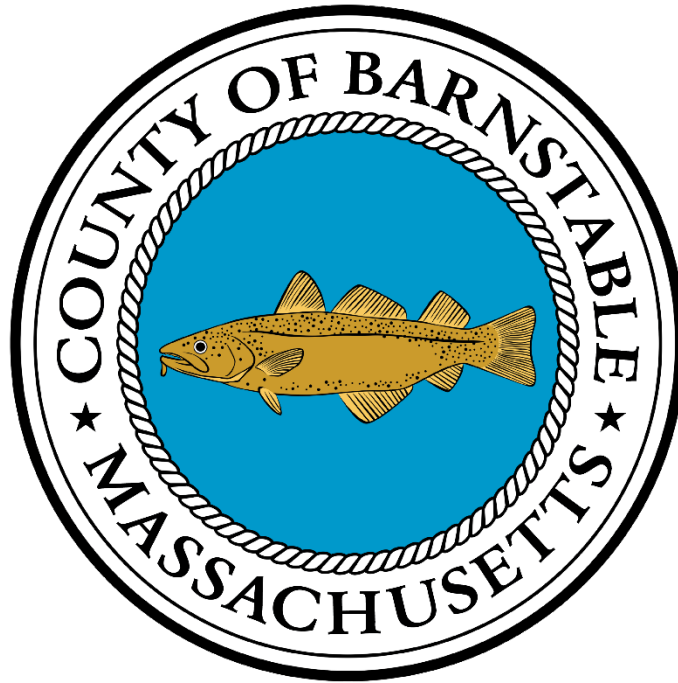


# Barnstable County Purchasing Department



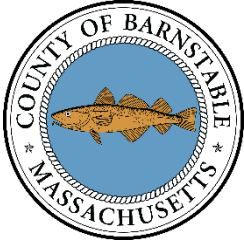
INVITATION FOR BID  
Supply and Delivery of #2 Fuel Oil  
IFB #: 7903  
April 6, 2020

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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 for **Supply and Delivery of #2 Fuel Oil** per Bid No. 7903

Bid specifications may be obtained as of April 6, 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 **Thursday, April 23, 2020 @ 11:00AM.**

Due to COVID-19, the Massachusetts Attorney General's Office has advised that public openings may be done through a livestream. An in-person bid opening will not be held for this bid. A link will be available on the Barnstable County Purchasing website with a link for the public to join on the day of the opening.

Sealed envelopes containing bids shall be clearly marked "**BID NO.7903 – SUPPLY AND DELIVERY OF #2 FUEL OIL**"

**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 bids 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.

Jennifer Frates  
Chief Procurement Officer

SUPERIOR COURTHOUSE, 3195 MAIN STREET, P.O. BOX 427, BARNSTABLE, MASSACHUSETTS 02630

## Supply & Delivery of #2 Fuel Oil

IFB #: 7903

Barnstable County is soliciting bids from qualified vendors to provide #2 fuel oil to the entities listed on ATTACHMENT A of this IFB. It is essential that Contractor(s) provide these entities with reliable delivery services throughout the term of the contract(s).

### 1. Service Specifications

Bidders are to submit responses based upon the specifications as outlined within Attachment A, "Service Specifications & Quantities" and the within Attachment B, "Bid Response Sheet". All pricing should be inclusive all cost associated with providing services as specified.

### 2. Term of Agreement

The Term of the Agreement will be from July 1, 2020 through June 30, 2021.

### 3. Sub Contractors

If any aspect of this project is to be sub contracted it must be so noted within your response. Include the name of the sub contractors and qualifications.

### 4. Pre-Bid Meeting

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

### 5. Bid Response Instructions

All bids must be delivered to:

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

### 6. 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 **11:00AM on Thursday, April 23, 2020**. No late proposals will be accepted.

Due to COVID-19, the Massachusetts Attorney General's Office has advised that public openings may be done through a livestream. An in-person bid opening will not be held for this bid. A link will be available on the Barnstable County Purchasing website with a link for the public to join on the day of the opening.

### 7. 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.

## **8. 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.

## **9. 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.)

## **10. 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.

## **11. Bid Prices to Remain Firm**

All bid prices submitted in response to this bid must remain firm for 30 days following the bid opening.

## **12. 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.

## **13. 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 **Tuesday, April 14, 2020, at 4:30 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 **#7903 Supply & Delivery of #2 Fuel Oil** 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.

#### **14. 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.

#### **15. Key Personnel**

Include within your response the key individuals that will be responsible for insuring the success of this project and their qualifications.

#### **16. References**

Provide the following references (Attachment D):

- Provide the contact information (entity name, contact name, title, phone number & email address) for three client references on projects of similar type, scale, and complexity.

