

AGENDA PACKET

06/06/18 REGULAR MEETING

AGENDA ITEM 5a

Approval of Minutes: Regular Meeting of May 30, 2018

AGENDA ITEM 6a

Presentation of citations to recipients of the Malcom McDowell Human Rights Academy Award: Isabel Pellegrini of Brewster, Nauset Regional High School student and; Amanda Pfautz of Barnstable, Barnstable High School student

AGENDA ITEM 6b

Review and discussion on the Commonwealth of Massachusetts Office of the Attorney General correspondence and decision in regard to an Open Meeting Law complaint filed by Ronald Beaty on July 25, 2017 and received May 23, 2018



MAURA HEALEY
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May 23, 2018

OML 2018 – 70

Robert S. Troy, Esq.
Barnstable County Counsel
Troy Wall Associates
90 Route 6A
Sandwich, MA 02563

RE: Open Meeting Law Complaint

Dear Attorney Troy:

This office received a complaint from Ronald Beaty on August 21 alleging that the Board of Barnstable County Commissioners (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The complaint was originally filed with the Board on July 25, and you responded, on behalf of the Board, by letter dated August 14. The complaint alleges that i) the Board’s June 28 open session and emergency meeting minutes are not sufficiently detailed; ii) the notice for the Board’s June 28 meeting lacked sufficient detail because it did not contain the purpose for the executive session and the Board failed to follow proper procedure before convening in executive session; iii) the Board failed to periodically review its executive session meeting minutes to determine whether there is a continued purpose for nondisclosure; and iv) the Board improperly held an emergency meeting on June 28.

We appreciate the patience of the parties while we reviewed this matter. Following our review, we find that the Board violated the Open Meeting Law (i) by failing to include in both the open session and emergency meeting minutes of June 28 a list of documents used by the Board; and (ii) by failing to state on its June 28 meeting notice the specific litigation matter that would be discussed during the executive session. We find no evidence, however, that the Board violated the law in the other ways alleged. In reaching this determination, we reviewed the original complaint, the Board’s response to the complaint, and the complaint filed with our office requesting further review. We also reviewed the notices of, and open and executive session minutes from, the Board’s June 28 meeting; the notice of, and open session minutes from, the Board’s June 28 emergency meeting; the notice of, and open session minutes from, the Board’s July 5 meeting; and the notice of, and open session minutes from, the Board’s August 2 meeting.

¹ Unless otherwise indicated, all dates in this letter refer to the year 2017.



Finally, we spoke with the complainant by telephone on November 28, and with you by telephone on May 2, 2018.²

FACTS

We find the facts as follows. The complainant is a member of the Board. On June 26 at 10:59 A.M., the Board posted notice for a meeting to be held on June 28 at 11:00 A.M. The notice listed 12 topics, including Approval of Minutes, General Business, Commissioner's Actions, Commissioner's Reports, County Administrator's Report, and Executive Session. Specifically, the notice indicated that the Board would convene in executive session under purpose 3 "to confer with counsel to discuss strategy with respect to litigation involving the Town of Barnstable, as an open meeting may have a detrimental effect on the bargaining or litigating position of Barnstable County (the Board will not reconvene in Open Session, or take formal action)."

The June 28 meeting was held as planned, with the complainant in attendance. The Board discussed the fiscal year 2017 budget, executed a memorandum of understanding with the Yarmouth Chamber of Commerce, and renewed and executed various contracts. The Board then approved a unanimous vote by roll call (including the complainant) to convene in executive session under purpose 3 "for the purpose of conferring with Counsel to discuss strategy with respect to pending litigation involving the Town of Barnstable." Board Chair Leo Cakounes announced that the Board would not reconvene in open session. Because the Board has not publicly released the minutes of this executive session, we do not recount their content in detail here. However, we note that the Board discussed the possibility of a settlement agreement in a water contamination case filed by the Town of Barnstable against Barnstable County, and then approved and executed a settlement agreement.

