

AGENDA PACKET

03/28/18 REGULAR MEETING

AGENDA ITEM 5a

Approval of Minutes: Regular Meeting of March 21, 2018 (NO DOCUMENTS)

AGENDA ITEM 6a

Report from Abigail Archer, Marine Resource Specialist, of the Cape Cod Cooperative Extension, on her travel to the Northeast Regional River Herring Meeting in Hartford, Connecticut from February 6, 2018 through February 7, 2018



Out of State Travel Report

Fill out this report and submit it to the County Administrator (copy the Commissioner's Executive Assistant) within 30 days of completing your travel. Be prepared to speak about the subject at the following Regional Board of Commissioners' meeting.

Name: Abigail Archer

Title: Marine Resource Specialist

Department: Cape Cod Cooperative Extension

Dates of Trip: February 6-7, 2018

Name of Meeting: Northeast Regional River Herring Meeting

Location: CT Dept of Energy & Environmental Protection

Report Submitted for Commissioners' Meeting On: _____

Purpose: [describe the purpose and goals of the trip and about the organization hosting the event]

- The MA Division of Marine Fisheries organizes an annual gathering of biologists from Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York, and federal agencies who work on river herring. The biologists update each other on counts of adult river herring ascending rivers, on juvenile abundance indices, on observations they have made, on restoration projects that are underway, and any concerns they have that would benefit from group discussion. After the state updates, we heard presentations from Brad Chase about the recent Atlantic States Marine Fisheries Commission stock assessment, from Tara Trinko-Lake at National Marine Fisheries Service about the petition for listing under the Endangered Species Act, and from the researcher Eric Palkovacs on his latest results on assigning river herring to distinct population groups based on genetics.

Highlights: [describe achievements, meetings attended, or successes or new information, etc.]

- I brought up the issue of aquatic invasive plant species in ponds and rivers with herring runs and all agreed that it is an issue worth more study
- I learned that when Palkovacs completes his work, river herring caught as bycatch in the Atlantic herring fishery will be able to be assigned to a regional stock (Northern New England, Southern New England, Mid Atlantic, Southern). This information will help us to determine if bycatch is negatively impacting river herring populations.

Outcomes: [describe the goals that were achieved, how they were achieved & the short or long-term impact for Barnstable County].

- Cape Cod river herring wardens work hard to keep fish ladders working and rivers free of obstructions. It's important for them to know that there are researchers and managers working hard to determine the cause of river herring declines. I identified several topics that will be useful for river herring wardens to learn about at the next annual meeting, and a couple speakers who might be willing to give talks.



AGENDA ITEM 6b

County Reimbursement Policy for Employees and Elected Officials

AGENDA ITEM 6c

County Administrator Goals and Objectives for Fiscal Year 2019 (NO DOCUMENTS)

AGENDA ITEM 6d

County Commissioner Goals and Objectives for Fiscal Year 2019

1. Space allocation, keep moving forward on consolidating space used by County to better serve our tenants.
 - a. Better use of current space
 - b. Revenue source and cost reductions for County
 - c. Establish dialog with DCAMM and the County Sheriff's Office with respect to the issue surrounding the telecommunication tower located on the Complex.

2. Create a 5-year plan on County Complex expansion and new Court structure.
 - a. Work with State on their proposed development
 - b. Explore possible new building for CCC. (save on rent)
 - c. Explore the future use of County property located at Rt. 132

3. Re-visit all leases and either amend, wright new, or end relationship with current tenants.
 - a. Create a better revenue source
 - b. Bring process in line with Charter and Assembly vote

4. Create a - year plan on consolidating all County Departments as to better serve the Towns and streamline costs.
 - a. Open Cape relationship with County
 - b. Cape Cod Commissions role in Joint Initiatives
 - c. Waste & Waste water issues, ie; collaborative.
 - d. Conduct periodic discussion and review of the possibility of roll back the County Deeds Tax to levels prior to July 2016.

5. Create a Policy and Procedure for a better Budgeting process and expenditure of funds.
 - a. Create Reserve Funds
 - b. Create a Departmental Budget process that bring Department Heads to the Table at the beginning of budget process for FY 19.
 - c. Build Reserves and continue to establish a solid and sustainable Bond Rating.

6. Schedule an INCOME (Revenue) workshop
 - a. Better understand the County's projected revenues for future.
 - b. Develop sustainable revenue sources for established funds and long term commitments for County.
 - c. Explore and pursue new source of non-tax revenue, i.e.; "Payment in Lieu of Taxes" program sponsored by the U.S. Department of the Interior.

7. Seek to resolve the Authorization to Bond yet funded with Reserves capital expenditures which date back 10 years. Possible need for State Legislation or re-vote by both Assembly and Commissioners.

8. Discussions with Cape Cod Community College and other Institutions of Education to set up an Internship Program at the County involving interested students.

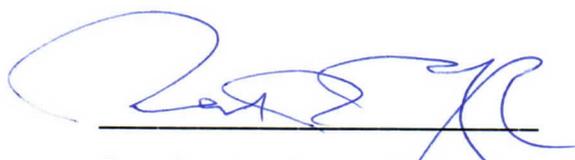
Approved:



Leo G. Cakounes, Chair



Mary Pat Flynn, Vice-Chair



Ron Beaty, Commissioner

04/05/2017

Date

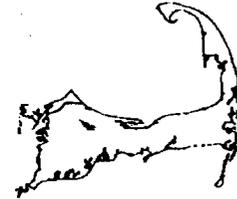
AGENDA ITEM 6e

Proposed Ordinance 18-__: Providing a supplemental budget for fiscal appropriations in Fiscal Year 2018



Mary T. McIsaac
Director/County Treasurer

County of Barnstable
Finance Department
Superior Court House, P.O. Box 427
Barnstable, MA 02630
508-375-6915
fax 508-362-4136



Memorandum

March 27, 2018

To: Mr. Leo Cakounes, Chairman

From: Ms. Mary T. McIsaac, Finance Director/Treasurer

Re: Request for Supplemental Budget

A supplemental budget is hereby requested to cover unanticipated costs related to the Fire Training Academy ongoing clean-up efforts, the Barnstable Settlement agreement and emergency repairs at the Second District Court as follows:

1. The sum of \$100,000 to provide funds necessary to cover the ongoing remediation efforts at the Fire Training Academy. Various contractual costs including but not limited to site monitoring and testing are currently being covered from the Fire Training Clean-Up Fund.
2. The sum of \$70,000 to provide the required FY18 funding for filter changes as agreed upon in the Barnstable settlement agreement.
3. The sum of \$45,000 to cover the costs of the unanticipated replacement of the generator at the Second District Court. The current reimbursement rate for the Second District Court is 100% and therefore the funds will be reimbursed to the County by the Commonwealth.

Future budgets will address these types of expenses which were not known at the time of the submission of the FY18 budget but have since been confirmed to be future operating costs. The FY19 proposed budget includes funding in the facilities for "emergency repairs" to cover extraordinary and/or unforeseen expenses which occur from time to time, usually requiring urgent responses. Going forward we will have the ability to respond to these issues timely avoiding disruptions in service to the County and the Trials Courts. Additionally, the FY19 proposed budget includes funding for the filter changes and the ongoing O & M costs due to the Town of Barnstable as defined in the settlement agreement and we will fund these for as long as necessary in the budget. Finally, a fund designated for the Fire Training clean-up has been funded by transfers from reserves during the time where reasonably anticipated costs were being identified and quantified. A reasonable estimate will be added to the FY20 budget and future budgets.

Thank you in advance for your consideration.

Cc: Jack T. Yunits, Jr., County Administrator

BARNSTABLE COUNTY

In the Year Two Thousand Fifteen

Proposed Ordinance 18- _____

The Cape Cod Regional Government, known as Barnstable County, hereby ordains;

To add to the County's operating budget for Fiscal Year 2018, as enacted in Ordinance No. 17-04, by making a supplemental appropriation for expenses for the Fiscal Year two-thousand and eighteen.

Section 1.

Based on a revised estimate of income of Barnstable County for the current fiscal year, made as of March 25, 2018, the sum set forth in section one, for the purpose set forth therein and subject to the conditions set forth in the Barnstable County Ordinance 17-04, is hereby appropriated from the General Fund Unreserved Fund Balance for FY2018 as a supplemental appropriation for Barnstable County for the fiscal year ending June thirtieth, two thousand and eighteen. Said funds shall be derived from the General Fund.

<u>Budget #</u>	<u>Sub-Program</u>	<u>Group</u>	<u>\$ Amount</u>
8099	Contractual Services	2	\$100,000
0019102	Court Judgement	2	\$70,000
0012021	Emergency Repairs	2	\$45,000

TOTAL SUPPLEMENTAL APPROPRIATION \$ 215,000

Approved by the Board of County Commissioners _____ (date), at _____ (time).

Leo G. Cakounes
Chairman

Ronald R. Beaty
Vice Chairman

Mary Pat Flynn
Commissioner

AGENDA ITEM 6f

Authorizing the adoption of a new Barnstable County Pregnancy and Pregnancy -
Related Condition Policy

BARNSTABLE COUNTY PREGNANCY AND PREGNANCY-RELATED CONDITIONS POLICY

I. Introduction

The Barnstable County (“County”) does not discriminate on the basis of pregnancy and pregnancy-related conditions.

II. Application of the Pregnant Workers Fairness Act (“the Act”),

The County will:

1. Upon request for an accommodation, communicate with the employee in order to determine a reasonable accommodation for the pregnancy or pregnancy-related condition. This is called an "interactive process," and it will be done in good faith. A reasonable accommodation is a modification or adjustment that allows the employee or job applicant to perform the essential functions of the job while pregnant or experiencing a pregnancy-related condition, without undue hardship to the County.
2. Accommodate conditions related to pregnancy, including post-pregnancy conditions such as the need to express breast milk for a nursing child, unless doing so would pose an undue hardship on the employer. "Undue hardship" means that providing the accommodation would cause the County significant difficulty or expense.
3. Will not require a pregnant employee to accept a particular accommodation, or to begin disability or parental leave if another reasonable accommodation would enable the employee to perform the essential functions of the job without undue hardship to the County.
4. Will not refuse to hire a pregnant job applicant or applicant with a pregnancy-related condition, because of the pregnancy or the pregnancy-related condition, if an applicant is capable of performing the essential functions of the position with a reasonable accommodation.
5. Will not deny an employment opportunity or take adverse action against an employee because of the employee’s request for or use of a reasonable accommodation for a pregnancy or pregnancy-related condition.
6. Will not require medical documentation about the need for an accommodation if the accommodation requested is for: - (i) more frequent restroom, food or water breaks; (ii) seating; (iii) limits on lifting no more than 20 pounds; and (iv) private, non-bathroom space for expressing breast milk. The County may, however, request medical documentation for other accommodations.

III. Complaints of Pregnancy and/or Pregnancy-Related Discrimination

If you believe that you as an employee have been subjected to pregnancy and/or pregnancy-related discrimination, you have the right to file a complaint with the County. This may be done in writing or orally.

If you would like to file a complaint you may do so by contacting Human Resources Director, County Commissioners' Office, 3195 Main Street, Barnstable, MA 02630 (508-375-6646). The Human Resources Director is also available to discuss any concerns you may have and to provide information to you about our policy and our complaint process.

IV. Investigation

When the County receives the complaint, it will promptly investigate the allegation in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. The investigation will include a private interview with the person filing the complaint and with witnesses. When the investigation is completed, the County, to the extent appropriate, will inform the person filing the complaint the results of the investigation.

If it is determined that inappropriate conduct has occurred, the County will act promptly to correct the condition.

V. Disciplinary Action

If it is determined that inappropriate conduct has been committed by an employee, the County will take such action as is appropriate under the circumstances. Such action may range from counseling to termination from employment and may include such other forms of disciplinary action as it deem appropriate under the circumstances.

VI. State and Federal Remedies

In addition to the above, if you believe you have been subjected to discrimination, you may file a formal complaint with either or both government agencies set forth below. Using our complaint process does not prohibit you from filing a complaint with these agencies. Each of the agencies has a short time period for filing a claim (EEOC - 300 days; MCAD - 300 days).

[The United States Equal Employment Opportunity Commission](#) ("EEOC")

[The Massachusetts Commission Against Discrimination](#) ("MCAD")

Approved by Board of Regional County Commissioners on March 28, 2018:

Leo Cakounes
Chair

Mary Pat Flynn
Vice Chair

Ron Beaty
County Commissioner

AGENDA ITEM 6g

Authorizing the proclamation of the month of April as Child Abuse Prevention Month

Child Abuse Prevention Month Proclamation

Whereas, children are vital to our state's future success, prosperity and quality of life as well as being our most vulnerable assets;

Whereas, all children deserve to have the safe, stable, nurturing homes and communities they need to foster their healthy growth and development;

Whereas, child abuse and neglect is a community responsibility affecting both the current and future quality of life of a community;

Whereas, communities that provide parents with the social support, knowledge of parenting and child development and concrete resources they need to cope with stress and nurture their children ensure all children grow to their full potential;

Whereas, effective child abuse prevention strategies succeed because of partnerships created among citizens, human service agencies, schools, faith communities, health care providers, civic organizations, law enforcement agencies, and the business community;

Therefore, I do hereby proclaim **April** as **Child Abuse Prevention Month** and call upon all citizens, community agencies, faith groups, medical facilities, elected leaders and businesses to increase their participation in our efforts to support families, thereby preventing child abuse and strengthening the communities in which we live.