#### **17. Price Escalation**

Not Applicable (N/A)

#### **18. Insurance**

##### General Insurance Requirements

Prior to the commencement this Contract, the Vendor shall procure and maintain during the life of the Contract and beyond as required, the types and limits of insurance as outlined below:

- All insurance required of the Vendor will be maintained with companies assigned a letter rating in the "A- VIII" category from A.M. Best or which are otherwise acceptable to the County of Barnstable, and which are lawfully authorized to do business in the Commonwealth of Massachusetts.
- Each policy (except workers' compensation and personal property) shall include County of Barnstable, and all other political subdivisions/entities as their interests may appear in the awarded scope of work (herein after referred to as "all other political subdivisions"), its officers and employees as Additional Insureds or loss payees as their interests may appear. Each policy shall indicate that the coverage is primary and non-contributory.
- Each policy shall contain a waiver of subrogation in favor of County of Barnstable, and "all other political subdivisions," its officers and employees.
- No policy must be allowed to expire, be cancelled or materially modified without thirty (30) days' prior written notice to the Chief Procurement Officer, County of Barnstable.

##### Liability Insurance

The Vendor shall be fully responsible for all claims for damages for bodily injury, including wrongful death, and all claims for property damage, which may result from the performance of this Contract by the Vendor, or any

of their respective agents or employees. The Vendor's liability shall not be limited to the extent of the insurance required herein. The Vendor shall take out and maintain in force during the life of this Contract the following types of insurance to protect the County of Barnstable, and "all other political subdivisions," its agents, and employees from claims which may arise from operations by himself or by anyone directly or indirectly employed by Vendor or working on their behalf.

- a. **Commercial General Liability Insurance:** to cover all claims for damages for bodily injury including accidental death, as well as claims for property damage which may arise out of operations performed in connection with the Contract. The policy shall provide a combined single limit for bodily injury and property damage of one million dollars (1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate. Personal and Advertising Injury coverage shall be provided at a limit of (\$1,000,000). The County of Barnstable and "all other political subdivisions" shall be named as an additional insured on all public liability and property damage insurance policies. The policy shall include a waiver of subrogation in favor of the County of Barnstable, and "all other political subdivisions." No insurance policy obtained pursuant to this section shall contain a deductible or self insured retention.
- b. **Automobile Liability:** to cover the liability of the Vendor arising from operations on and off the site of all motor vehicles whether they are owned, non-owned or hired. The policy shall be on an occurrence form with a combined single limit for bodily injury and property damage liability of at least one million dollars (\$1,000,000).  
The policy should include a Broadened Pollution Endorsement (CA 99 48) if Vendor is bringing fuel cans or possible pollutants, mobile equipment or other gas powered tools on-site. If hauling hazardous materials, contaminants or pollutants, the policy shall include coverage form MCS-90 in accordance with Sections 29 and 30 of the Motor Carrier Act of 1980.
- c. **Umbrella Liability:** to protect the Vendor against all claims excess of the commercial general liability and automobile liability mentioned above and employer's liability coverage mentioned in the paragraph below. The coverage provided by the umbrella policy shall be at least as broad as the underlying policies. The limit of protection provided by the policy shall be a minimum of one million dollars (\$1,000,000) or such other amount if required by the County of Barnstable and indicated via addendum to this Contract.

#### Workers' Compensation and Employer's Liability Insurance

Before commencing performance of this contract, the Vendor shall provide insurance for the payment of compensation and the furnishing of other benefits under the Massachusetts General Laws Chapter 152 (the so-called Workers Compensation Law) to all persons to be employed under this contract, the workers' compensation laws of any other state if there are any persons employed outside of Massachusetts, and any requirement for compensation required under any Federal Act for any maritime employee, longshoreman or harbor workers, and shall continue such insurance in full force and effect during the term of this contract. The contract shall, without limiting the generality of the foregoing, conform to the provisions of the General Laws Chapter 149 S34(a), which section is incorporated herein by reference and made a part hereof.

The Vendor shall provide employer's liability insurance in an amount not less than \$500,000 for each accident or disease for each employee.

#### Personal Property Insurance

Any tools, equipment, materials, and other personal property owned by Vendor shall be at the sole responsibility and risk of Vendor. The County of Barnstable, and "all other political subdivisions" shall not be liable for any loss, damage, or theft to such property. Any insurance that Vendor elects to maintain on Vendor's personal property and materials shall be at the sole responsibility and cost of Vendor.