The Board thought that it had to promptly disclose the settlement agreement in open session. In addition, the settlement agreement had to be filed in Superior Court by June 30. Because the Board announced that it would not reconvene in open session after the executive session, the Board posted notice for an emergency meeting at 2:00 P.M. on June 28. The Board posted this notice at 1:50 P.M., five minutes after adjourning from executive session. The notice listed the following topics: Call to Order, General Business, and Adjournment. Under General Business, the notice listed "[a]nnouncement of votes taken by County Commissioners in Executive Session . . . related to the settlement of litigation with the Town of Barnstable, including Settlement and Access Agreements."

The Board, including the complainant, met at 2:00 P.M. on June 28 and announced that it had approved and executed a settlement agreement in the matter of Town of Barnstable v. Barnstable County (Docket 1672CV00337), and that it had authorized County Legal Counsel Robert Troy and County Legal Counsel Robert Cox to file the agreement in court. The Board further announced that it had authorized Chair Cakounes and the County Administrator to prepare and issue a press release regarding the content of the settlement agreement. Finally, the Board announced that it had approved and executed "the Access Agreement between the Town of Barnstable and The County for the purpose of Well Exploration on the County Land referred

² For purposes of clarity, we will refer to you in the third person hereafter.

to as “The County Farm.”” The settlement agreement was filed in Barnstable Superior Court on June 29, and a stipulation of dismissal was entered on July 19.

On June 29, the Board posted notice for a meeting to be held on July 5 at 11:00 A.M. The notice listed eleven topics, including Approval of Minutes and General Business. Under General Business, the notice listed “[a]nnouncement of votes taken by County Commissioners in Executive Session . . . related to the settlement of litigation with the Town of Barnstable, including Settlement and Access Agreements.”

During the July 5 meeting, the Board, including the complainant, unanimously approved the minutes from both the open and emergency meetings held on June 28. Chair Cakounes then announced that the Board had met in executive session on June 28 pursuant to purpose 3 and then “read into the record the Motions and Votes taken during that meeting and announced during the Emergency Meeting.” He further explained that “I determined the necessity to call an Emergency Meeting of the Board” on June 28 at 2:00 P.M. “for the express purpose of the announcement of the action taken within the Executive Session Meeting” because the Board had stated that it would not reconvene in open session after the executive session, and because the Board was under a time constraint “as to filing the legal documents” in court by June 30. Finally, Chair Cakounes announced that the Board would be reviewing all executive session minutes to determine which minutes can be released.

During an August 2 meeting, the Board, again including the complainant, reviewed executive session minutes from meetings held on February 3, 2016, March 2, 2016, June 29, 2016, July 20, 2016, August 25, 2016, November 16, 2016, December 30, 2016, and June 28. The Board announced that the purposes for those meetings was still ongoing and therefore the minutes would not yet be released.

DISCUSSION

I. The June 28 Meeting Minutes Do Not Contain a List of Documents Used at the Meeting.

The complaint alleges that the minutes from both the open session and emergency meeting held on June 28 lack sufficient specificity. The Open Meeting Law requires that a public body “create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.” G.L. c. 30A, § 22(a). When reviewing minutes for compliance with the Open Meeting Law, we look for substantial compliance with the accuracy requirement. See OML 2013-64.³ By substantial compliance, we mean that the minutes should contain enough detail and accuracy so that a member of the public who did not attend the meeting could read the minutes and have a clear understanding of what occurred. See OML 2012-106. While minutes must include a summary

³ Open Meeting Law determinations may be found at the Attorney General’s website; www.mass.gov/ago/openmeeting.

of the discussion on each topic, a transcript is not required, and the minutes do not need to include every remark or opinion presented. See OML 2012-29; OML 2011-55.