Signature

Date

AGENDA ITEM 8a

Authorizing the approval of a timesheet for Jack Yunits, County Administrator, for the period of March 4, 2018 through March 17, 2018 (NO DOCUMENTS)

AGENDA ITEM 8b

Authorizing the approval of a grounds request by Joan E. Ellis to place flag decorations on the front lawn of the Superior Courthouse for various holidays and events



BARNSTABLE COUNTY

OFFICE OF COUNTY ADMINISTRATOR
3195 MAIN STREET
P.O. BOX 427
BARNSTABLE, MASSACHUSETTS 02630

Jack T. Yunits, Jr.
County Administrator
Cell: (508) 510-1127
Office: (508) 375-6771
Fax: (508) 362-4136
Jack.yunits@barnstablecounty.org

MEMORANDUM

DATE: March 28, 2018
TO: County Commissioners
FROM: Owen Fletcher, Executive Assistant
SUBJECT: Grounds Request

The County has received a grounds request from Joan E. Ellis, 3200 Main Street, Barnstable Village, MA 02668. Please approve her request to place flag decorations on the front lawn of the Superior Courthouse for the holidays and events listed here:

- Monday, April 16, 2018: Patriots Day (Boston Marathon Day)
- Monday, May 28, 2018: Memorial Day
- Thursday, June 14, 2018: Flag Day
- Sunday, July 22, 2018: Big Nick's Ride
- Saturday & Sunday, August 4 - 5, 2018: Pan Mass Bike Ride
- Tuesday, September 11, 2018: Patriot Day
- Sunday, November 11, 2018: Veterans Day

This approval would contingent upon the following conditions:

- the decorations would be limited to the front lawn area of the Superior Courthouse; and
- the decorations would not block water sprinklers, the sidewalks or impede any landscaping or other activities taking place on County grounds.

Approved:

Leo G. Cakounes, Chair

Ronald R. Beaty, Vice-Chair

Mary Pat Flynn, Commissioner

MARCH 20, 2018

JOHN YUNITS, JR.
COUNTY ADMINISTRATOR

RE: AMERICAN FLAGS ON FRONT LAWN

THE TIME HAS COME AGAIN WHEN I AM ASKING YOUR PERMISSION TO PUT THE FLAGS ON SUPERIOR COURT FRONT LAWN. I USUALLY PUT THEM UP TWO DAYS BEFORE AND TAKE THEM DOWN TWO DAYS AFTER.

THESE ARE THE DAYS I WOULD LIKE TO DO THIS:

#1. MONDAY, APRIL 16TH, 2018 - "PATRIOTS DAY"
"A MASSACHUSETTS HOLIDAY" - ALSO
"THE BOSTON MARATHON"

I WOULD LIKE TO HONOR THOSE WHO RAN APRIL 15, 2013 AND THOSE WHO ARE RUNNING THIS YEAR.

#2. MAY 28TH ~ MONDAY - "MEMORIAL DAY"

#3. THURSDAY, JUNE 14TH 2018 - "FLAG DAY"

#4. SUNDAY JULY 22ND 2018 - "BIG NICKS RIDE"

A MOTORCYCLE RIDE TO HONOR OUR
FALLEN HEROES OF CAPE COD.

IT ALSO SUPPORTS CAPE COD
VETERANS AND FAMILIES IN NEED.

- 2 -

- # 5. SATURDAY & SUNDAY ~ AUGUST 4TH & 5TH, 2018
"PAN MASS BIKE RIDE" ~ FOR CANCER.
- # 6. TUESDAY, SEPTEMBER 11, 2018
"PATRIOT DAY"
- # 7. SUNDAY, NOVEMBER 11, 2018
"VETERANS DAY"

AS ALWAYS, I DO NOT DO JULY 4TH,
* "INDEPENDENCE DAY" AS THE FRONT LAWN
IS COVERED WITH FAMILIES WATCHING
OUR "VILLAGE PARADE".

I WILL BE RESPECTFUL AND
COURTEOUS OF THE LANDSCAPERS.

I HOPE THIS MEETS WITH YOUR
APPROVAL.

RESPECTFULLY YOURS,

Joan E. Ellis

JOAN E. ELLIS
3200 MAIN STREET
P.O. BOX 22
BARNSTABLE VILLAGE,
MA 02630
TEL. 508-362-3215

AGENDA ITEM 8c

Authorizing the execution of a cooperative agreement with the Town of Falmouth for an amount not to exceed \$72,000.00 to do and perform all dredge related work for Great Pond, Green Pond and Eel River Inlets

COOPERATIVE AGREEMENT
BETWEEN
BARNSTABLE COUNTY
AND THE TOWN OF FALMOUTH

THIS AGREEMENT, made and entered into this _____ day of _____, 2018 by and between the County of Barnstable, hereinafter called the "County," and the Town of Falmouth, hereinafter called the "Town".

WHEREAS, the Town wishes to have the County undertake the dredging projects covered by this agreement more specifically described by way of the attached plan pursuant to the terms and conditions directed herein.

ARTICLE I. STATEMENT OF WORK

NOW THEREFORE, in consideration of the above premises and in the interest of the mutual advantage in attainment of common objectives, the parties hereto agree as follows:

BARNSTABLE COUNTY AGREES:

1. To do and perform all dredge related work for Great Pond, Green Pond and Eel River Inlets in accordance with the specifications, drawings and plans (Attachment I) up to a maximum contract amount of \$72,000.00. This is based on removing approximately 8,000 cubic yards of material at \$9.00 per cubic yard and the charge for mobilization/demobilization costs as set forth in Article III herein. Final and complete specifications, plans and drawings shall be provided to the County by the Town in a timely manner.
2. To observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the specifications, plans, and drawings identified in Attachment I as applicable to dredging and rough placement of materials.
3. To provide a hydraulic dredge and all related equipment to conduct maintenance dredging for the Town, according to and guided by the specifications, plans, drawings as provided.
4. To pump dredge materials and provide rough beach placement of said materials at a rate of \$9.00 per cubic yard for standard dredge material. This price includes before and after dredge surveys to be performed by the County. The County warrants that the final surveys are performed for the limited purpose of substantiating dredge volumes and under no conditions should said surveys be utilized to delineate navigable channels. The County shall provide the Town access to detailed survey work through Center for Coastal

Studies Provincetown at the Town's request and at the Town's expense.

5. To comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage injury or loss or on dredging or handling of dredge materials.
6. To the extent permitted by law, to indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the County and its employees with respect to the County's performance of its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this agreement.
7. Immediately notify the Town and cease operations whenever the dredging operations exceed by more than 10 % the specifications, drawings and plans agreed to as the volume scope of the agreement or whenever situations or conditions are encountered outside the scope of the specifications, drawings, and plans that were nor reasonably foreseeable. The parties agree that variations on the scope of 10 % more than or less than the proposed scope of work is reasonable due to climatic and coastal changes and that price adjustments shall be made accordingly. The parties further agree that changes in excess of 10 % shall require the parties to adjust this contract in writing pursuant to Article V.
8. Without the prior approval of the Town, the dredge will operate between the hours of 7:00 A.M. and 7:00 P.M.

THE TOWN OF FALMOUTH AGREES:

1. To obtain all required federal, state, and local permits and approvals to conduct the dredge project.
2. To furnish all specifications, drawings, and plans required to perform the dredge project at the execution of this document. Said documents will be incorporated by reference as Attachment I.
3. To conduct required inspections and testing consistent with federal, state and local permits and approvals.
4. To inspect the County's on-site dredging work in a timely manner.
5. To obligate funds to conduct the dredging work specified in Attachment I.
6. To indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the Town with respect to the Town's performance of its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under

other provisions of this agreement.

BOTH BARNSTABLE COUNTY AND THE TOWN OF FALMOUTH AGREE:

That nothing herein shall be construed as obligating either Barnstable County or the Town of Falmouth to expend funds or to be obligated to spend funds beyond the scope of this contract.

This AGREEMENT may only be modified in the form of amendments in writing by mutual agreement by both parties. Request for modification will be forwarded to one party by the other party by written notice.

ARTICLE II. TERM OF AGREEMENT

This AGREEMENT shall be effective when signed by all parties and shall remain in effect until the dredging identified in Attachment I is completed to the mutual satisfaction of all parties.

ARTICLE III. PAYMENT TO COUNTY:

The cost of the project shall be based on a per cubic yard basis, and calculated on the total cubic yards of material moved, using standard engineering practices, except as specified in Article VIII, and the mobilization and demobilization costs. The cost per cubic yard is \$9.00 for standard dredge material. Commencing July 1, 2018, the Town shall be billed, and the County shall be paid for the following services:

Mobilization costs for project;

Booster pumping adjustment to be determined by the length of the pipe;

100% movement/placement of dredge materials;

Demobilization costs for the project.

The Town shall submit payment within 30 days of date of invoice to the County. Failure to pay said invoice within 30 days will result in the assessment of a late fee in the amount of 1% per month (12% annually) on the unpaid balance remaining after the 30th day. Said late fee will be assessed daily 0.033%. Failure to pay invoice within 90 days may result in legal action. The Town shall be responsible for all legal costs incurred by the County in collection of unpaid debts.

ARTICLE IV. WEATHER CONDITIONS

In the event of temporary suspension of work due to inclement weather conditions, the County shall cease work with no adverse consequences to the County. The decision to cease work shall be made by the County in consultation with the Town.

ARTICLE V. CHANGES IN WORK

No changes in the work covered by this Agreement shall be made without having prior written approval of both the Town and County. Costs for additional cubic yardage shall be determined utilizing the costs identified in Article III.

ARTICLE VI. COUNTY INSURANCE

The County shall maintain the following insurance coverage while conducting the dredge project:

1. Compensation insurance. The County shall maintain during the life of this Agreement Workmen's Compensation Insurance as required by applicable state law.
2. Protection and Indemnity insurance.
3. General liability and excess liability insurance.
4. Pollution insurance.
5. Contingent watercraft liability insurance.

ARTICLE VII. INDEMNIFICATION

To the extent permitted by law, Barnstable County agrees to defend, indemnify, defend and hold harmless the Town of Falmouth from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of Barnstable County or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the County's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

To the extent permitted by law, the Town of Falmouth agrees to defend, indemnify, defend and hold harmless Barnstable County from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of the Town of Falmouth or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

ARTICLE VIII TERMINATION

Either party may terminate this Agreement by providing ten (10) days written notice to the other. The Town shall pay the County all costs incurred by the County to the date of termination,

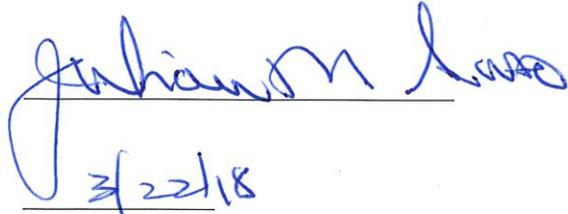
including staff time, review of documents and any other costs associated with the project up to said termination.

IN WITNESS WHEREOF, the TOWN and the COUNTY execute this Agreement this _____ day of _____, 2018.

BARNSTABLE COUNTY
COMMISSIONERS:

TOWN OF FALMOUTH

Leo G. Cakounes



3/22/18

Date

Ronald Beaty

Mary Pat Flynn

Approved as to form:
Frank J. Duffy, T.C.
3.15.18

Date

AGENDA ITEM 8d

Authorizing the execution of a cooperative agreement with the Town of Harwich for an amount not to exceed \$72,000.00 to do and perform all dredge related work for Allen Harbor

COOPERATIVE AGREEMENT
BETWEEN
BARNSTABLE COUNTY
AND THE TOWN OF HARWICH

THIS AGREEMENT, made and entered into this _____ day of _____, 2018 by and between the County of Barnstable, hereinafter called the "County," and the Town of Harwich, hereinafter called the "Town".

WHEREAS, the Town wishes to have the County undertake the dredging projects covered by this agreement more specifically described by way of the attached plan pursuant to the terms and conditions directed herein.

ARTICLE I. STATEMENT OF WORK

NOW THEREFORE, in consideration of the above premises and in the interest of the mutual advantage in attainment of common objectives, the parties hereto agree as follows:

BARNSTABLE COUNTY AGREES:

1. To do and perform all dredge related work for Allen Harbor in accordance with the specifications, drawings and plans (Attachment I) up to a maximum contract amount of \$72,000.00. This is based on removing approximately 8,000 cubic yards of material at \$9.00 per cubic yard and the charge for mobilization/demobilization costs as set forth in Article III herein. Final and complete specifications, plans and drawings shall be provided to the County by the Town in a timely manner.
2. To observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the specifications, plans, and drawings identified in Attachment I as applicable to dredging and rough placement of materials.
3. To provide a hydraulic dredge and all related equipment to conduct maintenance dredging for the Town, according to and guided by the specifications, plans, drawings as provided.
4. To pump dredge materials and provide rough beach placement of said materials at a rate of \$9.00 per cubic yard for standard dredge material. This price includes before and after dredge surveys to be performed by the County. The County warrants that the final surveys are performed for the limited purpose of substantiating dredge volumes and under no conditions should said surveys be utilized to delineate navigable channels. The County shall provide the Town access to detailed survey work through Center for Coastal Studies Provincetown at the Town's request and at the Town's expense.

5. To comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage injury or loss or on dredging or handling of dredge materials.
6. To the extent permitted by law, to indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the County and its employees with respect to the County's performance of its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this agreement.
7. Immediately notify the Town and cease operations whenever the dredging operations exceed by more than 10 % the specifications, drawings and plans agreed to as the volume scope of the agreement or whenever situations or conditions are encountered outside the scope of the specifications, drawings, and plans that were nor reasonably foreseeable. The parties agree that variations on the scope of 10 % more than or less than the proposed scope of work is reasonable due to climatic and coastal changes and that price adjustments shall be made accordingly. The parties further agree that changes in excess of 10 % shall require the parties to adjust this contract in writing pursuant to Article V.
8. Without the prior approval of the Town, the dredge will operate between the hours of 7:00 A.M. and 7:00 P.M.