#### Pollution Legal Liability

If applicable, the Contractor shall provide insurance coverage for bodily injury and property damage resulting from Contractor's liability arising out of pollution related exposures such as asbestos abatement, lead paint abatement, tank removal, mold remediation, removal of contaminated soil, etc. The policy shall also include coverage for on-site and off-site bodily injury and loss of damage to or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual, or sudden and accidental. The policy shall also include defense and clean-up costs. The policy shall provide a minimum limit of one million dollars (\$1,000,000) per occurrence for this project. If the policy is claims made, the retroactive date shall be no later than the commencement date of this contract and the policy shall include an extended reporting period of at least one year from substantial completion and acceptance of the work by the County of Barnstable or owner of the project.

#### Additional types of Insurance

The Vendor shall provide such other types of insurance as may be required by the County of Barnstable and indicated via addendum to this insurance requirement.

#### Proof of Insurance

No work shall be commenced on the site by the Vendor until copies of the policy or certificates of the types of insurance required hereby have been furnished to the Chief Procurement Officer, in a form satisfactory to her. If the Vendor provides a Certificate of Liability Insurance, it must indicate each policy number, insurance company, policy effective and expiration date, and limits of insurance. The certificate must make specific reference to the Contract number. It must also provide proof that the policy(ies) has been properly endorsed to add the County of Barnstable, and "all other political subdivisions" as an additional insured and to add a waiver of subrogation in favor of the County of Barnstable, and "all other political subdivisions," and to provide the County of Barnstable with at least thirty (30) days' notice of any cancellation, termination or material modification. The certificate must be signed by a duly authorized representative of the issuing insurance companies.

In addition, renewal certificates must be received by the County of Barnstable thirty (30) days prior to any policy expiration. Further, policies must not be allowed to expire or be canceled without thirty (30) days prior written notice to the Chief Procurement Officer, County of Barnstable.

#### Effect of Failure to Continue Insurance in Force

Failure to provide and continue in force insurance required by this contract shall be deemed a material breach of this contract and shall operate as an immediate termination thereof.

### **19. Contractual Terms**



Contractual terms and conditions will consist of the standard terms and conditions clauses contained within the County Purchase Order (Attachment E) and the Contract for Services (Attachment F) within this IFB for County Departments. 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. Towns will enter into their own contracts with the awarded Vendor.

**20. 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.

**21. Cost of Preparation**

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

**22. 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).

**23. 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.

**24. 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.

**25. 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 statues will be disregarded.

**26. Selection and Notice**

The bid will be awarded to the responsible and responsive vendor offering the most favorable fixed per-gallon or OEP price as indicated for each location. In case of a tie, immediately following the bid opening, in the presence of impartial witnesses, the names of the tied bidders will be placed in a receptacle, and the name of the winning bidder will be drawn by the a person who is not a County employee part of the bidding process nor someone who has an interest in the awarding of this bid.

Vendors must bid a fixed price that will remain in effect for the duration of the contract. An optional 20-day payment discount will be used only as a tiebreaker in determining award.

Notice of Award: The County has requested that all municipalities wishing to bid a fixed price have a representative who is authorized to accept or reject the bid to be available on the day of the bid opening to accept or reject the bid. If no representative can be reached, the fixed price bid for their location will be rejected. Each municipality will enter into their own contract with the appropriate vendor.

The County of Barnstable shall notify bidders as to whether their submitted fixed price bid has been accepted or rejected by the County of Barnstable and/or each political subdivision for which bids have been received on or before 2:00PM on the date when the bids are opened.

By submission of bids, the bidders agree to hold the County of Barnstable harmless for any causes of action in law or in equity that might accrue from the bid process. The County of Barnstable assumes no liability as a result of this bid process, the submission of bids or the acceptance or rejection of bids.

The County of Barnstable and/or each other political subdivision reserves the right to reject its section of the bid within an appropriate amount of time and unless otherwise specified by the bidder, to accept any item in the bid, or make a total award to one bidder. Rejection by any governmental entity or its section shall not be grounds for withdrawal by any bidder.

The County of Barnstable and/or each other political subdivision reserves the right to reject any and all bids if, in its sole opinion, it is in the best interest of Barnstable County and the political subdivisions listed on ATTACHMENT A to do so, waive any minor informalities in the bid requirements, or request additional clarifying information be provided after the deadline for submitting bids.

Upon notice of the award of the contract, the successful bidder shall submit names and telephone numbers, including twenty-four hour beeper or answering machine numbers, for those individuals involved in the direct customer service aspects of this contract(s). These contacts will be shared with all entities listed on ATTACHMENT A for the purpose of communicating routine or emergency information with the Contractor(s).