Here, the June 28 open session minutes contain the date and place of the meeting, the members who were present, a summary of the discussions, and the decisions made and actions taken, including a record of all votes. The open session minutes do not contain the time of the meeting, although the minutes do include the time that the Board adjourned the open portion of the meeting and convened in executive session. The Board should revise these minutes to include the time of the meeting. The June 28 emergency meeting minutes contain the date, time and place of the meeting, the members who were present, a summary of the discussions, as well as the decisions made and actions taken, including a record of all votes. However, neither the open session nor emergency meeting minutes contain a list of documents that the Board used during the meetings. While certain documents were referenced in the body of the minutes, the Open Meeting Law requires that the minutes of a public body's meeting include a list of all documents and exhibits used by the public body during the meeting. See G.L. c. 30A, § 22(a); OML 2012-91. The Open Meeting Law does not define what it means for a document to be used at a meeting but, at a minimum, it is clear that where a document is physically present, verbally identified, and the contents are discussed by the members of a public body during an open meeting, it has been "used" for purposes of the Open Meeting Law. See OML 2014-12; OML 2012-42. Here, documents were physically present, verbally identified, and their contents were discussed during both the open and emergency June 28 meetings; yet, neither set of minutes contain a list of documents used. As such, we find a violation of the Open Meeting Law and order the Board to revise its minutes to include a list of the documents used in its meetings.

As a member of the Board, the complainant voted to approve both the open and emergency session minutes of the Board's June 28 meetings at its July 5 meeting. If the complainant was concerned with the content of the minutes, he had the power as a Board member to make a motion to revise the minutes. Or, upon realizing that the minutes did not contain the required list of documents, he could have made a motion at a subsequent meeting to amend the minutes. He did not do so. Further, in an attempt to resolve the complaint, Attorney Troy sought clarification from the complainant with respect to how the minutes were insufficient but the complainant did not provide specific details as to the claimed deficiencies. We encourage the complainant to work with his fellow Board members to resolve Open Meeting Law concerns of this nature before filing a complaint.

II. The Board Did Not Provide Sufficient Notice Regarding the Executive Session Topic but Did Enter Executive Session for a Proper Purpose.

All meetings of a public body must be conducted in an open session, with some exceptions. G.L. c. 30A, §§ 20(a), 21(a). Public bodies may enter a closed, executive session for any of ten enumerated purposes, provided that the chair of the public body first announces in open session the purpose for the executive session, "stating all subjects that may be revealed without compromising the purpose for which the executive session was called." See G.L. c. 30A, §§ 21(a), 21(b)(3); see also District Attorney for the N. Dist. v. Sch. Comm. of Wayland, 455 Mass. 561, 567 (2009) ("[a] precise statement of the reason for convening in executive session is necessary ... because that is the only notification given the public that a [public body] would conduct business in private, and the only way the public would know if the reason for

doing so was proper or improper”). This level of detail about the executive session topic must also be included in the meeting notice. See G.L. c. 30A, § 20(b); OML 2016-72.

A public body may enter executive session “to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.” G.L. c. 30A, § 21(a)(3) (“Purpose 3”). This purpose offers the narrow opportunity to discuss strategy with respect to litigation that is pending or clearly and imminently threatened or otherwise demonstrably likely; the mere possibility of litigation is not sufficient to invoke Purpose 3. See Powers v. Freetown-Lakeville Reg'l Sch. Dist. Comm., 392 Mass. 656, 659 (1984); Doherty v. School Commission of Boston, 386 Mass. 643, 648 (1982).

The complaint alleges that the June 28 meeting notice concerning the executive session topic lacked sufficient detail. Here, the notice stated that the Board would discuss strategy with respect to litigation involving the Town of Barnstable. We find that including the specific case name of the litigation matter it planned to discuss would have better provided the public with an understanding of the precise subject of the executive session discussion without compromising the Board’s litigating position. See OML 2018-11. The Board does not suggest that inclusion of such information would have compromised the purpose for the executive session. In fact, the Board immediately thereafter announced in open session the specific litigation matter in which it had reached a settlement agreement. Therefore, we conclude that the meeting notice should have included the name of the litigation matter that was to be discussed in executive session.

