

# **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, Massachusetts, through its Chief Procurement Officer and on behalf of the Cape Cod Commission, is seeking a qualified firm to provide engineering and related services to assist the Cape Cod Commission in updating the area wide (208) water quality management plan.

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 **June 4, 2013 at 11 a.m. No exceptions.**

**NOTE: One original and five (5) 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 "208 Plan Engineering Services – Technical Proposal". Price proposals are to be submitted in a separate envelope, clearly labeled "208 Plan Engineering Services - 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 thirteenth day of May, Two Thousand and Thirteen.

Elaine Davis  
**Chief Procurement Officer**

**REQUEST FOR PROPOSALS  
BARNSTABLE COUNTY  
WASTEWATER ENGINEERING AND RELATED SERVICES**

Barnstable County, Massachusetts, through its Chief Procurement Officer and on behalf of the Cape Cod Commission, is seeking a qualified firm to provide technical and project management assistance to the Cape Cod Commission related to development of an area wide water quality management plan for the Cape Cod region pursuant to Section 208 of the Clean Water Act. The anticipated budget for year one of this project is \$400,000.

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 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. 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.

As the population has increased on Cape Cod, so has the amount of nutrients entering our coastal waters and freshwater ponds. In just one generation, we have seen eelgrass replaced by thick mats of algae, ponds choked with algae, diminishing shellfisheries, and decreasing dissolved-oxygen concentrations—occasionally leading to massive fish and shellfish kills.

A number of sources of nutrients (nitrogen and phosphorus) enter our coastal and fresh waters, but wastewater is by far the largest source, accounting for about 80% of the nutrients that enter our groundwater and surface waters.

The vast majority of properties on Cape Cod rely on on-site septic systems to treat wastewater, and these systems are responsible for about 85% (or about 8.2 billion gallons per year) of the

total wastewater flow on Cape Cod. But, conventional on-site septic systems are designed to remove pathogens, not nutrients, and so today we are confronting the enormous challenge of improving wastewater treatment in order to restore the quality of our waters. Constructing and maintaining this infrastructure will come with an extensive cost.

The severe degradation of the quality of our coastal and fresh waters is a Cape-wide problem. The watersheds to the ponds and coastal embayments comprise close to 80% of the entire land area of Cape Cod, and two or more towns share more than half of the embayment watersheds. The scale of the problem requires a similarly scaled set of solutions – one that presents cost effective and efficient alternatives Cape-wide.

In January 2013, the Cape Cod Commission was directed to complete an update to the 1978 Section 208 Water Quality Management Plan for nutrient remediation. This update is a state-sponsored process that will be developed within the framework set forth in the Cape Cod Regional Wastewater Management Plan to provide more specific information around appropriate technologies and strategies for water resources and nutrient management, as well as identify preferred alternatives for each impairment and watershed. It will be an iterative approach to watershed-based decision-making that will allow for extensive public participation in order to reach consensus on solutions.

The Commission is currently developing a range of solutions to the region's wastewater issues and its impacts on coastal waters. The Commission is seeking a consultant with technical expertise related to development of water quality management plans conforming to section 208 of the Clean Water Act and significant project management expertise. The Commission anticipates a three year time frame to develop a plan, conduct extensive public education and outreach, and garner support from communities to implement the appropriate plan(s), with a deadline of 12 months to complete the draft plan update.

## **II. PROJECT DESCRIPTION/SCOPE OF WORK**

The Proposer or proposers will work with the Commission and appropriate other parties as required to provide the following services related to development, public review and acceptance of the 208 Cape-wide Water Quality Management Plan (208 Plan) and other associated activities.

The Proposer should have expertise and experience in the following disciplines, with particular emphasis on engineering and science related to watershed-based nutrient management project requirements:

- I. Wastewater management planning including:
  - a. Characterization and evaluation of existing systems,
  - b. Current and build-out wastewater flow estimation,
  - c. Land use and regulatory constraints,
  - d. Seasonal flow factors,
  - e. Water supply protection requirements
  - f. Other Cape-specific wastewater issues.

