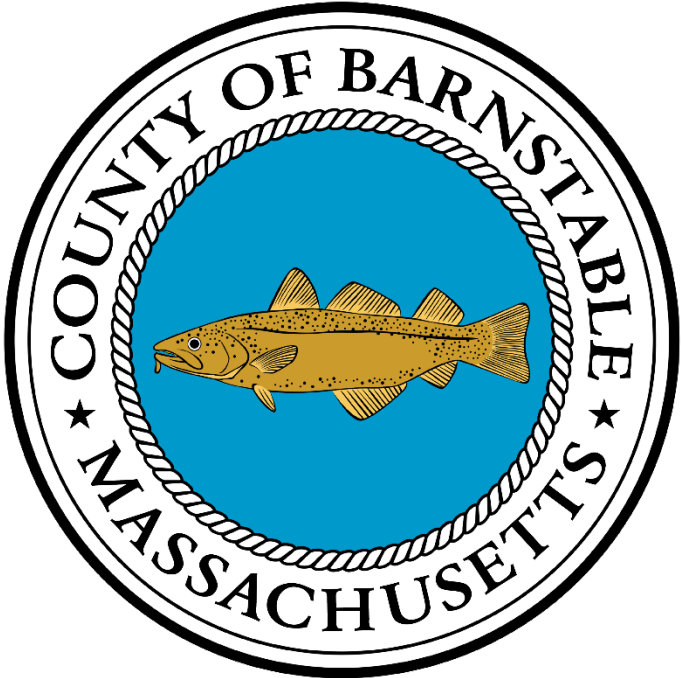


# Barnstable County Purchasing Department



INVITATION FOR BID

Roadway Materials

IFB #: 7901

Date: February 6, 2020

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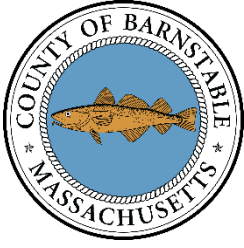
## **ADVERTISEMENT**

### **INSTRUCTION TO BIDDERS**

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## **Attachments**

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# COUNTY OF BARNSTABLE

## PURCHASING

### DEPARTMENT OF FINANCE

**Jennifer Frates**  
Chief Procurement Officer  
Phone: (508) 375-6637  
Fax: (508) 362-4136  
Jennifer.frates@barnstablecounty.org

#### Advertisement

Barnstable County invites sealed bids on behalf of the Town of Eastham and Nantucket County for **Roadway Materials for the period of April 1, 2020 through March 31, 2021 per Bid No.7901.**

Bid specifications may be obtained as of **Wednesday, February 12, 2020, at 9:00AM** on the Purchasing website at: <http://purchasing.barnstablecounty.org>

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 **Wednesday, March 4, 2020 @ 11:30AM.**

Sealed envelopes containing bids shall be clearly marked "**BID NO. 7901 Roadway Materials**"

**NOTE: One original copy of each bid shall be submitted. NO faxed or emailed 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.

**All submissions for this project are subject to the provisions of Massachusetts General Laws, Chapter 30, 39M.**

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.

Jennifer Frates  
Chief Procurement Officer

**Instruction to Bidders  
Roadway Materials  
IFB #: 7901**

Barnstable County is soliciting bids from qualified contractors to provide Roadway Materials.

**1. Defined Terms**

The term "County" means the County of Barnstable, MA through the County Commissioners.

The term "Successful Bidder" means the lowest, qualified, responsible, and responsive Bidder to whom the County (on the basis of the County's and Towns' evaluation as hereinafter provided) makes an award.

The term "Owner" means the Town of Eastham and Nantucket County. This includes divisions, departments and political subdivisions of each Town including but not limited to: water, fire, and school districts.

**2. Scope of Work**

Bidders are to submit responses based upon the specifications as outlined within Attachment A, "General Conditions", Attachment B, "Special Provisions", Attachment C, "Estimated Quantities" and the within Attachment D, "Bid Form". All pricing should be inclusive all cost associated with providing services as specified.

**3. Examination of Contract Documents and Site(s)**

Before submitting a Bid, each Bidder must (a) examine the Contract Documents thoroughly, (b) visit the Towns to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work, (c) familiarize himself with federal, state and local laws, by laws, rules and regulations that may in any manner affect cost, progress or performance of the Work; and (d) study and carefully correlate Bidder's observations with the Contract Documents.

The submission of a Bid will constitute an incontrovertible representation by the Bidder that he has complied with every requirement of this Article and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

**4. Term of Agreement**

The Term of the Agreement will be from April 1, 2020 through March 31, 2021.

**5. Sub Contractors**

If the General Conditions require the identity of certain Subcontractors and other persons and organizations to be submitted in advance of the Notice of Award, the apparent Successful Bidder, and any other Bidder so requested, will within seven days after the day of the Bid opening submit a list of all Subcontractors and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the Work as to which such identification is so required. Such list shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of qualification for each such Subcontractor, person and organization if requested. If, after due investigation, reasonable objection exists

to any proposed Subcontractor, other person or organization, the apparent Successful Bidder will be requested to submit an acceptable substitute without an increase in Bid price.

If the apparent Successful Bidder declines to make any such substitution, the Contract shall not be awarded to such Bidder. Any Subcontractor, other person or organization so listed and for whom the County has no written objection is submitted prior to the giving of the Notice of Award will be deemed acceptable.