The complaint further alleges that the Board failed to follow the proper procedures for entering into executive session. A public body may enter executive, or closed, session provided that it has first convened in an open session, that a majority of members of the body have voted to go into executive session, and that the vote of each member is recorded by roll call and entered into the minutes. G.L. c. 30A, § 21(b). Before entering the executive session, the chair must state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called, and the chair must publicly announce whether the open session will reconvene at the conclusion of the executive session. Id.; see also OML 2014-136.

Here, the Board first convened in open session before unanimously voting to enter executive session. However, the complainant, instead of Chair Cakounes, publicly stated the subjects that could be revealed without compromising the purpose of the executive session, and publicly stated that holding the discussion in an open meeting would have a detrimental effect on the negotiating position of the public body. Chair Cakounes then announced that the Board would not reconvene in open session. As a member of the Board, the complainant had the opportunity on June 28 to ensure that the Board convened in executive session properly, and if it had not, to raise that issue then. Instead, he filed a complaint a month later. We remind the complainant that he himself made the motion to enter, and stated the purpose for, the executive session, and then voted to enter executive session for the very purpose he had just announced.

The Board did not indicate on the notice or in its announcement preceding the executive session that it would vote following its discussion. We have previously found that it is reasonably foreseeable that a public body may hold a vote following discussion of a topic listed

on a meeting notice, even where the notice topic does not indicate the possibility of a vote. See OML 2015-66; OML 2012-75. In this instance, even though the notice did not specify that the Board may take a vote, the vote that occurred and the action taken was immediately announced in an open session. Therefore, any harm done by failing to include such action on the notice was minimal. We commend the Committee for promptly announcing the settlement agreement both immediately following the executive session and at its July 5 meeting.

III. The Board Periodically Reviewed Its Executive Session Meeting Minutes in Accordance with the Open Meeting Law.

The complaint alleges that the Board failed to periodically review its executive session meeting minutes to determine whether there is a continued purpose for nondisclosure. Executive session minutes may be withheld from disclosure to the public “as long as publication may defeat the lawful purposes of the executive session, but no longer.” G.L. c. 30A, § 22(f). When the purpose for a valid executive session has been served, the minutes and any documents or exhibits used at the session must be disclosed unless the attorney-client privilege or an exemption to the public records law applies to withhold them, in whole or in part, from disclosure. See id. Public bodies have an obligation to review the minutes of executive sessions at reasonable intervals to determine if continued non-disclosure of minutes is warranted, and to announce that determination at the next meeting following its review. G.L. c. 30A, § 22(g)(1). Here, the Board announced at its July 5 meeting that it “would be scheduling an executive session meeting, for the purpose of reviewing all executive session minutes . . . and determining which shall be released.” The Board then reviewed eight sets of minutes at its August 2 meeting. We therefore find that the Board did not violate the Open Meeting Law.

Again, we suggest that if the complainant was concerned with the failure of the Board to periodically review executive session minutes, he had an obligation as a Board member to ensure that the minutes were reviewed in compliance with the law. The complainant can ask that a review of meeting minutes be added to the Board’s meeting agenda, or could make a motion to review minutes if he feels such action is warranted. We encourage the complainant to work with his fellow Board members to resolve Open Meeting Law concerns of this nature before filing a complaint.

IV. The Board Was Mistaken in Its Belief that an Emergency Meeting Was Necessary.

The Open Meeting Law requires that, except in an emergency, “a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays.” G.L. c. 30A, § 20(b). A “meeting” is defined, in relevant part, as “a deliberation by a public body with respect to any matter within the body’s jurisdiction.” G.L. c. 30A, § 18. The law defines “deliberation” as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” Id. For the purposes of the Open Meeting Law, a “quorum” is a simple majority of the members of a public body. See G.L. c. 30A, § 18. An “emergency” is defined as “a sudden, generally unexpected occurrence or set of circumstances demanding

immediate action.” Id. The burden of justifying the need for an emergency meeting lies with the public body. See OML 2012-7; OML 2010-6.