## **27. Submittals**

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

- a. Proposal
- b. List of any subcontractors
- c. Bid Bond as outlined in Attachment A **REQUIRED**
- d. Completed Bid Response Sheet (Attachment B) **REQUIRED**

- e. Non-Collusion/Tax Compliance (Attachment C) **REQUIRED**
- f. List of References (Attachment D) **REQUIRED**

One original copy of the bid should be submitted. Bids must be sealed and marked as follows: ***"IFB #7903 – Supply & Delivery of #2 Fuel Oil"***.

**END OF IFB**

## Attachment A Service Specifications & Estimate Quantities

### OIL SPECIFICATIONS:

Beginning July 1, 2018, the Commonwealth of Massachusetts required that all heating oil be ultra-low sulphur diesel specification (ULSD). The ULSD product is a distillate that contains less than 15 parts per million (ppm) of sulphur, the same specification used for most diesel fuel.

Vendors are required to bid on and deliver the ULSD product:

Bidders are to deliver ULSD as defined in 310 CMR, section 7.05 (1).

The ASTM Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy (Designation D4294-90) and 40 CFR PART 80 SECTION 80.1, 80.2, 80.29, 80.30 must be adhered to. **Bidder must provide upon request a current analysis of the Diesel product(s) being bid.**

If any of the specifications listed conflict, the Chief Procurement Officer of Barnstable County will determine the specifications that meet or exceed the needs of Barnstable County and the Political Subdivisions listed within this IFB. The decision of the Chief Procurement Officer will be final.

### ANALYSIS AND DISPOSITION OF OIL NOT MEETING THE OIL SPECIFICATIONS:

The paramount goal of this contract is supply and delivery of high quality oil that meets the Oil Specifications. The Contractor is required to assure Barnstable County and all political subdivisions listed within this IFB that there are quality control mechanisms in place to assure the quality of delivered oil. If a customer has reason to believe that the Contractor has delivered oil of an inferior quality, questionable grade of oil, or oil with contaminants within (including water), the customer will have independent testing performed at the customer's request at a testing lab selected by the customer. The Contractor will agree to abide by the testing results obtained from the independent testing lab and will pay for the cost of testing if delivered oil does not meet the standards.

All oil may be regularly and continually analyzed or only part or parts thereof may be analyzed by the County or any other political subdivision. Each contract will provide that upon such an analysis being made, the Contractor shall receive reasonable notice and shall be entitled to have a representative present when samples for analysis are taken and shall be entitled to take samples like the sample to be analyzed.

The contractor will be notified of any oil rejected for not having complied with the analysis as required by this IFB and is to immediately remove same and any other oil previously in the tank, and immediately replace all with a like quantity of acceptable oil that complies with the specifications. All applicable Local, State, and Federal regulations must be complied with to meet the requirements of this Section. This process must begin as soon as possible upon the Contractor's receipt of notice that the oil does not meet the specifications listed in this IFB, and in no event later than 24 hours after said receipt. On failure to do so, the County or other political subdivision affected may individually remove it at the expense of said Contractor, and if the Contractor fails to provide proper oil within a reasonable length of time the county or other political

subdivision affected may individually cancel the Contract or may, at the expense of the Contractor, purchase a proper oil which will comply with the specifications listed in this IFB, charging said Contractor for any excess in cost thereof. Oil rejected under this paragraph, if partially used, shall be paid for at the contract price.

**DELIVERY REQUIREMENTS:**

The Contractor is obligated to supply the full oil requirements of the contract user including the purchase, transport, and delivery of oil to each contract user. The Contractor is responsible for all costs associated with the transport of oil to the contact user's tank.

Deliveries must be in compliance with all applicable Local, State, and Federal laws and regulations.

Contractors are responsible for paying for any damage they cause at a site.

While performing work under this contract, the Contractor shall be responsible for completing cleanup for any spills or accidental release to the environment (pursuant to M.G.L. Chapter 21 E and other relevant regulations) at no cost to any of the entities listed within this IFB.

The Contractor shall notify all Local, State, and Federal authorities as required by law in the event of such a release or threat of release. The Contractor will make every effort to contact the customer's emergency contact first, if time frames and conditions allow.

The Contractor will immediately notify the user facility contact person, in writing, in the event of a spill, release, or threat of a release to the environment and prior to initiating clean up response actions. If prior notification of the facility contact person is not possible, then the Contractor shall take appropriate response actions, as directed by the Contractor's Licensed Site Professional, and notify the contact person, in writing, as soon as possible thereafter.

The Contractor must provide a written summary of all response action taken in any instance within the timelines established for reporting of spills and/or contamination, as set forth in M.G.L. Chapter 21 E.

The successful Bidder will protect Barnstable County and the other political subdivisions listed within this IFB from any and all infringements of patents, royalties, or damages arising from this contract's transactions.