II. Wastewater collection, transport, treatment and disposal technologies including planning, design, construction and operations experience with:

- a. Innovative and emerging management technologies focusing on green infrastructure, sustainability through energy generation and water reuse, zero-discharge systems, anaerobic digestion, in-situ nutrient removal methods (e.g. permeable reactive barriers, aquaculture) alternative discharge systems and other technologies
- b. Decentralized treatment and disposal systems including alternative proprietary systems, package plants, cluster systems and other systems suitable for small scale applications with nutrient removal requirements
- c. Centralized treatment technologies, including MBRs, RBCs, SBRs, conventional activated sludge and other technologies suitable for small to medium sized wastewater systems
- d. Alternative collection and transport technologies including STEP systems and pressure and vacuum systems
- e. Septage receiving and treatment systems

III. Hydrogeologic studies, site evaluation, engineering design, permitting and operation of subsurface disposal systems, including conventional infiltration systems, wick systems, drip systems, deep well injection and other types of systems

IV. Cost estimating, including capital and operating cost estimating and asset management for a full range of collection, transport, treatment and disposal technologies

V. Water quality monitoring, pond and estuarine modeling and analyses related to nutrient management in fresh and saline waters, as well as familiarity with MEP methodologies and results

VI. Financial, affordability and user rates studies, including experience with CIP management and public and private financing mechanisms related to wastewater management programs

VII. Project management and task management for watershed-based water quality management plans, including:

- a. Managing multi-disciplined team of planners, engineers and scientists in developing watershed-based management plans
- b. Scope budget and schedule management
- c. Report writing and development of appropriate graphics
- d. Experience leading complex stakeholder involvement efforts on similar projects

VIII. State and federal regulatory issues related to wastewater management, alternative technologies for treatment and treated discharge systems, groundwater discharge permitting,

water supply protection, water quality standards, TMDL compliance and other regulatory requirements.

IX. GIS data base management, mapping and graphics to support watershed planning

X. Communication skills with the ability to explain complex scientific, engineering, and fiscal concepts to the public and local officials

Work under the contract will be assigned on a task order basis. Task order requests will be issued by the Commission and require a response to by the selected Proposer within three business days. Responses for each Task Order will include a staffing plan, estimate of hours for the task, labor and expense cost estimate, confirmation of ability to meet the required schedule and a list of deliverables. The selected Proposer must have the depth of resources and ability to:

1. Respond rapidly to task order requests, including starting and completion of tasks
2. Assign staff to work at Cape Cod Commission offices, if requested
3. Assign staff to engage as an integral part of the Commission 208 planning team

### **III. PROPOSAL SUBMISSION/REQUIREMENTS**

#### **General Information**

One original and five (5) copies of the original proposal shall be delivered to the Office of the County Commissioners at the address below no later than June 4, 2013 at 11:00 a.m. 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 "208 Plan Engineering Services – Technical Proposal." Price proposals are to be submitted in a separate envelope, clearly labeled "208 Plan Engineering Services - 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, if they intend to respond. 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 Proposer 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.. Each proposal should:
  - Present a plan that is as specific as possible in describing the methodologies to be used for the specific tasks
  - Enumerate the activities proposed and indicate how measurable outcomes will be provided and evaluated
  - Indicate how data will be presented in a visual format (i.e.: graphs & charts) when possible
5. Project Staffing: The Proposer shall provide an Organization Chart for the project specifying the names and qualifications of the individual(s) who will work directly on this project and confirming their availability. The Proposer should also indicate out of which office the work will be performed and how it would assign staff to work directly with Commission staff during the project. While collaborations are acceptable, the proposal must clearly enumerate the role of each participant with specific duties and responsibilities.
6. Resumes for each individual to be assigned to the project incorporating a list of each such person's previous assignments to similar projects, and evidence of any relevant professional licenses and certifications and a staffing plan linking individuals to specific portions of the project. This is necessary to ascertain the professional expertise to be devoted to the scope of work, and for the Commission to determine by this examination the sufficiency of the project team's experience on prior work of a similar nature.

7. List of Clients: Provide a complete list of clients for the past five years where the Proposer has assisted in issues similar in scope to that requested in this solicitation. For each reference, provide a contact name, title, and telephone number, dates of service, and the name of the Proposer's Project Manager assigned to the project. (Attachment B)

## **Price Proposal**

Under separate sealed cover, clearly marked "208 Plan Engineering Services - Price Proposal" the Proposer should submit a list of hourly rates of all individuals to be billed during the contract period. Proposals should identify separately the hourly rate, fringe, overhead and profit rates to be applied to hourly rates, along with summary of total rate for each individual to be billed. Additionally, the Proposer should provide a Statement of non-labor direct costs - expenses and administrative costs - that will be billed to the project.