Here, the Board posted notice for an emergency meeting five minutes after adjourning from executive session. The purpose of the emergency meeting was to announce the action the Board had just taken in executive session, which was the execution of a settlement agreement in the Superior Court matter of Town of Barnstable v. Barnstable County (Docket 1672CV00337). However, the Board did not need to announce or ratify the agreement in open session. See Doherty v. School Committee of Boston, 386 Mass. 643, 647 (1982) (holding that closed door votes are permissible where a body meets in executive session to protect its litigating position). Once an agreement has been executed, the public body should publicly announce the agreement in open session and describe the terms reached. Ideally, this should occur either during the same meeting or at the public body’s next scheduled meeting. See OML 2015-52; OML 2013-84. Because the Board was sincerely mistaken in its belief that a separate emergency meeting was necessary to announce the execution of the settlement agreement immediately in open session, we find no violation of the law.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law by failing to include in both the June 28 open session and emergency meeting minutes a list of documents used by the Board; and by failing to state on its June 28 meeting notice the specific litigation matter that would be discussed during the executive session. We order the Board’s immediate and future compliance with the Open Meeting Law, and we caution that similar future violations may be considered evidence of intent to violate the law. We also order the Board, within 30 days following receipt of this letter, to revise both its open session and emergency minutes to include a list of the documents used in those June 28 meetings. Pursuant to 940 CMR 29.07(4), the Committee shall notify our office in writing of compliance with this order.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Board. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



KerryAnne Kilcoyne
Assistant Attorney General
Division of Open Government

cc: Ronald Beaty
Board of Barnstable County Commissioners

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.

AGENDA ITEM 6c

Amendments to the Regular Meeting Minutes of June 28, 2017

AGENDA ITEM 6d

Amendments to the Emergency Meeting Minutes of June 28, 2017

AGENDA ITEM 6e

Proposed Ordinance 18-__: Establishing the Barnstable County Coastal Zone Management Committee

AGENDA ITEM 8a

Authorizing the acceptance and execution of an Affordable Housing Restriction for the Northbridge Mashpee Assisted Living Project at 68 Great Neck Road South in the Town of Mashpee

CAPE COD COMMISSION

AFFORDABLE HOUSING RESTRICTION

68 Great Neck Road South, Mashpee, MA

Northbridge Mashpee Assisted Living, LLC, a Delaware limited liability company with a principal place of business c/o The Northbridge Companies, 71 Third Avenue, Burlington, Massachusetts 01803, its successors and assigns (the "Grantor"), grants with quitclaim covenants, to BARNSTABLE COUNTY, a Massachusetts body politic, acting by and through the Cape Cod Commission, having an address of 3225 Main Street, PO Box 226, Barnstable, Massachusetts 02630 (the "Grantee"), the following described Affordable Housing Restriction on Grantor's interest in and to a parcel of land, together with all the buildings and improvements now or hereafter situated thereon, located at 68 Great Neck Road, Mashpee, Massachusetts, as described in more detail in Exhibit A attached hereto ("Premises").

WHEREAS, the Grantor received a Development of Regional Impact Decision, dated March 31, 2016 (the "DRI Decision") from the Grantee to allow for construction of an assisted living and memory care residential development at the Premises to be known as "Laurentide at Mashpee Commons" consisting of a 70 units (the "Project").

WHEREAS, condition AHC2 of the DRI Decision requires the perpetual affordability of one (1) studio assisted living unit, four (4) one bedroom assisted living units, and two (2) memory care beds contained within the Project, to be rented to Eligible Tenants (as defined below) and at such rental rates as hereinafter provided (collectively, the "Affordable Beds/Units").

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto agree and covenant, that the terms of this Affordable Housing Restriction, authorized by M.G.L. c. 184, §§31-33 and otherwise by law, are as follows:

1. Purpose. The purpose of this Affordable Housing Restriction is to assure that the Affordable Beds/Units will be perpetually retained as affordable in accordance with the DRI Decision.