If at any time the contractor is unable to furnish materials or services as ordered individually by the County or other political subdivisions, the Contractor shall be obligated to obtain delivery from another supplier and the contractor will in turn invoice the County or other political subdivision so affected, at the price specified in such Contract with the County or other political subdivision affected, or, the County or other political subdivision may order such materials or services from such places as are available, and the contractor shall pay to the affected County or other political subdivision all expenses incurred above such contract price.

Deliveries made to the County of Barnstable or other political subdivision shall be in the presence of an authorized agent of that governmental entity.

**Tank Wagon** deliveries of #2 fuel oil are to be by metered trucks and delivery slips shall be stamped by the metering device indicating the amount of fuel oil delivered at each delivery. Deliveries shall be made on days and during hours that are acceptable to contract users.

All deliveries of TANK WAGON #2 fuel oil shall be automatic, based on degree-day units unless otherwise stipulated by awarding authorities or Section. **Vendors are to make arrangements with each location for delivery times, etc.** Liability for damage resulting from an oil tank running out of fuel because of a Contractor's failure to make automatic deliveries shall be the responsibility of the Contractor.

**Motor Transport** deliveries must be sealed, receipts must accompany deliveries, and said seals shall be broken in the presence of an authorized agent of the government entity. Signed delivery slips are to be forwarded to the purchaser with invoices. Deliveries are to be made with 72 hours from date of notification. Spillage will be the responsibility of the contractor.

Motor Transport deliveries may be split between two sites at no extra charge.

**PAYMENT:**

Invoices shall be in cents per gallon. Twenty – (20) day payment schedules are offered for such quantities of materials or services as have been accepted by the County of Barnstable and by each other political subdivision individually. Discounts offered for payment within twenty (20) days shall be so specified on each section for each political subdivision.

State agencies and political subdivisions are specifically exempt from state sales tax and exempt from all federal taxes. The prices quoted shall be exclusive of said taxes.

Political Subdivisions will not pay more than the awarded bid price. Invoices must be calculated using the awarded bid price.

**BIDDING FORMAT:**

**Fixed Pricing:** Bidders will offer a fixed price per gallon to be in effect for the duration of the contract.

**Taxes:** State agencies and political subdivisions are specifically exempt from state sales tax and exempt from all federal taxes. The prices quoted shall not include taxes.

**OEP Pricing:** Items bid as OEP require vendors to compete for fuel on the basis of delivery margin. The O.E.P. bid, expressed in cents per gallon (not to exceed four (4) decimal places) will be a constant factor, which the winning vendor will receive for all deliveries of the responsive products. The Base Price for each fuel will be from Reseller Tank Car Boston Low Price as printed in the Journal of Commerce for the appropriate fuel for the delivery date of product.

The following exceptions to the Journal of Commerce postings will apply. Weekend pricing will be based on Friday's Posting. The Friday posting will also stay in effect on Monday Holidays. Prices in effect for midweek or Friday holidays will be the same as for the preceding day.

**BONDING REQUIREMENTS:**

**Bid Bond/Certified Check:** Each bid must be accompanied by a certified check or Bid Bond made payable to the County of Barnstable from a surety licensed in MA. Certified checks will be returned within ten (10) days of the award of the contract. However, if a bidder fails to execute such contract within ten (10) days of the date of sending, the certified check will be declared forfeited as liquidated damages. Bid Bonds or certified checks will be required as follows:

- \$2,000 if bidding up to 250,000 total estimated gallons
- \$3,000 if bidding up to 500,000 total estimated gallons
- \$4,000 if bidding up to 750,000 total estimated gallons
- \$5,000 if bidding up to 1,000,000 total estimated gallons
- \$10,000 if bidding more than 1,000,000 total estimated gallons

**Assurance:** As soon as the award is made, the successful Bidder(s) will be required to furnish a Performance Bond from a surety licensed to do business in MA, or Irrevocable Letter of Credit in the favor of the County of Barnstable and/or each political subdivision, individually, in an amount no less than \$.25 per gallon anticipated annual delivery. Said assurance shall cover the full term of any contract. Bidders must submit the name and address of the bonding company that will provide the performance bonds or the company that will supply the irrevocable letter of credit with their bid.

**Conditions of Award:** The County of Barnstable and each other political subdivision of this bid specification is listed by section. Each such section is accompanied by a listing of delivery sites, size of tanks at each site, and approximate gallonage used by that purchaser. A bidder may submit a bid on any or all sections as specified on the fuel oil bid sheet.

**Cancellation:** The County of Barnstable and/or any other political subdivision can terminate its contract/ price agreement with a contractor(s) who fails to perform under the terms of the contract/price agreement issued by a political subdivision. Notice of termination shall be in writing and notification shall be sent by registered or certified mail. Termination of contract/price agreement shall become effective upon contractor(s) receipt of notification.