No Contractor shall be required to employ any Subcontractor, other person or organization against whom he has reasonable objection.

**6. Fair Employment Practices.**

During the performance of this project, the Bidder and all of his Subcontractors, for himself, his assignees, and successors in interest, agree as follows: The Bidder, in the performance of all work during, after and prior to completion of work under this Agreement, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of subcontractors, or in the procurement of materials and rentals of equipment. (Fair Employment Practices law of the Commonwealth M.G.L. Chapter 151B.) The Bidder by signing this Agreement agrees to abide by the above paragraph to the best of his/her ability.

**7. Substitute Material and Equipment.**

The Contract, if awarded, will be on the basis of material and equipment described/ specified in the Contract Specifications. Whenever it is indicated in the Contract Specifications that a substitute or "approved equivalent" item of material or equipment may be furnished or used by Contractor if acceptable, application for such acceptance will not be considered by the County until after the "effective date of the Agreement".

**8. Pre-Bid Meeting**

A pre-bid meeting has not been scheduled for this bid.

**9. Bid Response Instructions**

All bids must be delivered to:

Barnstable County Purchasing Department  
Superior Courthouse  
3195 Main Street  
PO Box 427  
Barnstable, MA 02630

**10. Required Bid Response Date**

Bidders who wish to be considered for this project should submit their proposals per the instructions above to the County prior to the date and time specified below.

Proposals are due on or before **11:30AM on Wednesday, March 4, 2020**. No late proposals will be accepted.

Responses will be opened publicly and read aloud. An abstract of the bidders who submitted documents will be made available after the opening of bids on the purchasing website: <https://purchasing.barnstablecounty.org>

#### **11. Bid Security**

Bid Security shall be made payable to the County, in an amount of five percent (5%) of the Bidder's maximum Bid price and in the form of a certified or bank check or a Bid Bond.

The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required Contract Security (Performance and Payment Bonds, when required) and Insurance Binders, where upon it will be returned; if the Successful Bidder fails to execute and deliver the Agreement and furnish the required documents within five (5) working days of the Notice of Award, the County may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid Security of any Bidder whom the County believes to have a reasonable chance of receiving the award may be retained by the County until the earlier of the seventh (7th) day after the "effective date of the Agreement" (which term is defined in the General Conditions) by the County to Contractor and the required Contract Security is furnished or the sixty first (61st) day after the Bid opening. Bid Security of other Bidders will be returned within seven (7) days of the Bid opening.

#### **12. Bid Signature**

A bid must be signed as follows: 1) if the bidder is an individual, by her/him personally; 2) if the bidder is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the bidder is a corporation, by the authorized officer, whose signature must be attested to by the clerk/secretary of the corporation, and with the corporate seal affixed.

#### **13. Official Date & Time**

A bid will not be considered delivered unless the bid has been received by the Purchasing Department by the required response date and time referenced above.

#### **14. Time for Bid Acceptance**

The contract will be awarded within 30 days after the bid opening. The time for award may be extended for up to 45 additional days by mutual agreement between Barnstable County and the apparent lowest responsive and responsible bidder (or, for a contract requiring payment, the apparent highest responsive and responsible bidder.)

#### **15. Modification or Withdrawal of Bids, Mistakes, and Minor Informalities**

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. Bid modifications must be submitted in a sealed envelope clearly labeled "Modification No. \_\_\_" to the address listed in part one of this section. Each modification must be numbered in sequence, and must reference the original IFB.

After the bid opening, a bidder may not change any provision of the bid in a manner prejudicial to the interests of the County for fair competition. Minor informalities will 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.

If this bid is received electronically, bidders are solely responsible for obtaining and completing required attachments that are identified in this bid and for checking for any addenda or modifications that are subsequently made to this bid or attachments. Barnstable County accepts no liability and will provide no accommodation to bidders who fail to check for amended bids and submit inadequate or incorrect responses.

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.

**16. Bid Prices to Remain Firm**

All bid prices submitted in response to this bid must remain firm for 60 days following the bid opening.

**17. Unforeseen Office Closure**

If, at the time of the scheduled bid opening, Superior Courthouse is closed due to uncontrolled events such as fire, snow, ice, wind, or building evacuation, the bid opening will be postponed until 2:00 p.m. on the next normal business day. Bids will be accepted until that date and time.

**18. Questions and County POC**

Any clarification of requirements or requests for additional information by proposers must be made in writing via email and submitted no later than **February 26, 2020 @ 4:00 pm** E.S.T. to [purchasing@barnstablecounty.org](mailto:purchasing@barnstablecounty.org). Answers to all questions will be made in writing and posted online as an addendum to the **Bid No. 7900: Miscellaneous Public Works Items** on the Purchasing website: <https://purchasing.barnstablecounty.org/>. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

**19. Changes & Addenda**

For any bid or RFP document and any addenda that are received electronically, it is the responsibility of every bidder who receives this bid or RFP and all associated documents to check this website for any addenda. Barnstable County accepts no liability to provide accommodation to bidders who submit a response based upon information obtained from its website. Bidders may not alter (manually or electronically) the bid language or any bid documents.

**20. Contractual Terms**

Contractual terms and conditions will consist of the standard terms and conditions clauses contained within the Contract for Services (Attachment F) within this IFB. Any term not objected to will be deemed to have been accepted by the proposer. Exceptions to the terms and conditions may result in the respondent's offer being deemed as non responsive.