2. Scope. The Grantor intends, declares and covenants, on behalf of itself and its successors and assigns, that the covenants and restrictions set forth in this Affordable Housing Restriction regulating and restricting the use, occupancy and transfer of the Premises (i) shall be and are covenants running with the Premises, encumbering the Premises in perpetuity, binding upon the Grantor's successors in title and all subsequent owners of the Premises, (ii) are not merely personal covenants of the Grantor, and (iii) shall bind the Grantor and its successors and assigns (and the benefits shall inure to the Grantee and to any present or prospective tenants of the Affordable Beds/Units); provided, however, that the Grantor and each successive owner of all or any portion of the Project shall be liable only for the obligations accruing during the period of their respective ownership of the Project.

3. Duration not Limited. This perpetual Affordable Housing Restriction is intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of the

Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law. The Grantor hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for this Affordable Housing Restriction to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that this Affordable Housing Restriction runs with the land.

4. Subsequent Conveyances. Each and every contract, deed or other instrument hereafter executed conveying the Premises or portion thereof shall expressly provide that such conveyance is subject to this Affordable Housing Restriction, provided, however, that failure to do so shall not be a default hereunder and the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Premises or portion thereof provides that such conveyance is subject to this Affordable Housing Restriction.

5. Permitted Use. The Premises shall be used for the Project and the Affordable Beds/Units shall be provided as follows:

- One (1) of the Affordable Beds/Units shall be an assisted living studio unit;
- Four (4) of the Affordable Beds/Units shall be one (1) bedroom assisted living units; and
- Two (2) of the Affordable Beds/Units shall be memory care beds.

The Affordable Beds/Units are identified on the Exhibit B attached hereto.

No entry fee shall be charged for the Affordable Beds/Units. The construction of the Project shall meet all applicable codes, regulations, statutes, and zoning ordinances of the Town of Mashpee and all applicable codes, regulations and statutes of the Commonwealth of Massachusetts. The size of the Affordable Beds/Units shall be apportioned in similar proportion as those of the market rate units.

6. Tenant Selection.

(a) Nondiscrimination. The Grantor shall not discriminate on the basis of race, creed, color, sex, handicap, marital status, sexual preference, national origin or any other basis prohibited by law in the lease, use and occupancy of the Project (except that the parties expressly acknowledge that the Project, is an age-restricted senior housing facility for persons aged 62 and older (the "Age Restriction") and that accordingly the Age Restriction with respect to any and all residents and tenants shall not be deemed a discrimination in violation of this Section 6(a)) or in connection with the employment or application for employment of persons for the operation and management of the Project. The Grantor shall not discriminate against, or refuse to lease, rent or otherwise make available units in the Project to a holder of a federal or state rental certificate or voucher. The parties acknowledge that the building in which the Combined Project is located is a non-smoking facility and that smokers may accordingly be excluded as residents, visitors, or otherwise.

(b) Selection Policies for the Affordable Beds/Units. The Grantor shall adopt and submit to Grantee for approval resident selection policies and criteria for the Affordable Beds/Units acceptable to Grantee that provide for (i) the selection of residents from a written waiting list in the chronological order of their application, insofar as practicable, or a lottery, and (ii) the prompt written notification to any rejected applicant of the grounds for any rejection. An Eligible Tenant is subject to a health assessment by the Grantor to ensure that the Grantor can meet the health needs of the Eligible Tenant. If the Grantor determines that such Eligible Tenant does not require the services of the Grantor or requires more services than the Grantor provides, the Eligible Tenant will not be offered an Affordable Bed. The Grantor shall also provide the Grantee with an affirmative marketing plan for the Affordable Beds/Units reasonably acceptable to the Grantee. The approved marketing plan and the approved resident selection policies and criteria shall be adhered to in every material respect.