**QUALIFICATIONS:**

Bidders must have been regularly engaged for a least one year prior to the date of bid opening, in the business of supplying the product bid upon, in the grade bid upon and in the manner of organization, facilities and assurance of supply to insure prompt and satisfactory service as called for with all delivery in Massachusetts calibrated tank trucks.

Bidders must have firm sources of fuel.

**Pre-Qualification Statement:** A pre-qualification statement may be required by the County of Barnstable or other political subdivision individually. This statement includes, but is not limited to, experience with government entities, legal or administrative proceedings currently pending, financial condition certified by a Certified Public Accountant, bank and credit references, a listing of equipment to be used during the term of the contract, and municipal references for which the bidder has provided similar services.

Estimates of gallons required by each municipal entity are included for the convenience of bidders as the best information available to estimate the number of gallons in this procurement. Barnstable County makes no guarantee that any entity will purchase the number of estimated gallons listed below.

SECTION		Tank Size	#2 - Tank Wagon
<b>Section 1 - Brewster</b>			
1	COA-Old Town Hall, 1673 Main St., Brewster	3-275	1,500
2	Brewster - Disposal Area 201 Run Hill Road, Brewster	1-1000	600
<b>Section 2: County Locations</b>			
1	The Children's Cove, 1225 Mary Dunn Rd., Barnstable	1-275	1,300
2	Farmhouse Extension, 3675 Main St., Barnstable	1-275	1,800
3	*Americorps Residence, Bldg 4 875 County Road, Pocasset	1-275	1,250
	*Invoices are to be sent to Americorps Cape Cod		
	BC Resource Development, PO Box 427, Barnstable, MA		
<b>Section 3 - Dennis/Yarmouth School District</b>			
1	NEED Building North Pamet Rd., Truro	1 - 275	1,800
2	Dennis-Yarmouth Regional High School 210 Station Ave, So Yarmouth, MA	1 -15,000 gal underground	15,000
3	Station Avenue Elementary School 276 Station Ave, So Yarmouth, MA	1 - 10,000 gal underground	10,000
<b>Section 4 - Falmouth</b>			
1	East Falmouth Fire Department 505 E. Falmouth Highway, East Falmouth	1- 1000	940
2	Falmouth Fire Dept. Shop, 505 E. Falmouth Hwy	1-1000	4,560
3	East Falmouth Public Library, 310 East Falmouth Highway, East Falmouth	1- 300	1,124
4	Wastewater Treatment Plant Blacksmith Shop Road	1 - 1000 gall (underground) 1 - 2000 gall (above ground) 1 - 5,000 gall (underground)	5,000
5	Lawrence Academy Building Academy Lane, Falmouth	1 - 300	1,227
<b>Section 5 - Fire Training Academy</b>			
1	Fire Training School 155 South Flint Rock Road, Barnstable <b>Must contact day before delivery</b>	1- 250	2,063
<b>Section 6 - Harwich</b>			
1	Golf Department Maintenance Building, 183 Oak St., Harwich	1 - 275 1- 500	1,275 875
2	Harwich Golf Department, Cran Valley Pro Shop 183 Oak St.	1 -275	2,300
<b>SECTION</b>		<b>Tank Size</b>	<b>#2 - Tank Wagon</b>
<b>Section 7 - Hyannis Public Library</b>			
1	Hyannis Library 401 Main Street, Hyannis	2-275	6,000
<b>Section 8 - Le Hac House - Cape Cod National Seashore</b>			



	1	300 Pamet Rd., Wellfleet	1-275	1,100
		Invoices are to be sent to Americorps Cape Cod		
		BC Resource Development, PO Box 427, Barnstable, MA		
<b>Section 9- Nauset Regional School District</b>				
	1	Stony Brook Elementary School, Underpass Road, Brewster	1 - 6,000 1 - 300	28,000
	2	** Wellfleet Elementary School School Street, Wellfleet	1 - 10,000	20,000
		** Delivery to this location must be by tank wagon		
<b>Section 10 - Orleans</b>				
	1	Park Dept., Bay Ridge Lane, Orleans	1-275	400
	2	Town Hall Annex, Main St., Orleans	1-275	1,000
	3	Former American Legion Building, 10 School Road	1-275	1,000
	4	Hubler's Property, 223 Beach Road	1-275	200
	5	Sea Call Farm, Tonset Road	1-200	1,400
<b>Section 11 - Wellfleet</b>				
	3	Library, West Main St.	1-300	2,000
<b>Section 12 - Truro</b>				
	1	Highway Dept. Main Garage, 17 Town Hall Road	1-275	1,800
	2	Highway Dept Sweeper Garage, 17 Town Hall Rd.	1-275	450
	3	Truro Highway Dept Annex , 17 Town Hall Rd	1-275	450
	4	Truro Beach Office, Route 6, Truro	1-1,000	450

## Attachment B

### Bid Response Form

The undersigned BIDDER proposes and agrees that the proposal is based upon the items described in the Invitation for Bid documents and that the requirements have been read and understood by the proposer.