THE TOWN OF HARWICH AGREES:

1. To obtain all required federal, state, and local permits and approvals to conduct the dredge project.
2. To furnish all specifications, drawings, and plans required to perform the dredge project at the execution of this document. Said documents will be incorporated by reference as Attachment I.
3. To conduct required inspections and testing consistent with federal, state and local permits and approvals.
4. To inspect the County's on-site dredging work in a timely manner.
5. To obligate funds to conduct the dredging work specified in Attachment I.
6. To indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the Town with respect to the Town's performance of its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this agreement.

BOTH BARNSTABLE COUNTY AND THE TOWN OF HARWICH AGREE:

That nothing herein shall be construed as obligating either Barnstable County or the Town of Harwich to expend funds or to be obligated to spend funds beyond the scope of this contract.

This AGREEMENT may only be modified in the form of amendments in writing by mutual agreement by both parties. Request for modification will be forwarded to one party by the other party by written notice.

ARTICLE II. TERM OF AGREEMENT

This AGREEMENT shall be effective when signed by all parties and shall remain in effect until the dredging identified in Attachment I is completed to the mutual satisfaction of all parties.

ARTICLE III. PAYMENT TO COUNTY:

The cost of the project shall be based on a per cubic yard basis, and calculated on the total cubic yards of material moved, using standard engineering practices, except as specified in Article VIII, and the mobilization and demobilization costs. The cost per cubic yard is \$9.00 for standard dredge material. Commencing July 1, 2018, the Town shall be billed, and the County shall be paid for the following services:

Mobilization costs for project;

Booster pumping adjustment to be determined by the length of the pipe;

100% movement/placement of dredge materials;

Demobilization costs for the project.

The Town shall submit payment within 30 days of date of invoice to the County. Failure to pay said invoice within 30 days will result in the assessment of a late fee in the amount of 1% per month (12% annually) on the unpaid balance remaining after the 30th day. Said late fee will be assessed daily 0.033%. Failure to pay invoice within 90 days may result in legal action. The Town shall be responsible for all legal costs incurred by the County in collection of unpaid debts.

ARTICLE IV. WEATHER CONDITIONS

In the event of temporary suspension of work due to inclement weather conditions, the County shall cease work with no adverse consequences to the County. The decision to cease work shall be made by the County in consultation with the Town.

ARTICLE V. CHANGES IN WORK

No changes in the work covered by this Agreement shall be made without having prior written approval of both the Town and County. Costs for additional cubic yardage shall be determined utilizing the costs identified in Article III.

ARTICLE VI. COUNTY INSURANCE

The County shall maintain the following insurance coverage while conducting the dredge project:

1. Compensation insurance. The County shall maintain during the life of this Agreement Workmen's Compensation Insurance as required by applicable state law.
2. Protection and Indemnity insurance.
3. General liability and excess liability insurance.
4. Pollution insurance.
5. Contingent watercraft liability insurance.

ARTICLE VII. INDEMNIFICATION

To the extent permitted by law, Barnstable County agrees to defend, indemnify, defend and hold harmless the Town of Harwich from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of Barnstable County or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the County's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

To the extent permitted by law, the Town of Harwich agrees to defend, indemnify, defend and hold harmless Barnstable County from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of the Town of Harwich or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

ARTICLE VIII TERMINATION

Either party may terminate this Agreement by providing ten (10) days written notice to the other. The Town shall pay the County all costs incurred by the County to the date of termination, including staff time, review of documents and any other costs associated with the project up to

IN WITNESS WHEREOF, the TOWN and the COUNTY execute this Agreement this

_____ day of _____, 2018

BARNSTABLE COUNTY
COMMISSIONERS

TOWN OF HARWICH

Leo G. Cakounes

Ronald Beaty

Mary Pat Flynn

Date









March 12, 2018
Date

AGENDA ITEM 8e

Authorizing the execution of a cooperative agreement with the Town of Harwich for an amount not to exceed \$72,000.00 to do and perform all dredge related work for Saquatucket Harbor

COOPERATIVE AGREEMENT
BETWEEN
BARNSTABLE COUNTY
AND THE TOWN OF HARWICH

THIS AGREEMENT, made and entered into this _____ day of _____, 2018 by and between the County of Barnstable, hereinafter called the "County," and the Town of Harwich, hereinafter called the "Town".

WHEREAS, the Town wishes to have the County undertake the dredging projects covered by this agreement more specifically described by way of the attached plan pursuant to the terms and conditions directed herein.

ARTICLE I. STATEMENT OF WORK

NOW THEREFORE, in consideration of the above premises and in the interest of the mutual advantage in attainment of common objectives, the parties hereto agree as follows:

BARNSTABLE COUNTY AGREES:

1. To do and perform all dredge related work for Sagatucket Harbor in accordance with the specifications, drawings and plans (Attachment I) up to a maximum contract amount of \$72,000.00. This is based on removing approximately 8,000 cubic yards of material at \$9.00 per cubic yard and the charge for mobilization/demobilization costs as set forth in Article III herein. Final and complete specifications, plans and drawings shall be provided to the County by the Town in a timely manner.
2. To observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the specifications, plans, and drawings identified in Attachment I as applicable to dredging and rough placement of materials.
3. To provide a hydraulic dredge and all related equipment to conduct maintenance dredging for the Town, according to and guided by the specifications, plans, drawings as provided.
4. To pump dredge materials and provide rough beach placement of said materials at a rate of \$9.00 per cubic yard for standard dredge material. This price includes before and after dredge surveys to be performed by the County. The County warrants that the final surveys are performed for the limited purpose of substantiating dredge volumes and under no conditions should said surveys be utilized to delineate navigable channels. The County shall provide the Town access to detailed survey work through Center for Coastal Studies Provincetown at the Town's request and at the Town's expense.

5. To comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage injury or loss or on dredging or handling of dredge materials.
6. To the extent permitted by law, to indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the County and its employees with respect to the County's performance of its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this agreement.
7. Immediately notify the Town and cease operations whenever the dredging operations exceed by more than 10 % the specifications, drawings and plans agreed to as the volume scope of the agreement or whenever situations or conditions are encountered outside the scope of the specifications, drawings, and plans that were nor reasonably foreseeable. The parties agree that variations on the scope of 10 % more than or less than the proposed scope of work is reasonable due to climatic and coastal changes and that price adjustments shall be made accordingly. The parties further agree that changes in excess of 10 % shall require the parties to adjust this contract in writing pursuant to Article V.
8. Without the prior approval of the Town, the dredge will operate between the hours of 7:00 A.M. and 7:00 P.M.

THE TOWN OF HARWICH AGREES:

1. To obtain all required federal, state, and local permits and approvals to conduct the dredge project.
2. To furnish all specifications, drawings, and plans required to perform the dredge project at the execution of this document. Said documents will be incorporated by reference as Attachment I.
3. To conduct required inspections and testing consistent with federal, state and local permits and approvals.
4. To inspect the County's on-site dredging work in a timely manner.
5. To obligate funds to conduct the dredging work specified in Attachment I.
6. To indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the Town with respect to the Town's performance of its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this agreement.

BOTH BARNSTABLE COUNTY AND THE TOWN OF HARWICH AGREE:

That nothing herein shall be construed as obligating either Barnstable County or the Town of Harwich to expend funds or to be obligated to spend funds beyond the scope of this contract.

This AGREEMENT may only be modified in the form of amendments in writing by mutual agreement by both parties. Request for modification will be forwarded to one party by the other party by written notice.

ARTICLE II. TERM OF AGREEMENT

This AGREEMENT shall be effective when signed by all parties and shall remain in effect until the dredging identified in Attachment I is completed to the mutual satisfaction of all parties.

ARTICLE III. PAYMENT TO COUNTY:

The cost of the project shall be based on a per cubic yard basis, and calculated on the total cubic yards of material moved, using standard engineering practices, except as specified in Article VIII, and the mobilization and demobilization costs. The cost per cubic yard is \$9.00 for standard dredge material. Commencing July 1, 2018, the Town shall be billed, and the County shall be paid for the following services:

Mobilization costs for project;

Booster pumping adjustment to be determined by the length of the pipe;

100% movement/placement of dredge materials;

Demobilization costs for the project.

The Town shall submit payment within 30 days of date of invoice to the County. Failure to pay said invoice within 30 days will result in the assessment of a late fee in the amount of 1% per month (12% annually) on the unpaid balance remaining after the 30th day. Said late fee will be assessed daily 0.033%. Failure to pay invoice within 90 days may result in legal action. The Town shall be responsible for all legal costs incurred by the County in collection of unpaid debts.

ARTICLE IV. WEATHER CONDITIONS

In the event of temporary suspension of work due to inclement weather conditions, the County shall cease work with no adverse consequences to the County. The decision to cease work shall be made by the County in consultation with the Town.

ARTICLE V. CHANGES IN WORK

No changes in the work covered by this Agreement shall be made without having prior written approval of both the Town and County. Costs for additional cubic yardage shall be determined utilizing the costs identified in Article III.

ARTICLE VI. COUNTY INSURANCE

The County shall maintain the following insurance coverage while conducting the dredge project:

1. Compensation insurance. The County shall maintain during the life of this Agreement Workmen's Compensation Insurance as required by applicable state law.
2. Protection and Indemnity insurance.
3. General liability and excess liability insurance.
4. Pollution insurance.
5. Contingent watercraft liability insurance.

ARTICLE VII. INDEMNIFICATION

To the extent permitted by law, Barnstable County agrees to defend, indemnify, defend and hold harmless the Town of Harwich from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of Barnstable County or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the County's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

To the extent permitted by law, the Town of Harwich agrees to defend, indemnify, defend and hold harmless Barnstable County from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of the Town of Harwich or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

ARTICLE VIII TERMINATION

Either party may terminate this Agreement by providing ten (10) days written notice to the other. The Town shall pay the County all costs incurred by the County to the date of termination, including staff time, review of documents and any other costs associated with the project up to

IN WITNESS WHEREOF, the TOWN and the COUNTY execute this Agreement this

_____ day of _____, 2018

BARNSTABLE COUNTY
COMMISSIONERS

TOWN OF HARWICH

Leo G. Cakounes

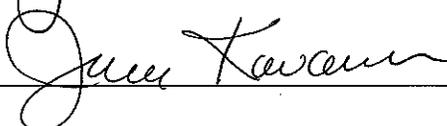
Ronald Beaty

Mary Pat Flynn

Date









March 12, 2018
Date

AGENDA ITEM 8f

Authorizing the execution of an agreement, by and through the Cape Cod Commission, in the amount of \$74,370.00, for a period from April 1, 2018 through March 31, 2019 to continue 3C transportation planning activities for a Federal Transit Administration Section 5303 Grant

MASSDOT STANDARD CONTRACT FORM



This form is issued and published by the Massachusetts Department of Transportation (MassDOT or Department). Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors may not require any additional agreements, engagement letters, contract forms or other additional terms as part of this Contract without prior Department approval.

CONTRACTOR LEGAL NAME: County of Barnstable (and d/b/a): Cape Cod Commission		DEPARTMENT NAME: Massachusetts Department of Transportation MMARS Department Code: DOT	
Legal Address: (W-9, W-4,T&C): 3195 Main Street, Barnstable, MA 02630-1105		Business Mailing Address: 10 Park Plaza, Boston, MA 02116	
Contract Manager: Kristy Senatori		Contract Manager: Bryan K. Pounds	
E-Mail: ksenatori@capecodcommission.org		E-Mail: bryan.pounds@state.ma.us	
Phone: 508.362.3828	Phone: 508.362.3136	Phone: 857.368.8860	Fax: 857.368.0639
Contractor Vendor Code: VC6000194979		MMARS Doc ID(s): INTF00X02018H0103523	
Vendor Code Address ID (e.g. "AD001"): AD001. (Note: The Address Id Must be set up for EFT payments.)		RFR/Procurement or Other ID Number:	
<input checked="" type="checkbox"/> NEW CONTRACT PROCUREMENT OR EXCEPTION TYPE: (Check one option only) <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input type="checkbox"/> Department Procurement (includes State or Federal grants 815 CMR 2.00) (Attach RFR and Response or other procurement supporting documentation) <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach Employment Status Form , scope, budget) <input checked="" type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification, scope and budget)		<input type="checkbox"/> CONTRACT AMENDMENT Enter Current Contract End Date <i>Prior</i> to Amendment: Enter Amendment Amount: \$ _____. (or "no change") AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.) <input type="checkbox"/> Amendment to Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> Contract Employee (Attach any updates to scope or budget) <input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification and updated scope and budget)	
The following MassDOT TERMS AND CONDITIONS (T&C) has been executed, filed with CTR and is incorporated by reference into this Contract. <input checked="" type="checkbox"/> MassDOT Terms and Conditions			
COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for MassDOT/Commonwealth owed debts under 815 CMR 9.00. <input type="checkbox"/> Rate Contract (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input checked="" type="checkbox"/> Maximum Obligation Contract Enter Total Maximum Obligation for total duration of this Contract (or <i>new</i> Total if Contract is being amended). \$74,370			
PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days ___% PPD; Payment issued within 15 days ___% PPD; Payment issued within 20 days ___% PPD; Payment issued within 30 days ___% PPD. If PPD percentages are left blank, identify reason: ___agree to standard 45 day cycle ___ statutory/legal or Ready Payments (G.L. c. 29, § 23A); ___ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy .)			
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) To continue the 3C transportation planning activities for Federal Transit Administration Section 5303 grant for the Cape Cod Commission (MA-80- X012).			
ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <input type="checkbox"/> 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date . <input checked="" type="checkbox"/> 2. may be incurred as of April 1, 2018 , a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date . <input type="checkbox"/> 3. were incurred as of ____, 20__, a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth and MassDOT from further claims related to these obligations.			
CONTRACT END DATE: Contract performance shall terminate as of March 31, 2019 , with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the " Effective Date " of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached Contractor Certifications (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the MassDOT Terms and Conditions , this Standard Contract Form including the Instructions and Contractor Certifications , the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07 , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.			
AUTHORIZING SIGNATURE FOR THE CONTRACTOR: X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature) Print Name: <u>Leo Cakounes, Ronald Beaty, Mary Pat Flynn</u> Print Title: <u>Barnstable County Commissioners</u>		AUTHORIZING SIGNATURE FOR MassDOT: X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature) Print Name: <u>David Mohler</u> Print Title: <u>Executive Director</u>	

MASSDOT STANDARD CONTRACT FORM



INSTRUCTIONS AND CONTRACTOR CERTIFICATIONS

The following instructions and terms are incorporated by reference and apply to this Standard Contract Form. Text that appears underlined indicates a "hyperlink" to an Internet or bookmarked site and are unofficial versions of these documents and Departments and Contractors should consult with their legal counsel to ensure compliance with all legal requirements. Using the Web Toolbar will make navigation between the form and the hyperlinks easier. Please note that not all applicable laws have been cited.