When the County gives a Notice of Award to the Successful Bidder, the Contractor shall furnish all required documents (e.g. Bonds, Insurance Binders) within ten (10) business days to the County. Thereafter once the Contractor receives the completed contract electronically, the Contractor shall sign the agreement within five (5) business days electronically and the County will then countersign.

**21. Reference to General Laws**

Whenever in the proposal, contract, plans, drawings or specifications, reference is made to General Laws it shall be construed to include all amendments thereto effective as of the date of issue of invitation to proposal on the proposed work.

All bids shall be submitted in accordance with all requirements of all laws and regulations governing the performance of work on the Project or Services. Bidder warrants and represents that it has read and is familiar with all such requirements.

**22. Cost of Preparation**

The cost of preparation and delivery of the proposals will be borne solely by the Vendor.

**23. County Tax Exemption**

Any material furnished to Barnstable County is to be exempt from Massachusetts Sales Tax (Massachusetts Sales Tax Exemption No. E-04-6001419).

**24. Political Activity Prohibited, Anti-Boycott Warranty**

The Contractor may not use any Contract funds and none of the services to be provided by the Contractor may be used for any partisan political activity or to further the election or defeat of any candidate for public office. During the term of this Contract, neither the Contractor nor any controlled group, within the meaning of s.993 (a) (3) of the Internal Revenue Code, as amended, shall participate in or cooperate with any international boycott, as defined in s.999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended; nor shall either engage in conduct declared to be unlawful by M.G.L. c.151Es.2.

**25. Contractor Compliance**

The successful Contractor must comply with provisions of The Copeland Anti-Kickback Act (18 USC 874) as supplemented in Department of Labor 29 CFR Part 3, the Davis-Bacon Act (40 USC 276a et.seq.), Sections 103 and 107 of the contract Work Hours and Safety Standard Act (50 USC 327-330) as supplemented by Department of Labor Regulation 29 CFR Part 5, and the Clean Air Act of 1970 (42 USC 1857, et.seq.) to the extent that they are applicable.

**26. Public Record Request**

All proposals received are subject to Massachusetts General Laws Chapter 4, Section 7, Section 26 and Chapter 66, Section 10 regarding public access to such documents. Statements or endorsements inconsistent with those statutes will be disregarded.

**27. Selection and Notice**

The County may consider informal any bid not prepared and submitted in accordance with the provisions hereof. The County reserves the right to reject any and all Bids, to waive any and all informalities and to negotiate contract terms with the Successful Bidder, and the right to disregard all nonconforming, non-responsive or conditional Bids. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of a column of figures and the correct sum thereof will be resolved in favor of the correct sum.



In evaluating Bids, the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements and prices if requested in the Bid forms shall be considered. The Contract shall be awarded to the lowest, qualified, responsive and responsible Bidder.

The qualifications and experience of Subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the Work as to which the identity of Subcontractors and other persons and organizations must be submitted as provided in the Supplementary Conditions may be considered. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered.

Investigations may be conducted as deemed necessary (including but not limited to requesting a list of all projects completed by a Bidder) to assist in the evaluation of any Bid and to satisfactorily establish the responsibility, qualifications and financial ability of the Bidders, proposed Subcontractors and other persons and organizations to do the Work in accordance with the Contract Documents within the prescribed time.

The right is reserved to reject the Bid of any Bidder who does not satisfactorily pass any such evaluation.

If the Contract is to be awarded, it will be awarded to the lowest, qualified, responsive and responsible Bidder whose evaluation indicates that the award will be in the best interests of the Project.

If the Contract is to be awarded, the County will give the Successful Bidder a Notice of Award within sixty (60) days after the day of the Bid opening.

## **28. Submittals**

All Bids must be submitted on the Bid forms bound herein.

The Bid unit price of each item bid on the form must be stated in words and numerals; in case of a conflict, words will take precedence.

Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

All names must be typed or printed below the signature.

The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).

The address to which communications regarding the Bid are to be directed must be shown.

Cover letter clearly addressing any exceptions taken to the terms and conditions contained within this IFB.

- a. Completed Bid Response Sheet (Attachment D) **REQUIRED**
- b. Non-Collusion/Tax Compliance (Attachment E) **REQUIRED**
- c. Bid Deposit – 5% of bid price in the form of a certified, treasurer’s, or cashier’s check payable to Barnstable County; or a bid bond from a licensed surety registered to do business in the Commonwealth of Massachusetts. **REQUIRED**

One original copy of the bid should be submitted. Bids must be sealed and marked as follows: ***“IFB #7901 Roadway Materials”***.

**END OF IFB**

# **ATTACHMENT A**

## **Special Provisions**

### **GENERAL**

The Work under this Contract consists of providing various materials as described herein to the Towns of Barnstable, Bourne, Brewster, Chatham, Dennis, Eastham, Falmouth, Harwich, Mashpee, Orleans, Provincetown, Sandwich, Truro, Wellfleet and/or Yarmouth through an Agreement with the County of Barnstable.

All Work done under this Contract shall be in conformance with the 1988 Massachusetts Highway Department (MDOT) Standard Specifications for Highways and Bridges, the Supplemental Specifications, the 2005 Standard Special Provisions, the 2010 Construction Standard Details, and the 2009 Manual on Uniform Traffic Control Devices, all as amended, and these Special Provisions.