7. Income and Rent Restrictions for the Affordable Beds/Units.

(a) During the term of this Affordable Housing Restriction, one hundred percent (100%) of the Affordable Beds/Units shall be leased exclusively to the Eligible Tenants. An "Eligible Tenant" is an individual who is 62 years of age or older whose annual gross income does not exceed eighty percent (80%) of the most current Area (as hereinafter defined) median income (the "Maximum Income") as determined by the U.S. Department of Housing and Urban Development ("HUD"). The "Area" is defined as Barnstable Town MSA. An Eligible Tenant's annual gross income shall be the anticipated total income from all sources received by the individual, including all net income derived from assets for the 12-month period following the effective date of certification of income. Annual income specifically includes certain types of income as set forth in, and shall be determined in accordance with, 24 C.F.R. §5.609 (or any successor regulations).

(b) The monthly rent charged to the Eligible Tenants of the Affordable Beds/Units, inclusive of the standard resident package of services as described in AHC5. of the DRI Decision, but exclusive of costs and expenses beyond the standard resident package, shall not exceed seventy-five percent (75%) of the income of a one (1) person household for assisted living studio units and memory care beds, and a one and one-half (1.5) person household for one (1)-bedroom units, whose annual gross income is eighty percent (80%) of the median income for the Area (the "Maximum Monthly Rents"). The initial Maximum Monthly Rents are defined in Exhibit C. Maximum Monthly Rents shall be adjusted as provided herein.

(c) Notwithstanding anything contained herein to the contrary, in the event that the Grantor and/or the Grantee are unable to find a qualifying person for an Affordable Bed(s)/Unit(s) pursuant to the above noted priority listing, the Grantor may lease any vacant Affordable Bed/Unit to a full market rate resident until such time as an Eligible Tenant for an Affordable Bed/Unit has been qualified and the market rate resident has been relocated to a market rate unit.

8. Income Certifications for the Affordable Beds/Units. The Grantor represents, warrants and covenants that the determination of whether an individual occupying an Affordable

Bed/Unit meets the income requirements set forth herein shall be made by Grantor at the time of leasing of the Affordable Beds/Units in the Project and thereafter at least annually on the basis of the current income of such individual. Grantor shall maintain as part of its Project records copies of all leases of the Affordable Beds/Units in the Project and all initial and annual income certifications by tenants of the Affordable Beds/Units in the Project. Within 60 days after the end of each calendar year of occupancy of any portion of the Project, the Grantor shall provide to the Grantee annual reports consisting of certifications regarding the annual and monthly gross income of each individual occupying an Affordable Bed/Unit at the Project. With respect to individuals who moved to an Affordable Bed/Unit at the Project in the prior year, the annual report shall also include certification of such individuals at the time of their initial occupancy at the Project.

Any Affordable Bed/Unit occupied by an Eligible Tenant at the commencement of occupancy shall be deemed an Affordable Bed/Unit so long as (i) such bed/unit continues to be rent restricted and (ii) the tenant's income does not exceed 110% of the Area Median Income. If the tenant's income exceeds 110% of the Area Median Income at the time of annual recertification determination, his/her bed/unit (the "Excess Income Tenant Bed") shall be deemed an Affordable Bed/Unit until Project Sponsor shall rent to an Eligible Tenant the next available bed/unit which is not an Affordable Bed/Unit and which is otherwise substantially similar to the Excess Income Tenant Bed. If a tenant's income exceeds 110% of the Area Median Income, such tenant will be required to pay market rent for the Excess Income Tenant Bed when the next Affordable Bed/Unit is identified by Landlord and rented to an Eligible Tenant. The annual reports shall be in a form approved by the Grantee and shall contain such supporting documentation as the Grantee shall reasonably require. In addition to the foregoing, Grantor shall keep such additional records with respect to the Affordable Beds/Units and prepare and submit to Grantee such additional reports with respect to the Affordable Beds/Units as Grantee may reasonably deem necessary to ensure compliance with the requirements of this Affordable Housing Restriction.