CONTRACTOR LEGAL NAME (AND D/B/A): Enter the **Full Legal Name** of the Contractor's business as it appears on the Contractor's [W-9](#) or [W-4 Form](#) (Contract Employees only) and the MassDOT [Terms and Conditions](#). If Contractor also has a "doing business as" (d/b/a) name, BOTH the legal name and the "d/b/a" name must appear in this section.

Contractor Legal Address: Enter the Legal Address of the Contractor as it appears on the Contractor's [W-9](#) or [W-4 Form](#) (Contract Employees only) and the MassDOT [Terms and Conditions](#), which must match the legal address on the 1099I table in MMARS (or the Legal Address in HR/CMS for Contract Employee).

Contractor Contract Manager: Enter the authorized Contract Manager who will be responsible for managing the Contract. The Contract Manager should be an Authorized Signatory or, at a minimum, a person designated by the Contractor to represent the Contractor, receive legal notices and negotiate ongoing Contract issues. The Contract Manager is considered "Key Personnel" and may not be changed without the prior written approval of the Department. If the Contract is posted on [COMMBUYS](#), the name of the Contract Manager must be included in the Contract on COMMBUYS.

Contractor E-Mail Address/Phone/Fax: Enter the electronic mail (e-mail) address, phone and fax number of the Contractor Contract Manager. This information must be kept current by the Contractor to ensure that the Department can contact the Contractor and provide any required legal notices. Notice received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any written legal notice requirements.

Contractor Vendor Code: The Department must enter the [MMARS Vendor Code](#) assigned by the Commonwealth. If a Vendor Code has not yet been assigned, leave this space blank and the Department will complete this section when a Vendor Code has been assigned. The Department is responsible under the [Vendor File and W-9s Policy](#) for verifying with authorized signatories of the Contractor, as part of contract execution, that the legal name, address and Federal Tax Identification Number (TIN) in the Contract documents match the state accounting system.

Vendor Code Address ID: (e.g., "AD001") The Department must enter the MMARS Vendor Code Address ID identifying the payment remittance address for Contract payments, which MUST be set up for EFT payments PRIOR to the first payment under the Contract in accordance with the [Bill Paying](#) and [Vendor File and W-9](#) policies.

COMMONWEALTH DEPARTMENT NAME: Enter the full Department name with the authority to obligate funds encumbered for the Contract.

Commonwealth MMARS Alpha Department Code: Enter the [three \(3\) letter MMARS Code](#) assigned to this Commonwealth Department in the state accounting system.

Department Business Mailing Address: Enter the address where all formal correspondence to the Department must be sent. Unless otherwise specified in the Contract, legal notice sent or received by the Department's Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address for the Contract Manager will meet any requirements for legal notice.

Department Billing Address: Enter the Billing Address or email address if invoices must be sent to a different location. Billing or confirmation of delivery of performance issues should be resolved through the listed Contract Managers.

Department Contract Manager: Identify the authorized Contract Manager who will be responsible for managing the Contract, who should be an authorized signatory or an employee designated by the Department to represent the Department to receive legal notices and negotiate ongoing Contract issues.

Department E-Mail Address/Phone/Fax: Enter the electronic mail (e-mail) address, phone and fax number of the Department Contract Manager. Unless otherwise specified in the Contract, legal notice sent or received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any requirements for written notice under the Contract.

MMARS Document ID(s): Enter the MMARS 20 character encumbrance transaction number associated with this Contract which must remain the same for the life of the Contract. If multiple numbers exist for this Contract, identify all Doc Ids.

RFR/Procurement or Other ID Number or Name: Enter the Request for Response (RFR) or other Procurement Reference number, Contract ID Number or other reference/tracking number for this Contract or Amendment and will be entered into the Board Award Field in the MMARS encumbrance transaction for this Contract.

NEW CONTRACTS (left side of Form):

Complete this section **ONLY** if this Contract is brand new. (Complete the **CONTRACT AMENDMENT** section for any material changes to an existing or an expired Contract, and for exercising options to renew or annual contracts under a multi-year procurement or grant program.)

PROCUREMENT OR EXCEPTION TYPE: Check the appropriate type of procurement or exception for this Contract. Only one option can be selected. See [State Finance Law and General Requirements](#), [Acquisition Policy and Fixed Assets](#), the [Commodities and Services Policy](#) and the [Procurement Information Center \(Department Contract Guidance\)](#) for details.

Statewide Contract (OSD or an OSD-designated Department). Check this option for a Statewide Contract under OSD, or by an OSD-designated Department.

Collective Purchase approved by OSD. Check this option for Contracts approved by OSD for collective purchases through federal, state, local government or other entities.

Department Contract Procurement. Check this option for a Department procurement including state grants and federal sub-grants under [815 CMR 2.00](#) and [State Grants and Federal Subgrants Policy](#), Departmental Master Agreements (MA). If multi-Department user Contract, identify multi-Department use is allowable in Brief Description.

Emergency Contract. Check this option when the Department has determined that an unforeseen crisis or incident has arisen which requires or mandates immediate purchases to avoid substantial harm to the functioning of government or the provision of necessary or mandated services or whenever the health, welfare or safety of clients or other persons or serious damage to property is threatened.

Contract Employee. Check this option when the Department requires the performance of an [Individual Contractor](#), and when the planned Contract performance with an Individual has been classified using the [Employment Status Form](#) (prior to the Contractor's selection) as work of a Contract Employee and not that of an Independent Contractor.

Legislative/Legal or Other. Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Supporting documentation must be attached to explain and justify the exemption.

CONTRACT AMENDMENT (Right Side of Form)

Complete this section for any Contract being renewed, amended or to continue a lapsed Contract. All Contracts with available options to renew must be amended referencing the original procurement and Contract doc ids, since all continuing contracts must be maintained in the same Contract file (even if the underlying appropriation changes each fiscal year.) "See [Amendments, Suspensions, and Termination Policy](#)."

Enter Current Contract End Date: Enter the termination date of the Current Contract being amended, even if this date has already passed. (Note: Current Start Date is not requested since this date does not change and is already recorded in MMARS.)

Enter Amendment Amount: Enter the amount of the Amendment increase or decrease to a Maximum Obligation Contract. Enter "no change" for Rate Contracts or if no change.

AMENDMENT TYPE: Identify the type of Amendment being done. Documentation supporting the updates to performance and budget must be attached. **Amendment to Scope or Budget.** Check this option when renewing a Contract or executing any Amendment ("material change" in Contract terms) even if the Contract has lapsed. The parties may negotiate a change in any element of Contract performance or cost identified in the RFR or the Contractor's response which results in lower costs, or a more cost-effective or better value performance than was presented in the original selected response, provided the negotiation results in a better value within the scope of the RFR than what was proposed by the Contractor in the original selected response. Any "material" change in the Contract terms must be memorialized in a formal Amendment even if a corresponding MMARS transaction is not needed to support the change. Additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in [801 CMR 21.07](#), incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

Interim Contracts. Check this option for an Interim Contract to prevent a lapse of Contract performance whenever an existing Contract is being re-procured but the new procurement has not been completed, to bridge the gap during implementation between an expiring and a new procurement, or to contract with an interim Contractor when a current Contractor is unable to complete full performance under a Contract.

Contract Employee. Check this option when the Department requires a renewal or other amendment to the performance of a Contract Employee.

Legislative/Legal or Other. Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Attach supporting documentation to explain and justify the exemption and whether Contractor selection has been publicly

MASSDOT STANDARD CONTRACT FORM



posted.

MASSDOT TERMS AND CONDITIONS

The MassDOT [Terms and Conditions](#) has been executed by the Contractor and is incorporated by reference into this Contract. This Form is signed only once and recorded on the Vendor Customer File (VCUST). See [Vendor File and W-9s](#) Policy.

COMPENSATION

Identify if the Contract is a **Rate Contract** (with no stated Maximum Obligation) or a **Maximum Obligation Contract** (with a stated Maximum Obligation) and identify the Maximum Obligation. If the Contract is being amended, enter the new Maximum Obligation based upon the increase or decreasing Amendment. The Total Maximum Obligation must reflect the total funding for the dates of service under the contract, including the Amendment amount if the Contract is being amended. The Maximum Obligation must match the MMARS encumbrance. Funding and allotments must be verified as [available and encumbered](#) prior to incurring obligations. If a Contract includes both a Maximum Obligation component and Rate Contract component, check off both, specific Maximum Obligation amounts or amended amounts and Attachments must clearly outline the Contract breakdown to match the encumbrance.

PAYMENTS AND PROMPT PAY DISCOUNTS

Payments are processed within a 45 day payment cycle through EFT in accordance with the Commonwealth [Bill Paying Policy](#) for investment and cash flow purposes. Departments may NOT negotiate accelerated payments and Payees are NOT entitled to accelerated payments UNLESS a prompt payment discount (PPD) is provided to support the Commonwealth's and MassDOT's loss of investment earnings for this earlier payment, or unless a payments is legally mandated to be made in less than 45 days (e.g., construction contracts, Ready Payments under [G.L. c. 29, s. 23A](#)). See [Prompt Pay Discounts Policy](#). PPD are identified as a percentage discount which will be automatically deducted when an accelerated payment is made. Reduced contracts rates may not be negotiated to replace a PPD. If PPD fields are left blank please identify that the Contractor agrees to the standard 45 day cycle; a statutory/legal exemption such as Ready Payments ([G.L. c. 29, § 23A](#)); or only an initial accelerated payment for reimbursements or start up costs for a grant, with subsequent payments scheduled to support standard EFT 45 day payment cycle. Financial hardship is not a sufficient justification to accelerate cash flow for all payments under a Contract. Initial grant or contract payments may be accelerated for the first invoice or initial grant installment, but subsequent periodic installments or invoice payments should be scheduled to support the Payee cash flow needs and the standard 45 day EFT payment cycle in accordance with the Bill Paying Policy. Any accelerated payment that does not provide for a PPD must have a legal justification in Contract file for audit purposes explaining why accelerated payments were allowable without a PPD.

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE

Enter a brief description of the Contract performance, project name and/or other identifying information for the Contract to specifically identify the Contract performance, match the Contract with attachments, determine the appropriate expenditure code (as listed in the [Expenditure Classification Handbook](#)) or to identify or clarify important information related to the Contract such as the Fiscal Year(s) of performance (ex. "FY2012" or "FY2012-14"). Identify settlements or other exceptions and attach more detailed justification and supporting documents. Enter "Multi-Department Use" if other Departments can access procurement. For Amendments, identify the purpose and what items are being amended. Merely stating "see attached" or referencing attachments without a narrative description of performance is insufficient.

ANTICIPATED START DATE

The Department and Contractor must certify WHEN obligations under this Contract/Amendment may be incurred. Option 1 is the default option when performance may begin as of the [Effective Date](#) (latest signature date and any required approvals). If the parties want a new Contract or renewal to begin as of the upcoming fiscal year then list the fiscal year(s) (ex. "FY2012" or "FY2012-14") in the Brief Description section. Performance starts and encumbrances reflect the default [Effective Date](#) (if no FY is listed) or the later FY start date (if a FY is listed). Use Option 2 only when the Contract will be signed well in advance of the start date and identify a specific future start date. Do not use Option 2 for a fiscal year start unless it is certain that the Contract will be signed prior to fiscal year. Option 3 is used in lieu of the [Settlement and Release Form](#) when the Contract/Amendment is signed late, and obligations have already been incurred by the Contractor prior to the [Effective Date](#) for which the Department has either requested, accepted or deemed legally eligible for reimbursement, and the Contract includes supporting documents justifying the performance or proof of eligibility, and approximate costs. Any obligations incurred outside the scope of the [Effective Date](#) under any Option listed, even if the incorrect Option is selected, shall be automatically deemed a settlement included under the terms of the Contract and upon payment to the Contractor will release the Commonwealth and MassDOT from further obligations for the identified performance. All settlement payments require justification and must be under same encumbrance and object codes as the Contract payments. Performance dates are subject to [G.L. c.4, § 9](#).

CONTRACT END DATE

The Department must enter the date that Contract performance will terminate. **If the Contract is being amended and the Contract End Date is not changing, this date must be re-entered again here.** A Contract must be signed for at least the initial duration but not longer than the period of procurement listed in the RFR, or other solicitation document (if applicable). No new performance is allowable beyond the end date without an amendment, but the Department may allow a Contractor to complete minimal close out performance obligations if substantial performance has been made prior to the termination date of the Contract and prior to the end of the fiscal year in which payments are appropriated, provided that any close out performance is subject to appropriation and funding limits under state finance law, and CTR may adjust encumbrances and payments in the state accounting system to enable final close out payments. Performance dates are subject to [G.L. c.4, § 9](#).