State agencies and political subdivisions are specifically exempt from state sales tax and exempt from all federal taxes. The prices quoted shall be exclusive of said taxes and the oil spill prevention fee.

#### **#2 TANK WAGON DELIVERIES – BID AS A FIXED PRICE**

<b>Section</b>	<b>Gallons</b>	<b>Fixed Price Bid</b>
1. Brewster	2,100	
2. County Locations	4,350	
3. Dennis/Yarmouth School District	26,800	
4. Falmouth	12,851	
5. Fire Training Academy	2,063	
6. Harwich	4,450	
7. Hyannis Public Library	6,000	
8. LeHac House	1,100	
9. Nauset Regional School District	48,000	
10. Orleans	4,000	
11. Wellfleet	2,000	

#### **#2 TANK WAGON DELIVERIES – BID AS OEP**

<b>SECTION</b>	<b>Gallons</b>	<b>OEP Price Bid</b>
12. Truro	3,150	

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

Signed: \_\_\_\_\_ Print Name: \_\_\_\_\_

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

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

\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_ Date: \_\_\_\_\_

## **ATTACHMENT C**

### **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 30B.

**ATTACHMENT D**  
**REFERENCE FORM**

Bidder: \_\_\_\_\_

**Bidder must provide references for:**

Bidder must submit a complete list of all jobs performed in the past two (2) years that are similar in size and scope to this project, with contact names and telephone numbers.

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 E

### Purchase Order Terms and Conditions

This purchase order issued by the County of Barnstable (hereinafter "County") and the attached description of product/services to be provided and price quote submitted by the supplier/contractor/consultant named in this purchase order (hereinafter "vendor") shall constitute the contract between the County and the vendor. This purchase order, description of product/services and price quote constitute the entire agreement between the parties (hereinafter "contract") and there are no contracts other than those incorporated herein. In the instance of the purchase order resulting from a state contract or intergovernmental collaborative bid, the terms and conditions of that bid and/or contract will apply, and the terms stated herein shall be supplemental to those terms. The contract may not be changed, altered, amended, modified, or terminated orally and any such change, alteration, amendment, or modification must be in writing and executed by the parties hereto.

FOR AND IN CONSIDERATION of the payments by the County and delivery of the product/services by the vendor, the VENDOR hereby agrees to provide the product and/or services and the County agrees to pay the contract price in accordance with the terms of this contract.