NO FUEL PRICE ADJUSTMENT WILL BE ALLOWED FOR ANY OF THE CONTRACT BID ITEMS CONTAINED HEREIN. As noted on the Bid Form, a liquid asphalt price adjustment will be allowed for the Hot Mix Asphalt (Loaded on Town Trucks) ONLY. No other bid items will be allowed price adjustments.

The Special Provisions shall take precedence over the General Requirements of the Standard Specifications.

The vendor shall furnish manufacturer's certification that the materials conform to the specifications. All material shall be delivered to and off loaded at each Town's Highway Division yard or to a mutually agreeable site, except Hot Mix Asphalt which shall be loaded on Town trucks at the plant. All costs of transportation shall be included in the prices bid. If, at any time, the materials delivered are found to be sub-standard, the vendor shall be responsible for removing the offending material at their cost, within ten (10) working days after receiving notification from the Town.

All deliveries shall be made during each Town's normal business hours, Monday through Friday (except legal holidays), and in the presence of an authorized Town employee or agent.

Delivery shall be immediate unless the item is out of stock or not normally stocked, then the vendor shall notify the Town and shall make delivery within ten (10) days.

If at any time the vendor is unable to furnish materials or services as ordered by a Town:

- \* The vendor shall be obligated to obtain delivery from another supplier and will in turn invoice the Town at the price specified in the Contract, or
- \* The Town may order such materials or services from such places as are available, and the vendor shall reimburse the Town for all expenses incurred above the Contract price.

If services of the vendor are subsequently deemed to be unsatisfactory to any Town and/or are in violation of these specifications, a Town shall notify the said vendor in writing. If mutually agreeable arrangements cannot be achieved between the Town and the vendor, the terms of the Contract for that Town will be terminated. Notice of termination will be in writing and notification will be sent by registered or certified mail. Termination will become effective three (3) days after mailing said notification. Termination of a Contract by any Town shall not invalidate or alter the terms of a similar Contract with any other Town.

The vendor receiving an award shall, at no expense to any Town, adhere to Massachusetts General Law Chapter 111F "Right to Know Law" as it shall apply to the items contained in the award notice.

MSDS labels and data are required where applicable.

### **ESTIMATED QUANTITIES BY TOWN**

Each Town has provided the estimated quantities for each bid item that it is presently planning to use which can be found in Attachment B. Because of unanticipated funding levels and bid results, these estimated quantities are for bid purposes only and can not be guaranteed. If there is no quantity provided for an item, then that specific Town does not intend to use that item.

### **UNIT PRICE WORK**

Initially, the Contract Price will be deemed to include for all Unit Price Work an amount equal to the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classification of Unit Price Work performed by CONTRACTOR will be made by each Town.

Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item. The prices bid shall, without exception, include all royalties and other costs arising from patents, trademarks, and copyrights in any way involved in the materials to be supplied.

When the accepted quantity of Work varies from the estimated quantity, the CONTRACTOR shall accept as payment in full, so far as each contract item is concerned, payment at the original Contract unit price for the accepted quantity of Work done. No allowance will be made for any increased expenses, loss of expected reimbursement or loss of anticipated profits suffered or claimed by the Contractor, resulting either directly or indirectly from such increased or decreased quantity.

Each Town does not guarantee any minimum quantity of Unit Price Work. The CONTRACTOR may contact each Town to obtain information regarding quantities used in previous years, if he so chooses. However, each Town will not guarantee that an equal or greater quantity of Unit Price Work will be requested. Each Town reserves the right to purchase quantities of Contract materials from other sources for emergency or other reasons.

The vendor shall submit separate invoices accompanied by signed delivery slips to each using division/ department of each Town.

It shall be the responsibility of the CONTRACTOR to inform each Town when the sum of all orders for units of Work is within 90% of the total Contract price for that Town. The CONTRACTOR'S total billing can not exceed the total Contract price without prior written approval by each Town.

### **TAXES**

State taxes will be excluded from all General and Sub-bids. The Towns shall provide their exemption certificate number to the CONTRACTOR. CONTRACTOR shall pay all taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

**WEIGHING**

All materials requiring payment by weight shall be weighed at a certified scale prior to delivery and the weigh slips shall be delivered to and signed by a Town representative. Each Town may provide use of its scale and require gross weights and vehicle tare weights verified at time of delivery.

**MISCELLANEOUS**

No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically, but without limitation, moneys that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

The County and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

This CONTRACT shall be deemed to include all terms and requirements imposed by laws related to the performance of the Work on the Project or Services.

This is not an exclusive contract to provide services or materials to the County and Towns. The County and Towns reserve the right to contract for similar services or materials.

**INTEREST**

All monies not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project.

**ITEM 200 HOT MIX ASPHALT (LOADED ON TOWN TRUCKS)**

Bituminous Concrete (Hot Mix Asphalt) shall be manufactured in conformance with the material, composition, mixing, testing and plant requirements of Standard Specification Section M3. Top course mix, binder course mix and dense mix shall be furnished, as required, and loaded on Town trucks.