CERTIFICATIONS AND EXECUTION

See [Department Head Signature Authorization Policy](#) and the [Contractor Authorized Signatory Listing](#) for policies on Contractor and Department signatures.

Authorizing Signature for Contractor/Date: The Authorized Contractor Signatory must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "[Anticipated Contract Start Date](#)". Acceptance of payment by the Contractor shall waive any right of the Contractor to claim the Contract/Amendment is not valid and the Contractor may not void the Contract. **Rubber stamps, typed or other images are not acceptable.** Proof of Contractor signature authorization on a [Contractor Authorized Signatory Listing](#) may be required by the Department if not already on file.

Contractor Name /Title: The Contractor Authorized Signatory's name and title must appear legibly as it appears on the [Contractor Authorized Signatory Listing](#).

Authorizing Signature For Department/Date: The [Authorized Department Signatory](#) must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "[Anticipated Start Date](#)". **Rubber stamps, typed or other images are not accepted.** The Authorized Signatory must be an employee within the Department legally responsible for the Contract. See [Department Head Signature Authorization](#). The Department must have the legislative funding appropriated for all the costs of this Contract or funding allocated under an [approved Interdepartmental Service Agreement \(ISA\)](#). A Department may not contract for performance to be delivered to or by another state department without specific legislative authorization (unless this Contract is a Statewide Contract). For Contracts requiring Secretariat signoff, evidence of Secretariat signoff must be included in the Contract file.

Department Name /Title: Enter the Authorized Signatory's name and title legibly.

CONTRACTOR CERTIFICATIONS AND LEGAL REFERENCES

Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified, subject to any required approvals. The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein:

MassDOT and Contractor Ownership Rights. The Contractor certifies and agrees that MassDOT is entitled to ownership and possession of all "deliverables" purchased or developed with Contract funds. A Department may not relinquish rights to deliverables nor may Contractors sell products developed with MassDOT resources without just compensation. The Contract should detail all MassDOT deliverables and ownership rights and any Contractor proprietary rights.

Qualifications. The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the [Secretary of State's website](#) as licensed to do business in Massachusetts, as required by law.

Business Ethics and Fraud, Waste and Abuse Prevention. The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

Collusion. The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

Public Records and Access The Contractor shall provide full access to records related to performance and compliance to the Department and officials listed under [Executive Order 195](#) and [G.L. c.11, s.12](#) seven (7) years beginning on the first day after the final payment

MASSDOT STANDARD CONTRACT FORM



under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under [950 C.M.R. 32.00](#).

Debarment. The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation including, [Executive Order 147](#); [G.L. c. 29, s. 29F](#); [G.L. c. 30, § 39R](#); [G.L. c. 149, § 27C](#); [G.L. c. 149, § 44C](#); [G.L. c. 149, § 148B](#) and [G.L. c. 152, s. 25C](#).

Applicable Laws. The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable [Massachusetts General Laws](#); the Official [Code of Massachusetts Regulations](#); [Code of Massachusetts Regulations](#) (unofficial); [801 CMR 21.00](#) (Procurement of Commodity and Service Procurements, Including Human and Social Services); [815 CMR 2.00](#) (Grants and Subsidies); [808 CMR 1.00](#) (Compliance, Reporting and Auditing for Human And Social Services); [AICPA Standards](#); confidentiality of Department records under [G.L. c. 66A](#); and the [Massachusetts Constitution Article XVIII](#) if applicable.

Invoices. The Contractor must submit invoices in accordance with the terms of the Contract and the Commonwealth [Bill Paying Policy](#). Contractors must be able to reconcile and properly attribute concurrent payments from multiple Departments. Final invoices in any fiscal year must be submitted no later than August 15th for performance made and received (goods delivered, services completed) prior to June 30th, in order to make payment for that performance prior to the close of the fiscal year to prevent reversion of appropriated funds. Failure to submit timely invoices by August 15th or other date listed in the Contract shall authorize the Department to issue an estimated payment based upon the Department's determination of performance delivered and accepted. The Contractor's acceptance of this estimated payment releases the Commonwealth and MassDOT from further claims for these invoices. If budgetary funds revert due to the Contractor's failure to submit timely final invoices, or for disputing an estimated payment, the Department may deduct a penalty up to 10% from any final payment in the next fiscal year for failure to submit timely invoices.

Payments Subject to Appropriation. Pursuant to [G.L. c. 29 § 26, § 27](#) and [§ 29](#), Departments are required to expend funds only for the purposes set forth by the Legislature and within the funding limits established through appropriation, allotment and subsidiary, including mandated allotment reductions triggered by [G.L. c. 29, § 9C](#). A Department cannot authorize or accept performance in excess of an existing appropriation and allotment, or sufficient non-appropriated available funds. Any oral or written representations, commitments, or assurances made by the Department or any other Commonwealth representative are not binding. The Commonwealth and MassDOT have no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by a Contractor outside the scope of a Contract. Contractors should verify funding prior to beginning performance.

Intercept. Contractors may be registered as Customers in the Vendor file if the Contractor owes a Commonwealth debt. Unresolved and undisputed debts, and overpayments of Contract payments that are not reimbursed timely shall be subject to intercept pursuant to [G.L. c. 7A, s. 3](#) and [815 CMR 9.00](#). Contract overpayments will be subject to immediate intercept or payment offset. The Contractor may not penalize any state Department or assess late fees, cancel a Contract or other services if amounts are intercepted or offset due to recoupment of an overpayment, outstanding taxes, child support, other overdue debts or Contract overpayments.

Tax Law Compliance. The Contractor certifies under the pains and penalties of perjury tax compliance with [Federal tax laws](#); [state tax laws](#) including but not limited to [G.L. c. 62C](#); [G.L. c. 62C, s. 49A](#); compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under [G.L. c. 62E](#), withholding and remitting [child support](#) including [G.L. c. 119A, s. 12](#); [TIR 05-11: New Independent Contractor Provisions](#) and applicable [TIRs](#).

Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts. The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing at **least 45 days prior** to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is **any risk** to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal

services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

Federal Anti-Lobbying and Other Federal Requirements. If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including [31 USC 1352](#); [other federal requirements](#); [Executive Order 11246](#); [Air Pollution Act](#); [Federal Water Pollution Control Act](#) and [Federal Employment Laws](#).

Protection of Personal Data and Information. The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth/MassDOT data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under [G.L. c. 93H](#) and [c. 66A](#) and [Executive Order 504](#). The Contractor is required to comply with [G.L. c. 93I](#) for the proper disposal of all paper and electronic media, backups or systems containing personal data and information, provided further that the Contractor is required to ensure that any personal data or information transmitted electronically or through a portable device be properly encrypted using (at a minimum) [Information Technology Division \(ITD\) Protection of Sensitive Information](#), provided further that any Contractor having access to credit card or banking information of Commonwealth/MassDOT customers certifies that the Contractor is PCI compliant in accordance with the [Payment Card Industry Council Standards](#) and shall provide confirmation compliance during the Contract, provide further that the Contractor shall immediately notify the Department in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the Commonwealth/MassDOT and provide access to any information necessary for the Commonwealth/MassDOT to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to [G.L. c. 214, s. 3B](#).

Corporate and Business Filings and Reports. The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the [Secretary of the Commonwealth](#), the [Office of the Attorney General](#) or other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

Employer Requirements. Contractors that are employers certify compliance with applicable state and [federal employment laws](#) or regulations, including but not limited to [G.L. c. 5, s. 1](#) (Prevailing Wages for Printing and Distribution of Public Documents); [G.L. c. 7, s. 22](#) (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); [minimum wages and prevailing wage programs and payments](#); [unemployment insurance](#) and contributions; [workers' compensation and insurance](#), [child labor laws](#), [AGO fair labor practices](#); [G.L. c. 149](#) (Labor and Industries); [G.L. c. 150A](#) (Labor Relations); [G.L. c. 151](#) and [455 CMR 2.00](#) (Minimum Fair Wages); [G.L. c. 151A](#) (Employment and Training); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); [G.L. c. 152](#) (Workers' Compensation); [G.L. c. 153](#) (Liability for Injuries); [29 USC c. 8](#) (Federal Fair Labor Standards); [29 USC c. 28](#) and the [Federal Family and Medical Leave Act](#).

Federal And State Laws And Regulations Prohibiting Discrimination including but not limited to the [Federal Equal Employment Opportunity \(EEO\) Laws](#) the [Americans with Disabilities Act](#); [42 U.S.C. Sec. 12,101, et seq.](#), the [Rehabilitation Act](#), [29 USC c. 16 s. 794](#); [29 USC c. 16, s. 701](#); [29 USC c. 14, 623](#); the [42 USC c. 45](#); (Federal Fair Housing Act); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); the Public Accommodations Law [G.L. c. 272, s. 92A](#); [G.L. c. 272, s. 98](#) and 98A, [Massachusetts Constitution Article CXIV](#) and [G.L. c. 93, s. 103](#); [47 USC c. 5, s. II, Part II, s. 255](#) (Telecommunication Act); Chapter 149, [Section 105D](#), [G.L. c. 151C](#), [G.L. c. 272](#), [Section 92A, Section 98](#) and [Section 98A](#), and [G.L. c. 111, Section 199A](#), and [Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities](#), and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also [MCAD](#) and [MCAD links and Resources](#).

Small Business Purchasing Program (SBPP). A Contractor may be eligible to participate in the SBPP, created pursuant to [Executive Order 523](#), if qualified through the SBPP COMMBUYS subscription process at: [www.commbuys.com](#) and with acceptance of the terms of the SBPP participation agreement.

Limitation of Liability for Information Technology Contracts (and other Contracts as Authorized). The [Information Technology Mandatory Specifications](#) and the [IT Acquisition Accessibility Contract Language](#) are incorporated by reference into Information Technology Contracts. The following language will apply to Information Technology contracts in the U01, U02, U03, U04, U05, U06, U07, U08, U09, U10, U75, U98 object codes in the [Expenditure Classification Handbook](#) or other Contracts as approved by CTR or OSD. Pursuant to Section 11. Indemnification of the MassDOT Terms and Conditions, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth/MassDOT incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. "Other damages" shall not include damages to the Commonwealth/MassDOT as a result of third party claims, provided, however, that the foregoing in no way limits the Commonwealth's or MassDOT's right of recovery for personal injury or property damages or patent and copyright

MASSDOT STANDARD CONTRACT FORM



infringement under Section 11 nor the Commonwealth's/MassDOT's ability to join the contractor as a third party defendant. Further, the term "other damages" shall not include, and in no event shall the contractor be liable for, damages for the Commonwealth's or MassDOT's use of contractor provided products or services, loss of Commonwealth or MassDOT's records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth or MassDOT. In no event shall "other damages" exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. Section 11 sets forth the contractor's entire liability under a Contract. Nothing in this section shall limit the Commonwealth's or MassDOT's ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference Section 11 of the MassDOT Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement. These terms may be applied to other Contracts only with prior written confirmation from the Operational Services Division or the Office of the Comptroller. The terms in this Clarification may not be modified.

Northern Ireland Certification. Pursuant to [G.L. c. 7 s. 22C](#) for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

Pandemic, Disaster or Emergency Performance. In the event of a serious emergency, pandemic or disaster outside the control of the Department, the Department may negotiate emergency performance from the Contractor to address the immediate needs of the MassDOT even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

Consultant Contractor Certifications (For Consultant Contracts "HH" and "NN" and "U05" object codes subject to [G.L. Chapter 29, s. 29A](#)). Contractors must make required disclosures as part of the RFR Response or using the [Consultant Contractor Mandatory Submission Form](#).

Attorneys. Attorneys or firms providing legal services or representing MassDOT may be subject to [G.L. c. 30, s. 65](#), and if providing litigation services must be approved by the Office of the Attorney General to appear on behalf of a Department, and shall have a continuing obligation to notify the Commonwealth of any conflicts of interest arising under the Contract.

Subcontractor Performance. The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontractors, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors.

EXECUTIVE ORDERS

For covered Executive state Departments, the Contractor certifies compliance with applicable [Executive Orders](#) (see also [Massachusetts Executive Orders](#)), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

Executive Order 481. [Prohibiting the Use of Undocumented Workers on State Contracts.](#) For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

Executive Order 130. [Anti-Boycott.](#) The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See [IRC § 999\(b\)\(3\)-\(4\)](#), and [IRS Audit Guidelines Boycotts](#)) or engages in conduct declared to be unlawful by [G.L. c. 151E, s. 2](#). A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, MassDOT and the Commonwealth shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

Executive Order 346. [Hiring of State Employees By State Contractors](#) Contractor certifies compliance with both the conflict of interest law [G.L. c. 268A specifically s. 5 \(f\)](#) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth/MassDOT. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

Executive Order 444. [Disclosure of Family Relationships With Other State Employees.](#) Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

Executive Order 504. [Regarding the Security and Confidentiality of Personal Information.](#) For all Contracts involving the Contractor's access to personal information, as defined in [G.L. c. 93H](#), and personal data, as defined in [G.L. c. 66A](#), owned or controlled by Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read Commonwealth of Massachusetts Executive Order 504 and agrees to protect any and all personal information; and (2) has reviewed all of the Commonwealth [Information Technology Division's Security Policies](#). Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all state agencies in the Executive Department, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with the contracting agency's Information Security Program (ISP) and any pertinent security guidelines, standards, and policies; (2) comply with all of the Commonwealth of Massachusetts Information Technology Division's "[Security Policies](#)"; (3) communicate and enforce the contracting agency's ISP and such Security Policies against all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information to which the Contractor is given access by the contracting agency from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information (collectively referred to as the "unauthorized use"): (a) immediately notify the contracting agency if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the contracting agency to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the contracting agency and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth and MassDOT may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 11 of MassDOT's [Terms and Conditions](#), withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under [G.L. c. 214, § 3B](#) for violations under M.G.L. c. 66A.