## **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 **12 noon on May 24, 2013** to:

Elaine Davis, Chief Procurement Officer  
3195 Main St., Box 427  
Barnstable, MA 02630  
Email: [edavis@barnstablecounty.org](mailto: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.

Bidders Conference: A bidder's conference will be held on Wednesday, May 22, 2013 at 10 a.m. in the Cape Cod Commission office, 3225 Main Street, Barnstable, MA, in order to give all Proposers an opportunity to refine the scope of their proposal. .

#### **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. In the event that the date of award will not be met, all respondents will be notified. 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.

Interviews: The Evaluation Committee may choose to conduct interviews with finalists, to be held at the Barnstable County offices.

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 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. Proposed staff with a minimum of 5 years of broad technical experience in wastewater management planning.
4. Proposed staff with a minimum of 10 years of experience with cost estimating, financial, affordability and user rates studies and with public and private financing mechanisms related to wastewater management programs.
5. Proposed staff with a minimum of 8 years of experience with hydrogeologic studies, site evaluation, engineering design, permitting and operation of subsurface disposal systems
6. Proposed staff with a minimum of 8 years of experience with wastewater collection, transport, treatment and disposal technologies.
7. Proposed staff with a minimum of 10 years of experience with state and federal regulatory issues related to wastewater management.
8. Proposed staff with a minimum of 3 years of experience with GIS data base management, mapping and graphics to support watershed planning
9. Proposed staff with a minimum of 8 years of experience working with municipalities, environmental advocacy groups, tax payer organizations, citizen advisory groups and other entities involved in planning, evaluation and implementation of wastewater management programs.
10. Satisfactory references

**Comparative Criteria:**

1. Project Management

*Highly Advantageous* – The proposed project manager has more than 10 years of recent relevant experience managing projects in watershed protection and wastewater management planning including consideration of centralized, de-centralized, small-scale, and innovative wastewater systems for a public entity undertaking major wastewater planning and implementation programs.

*Advantageous* – The proposed project manager has more than five years of recent relevant experience managing projects in watershed protection and in wastewater management planning including consideration of centralized and de-centralized systems for a public entity undertaking major wastewater planning and implementation programs.

*Not Advantageous* – The proposed project manager has limited experience on projects with requirements as outlined above.

## 2. Engineering Experience

*Highly Advantageous* – The proposed project team has recent and extensive experience on projects with the same requirements as those required by this procurement including hydrogeologic studies, site evaluation, engineering design, permitting and operation of subsurface disposal systems, including conventional infiltration systems, wick systems, drip systems, deep well injection and other types of systems.

*Advantageous* – The proposed project team has significant experience on projects with the same requirements as those required by this procurement.

*Not Advantageous* – The proposed project team has limited experience on projects with the requirements as outlined above.

## 3. Regulatory Experience

*Highly Advantageous* – The proposed project team has recent and extensive experience on similar projects involving federal and state policies, regulations and standards related to wastewater management planning.

*Advantageous* – The proposed project team has significant experience on similar projects involving federal and state policies, regulations and standards related to wastewater planning.

*Not Advantageous* – The proposed project team has limited experience on similar projects with requirements as outlined above.

## 4. Presentation and Public Involvement Skills

*Highly Advantageous* – The proposed project team has recent and extensive experience on similar projects involving presentations of technical information, findings and recommendations in a format that is understandable to the general public and in organizing and leading wastewater management public involvement programs.

*Advantageous* – The proposed project team has significant experience on similar projects involving presentations of technical information, findings and recommendations in a format that is understandable to the general public and in organizing and leading wastewater management public involvement programs.

*Not Advantageous* – The proposed project team has limited experience on similar projects with requirements as outlined above.

## 5. 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 meets minimum requirements.

6. Timeframe

*Highly Advantageous* – Proposer is able to begin work on this project immediately upon contract execution.

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

*Not Advantageous* – Proposer is able to begin work on this project within two months of contract execution.

**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, William Doherty and Sheila Lyons 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 developing a wastewater management plan for the region, and

WHEREAS, the Commission requires engineering and other technical and project assistance for this effort, 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 (one year) 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:

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

\_\_\_\_\_  
Paul Niedzwiecki, Executive Director

\_\_\_\_\_  
William Doherty, Vice-Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sheila Lyons, Commissioner

\_\_\_\_\_  
Date

FOR THE CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_  
Date