1. ACCEPTANCE: The Contractor, by accepting this contract, agrees to all the conditions and terms specified herein, on attachments hereto, on the reverse hereof, and on any bid inquiry that may have preceded this award. Direct all correspondence relative to this contract to the Barnstable County, Purchasing Department, Barnstable, MA 02630. Prices cannot be altered during the term unless that was a condition of Contractor's bid. Unless otherwise stated, unit prices are inclusive of all costs.
2. SHIP TO: To ensure that delivery is made to the correct location, please address all shipments as noted on the face of this order. All correspondence, packages, and invoices must indicate the purchase order number, departmental name, and delivery address as indicated on this order.
3. DELIVERY: Deliveries shall be strictly in accordance with the schedule set out or referred to in the order and in exact quantities ordered. Notwithstanding the foregoing, Contractor shall not be liable for delay in delivery due to causes beyond Contractor's control and without Contractor's fault or negligence, provided Contractor exercises due diligence in promptly notifying County of conditions which will result in delay, and provided further, if Contractor's delay is caused by the default of a subcontractor or supplier, such default arises out of causes beyond the control of both Contractor and subcontractor or supplier, and without the fault or negligence of either of them, and the supplies or services to be furnished by the subcontractor or supplier were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.
4. INSPECTION OF GOODS: The County shall have a reasonable time after delivery to inspect the goods delivered or services rendered under this contract and to reject or revoke acceptance of any not conforming with the terms of this agreement. Rejected goods will be returned to Contractor at Contractor's expense. Rejected services will be reworked and all costs associated with the rework will be charged to Contractor.
5. SUBSTITUTION OF GOODS: Goods not conforming with this contract will not be accepted. The County must approve, in writing, any substitution of non-conforming goods prior to shipment.
6. MATERIAL SAFETY DATA SHEETS: Contractor shall submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance or mixture containing such substance (pursuant to M.G.L. C. 111F s. 8,9 and 10 and the regulations contained in 441 OMR s. 21.06) that is shipped against this order.
7. CONTRACTOR'S WARRANTY: Contractor herein warrants and covenants that the subject merchandise complies with all applicable federal, state and local statutes, rules and regulations for the installation and use of said merchandise for the purpose for which said merchandise is being purchased or rented.
8. PAYMENT: All invoices must be submitted to the BILL TO ADDRESS referenced on the front of this purchase order and must indicate the County's purchase order number and the name of the department listed in the SHIP TO ATTENTION line. Note that in order to effect payment, a W-8 or W-9 form, as appropriate, executed by the Contractor, which reflects the Contractor's current legal and remittance address or addresses, must be on file at the County. Payment shall be made in accordance with M.G.L. C.29, s.29c and 815 CMR 4.00.
9. DEFAULT: In the event of default by Contractor, including failure to deliver any item ordered within a reasonable time after acceptance of this contract, or if the County rightfully rejects the goods or services or revokes acceptance, the County may without waiving any other remedy permitted by law, make covering purchases of goods or services and hold Contractor liable for all additional costs incurred. Further, in such event, the County, at its option, may be relieved of any duty to accept such items as are subsequently delivered pursuant to this contract.
10. If this contract does not agree with Contractor's quotation, contact the County before performance begins. Prior to performance, the County may require additional information from the Contractor in order to ensure that the firm is qualified, and that the product or service offered will meet the need for which it is intended.
11. FORCE MAJEURE: The Contract shall be subject to Force Majeure considerations. Either party hereto shall be excused from performance of any act under the contract if prevented from the performance of any act required by reasons of strikes, lockouts, labor trouble, inability to procure materials, failure of power, fire, winds, Acts of God, riots, insurrections, war or other reason of a like nature not reasonably within the control of the party. The period for the performance of such obligation shall be extended for an equivalent period for no additional cost. Continued prevention from performance by such causes for periods aggregating sixty (60) or more days shall be deemed to render performance impossible, and either party shall thereafter have the right to terminate this contract.
12. TERMINATION OF CONTRACT: Unless excused from performance by Force Majeure, if the Vendor shall fail to fulfill in a timely and satisfactory manner its obligations under this contract, or if the Vendor shall violate any of the covenants, conditions, or stipulations of this contract, which failure or violation shall continue for seven (7) business days after written notice of such failure or violation is received by the vendor, then the County shall thereupon have the right to terminate this contract by giving written notice to the vendor of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Additionally, the County, by written notice, may terminate this contract, in whole or in part, when it is in the County's best interest. If this contract is terminated, the County shall be liable only for payment under the payment provisions of this contract for services or goods received before the effective date of termination.
13. GOVERNING LAW: This contract is governed by the laws of the Commonwealth of Massachusetts.
14. INSURANCE: If the contract requires the vendor to perform work on County property, no work shall be performed by vendor under this contract on County property unless and until vendor submits a certificate of insurance naming the County of Barnstable as an additional insured in full compliance with the County's insurance policies for liability, property damage and workmen's compensation as applicable. Email certification to Purchasing Division purchasing@barnstablecounty.org. Insurance is to remain current during performance of this contract.
15. INDEMNIFICATION: The Vendor shall indemnify, defend and hold harmless the County, its elected or duly appointed officers, and employees against liability, losses, damages or expenses (including legal expenses) resulting from any claim based upon breach of this contract or negligent or intentional misdeeds or omission of the Vendor, its employees or its agents in providing its service(s) to the County pursuant to the Contract.
16. TAX EXEMPT: The County is exempt from Federal Excise Tax, including Transportation Tax, and will furnish properly executed tax exemption certificates when called upon to do so. The County is also exempt from Massachusetts Sales Tax.
17. NON-DISCRIMINATION: The Contractor agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment.
18. STATE TAX - M.G.L. C.62C, s.49A and C. 15 IA, s. 19A: Each Contractor must certify under penalties of perjury that they' have filed all state returns and paid all state taxes as required under law.

This Purchase Order in its entirety constitutes a written contract with the County of Barnstable pursuant to the provision of Chapter 30B, Subsection (a) as amended by 2013, 38, Section 49 effective July 1, 2013.

The terms of this contract cannot be modified, altered, or changed without the specific written approval of the County.

**ATTACHMENT F**

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 1518§(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:**

**FOR THE CONTRACTOR:**

BARNSTABLE COUNTY COMMISSIONERS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date

\_\_\_\_\_

\_\_\_\_\_

Date