**ITEM 201 SAND BORROW**

**ITEM 202 LOAM BORROW**

Sand and Loam Borrow materials shall conform to the following Standard Specification subsections:

- Sand Borrow for Winter Maintenance - M 1.04.0 Type a (Washed)
- Loam Borrow M 1.05.0

Sand shall be washed and screened through a one quarter inch (1/4") screen. The sand must be coarse and free from clay, silty loam and other undesirable materials. Deliveries of sand shall be made during the vendor's normal business hours, Monday through Friday. A Town may require, at its discretion, that emergency deliveries must be made during other periods to include Saturdays, Sundays, Holidays and non-business hours Monday through Friday at no extra cost to the Town. The vendor shall complete normal and emergency deliveries within a 12 hour period after receiving a request for delivery (maximum delivery 1,000 tons per 12 hours).

Loam borrow shall be screened to removed all stones and other material larger than 1 inch.

**ITEM 203 1-1/2" CRUSHED STONE (DOUBLE WASHED)**

**ITEM 204 3/4" CRUSHED STONE (DOUBLE WASHED)**

**ITEM 205 3/8" PEASTONE (DOUBLE WASHED)**

**ITEM 206 1 1/2" DENSE GRADES CRUSHED STONE**

Aggregate materials shall conform to the following Standard Specification subsections:

Crushed Stone M 2.01.1 through 2.01.6 (double washed)

Dense Graded Crushed Stone M 2.01.7 (1 1/2")

A requirement for all grades of crushed stone (except dense graded) shall be that not more than 0.3% of unsatisfactory material shall pass a No.4 sieve.

**ITEM 207 RECYCLED ASPHALT**

The recycled asphalt material shall meet the following gradation requirements:

Sieve Designation	Percentage By Weight Passing Through
3"	100
1 1/2"	70 100
3/4"	50 85
#4	30 60
#50	8 24
#200	0 10

The stone and sand material shall consist of inert material that is hard, angular, and durable, and free from cement concrete, brick, reinforcing steel, glass, wood, building rubble, loam and clay and other deleterious materials. Native round stone and materials that break up when alternately frozen and thawed or wetted and dried shall not be used. The material shall be "T base" as manufactured by Aggregate Industries, Inc. or approved equivalent.

Each stockpile shall be tested (at no additional cost to the Town) for sieve analysis and California Bearing Ratio (CBR) by an independent, qualified Massachusetts laboratory. The certified results shall be equal to or

greater than that of gravel borrow (M1.03.0 type b), and the certifications shall be supplied to each Town. The processed material shall be stockpiled in such a manner as to minimize segregation of particle sizes. All recycled pavement material shall come from approved stockpiles.

The material shall be subject to review and approval by a Town prior to delivery.

**ITEM 208 4'x4' PRECAST LEACH GALLEY**

**ITEM 209 1,000 GALLON PRECAST CATCH BASIN**

**ITEM 210 1,000 GALLON PRECAST LEACH PIT**

**ITEM 211 4' DIAMETER PRECAST CATCH BASIN W/OFFSET TOP**

All precast structures shall be capable of withstanding H-20 loading with a minimum concrete strength of 4,000 psi @ 28 days. Steel reinforcement shall be Grade 60 meeting ASTM-A-615 requirements.

The 1,000 Gallon Precast Solid Catch Basin shall have a solid bottom or include a 6' diameter Basin Pad meeting the same requirements as the structures. The cost of the Base Pad shall be included with the cost of the structure.

The 4' Diameter Precast Catch Basin w/Offset Top shall have separate top with an offset opening. The structure shall have a 4 foot deep sump below the outlet pipe.

The Town shall specify the hole diameter and hole location(s) at the time of order.

The manufacturer shall deliver the structure to the Town DPW or at the installation location as specified by the Town.

Payment for the precast drainage structures shall be by the Contract Unit Price per Each delivered.

**ITEM 983.2 RIPRAP**

Material shall conform to the provisions of Section M2.02.2 of the latest Massachusetts Department of Transportation Standard Specifications and the following:

Stone for dumped riprap shall be hard, durable, angular in shape, resistant to weathering and shall meet the gradation requirement specified below. Rounded stones, boulders, sandstone or similar soft stone or relatively thin slabs will not be acceptable.

SIZE OF STONE	MAXIMUM PERCENT OF TOTAL WEIGHT SMALLER THAN GIVEN SIZE
400 lb.	100
300 lb.	80
200 lb.	50
*25 lb.	10

\*No more than 5% by weight shall pass a 2 in. sieve.

Each stone shall weigh not less than 50 pounds and at least 75% of the volume shall consist of stones weighing not less than 500 pounds each. The remainder of the stones shall be so graded that when placed with the larger stones the entire mass will be compact.

**METHOD OF MEASUREMENT AND BASIS OF PAYMENT**

Item A2 RIP RAP shall be paid at the price per TON, which shall be the full payment of all labor, materials, equipment, tools and other incidentals necessary for the delivery of the material to the Eastham DPW Yard, based on truck weight slips.

**ITEM 204 PRECAST GUTTER INLET EACH**

**ITEM 222.1 8" FRAME AND COVER EACH**

**ITEM 222.3 8" FRAME AND GRATE MUNICIPAL STANDARD EACH**

**ITEM 224.12 12" HOOD EACH**

**ITEM 241.12 12" REINFORCED CONCRETE PIPE (CLASS IV) EACH**

**ITEM 252.12 12" CORRUGATED PLASTIC (POLYETH.) PIPE EACH**

All precast structures shall be capable of withstanding H-20 loading with a minimum concrete strength of 4,000 psi @ 28 days. Steel reinforcement shall be Grade 60 meeting ASTM-A-61 5 requirements. Gutter Inlets shall Acme-Shorey Model GI or similar with minimum outside dimensions of 30" by 30" and capable of withstanding an HS-20 load.