Executive Orders 523, 524 and 526. Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes [Executive Order 478](#)). [Executive Order 524](#) (Establishing the Massachusetts Supplier Diversity Program which supersedes Executive Order 390). [Executive Order 523](#) (Establishing the Massachusetts Small Business Purchasing Program.) All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices; and the Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and the Contractor commits to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. These provisions shall be enforced through the contracting agency, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

**ATTACHMENT J
SPECIAL PROVISIONS**

**MASSACHUSETTS DEPARTMENT of TRANSPORTATION
OFFICE OF TRANSPORTATION PLANNING**

**Federal Transit Administration 5303 Planning Contract
Cape Cod Commission
Contract # 103523**

Contract period: 4/1/2018 through 3/31/2019

These SPECIAL PROVISIONS shall be made part of this contract with the expressed understanding that in the event of conflict, the SPECIAL PROVISIONS shall prevail over the STANDARD PROVISIONS, Office of Transportation Planning version. In the event of conflicts between any parts of this contract and the COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT (STANDARD CONTRACT) or the COMMONWEALTH TERMS AND CONDITIONS (TERMS AND CONDITIONS), the provisions contained in the STANDARD CONTRACT and/or the TERMS AND CONDITIONS shall prevail.

During the performance of this contract, the CONSULTANT shall comply with the terms and conditions contained in the STANDARD CONTRACT, TERMS AND CONDITIONS, and ARTICLES I and II of the STANDARD PROVISIONS included in ATTACHMENT I of this contract, except as said STANDARD CONTRACT and STANDARD PROVISIONS are expressly amended or supplemented as follows below.

The numbering of amendments in these SPECIAL PROVISIONS corresponds to that of the preceding STANDARD PROVISIONS. Skipping a number in the SPECIAL PROVISIONS indicates only that there is no change to the corresponding number in the STANDARD PROVISIONS.

ARTICLE I - GENERAL PROVISIONS

1. DEFINITIONS

Add the following:

METROPOLITAN PLANNING ORGANIZATION or “MPO”... The organization designated by the Governor as being responsible for carrying out 3C transportation planning for an urbanized area.

REGIONAL PLANNING AGENCY or “RPA”...One of thirteen planning agencies in the Commonwealth established under Massachusetts General Laws or the Central Transportation Planning Staff "CTPS," having responsibility for comprehensive regional and transportation planning, and acting as the CONSULTANT.

UNIFIED PLANNING WORK PROGRAM or “UPWP”... Document required by the U.S. Department of Transportation Metropolitan Planning regulations that contains a description of all proposed transportation-related planning activities and air quality planning activities.

2. TIME SCHEDULE:

Amend to include the following:

The Consultant shall perform all work described in Attachment A, Scope of Services, in accordance with the time schedule shown therein. Allotment of time and cost for each task shall not be changed without the prior approval of the Executive Director.

3. TERMINATION:

Add the following:

This contract shall commence on the date indicated in the written Notice to Proceed from the Massachusetts Department of Transportation and shall remain in effect until 3/31/2019, subject to satisfactory completion of the work tasks in accordance with Attachment A, Scope of Services, as outlined in the annually endorsed Unified Planning Work Program.

15. REVISIONS:

Amend the 1st paragraph by deleting the words “in accordance with Article II section 3.”

17. EMPLOYMENT OF DEPARTMENT PERSONNEL:

Add the following paragraph:

Neither the Consultant nor the Massachusetts Department of Transportation shall engage in any conduct that violates or induces others to violate any provisions of the Massachusetts General Laws regarding the conduct of public employees. No officer, member, or employee of the Consultant or Massachusetts Department of Transportation, and no public official of the Commonwealth or any political subdivision thereof who exercises any functions or responsibilities in the review, approval or implementation of this contract shall: a) participate in any decision relating to this contract which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested; or b) have any interest, direct or indirect, in this contract or the proceeds thereof.

21. NOTICE

Amend to read as follows:

Unless otherwise specified, any notice here under shall be in writing and deemed delivered when given in person or deposited in the U.S. mail, postage prepaid and addressed as follows:

To Department: David Mohler, Executive Director
Office of Transportation Planning
Massachusetts Department of Transportation

10 Park Plaza, Room 4150
Boston, MA 02116

To Consultant: Kristy Senatori, Acting Executive Director
Cape Cod Commission
3225 Main Street, P.O. Box 2226
Barnstable, Massachusetts 02630

22. INSURANCE: Not Applicable

27. COPYRIGHT:

Add the following:

Furthermore, any materials to be published and/or copyrighted by the Consultant as a result of work for this contract shall receive prior written approval of the Executive Director. Materials published by the consultant shall contain the acknowledgement: "Prepared in cooperation with the Massachusetts Department of Transportation and the U.S. Department of Transportation. The views and opinions of the [Consultant] expressed herein do not necessarily state or reflect those of the Massachusetts Department of Transportation or the U.S. Department of Transportation." Unless otherwise specified or requested, at least three paper copies and one electronic copy of all documents, reports or other materials developed as products of this contract shall be submitted to the Massachusetts Department of Transportation upon completion.

**ATTACHMENT J
SPECIAL PROVISIONS**

ARTICLE II – COMPENSATION OF CONSULTANT

Replace Article II in its entirety with the following:

- 1. GENERAL FEE (MAXIMUM FEE)** The Commonwealth hereby agrees to pay and the Consultant agrees to accept, as full compensation for all services rendered to the satisfaction of the Massachusetts Department of Transportation, a fee established in accordance with the following.

All costs and charges of the Consultant under this contract must be billed to and associated with a task as listed in Attachment B. The maximum labor cost that shall be billed to each task is equal to the amount referenced for that task in Attachment B. Labor costs in excess of these limits shall be considered unallocated costs. Any deviation from the task structure (financial or otherwise) of the budget in Attachment B must have prior written approval of the Executive Director.

For all services to be performed under the General Fee, the Consultant shall be paid an amount equal to the sum of the following items a, b, and c:

- (a) Actual direct salaries paid to professional employees by the Consultant for the time such employees are directly utilized on work necessary to fulfill the provisions of the contract. Actual direct salary shall consist of payroll costs at straight time for professional employees, excluding all principals, administrative officers or other major supervisory personnel, for the time such employees are directly utilized on the work covered by this contract. If it is the usual practice for salaried principals or administrative officers to perform planning, research or technical work, permission may be granted by the Executive Director to compensate them for the time when they are actually engaged in this work. Payment of any said principals or officers for administrative duties at the usual rate of pay for these positions will not be allowed, it being considered that their salaries are included under overhead. Salary rates and increases thereof paid to professional employees assigned to this contract shall be commensurate with salaries paid and increases thereof made to other employees of the Consultant engaged in similar work. A specific listing of all employees who shall perform work on this contract and each employee's salary rate must be provided in Attachment B. If the Consultant wants to add new employees to perform work on this contract, the Consultant must request prior written approval by the Executive Director; if the Executive Director does not respond to the request within 10 days of receiving the request, then the request to add staff to the contract is automatically granted. Any increases in salary shall be in accordance with company-wide personnel regulations and established policies, but require prior written approval of the Executive Director. However, no cost of living adjustments to employee salaries will be approved, nor may they be requested; the only salary increases that will be considered for approval are merit increases. Request of such merit increases must be submitted in writing sufficiently in advance to afford the Executive Director thirty days to review. The Executive Director shall notify the Consultant in writing by the end of the thirty-day period that such salary rate or increase is approved or disapproved. If the Executive Director does not respond to a request for staff merit increase(s) by the end of the thirty day review period, that merit increase is automatically approved; however, this provision does not apply to cost of living adjustments, which may be neither requested nor approved. All salary changes from those submitted on the previous invoice shall be specifically noted by the Consultant on its next invoice giving the date of the letter approving such increase. Changes in salary rates made prior to the date of this letter will not be approved for payment. Any such salary increase shall not be

considered as justification for an increase in the maximum fee. No premium payment shall be made for overtime work unless previously approved by the Executive Director.

It is the current policy of the Massachusetts Department of Transportation to impose NO MAXIMUM LIMIT on the hourly rate for RPA professional employees. The Consultant is approved to submit each employee's actual direct salary rate, as approved under the contract, for payment.

The amount to be allowed for indirect costs to a sub-contractor shall be the actual audited amounts of such costs incurred by the sub-contractor, provided, however, that the total allowance for such costs shall in no event exceed **155%** percent. Said limit on allowable indirect costs shall apply notwithstanding any audit that indicates that higher indirect costs were actually incurred.

- (b) Applicable indirect costs incurred during the period of this contract, to the extent that such indirect costs are allowable under the "Federal Acquisition Regulations," incorporated herein and made a part hereof by reference.

For purposes of partial payments a provisional indirect cost additive rate, expressed as a percent of actual direct salary costs, shall be used. For this contract, the rate is **130.72%** as documented by the most recent audit report required by the Office of Management and Budget Circular A-133.

- (c) Reimbursement for authorized direct expenses as allowed under the provisions of the Federal Acquisition Regulations referred to above and meeting the requirements set forth below. In order to be allowable under Federal awards, the direct cost must be necessary and reasonable for proper and efficient performance and administration of the work executed under this contract. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded.
- 1) Items of direct expenses attributable directly to this contract, listed in Exhibit B. Inclusion of Exhibit B does not constitute prior approval to incur these expenses.
 - 2) Actual reasonable meeting place expenses of the MPO and the transportation advisory committees of the MPO.
 - 3) Travel: All travel is to be made via the least expensive reasonable means. In keeping with MassDOT's GreenDOT Policy and mode shift initiative, MassDOT strongly encourages travel by public transit, walking or bicycling whenever feasible for travel related to this contract. When automobile travel is necessary, Consultant staff are expected to travel together whenever feasible.
 - 4) Automobile travel reimbursement: The Consultant may charge for automobile travel either on a per-mile basis or for actual expenses of using a rental automobile. Mileage charges for use of automobiles for contract-related purposes are not to exceed the Internal Revenue Service (IRS) approved business standard mileage reimbursement rate that is in effect at the time of travel. Mileage reimbursement is to be the means of payment for automobile travel by private staff-owned automobile, Consultant-owned vehicle, or Consultant-leased vehicle. If the overall cost (factoring in mileage charges, parking, gasoline, etc.) for a rental car is expected to be lower than for mileage charges, the Consultant may charge for the car rental usage fee and gasoline. Tolls and parking costs may also be reimbursed with documentation. The Consultant must provide a clear and explicit delineation of all automobile travel charges,

- including travel purpose and destination, method of reimbursement (mileage or rental fee plus gasoline), distance, breakdown of charges, and receipts as appropriate.
- 5) Overnight out-of-state travel: All out-of-state travel expenses that entail an overnight stay shall require prior written approval of the Executive Director.
 - 6) Meetings and conferences. Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information required for work under this contract, are allowable. Travel by planning staff is allowable for attendance at meetings or conferences where technical information will be disseminated that would help the employee(s) perform work under this contract and satisfy the requirements of the metropolitan planning process. Expenses related to attendance at general policy-oriented meetings and conferences not directly related to the tasks covered under this contract are not reimbursable as direct expenses.
 - 7) Memberships, subscriptions, and professional activity costs. Costs of the Consultant's organizational memberships in technical and professional organizations are allowable. Costs of the governmental unit's subscriptions to professional and technical periodicals are allowable. Costs of membership in organizations substantially engaged in policy and lobbying are not reimbursable as direct expenses. Costs of individual staff memberships in technical and professional organizations are not reimbursable as direct expenses.
 - 8) Meals reimbursement: Breakfast \$5.00; lunch \$10.00; dinner \$20.00. Meal expenses for breakfast or lunch may only be reimbursed when a staff member is absent from his or her home for more than twenty-four hours. Meal expenses for dinner may only be reimbursed for travel ending two or more hours after compensated time.
 - 9) Lodging: All lodging expenses require prior written approval of the Executive Director. Hotel/motel expenses will be reimbursed at actual cost provided such cost is found to be reasonable by the Executive Director; room costs over the lodging per diem rate approved by the U.S. General Services Administration (GSA) require documentation of lodging options and justification of the expense. The Consultant shall provide backup of the approved GSA rate with the travel request and with the final invoice for the charge.
 - 10) Capital and expendable property and equipment. Expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.
 - 11) Any individual direct expense of \$1,000 or more shall require prior written approval of the Executive Director. For any individual direct expense of \$1,000 or more, the Consultant shall obtain three competitive cost bids or estimates from reputable vendors, and supply those to the Executive Director with the request for approval of the direct expense. The request for approval shall include justification for the Consultant's selection of vendor. These requirements apply to all direct expenses that have a total cost of \$1,000 or more, not just \$1,000 or more charged to this contract. That is, if the Consultant allocates a direct expense of \$1,000 or more between two or more contracts, or in any way "splits" the expense, the total cost (not just the cost charged to this contract) determines the applicability of these requirements. If the Consultant makes a purchase through the State Procurement Contract, the requirement for three competitive bids or estimates is waived.
 - 12) Production costs: Reimbursement may be provided for unusual production expenses (e.g. large reports, promotional materials, large scale graphics, etc.), but not for typical day-to-day production expenses (e.g. copies of agendas, memos, etc.). In keeping with the material

reduction element of the GreenDOT Policy, MassDOT strongly encourages the Consultant to minimize production of hard copy materials and encourage staff and members of the public to rely upon online dissemination of materials and information.

- 13) Other reasonable direct expenses attributable to this contract provided such costs are not included in overhead expenses.

