat Flynn, Sheila Lyons and Leo Cakounes as they are the Commissioners of Barnstable County, but without any personal liability.

WITNESSETH, that the Contractor and County for the consideration hereinafter named agree as follows:

WHEREAS: Barnstable County issued an Invitation for Bids for the Food and Beverage Vending Machine Services and Maintenance.

WHEREAS: This service was bid in compliance with MGL Chapter 30B

WHEREAS: (Vendor) was the responsive, responsible bidder offering the Highest percentage commission.

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

1. Employment of Contractor. The County hereby agrees to perform the services hereinafter set forth in the Scope of Services. Contractor hereby agrees to hold the County 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 County, including costs, benefits, and reasonable attorney fees in the event the Contractor files such claim.
2. Scope of Services. Scope of Services as outlined in the Invitation for Bids, attached to this contract as Attachment A.
3. Time of Performance. July 1, 2015 through June 30, 2016, with the option to renew for one additional year.
4. Payment: XXXXXX
5. Termination or Suspension of Contract for Cause. If through any sufficient cause, the Customer or the County 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 County. The County 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 County may, from time to time, require changes in the Scope of Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Customer costs, which are mutually agreed upon by the County and the Customer, shall be incorporated in written amendments to this Contract.
8. Non-Discrimination in Employment and Affirmative Action. The Customer 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 Customer 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 1518§(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 County 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 County. No subcontract or delegation shall relieve or discharge the Customer 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 County shall have the right to obtain a copy of the subcontract upon request.

10. Interest of Members of County and Others. No officer, member or employee of the County, 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 financially 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 County thereto; provided, however that claims for money due or to become due the Contractor from the County 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 County.

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 County 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 County 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 County.

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 County 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 County 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. All parties to this contract and covenant agree that any disputes be litigated in the District or Superior courts in Barnstable County.

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 County 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 County 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. Waiver of Liability. The Contractor and the county hereby covenant and agree to waive any and all claims against Barnstable County and release Barnstable County from any liability arising out of the Scope of Services described in the attached "Exhibit A".

IN WITNESS WHEREOF, the County and Contractor have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand and Fifteen.

**FOR THE COUNTY:**

BARNSTABLE COUNTY COMMISSIONERS:

\_\_\_\_\_  
Sheila Lyons

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

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

\_\_\_\_\_  
Date

**FOR THE CONTRACTOR:**

\_\_\_\_\_