The word "DRAIN" shall be prominently cast in the top of all drain manhole covers. Frame and Covers shall be East Jordan Iron Works Massachusetts Standards Manhole Frame and Cover Type B or similar 8" frame and cover matching MassDOT Constructions Details E 202.7.0.

Frame and Grates shall be East Jordan Iron Works LF248-4-40 or similar 8" frame and grate matching MassDOT Construction Details E 201.6.0

Reinforced Concrete Pipe shall conform to MassDOT Section M5.02.1 and the AASHTO M170 for Standard Strength Reinforced Concrete Culvert Pipe for class III Pipe, Wall B. Pipes shall be of the bell and spigot type and capable of supporting an HS-20 live load. A preformed flexible plastic sealing compound of Butyl Mastic Rope Sealer " 1" size, "EZ Stick" as manufactured by Concrete Products supply or an approved equal shall be provided for sealing watertight joints.

Corrugated Plastic (Polyethylene) Pipe shall conform to MassDOT Section M5.03.10. Pipe shall be smooth interior wall and corrugated exterior wall, and be water-tight. Pipe shall be minimum 12- inch diameter. Ends shall be bell-and-spigot and comply with the requirements for test methods, dimensions and markings found in AASHTO Designations M252 and M294. Pipe shall support an HS-20 live load with a maximum deflection of 5% of the minimum pipe diameter. Pipe and fittings shall be made from virgin polyethylene compounds which conform to the applicable current edition of the AASHTO Material Specifications for cell classification as defined and described in ASTM D3350. Nominal sizes of 12- to 60-inch shall be either AASHTO Type 'S' or Type 'D

Catch basin hoods shall protrude no more than 12 inches beyond the end of pipe into the structure. Acceptable hoods are Ground Water Rescue Inc. Eliminator, Best Management Practices Inc. Snout® or equal lightweight hood.



**ATTACHMENT B**

**ESTIMATED BID QUANTITIES**

Each Town has provided estimated quantities for each bid item that it presently intends to order. These estimated quantities are for bid purposes only and cannot be guaranteed. If there is no quantity provided for an item, then that specific Town does not intend to use that item.

<b>Item</b>	<b>Description</b>	<b>Unit</b>	<b>Eastham</b>	<b>Nantucket</b>
200	Hot Mix Loaded on Town Trucks	TON	50	
203	1 ½" Crushed Stone (Double Washed)	CY	500	
206	Dense Graded Crushed Stone (1 1/2")	TON	600	
208	4'x4' Precast Leach Galley	EA	10	10
209	1,000 Gallon Precast Catch Basin	EA	5	10
210	1,000 Gallon Precast Leach Pit	EA	10	10
211	4' Diameter Preset Catch Basin w/offset Top (4' sump)	EA	5	10
A2	Riprap (MassDOT Item 983.2)	CY	50	
A3	8" Frame and Grate Municipal Standard (MassDOT Item 222.3)	EA	10	
A4	8" Frame and Cover w/1 inch vent hole (MassDOT Item 221)	EA	10	
A5	Precast Gutter Inlet (MassDOT Item 204)	EA	5	
A6	12" Reinforced Concrete Pipe (MassDOT Item 241.12)	EA	100	
A7	12" Corrugated Plastic (Polyethylene) Pipe (MassDOT Item 252.12)	LF	100	
A10	12" Hood (MassDOT Items 224.12)	EA	10	

## ATTACHMENT C

**Bid Response Form**

**BID IDENTIFICATION:**

**BID No. 7901 ROADWAY MATERIALS  
(UNIT PRICE WORK)**

**THIS BID IS SUBMITTED TO:**

**(Name and Address  
of Owner)**

**Office of the County Commissioners  
Superior Court House  
P.O. Box 427  
Barnstable, Massachusetts 02630**

1. The undersigned BIDDER proposes and agrees, if the Bid is accepted to enter into an Agreement with the County, to complete all Work as specified or indicated in the Contract Documents for the Contract Unit Prices during the contract period of **April 1, 2020** to **March 31, 2021**, and in accordance with the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Instructions to Bidders. This Bid will remain open for sixty (60) days after the day of Bid opening. BIDDER will sign the Agreement and submit other documents (e.g. Bonds, Insurance Binders) required by the Contract Documents within five (5) working days after the date of the County's Notice of Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:
  - 3.1 BIDDER has examined copies of all the Contract Documents and of the following addenda:

Bidder acknowledges addenda numbered \_\_\_\_\_

(receipt of all of which is hereby acknowledged) and also copies of the Notice to Bidders and the Instructions to Bidders.

- 3.2 BIDDER has examined the legal requirements (federal, state and local laws, by-laws, rules and regulations) and the conditions affecting cost, progress of performance of the Work and has made such independent investigations as BIDDER deems necessary.
- 3.3 This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for himself any advantage over any other Bidder or over the County.
4. BIDDER will complete all the Work assigned for the unit price(s) listed in the Bid Form.
5. The following documents are attached to and made a condition of this Bid:
  - 5.1 A tabulation of Subcontractors and other persons or organizations required to be identified in this Bid.