2. **AUDIT ADJUSTMENTS** All costs described above are to be determined by records kept during the contract period, subject to audit by the Massachusetts Department of Transportation. The total of payments made shall be adjusted to conform to a final audit. The total audited amount shall not exceed the maximum fee. Interim audits may be undertaken at any time. Interim adjustments of provisional indirect cost rates may be requested for approval by the Executive Director on the basis of post audits of individual fiscal years or adequate cost allocation plans and/or indirect cost proposals prepared in accordance with Federal Acquisition Regulations (FAR) and approved by the Massachusetts Department of Transportation.

Toward compliance with federal Office of Management and Budget (OMB) requirements, the Consultant shall engage the services of an independent public accountant (IPA) to conduct annual audits and issue audit reports. Prior to engaging an IPA the Consultant shall obtain Massachusetts Department of Transportation review and comment on the proposed agreement with the IPA. The Massachusetts Department of Transportation will not, however, participate in any way in the selection of the IPA. The Massachusetts Department of Transportation may make suggestions as to the IPA's audit coverage and/or audit program. For purposes of this contract, the cost of the services of an IPA shall be allowable as an indirect cost item. The written agreement with the IPA shall include the following provisions:

- a) The IPA audits shall fully satisfy OMB requirement; including the Single Audit Act Amendments of 1997.
- b) The IPAs working papers shall be retained for a minimum of three (3) years from the date of the audit report and shall be made available upon request for review by the US Department of Transportation and/or the US General Accounting Office
- c) The IPA shall be alert to the fact that this duly executed contract is governed by the statutes of the Commonwealth and therefore stands on different legal ground than a direct federal grant. As the Consultant is paid out of state funds, provisions of this contract may differ from federal requirements on direct grants. So as to protect the interests of the Commonwealth, the IPA audit shall contain adequate testing of compliance by the Consultant with all provisions of this contract, including provisions which may differ from the requirements of federal funding agencies under direct federal grants.

The IPA's audit report will include a schedule, "Indirect Cost Rate(s) Applicable to Massachusetts Department of Transportation contract(s) for Fiscal Year 20xx (fiscal year audited)" or similar schedule, disallowed and indirect costs allowed; and a calculation of the indirect cost rate (indirect which shall include columnar tabulations, by account, of Consultant's indirect costs incurred, indirect costs divided by direct salary costs). The schedule will include a tabulation of disallowances under FAR. The indirect cost rate used to determine final payments under this contract will be an annual rate (rather than a series of monthly rates) and will be calculated using indirect costs and direct labor costs for the fiscal year in the base period.

- d) The IPA's audit report will include a "Schedule of Public Support, Revenue and Expenses by Agreement/Grant/Contract Fund." This schedule shall include a listing of revenue sources

(federal, state, etc.) and expense classifications (direct salaries, indirect costs, direct costs, etc.) by agreement/grant contract.

- e) The Federal Program Description for these funds is Section 5303 Metropolitan Planning, and the Catalog of Federal Domestic Assistance number (CFDA#) is 20-505.

The Massachusetts Department of Transportation reserves the right to reject IPA audit findings and to perform its own audit and issue its own audit reports insofar as this contract is concerned.

3. **METHOD OF PAYMENT** Partial payments against the General (Maximum) Fee shall be for the value of all services performed as shown on invoice(s) submitted by the Consultant and approved by the Executive Director. These partial payments shall be based on actual salaries paid for the period invoiced; plus applicable provisional indirect rate (overhead) for the period invoiced; plus reimbursement for authorized direct expenses for the period invoiced. No premium shall be paid for overtime work. The Massachusetts Department of Transportation reserves the right to defer any partial payments when the ratio of the total salary costs billed (exclusive of direct costs) to the total salary costs as shown in the original proposal is greater than the ratio of the work completed to the total work to be performed under the contract provisions. All invoices and time records shall contain a statement that the Consultant certifies, under the pains and penalties of perjury, that all work for which payment is requested has been performed and that such performance is in full compliance with the provisions of the contract.

All invoices shall be submitted no later than thirty (30) days following the month in which the services were performed and shall include a monthly summary sheet, in a format prescribed by the Massachusetts Department of Transportation/Office of Transportation Planning, showing the number of hours per day and total hours for each individual.

The Consultant shall furnish progress reports for each monthly pay period of its work. The progress report shall accompany the invoice for that period. All work products are subject to the approval of the Executive Director before payment is made. The progress report shall be prepared with a title page indicating the contractor name, the contract number, the report time period, and shall include the following:

- a) Brief narrative describing the work accomplished by task.
- b) Key personnel attendance at meeting(s) held for each week.
- c) Objectives/planned activities for the next month.
- d) Percent of work completed by task.
- e) Some measure of actual resources (hours, funds, etc.) charged to the contract over the past month.
- f) Comparison of actual cumulative resources expended compared to the contract budget.

ELIGIBILITY QUESTIONS Interpretation of questions regarding the eligibility of specific items for payment under the contract will be made by the Massachusetts Department of Transportation in accordance with applicable Massachusetts Department of Transportation requirements, and Massachusetts and federal laws and regulations. The Massachusetts Department of Transportation reserves the right to defer any partial payment until such time as disputes concerning the partial payment are resolved by the Massachusetts Department of Transportation. Should the decision of the Massachusetts Department of Transportation be unsatisfactory to the Consultant, it shall have recourse to a hearing with the Massachusetts Department of Transportation Hearing Examiner. The Massachusetts Department of Transportation shall have the final decision in any dispute.

4. **RECORDKEEPING, AUDIT, AND INSPECTION OF RECORDS** All costs and expenses as described in the foregoing paragraphs are to be determined by actual records kept by the Consultant in accordance with the provisions of this Contract and are subject to final audit by the Department (or its designee) and the FHWA. The total partial payments made hereunder shall be adjusted to conform to determinations made in such audit(s). Payments as made to the Consultant shall be subject to adjustments on the basis of final audit by the Department. At their discretion, the Department and the FHWA may undertake interim audits and make retroactive Interim payment adjustments as a result of such audits at any time during the term of this Contract.

The Consultant is obligated to maintain in an acceptable form books, records, and other compilations of data pertaining to the performance of the provisions and requirements of this Contract to the extent and in such detail as shall properly substantiate claims for payment under this Contract, including complete employee time and payroll records, as well as documents, papers, and other evidence pertaining to billings to the Department under this Contract; and shall also maintain records supporting the original cost proposal on this Contract. The Consultant shall make such materials available at its office at reasonable times during the term of this Contract and thereafter for inspection by the various agencies and entities identified in this Section; and copies of such materials shall be furnished upon request of the Department or its designee or the FHWA.

The Consultant shall comply with any programmatic or fiscal reporting requirements identified in this Contract, including format, contents, detail and submission requirements. The Consultant's failure to timely submit required reports may be considered a material breach of this Contract and may subject the Consultant to delayed or reduced payments without penalty to the Department.

All such records and reports, noted above, shall be kept for a minimum period of seven (7) years or until the resolution of any litigation, claim, negotiation, audit or other action involving the records which arise at any time during the retention period. All document retention periods shall begin on the first day after final payment under this Contract. If any litigation, claim negotiation, audit or other action involving the records has been started before the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting there from, or until the end of the applicable retention period whichever is later.

Pursuant to Executive Order No, 195, or as amended, the Department, the Governor of the Commonwealth of Massachusetts or his/her designee, the Secretary of Administration and Finance, the State Auditor, or their duly authorized designees, shall have access, at reasonable times and upon reasonable notice to examine the books, records, reports, and other compilation of data of the Consultant noted above which pertain to the performance of the provisions and requirements of this Contract. Such access shall include on-site audits, review, and photocopying of such records, reports or other data, at a reasonable expense.

6. **NONDISCRIMINATION AND UNIVERSAL ACCESSIBILITY**

During the performance of this contract, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

- a) **Compliance with Regulations:** The Consultant shall comply with the Acts and the Regulations relative to Nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- b) **Nondiscrimination:** The Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials

and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers a program set forth in Appendix B of 49 CFR Part 21. The Consultant shall also abide by the Massachusetts Public Accommodation Law, M.G.L. c 272 §§92a, 98, 98a, and the Governor's Executive Order 526, section 4 which provide that access to programs, services and benefits be provided without regard to religious creed, sexual orientation, gender identity and expression, veteran's status and/or ancestry, along with the bases previously referenced.

- c) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract, the Acts and the Regulations, Massachusetts General Laws, and Governor's Executive Orders relative to Nondiscrimination on the grounds of race, color, national origin, sex, age, disability, religious creed, sexual orientation, gender identity and expression, veteran's status and/or ancestry.
- d) **Universal Accessibility of Websites, Meeting Materials, Presentations, Notices, and Contract Deliverables.** The Consultant shall ensure that all materials prepared under this contract meet applicable federal and state requirements for accessibility for persons with disabilities. All electronic and information technology products that are submitted under this contract must be compliant with Section 508 of the Rehabilitation Act so that they can be web posted without further modification. Accordingly, final deliverable reports prepared under this Agreement and submitted in electronic format must meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The act requires that all electronic products prepared for the Federal Government be accessible to persons with disabilities, including those with vision, hearing, cognitive, and mobility impairments. View Section 508 of the Rehabilitation Act (<http://www.access-board.gov/508/508standards.htm> - PART 1194) and the Federal IT Accessibility Initiative Home Page (<http://section508.gov>) for detailed information. The following paragraphs summarize the requirements for preparing reports in conformance with Section 508.
- (i) Electronic documents with images, figures, or tables. Provide a text equivalent for every non-text or tabular element (including photographs, charts and equations) in all publications prepared in electronic format. Use descriptions such as "alt" and "longdesc" for all non-text images or place them in element content. "Text equivalent" means text sufficient to reasonably describe the non-text or tabular element. Images that are merely decorative require only a very brief "text equivalent" description. However, images that convey information that is important to the content of the report require text sufficient to reasonably describe that image and its purpose within the context of the report.
- (ii) Electronic documents with forms. When electronic forms are designed to be completed on-line, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.
- e) **Information and Reports:** The Consultant shall provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such Acts, Regulations, orders, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Recipient or the FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

- f) **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the Nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it, the FHWA, and/or MassDOT may determine to be appropriate, including, but not limited to: Withholding of payments to the Consultant under the contract until the Consultant complies; and/or Cancellation, termination, or suspension of the contract, in whole or in part.
- g) **Incorporation of Provisions:** The Consultant shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the Recipient to enter into such litigation to protect the interests of the Recipient and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.
7. **GREENDOT POLICY IMPLEMENTATION** In compliance with the Cooperative Agreement provisions regarding the federal Resource Conservation and Recovery Act of 1976, as well as MassDOT's GreenDOT policy, the Consultant shall follow the provisions of Massachusetts Executive Order 515 – Establishing an Environmental Purchasing Policy.

If possible, the Consultant and its Sub-Consultants shall utilize 100% recycled content paper for all deliverables. The Consultant and its Sub-Consultants shall minimize paper use in the Project through digital distribution and double-sided copying whenever possible. Selection of all office and cleaning supplies purchased fully or partially with funds from this Contract shall include consideration of recycled content, reduced hazardous material use in production, natural material content, and other relevant environmental criteria. All equipment purchased as a direct cost of this contract shall be selected with increased energy efficiency and minimal hazardous material content as key criteria. Any wood materials purchased must be Sustainable Forestry Certified.

Additionally all public meetings and events shall be held in a facility that is accessible by public transit if held in a community with fixed route or demand-responsive service, and all reasonable efforts shall be made to schedule public meetings and events during periods when public transit is operating. All reasonable efforts should be made to select meeting locations that provide secure bicycle parking; if a preferred meeting location does not provide secure bicycle parking, the Consultant should request that the venue install bicycle parking in order to provide reasonable access for all transportation modes. Notices for public meeting that include driving directions shall also include comparable transit and bicycling directions to the venue.

AGENDA ITEM 8g

Authorizing the award of contracts to: Diesel Direct Inc.; Noonan Brothers and Petersons Oil Service, Inc.; for the supply and delivery of gasoline and diesel fuel to Barnstable County and other political subdivisions, for the period of July 1, 2018 through June 30, 2019

COUNTY OF BARNSTABLE
PURCHASING
DEPARTMENT OF FINANCE
SUPERIOR COURT HOUSE
P.O. BOX 427
BARNSTABLE, MASSACHUSETTS 02630

Elaine Davis
Chief Procurement Officer

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

March 22, 2018

MEMORANDUM

TO: County Commissioners
FROM: Elaine Davis, Chief Procurement Officer
RE: Notice of Bid Award

Barnstable County issued an Invitation for Bids for the Supply and delivery of Gasoline and diesel Fuel for Barnstable County and other Political Subdivisions for the period of July 1, 2018 through June 30, 2019. The bids submitted are reflected on the attached spreadsheet with the low bids highlighted in yellow. Please vote to award the bid to the responsive, responsible bidders offering the lowest prices as highlighted on the attached spreadsheet:

Noonan Brothers
Diesel Direct Inc.
Petersons Oil Service, Inc.

Thank you.

County Commissioners:

Ronald R. Beaty, Jr.