6. Communications concerning this Bid shall be addressed to:

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

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

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Bidder's Contact Person: \_\_\_\_\_

7. Bid comparison will be based on each item unit price provided for each Town. Bidders may bid on any or all items for any or all Towns listed. Bid selection will be by each item by Town and will be based on the lowest, qualified, responsible, and responsive bid for each item for each Town.

8. The undersigned certifies under penalties of perjury that this Bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph, the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

SUBMITTED on \_\_\_\_\_, 20\_\_.

**An Individual**

By \_\_\_\_\_ (SEAL)

(Individual's Name and Signature)

doing business as \_\_\_\_\_

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

**A Partnership**

By \_\_\_\_\_ (SEAL)

(Firm Name)

\_\_\_\_\_

(General Partner Name and Signature)

Business address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

**A Corporation**

By \_\_\_\_\_  
(Corporation Name)

\_\_\_\_\_  
(State of Incorporation)

By \_\_\_\_\_  
(Name of person authorized to sign and Signature)

(Corporate Seal)

Attest \_\_\_\_\_  
(Secretary)

Business address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

**A Joint Venture**

By \_\_\_\_\_  
(Name and Signature)

\_\_\_\_\_  
(Address)

By \_\_\_\_\_  
(Name and Signature)

\_\_\_\_\_  
(Address)

(Each joint venture must sign. The manner of signing for each individual, partnership and corporation that is party to the joint venture should be in the manner indicated above.)

BID FORM  
MISCELLANEOUS PUBLIC WORKS ITEMS  
(UNIT PRICE WORK)

State the unit bid price (written in words and in numerals) for each Town listed. See Attachment "C" for estimated quantities. Bidders may wish to contact each Town to obtain actual quantities purchased during prior years. Bidders may bid on any or all items for any or all Towns. Bid selection will be by each item and will be based on the lowest, qualified, responsible, and responsive bid for each item for each Town.

**Price Adjustments:** The Massachusetts Department of Transportation (MassDOT) method for calculating price adjustments due to cost fluctuations in liquid asphalt, Portland cement, diesel fuel, gasoline, and structural steel shall apply to this bid. The Liquid Asphalt adjustment shall apply to Hot Mix Asphalt (Loaded on Town Trucks) on orders greater than 100 tons where the adjustment results in a change in the Unit Price of 5% or more. No other adjustments will be made to the remaining bid items.

The Liquid Asphalt price adjustment shall be based on the difference between the price at the time of the bid (base bid price) and the price on the date of paving.

Base Bid Price Liquid Asphalt (Ton): \$535.00

<b>ITEM NO. 200</b>	<b>Hot Mix Loaded on Town Trucks</b>	<b>PER Ton</b>
	<b>Unit Bid Price Written in Words</b>	<b>In Numerals</b>
Eastham	_____	\$ _____

<b>ITEM NO. 203</b>	<b>1 ½ Crushed Stone</b>	<b>PER CY</b>
	<b>Unit Bid Price Written in Words</b>	<b>In Numerals</b>
Eastham	_____	\$ _____

<b>ITEM NO. 206</b>	<b>Dense Graded Crushed Stone (1 ½)</b>	<b>PER Ton</b>
	<b>Unit Bid Price Written in Words</b>	<b>In Numerals</b>
Eastham	_____	\$ _____

<b>ITEM NO.208</b>	<b>4'X4' Precast Leach Galley</b>	<b>EACH</b>
	<b>Unit Bid Price Written in Words</b>	<b>In Numerals</b>
Eastham	_____	\$ _____
Nantucket	_____	\$ _____

<b>ITEM NO. 209</b>	<b>1,000 Gallon Precast Catch Basin</b>	<b>EACH</b>
	<b>Unit Bid Price Written in Words</b>	<b>In Numerals</b>
Eastham	_____	\$ _____
Nantucket	_____	\$ _____

<b>ITEM NO. 210</b>	<b>1,000 Gallon Precast Leach Pit</b>	<b>EACH</b>
	<b>Unit Bid Price Written in Words</b>	<b>In Numerals</b>
Eastham	_____	\$ _____
Nantucket	_____	\$ _____

<b>ITEM NO.211</b>	<b>4' Diameter Preset Catch Basin w/offset Top (4'sump)</b>	<b>EACH</b>
	<b>Unit Bid Price Written in Words</b>	<b>In Numerals</b>
Eastham	_____	\$ _____
Nantucket	_____	\$ _____

**ITEM NO. A2 Riprap (MassDOT Item 983.2) PER CY**  
**Unit Bid Price Written in Words In Numerals**  
Eastham \_\_\_\_\_ \$ \_\_\_\_\_

**ITEM NO. A3 8" Frame and Grate Municipal Standard (MassDOT Item 222.3) Each**  
**Unit Bid Price Written in Words In Numerals**  
Eastham \_\_\_\_\_ \$ \_\_\_\_\_

**ITEM NO. A4 8" Frame and Cover w/1 inch vent hole (MassDOT Item 222.1) Each**  
**Unit Bid Price Written in Words In Numerals**  
Eastham \_\_\_\_\_ \$ \_\_\_\_\_

**ITEM NO. A5 Precast Gutter Inlet (MassDOT Item 204) Each**  
**Unit Bid Price Written in Words In Numerals**  
Eastham \_\_\_\_\_ \$ \_\_\_\_\_

**ITEM NO. A6 12" Reinforced Concrete Pipe (MassDOT Item 241.12) Each**  
**Unit Bid Price Written in Words In Numerals**  
Eastham \_\_\_\_\_ \$ \_\_\_\_\_

**ITEM NO. A7 12" Corrugated Plastic (Polyethylene) Pipe (MassDOT Item 252.12) PER LF**  
**Unit Bid Price Written in Words In Numerals**  
Eastham \_\_\_\_\_ \$ \_\_\_\_\_

**ITEM NO. A10 12" Hood (MassDOT Items 224.12) Each**  
**Unit Bid Price Written in Words In Numerals**  
Eastham \_\_\_\_\_ \$ \_\_\_\_\_

**ATTACHMENT D**  
**CERTIFICATE of NON-COLLUSION AND TAX COMPLIANCE**

Pursuant to Massachusetts General Law, Chapter 7, Section 22 (20), I certify under penalties of perjury that this bid/proposal is in all respects bona fide, fair, and made without collusion or fraud with any person. As used in this certification the word "person" means any natural person, joint venture, partnership, corporation or other business or legal entity.

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.

**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 30, 39M.



**ATTACHMENT E**

Bid# \_\_\_\_\_

Contract# \_\_\_\_\_

**Contract for Services  
Terms and Conditions**

**Barnstable County  
3195 Main Street  
Barnstable, MA 02630**

**And**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_ (hereinafter referred to as Contractor), and Barnstable County (hereinafter referred to as County).

The Contract for Services Terms and Conditions and any agreed upon changes thereto included in any Contract Amendments shall take precedence over any additional or conflicting terms and conditions as may be included in any other document attached hereto.

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

1. **Employment of Contractor.** The Contractor 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 or Town, 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 set forth in \_\_\_\_\_  
\_\_\_\_\_

3. **Contract Amendments.** The following amendments to the Contract have been executed by duly authorized representatives of the Parties and are attached hereto and incorporated herein:

4. **Time of Performance.**

\_\_\_\_\_ Start Date

\_\_\_\_\_ End Date

5. **Responsible County Official:** The County Official and Department exercising managerial and budgetary control for this Contract shall be: \_\_\_\_\_

6. **Payment:**

A. The County shall compensate the Contractor for the services rendered at the rate of \$ \_\_\_\_\_ per \_\_\_\_\_ (e.g., hour, week, semester, project, etc.).

- B. In no event shall the Contractor be reimbursed for time other than that spent providing the described service(s).
- C. Payment will be made upon submittal and approval of the Contractor's Invoice(s) that is (are) received Monthly\_\_\_\_, Quarterly\_\_\_\_, Other\_\_\_\_ (specify)\_\_\_\_\_.
- D. Reimbursement for Travel and Other Contractor Expenses:

All travel and meals are part of this Contract. No reimbursement will be made.

Contractor will be reimbursed for pre-approved travel in an amount not to exceed \$\_\_\_\_\_. Copies of receipts must be submitted. Any expense claimed by the Contractor for which there is no supporting documentation shall be disallowed.

Contractor will be reimbursed for OTHER expenses in an amount not to exceed \$\_\_\_\_\_. OTHER Expenses shall be limited to: \_\_\_\_\_ . Copies of receipts must be submitted. Any expense claimed by the Contractor for which there is no supporting documentation shall be disallowed.

- E. The total of all payments made against this Contract shall not exceed: \$ \_\_\_\_\_

Upon acceptance of the Contractor's invoice, payment will be made within thirty (30) days. If an invoice is not accepted by the County 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 County no later than July 31<sup>st</sup> of the year when the services were performed. Contractors shall submit invoices within sixty (60) days of completing the work.

**7. Termination or Suspension of Contract for Cause.** If through any sufficient cause, the Contractor 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.

**8. 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.

**9. Amendments.** 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 Contractor costs, which are mutually agreed upon by the County and the Contractor, shall be incorporated in written amendments to this Contract.

**10. 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 11246.

11. **Subcontracting.** None of the services to be provided to 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 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 County shall have the right to obtain a copy of the subcontract upon request.

12. **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.

13. **Conflict of Interest.** Contractor acknowledges that it may be subject to the Massachusetts Conflict of Interest statute, Mass. Gen. Laws ch. 268A, and to that extent, Contractor agrees to comply with all requirements of the statute in the performance of this Contract.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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 are 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.

21. **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.

22. **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 requirements outlined in the Office of Management & Budget Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200

subpart A-F)

23. **Tax Exempt Status.** The County is exempt from federal excise, state, and local taxes; therefore, sales to the County are exempt from Massachusetts sales and use taxes. If the County should become subject to any such taxes during the term of this Contract, the County shall reimburse the Contractor for any cost or expense incurred. Any other taxes imposed on the Contractor on account of this Contract shall be borne solely by the Contractor.

24. **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.

25. **Waiver of Liability.** The Contractor hereby covenants and agrees to waive any and all claims against Barnstable County and release Barnstable County from any liability arising out of the Scope of Services.

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

**FOR THE COUNTY:**

BARNSTABLE COUNTY COMMISSIONERS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date

**FOR THE CONTRACTOR:**

\_\_\_\_\_

\_\_\_\_\_

Date