Mary Pat Flynn

Leo Cakounes

Date

**GASOLINE DIESEL FY 2019 BIDS SUBMITTED
 BID OPENING – 3/22/18**

SECTION	FIXED PRICE PREMIUM ULTRA LOW SULPHUR DIESEL		
	Peterson	Noonan	Diesel Direct
Section 1: Barnstable Dept. of Public Works	2.33	2.157	2.1413
Section 3: Barnstable Golf Courses	2.58	2.187	2.2446
Section 4: Barnstable Municipal Airport	2.50	2.157	2.1613
Section 5: Barnstable School Department	2.58	2.157	2.1313
Section 7: Town of Bourne, a, b	2.50	2.157	2.2824
Section 7: Town of Bourne, d,e, ISWM	No bid	2.157	2.3346
Section 8: Town of Brewster	2.58	2.157	2.2824
Section 10: Town of Chatham	2.50	2.157	2.3346
Section 11: Town of Dennis	2.50	2.157	2.1833
Section 14: Town of Eastham	2.58	2.167	2.2824
Section 15: Town of Falmouth	2.28	2.138	2.3346
Section 16: Town of Harwich	2.50	2.157	2.1723
Section 18: Town of Mashpee	2.58	2.167	2.1694
Section 19: Town of Orleans	2.50	2.167	2.2824
Section 20: Town of Sandwich	2.58	2.167	2.2824
Section 22: Upper Cape Regional Technical	2.50	2.177	2.2824
Section 23: Town of Wellfleet	2.18	No bid	2.3824

SECTION	OEP ULS DIESEL		
	Peterson	Noonan	Diesel Direct
Section 6: Barnstable County Dredge	No bid	.09	.1175
Section 9: Centerville/Osterville/MM Fire	.3300	.085	.1355
Section 12: Dennis Water	.3300	.08	.1023
Section 13: Dennis Yarmouth Regional School District	.3300	.08	.0725
Section 17: Hyannis Fire District	.3300	.08	.0881
Section 21: Town of Truro	No bid	.15	.1455

Section 24: Town of Yarmouth	.3300	.08	.0833
------------------------------	-------	-----	-------

SECTION	FIXED PRICE Regular Gasoline		
	Peterson	Noonan	Diesel Direct
Section 1: Barnstable Dept. of Public Works	No bid	2.015	No bid
Section 2: Barnstable Police Department		2.015	
Section 3: Barnstable Golf Courses		2.074	
Section 4: Barnstable Municipal Airport		2.045	
Section 5: Barnstable School Department		2.044	
Section 7: Town of Bourne, locations a,b		2.024	
Section 8: Town of Brewster		2.034	
Section 10: Town of Chatham		2.014	
Section 11: Town of Dennis		2.014	
Section 14: Town of Eastham		2.014	
Section 15: Town of Falmouth		1.976	
Section 16: Town of Harwich		2.014	
Section 18: Town of Mashpee		2.014	
Section 19: Town of Orleans		2.014	
Section 20: Town of Sandwich		2.014	
Section 22: Upper Cape Regional Technical		2.024	

SECTION	OEP REGULAR GASOLINE		
	Peterson	Noonan	Diesel Direct
Section 9: COMM	No Bid	.085	.1151
Section 21: Town of Truro		.15	.1455
Section 24: Town of Yarmouth		.058	.1025

SECTION	OEP MID GRADE/87 OCTANE GASOLINE		
	Peterson	Noonan	DD
Section 17: Hyannis Fire		.08	.105

AGENDA ITEM 8h

Authorizing the execution of a contract to Rochester Bituminous Products, Inc., for road resurfacing projects in the towns of Barnstable County, for the period of April 1, 2018 through March 31, 2019

AGREEMENT BETWEEN

Barnstable County
3295 Main Street
Barnstable, MA 02630

and

Rochester Bituminous Products
83 King's Highway
West Wareham, MA 02576

THIS AGREEMENT is made this _____ day of _____ 2018 by and between Rochester Bituminous Products (hereinafter referred to as Contractor), and Mary Pat Flynn, Ron Beaty and Leo Cakounes as they are the Commissioners of Barnstable County, but without any personal liability.

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

WHEREAS: The County Commissioners issued an Invitation for Bids for Road Resurfacing for Towns in Barnstable County

WHEREAS: The bids were bid in compliance with MA General Law Chapter 30, 39M.

WHEREAS: The contractor is the responsive, responsible bidder offering the lowest price for all towns

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

1. Employment of Contractor. The Vendor 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 Vendor shall perform the work identified in the scope of services as set forth in Barnstable County's Invitation for Bids dated January 3, 2018 and the vendors proposal dated January 17, 2018, incorporated herein by reference.
3. Time of Performance. The term of the contract is April 1, 2018 through March 31, 2019
4. Payment. The Towns shall compensate the vendor for services provided under the Scope of Services, at the rates and amounts detailed in the vendors Price Proposal dated January 17, 2018 and as highlighted on the spreadsheet attached to this contract as Attachment A.
5. Termination or Suspension of Contract for Cause. If through any sufficient cause, the Customer or the Towns shall fail to fulfill or perform its duties and obligations under this Contract, or if either party shall violate or breach any of the provisions of this Contract, either party shall thereupon have the right to terminate or suspend this Contract, by giving written notice to the other party of such termination or suspension and specifying the effective date thereof. Such notice shall be given at least fifteen (15) calendar days before such effective date.
6. Termination for Convenience of County or Towns. The County or Towns shall have the right to discontinue the work of the Contractor and cancel this contract by written notice to the Contractor of such termination and specifying the effective date of such termination. In the event of such termination or suspension of this Contract, the Contractor shall be entitled to just and equitable compensation for satisfactory work completed, for services performed and for reimbursable

expenses necessarily incurred in the performance of this Contract up to and including the date of termination or suspension.

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

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

9. Subcontracting. None of the services to be provided to the Towns 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 Towns. No subcontract or delegation shall relieve or discharge the Customer from any obligation or liability under this Contract except as specifically set forth in the instrument of approval. If this Contract is funded in whole or in part with federal funds, Contractor further agrees to comply with the provisions of the Office of Management and Budget Circular A-110, as amended, with respect to taking affirmative steps to utilize the services of small and minority firms, women's business enterprises and labor surplus area firms. All subcontracts shall be in writing and shall contain provisions which are functionally identical to, and consistent with, the provisions of this Contract. The County shall have the right to obtain a copy of the subcontract upon request.

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

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

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

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

include on-site audits, review and copying of records.

14. Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by the Contractor under this Contract which the Towns 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 or Towns.

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

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

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

18. Choice of Law. This Contract shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Contractor and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which the County or Towns 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.

19. Force Majeure. Neither party shall be liable to the other nor be deemed to be in breach of this Contract for failure or delay in rendering performance arising out of causes factually beyond its control and without its fault or negligence. Such causes may include, but are not limited to: acts of God or the public enemy, wars, fires, floods, epidemics, strikes, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

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

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

22. Waiver of Liability. The Contractor and the County hereby covenant and agree to waive any and all claims against Barnstable County and release Barnstable County from any liability arising out of the work identified in the scope of services as set forth in Barnstable County's Invitation for Bids dated January 3, 2018.

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

FOR THE COUNTY:

BARNSTABLE COUNTY COMMISSIONERS:

Leo Cakounes

Mary Pat Flynn

Ron Beaty

Date

FOR THE CONTRACTOR:



3/1/18

Date

AGENDA ITEM 8i

Authorizing the execution of contracts for roadway construction items, for Towns in Barnstable County, for the period of April 1, 2018 through March 31, 2019, with the option to renew for one (1) additional year to: All States Asphalt, Inc.; Garrity Asphalt Reclaiming, Inc.; MCE Dirtworks, Inc.; Lawrence-Lynch, Inc.; P.J. Keating Company; and Sealcoating, Inc.

AGREEMENT BETWEEN

Barnstable County
3295 Main Street
Barnstable, MA 02630

and

Rafferty Fine Grading, Inc.
57 South Road
Enfield, CT 06082

THIS AGREEMENT is made this 21st day of March 2018 by and between Rafferty Fine Grading, Inc. (hereinafter referred to as Contractor), and Mary Pat Flynn, Ronald Beaty and Leo Cakounes as they are the Commissioners of Barnstable County, but without any personal liability.

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

WHEREAS: The County Commissioners issued an Invitation for Bids for Roadway Construction Items for Towns in Barnstable County:

WHEREAS: The bids were bid in compliance with MA General Law Chapter 30, 39M.

WHEREAS: The contractor is the responsive, responsible bidder offering the lowest price as highlighted on the attached spreadsheet

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

1. Employment of Contractor. The Vendor 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 Vendor shall perform the work identified in the scope of services as set forth in Barnstable County's Invitation for Bids dated January 17, 2018 and its proposal dated February 15, 2018, incorporated herein by reference.
3. Time of Performance. The term of the contract is April 1, 2018 through March 31, 2019 with the option to renew for one additional year at the sole discretion of the Towns and the County.
4. Payment. The Towns shall compensate the vendor for services provided under the Scope of Services, at the rates and amounts detailed in the vendors Price Proposal dated February 15, 2018 and as highlighted on the spreadsheet attached to this contract as Attachment A.
5. Termination or Suspension of Contract for Cause. If through any sufficient cause, the Customer or the Towns shall fail to fulfill or perform its duties and obligations under this Contract, or if either party shall violate or breach any of the provisions of this Contract, either party shall thereupon have the right to terminate or suspend this Contract, by giving written notice to the other party of such termination or suspension and specifying the effective date thereof. Such notice shall be given at least fifteen (15) calendar days before such effective date.
6. Termination for Convenience of County or Towns. The County or Towns shall have the right to discontinue the work of the Contractor and cancel this contract by written notice to the Contractor of such termination and specifying the effective date of such termination. In the event of such termination or suspension of this Contract, the Contractor shall be entitled to just and equitable

compensation for satisfactory work completed, for services performed and for reimbursable expenses necessarily incurred in the performance of this Contract up to and including the date of termination or suspension.

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

8. Non-Discrimination in Employment and Affirmative Action. The Customer shall take affirmative action to ensure that qualified applicants and employees are treated without regard to age, race, color, religion, sex, marital status, sexual orientation, national origin, disability, or Vietnam Era Veteran status. The Customer agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment including but not limited to: Title VII of the Civil Rights Act of 1964, as amended; Massachusetts General Laws Chapter 1518§(1); the Americans with Disabilities Act of 1990; and all relevant administrative orders and executive orders including Executive Order 246.

9. Subcontracting. None of the services to be provided to the Towns 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 Towns. No subcontract or delegation shall relieve or discharge the Customer from any obligation or liability under this Contract except as specifically set forth in the instrument of approval. If this Contract is funded in whole or in part with federal funds, Contractor further agrees to comply with the provisions of the Office of Management and Budget Circular A-110, as amended, with respect to taking affirmative steps to utilize the services of small and minority firms, women's business enterprises and labor surplus area firms. All subcontracts shall be in writing and shall contain provisions which are functionally identical to, and consistent with, the provisions of this Contract. The County shall have the right to obtain a copy of the subcontract upon request.

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

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

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

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

Contractor which pertain to the provisions and requirements of this Contract. Such access shall include on-site audits, review and copying of records.

14. Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by the Contractor under this Contract which the Towns 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 or Towns.

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

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

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

18. Choice of Law. This Contract shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Contractor and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which the County or Towns 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.

19. Force Majeure. Neither party shall be liable to the other nor be deemed to be in breach of this Contract for failure or delay in rendering performance arising out of causes factually beyond its control and without its fault or negligence. Such causes may include, but are not limited to: acts of God or the public enemy, wars, fires, floods, epidemics, strikes, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

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

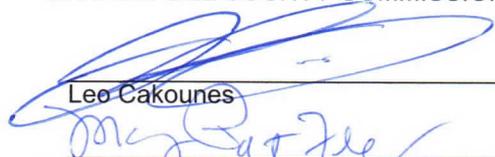
21. Headings, Interpretation and Severability. The headings used herein are for reference and convenience only and shall not be a factor in the interpretation of the Contract. If any provision of this Contract is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved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

22. Waiver of Liability. The Contractor and the County hereby covenant and agree to waive any and all claims against Barnstable County and release Barnstable County from any liability arising out of the work identified in the scope of services as set forth in Barnstable County's Invitation for Bids dated January 3, 2018.

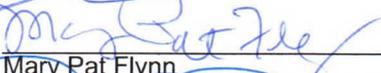
IN WITNESS WHEREOF, the County and Contractor have executed this Agreement this 21st day of March in the year Two Thousand and Eighteen.

FOR THE COUNTY:

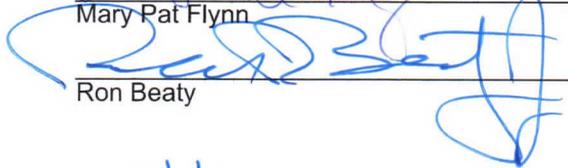
BARNSTABLE COUNTY COMMISSIONERS:



Leo Cakounes



Mary Pat Flynn



Ron Beaty

03/21/18

Date

FOR THE CONTRACTOR:



Rhonda L. Rafferty

03/01/2018

Date

COUNTY OF BARNSTABLE

PURCHASING

DEPARTMENT OF FINANCE

SUPERIOR COURT HOUSE

P.O. BOX 427

BARNSTABLE, MASSACHUSETTS 02630

Phone: (508) 375-6637

Fax: (508) 362-4136

Email:

edavis@barnstablecounty.org

Elaine Davis
Chief Procurement Officer

February 22, 2018

MEMORANDUM

TO: County Commissioners
FROM: Elaine Davis, Chief Procurement Officer
RE: Notice of Award

Barnstable County issued an Invitation for Bids on for Roadway Construction Items for Towns in Barnstable County for the period of April 1, 2018 through March 31, 2019, with the option to renew for one additional year. Please vote to award the contracts to the responsive, responsible bidders offering the most advantageous prices for each product as shown on the attached spreadsheet:

P.J. Keating Company
MCE Dirtworks, Inc.
Lawrence-Lynch, Inc.
Robert Childs, Inc
Murray Paving and Reclamation
Rafferty Fine Grading, Inc.
Garrity Asphalt Reclaiming, Inc.
Sealcoating, Inc
All States Asphalt, Inc
Pavement Maintenance Systems, Inc
Felix A. Marino, Inc

The Town of Sandwich is rejecting the low bid from Rafferty due to documented poor performance in the past, and is accepting the second low bid for Item #7.

Thank you.

County Commissioners:

Ronald R. Beaty, Jr.



Mary Pat Flynn



Leo Cakounes

Date

02/28/18