9. Rent Schedules for the Affordable Beds/Units. Prior to initial occupancy of the Affordable Beds/Units in the Project and annually thereafter as part of the annual reports required under Section 8 above, Grantor shall submit to Grantee a proposed schedule of Maximum Monthly Rents for all the Affordable Beds/Units in the Project. Such schedule shall be subject to the approval of Grantee for compliance with the requirements of Section 7 above. After approval of a schedule of Maximum Monthly Rents by Grantee, Rents for Affordable Beds/Units shall not be increased without the Commission's prior approval not to be unreasonably withheld, delayed or conditioned of either (x) a specific request by Grantor for a rent increase or (y) the next annual schedule of rents and allowances. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days' prior written notice by Project Sponsor to all affected tenants.

10. Lease Form for the Affordable Beds/Units. The Grantor shall not include in any lease for an Affordable Bed/Unit in the Project any of the following provisions:

- (i) Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the Grantor in a lawsuit brought in connection with the lease.
- (ii) Agreement by the tenant that the Grantor may take, hold, or sell personal property of household members without notice to the tenant and a court

decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the unit after the tenant has moved out of the unit or deceased. The Grantor may dispose of such personal property in accordance with state law.

- (iii) Agreement by the tenant not to hold the Grantor or the Grantor's agents legally responsible for any action by Grantor or failure to act by Grantor, whether intentional or negligent.
- (iv) Agreement of the tenant that the Grantor may institute a lawsuit without notice to the tenant.
- (v) Agreement by the tenant that the Grantor may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- (vi) Agreement by the tenant to waive any right to a trial by jury. This shall not restrict the Grantor or tenant from electing alternative dispute resolution in lieu of litigation, to the extent permitted by law; provided that participation in such alternative dispute resolution is voluntary and not required of Grantor or tenant.
- (vii) Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease. This shall not restrict the Grantor or tenant from electing alternative dispute resolution in lieu of litigation, to the extent permitted by law; provided that participation in such alternative dispute resolution is voluntary and not required of Grantor or tenant.
- (viii) Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court or dispute resolution proceeding by the Grantor against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

All leases for Affordable Beds/Units in the Project shall be for terms of not less than one (1) year, unless by mutual agreement between the tenant and Grantor, and shall require tenants to provide information required for the Grantor to meet its reporting requirements hereunder. Grantor may not terminate the tenancy or refuse to renew the lease of an occupant of an Affordable Bed/Unit of the Project except (i) for serious or repeated violation of the terms and conditions of the lease; (ii) for violations of applicable federal, state or local law; or (iii) for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days written notice from Grantor to tenant specifying the grounds for the action.

11. Notice of Sale. The Grantor shall provide the Grantee with sixty (60) days advance written notice of any sale, transfer or exchange of the Project, including the date of the proposed

transaction, the name and address of the transferee, and any other information concerning the transaction or the transferee that is reasonably requested by the Grantee.

12. No Demolition. The Grantor shall not demolish any material part of the Project or substantially subtract from any material real or personal property of the Project except if required by law unless after such action the ratio of Affordable Beds/Units to total number of remaining Beds in the Project is in conformity with the DRI Decision in conjunction with renovation or rehabilitation of the Project or construction of a new project on the Premises, in either case subject to the prior written consent of the Grantee, which consent shall not be unreasonably withheld, conditioned or delayed. The Grantor shall not permit the use of any Affordable Unit for any purpose other than rental housing.

13. Casualty. The Grantor represents, warrants and agrees that if the Project, or any material part thereof, shall be damaged or destroyed, (i) the Grantor will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, subject to the approval of the lender(s) which has provided financing for the Project or (ii) if not restored or repaired or relieved, the Grantor shall maintain the same ratio of Beds to total number of remaining Beds in the Project as required by the DRI Decision. The Grantor represents, warrants and agrees that the Affordable Beds/Units shall thereafter continue to operate in accordance with the terms of this Affordable Housing Restriction.

14. Inspection. Any use of the Affordable Beds/Units or activity thereon which is inconsistent with the purpose of this Affordable Housing Restriction is expressly prohibited. Grantor hereby grants to Grantee and its duly authorized representatives the right to enter the Premises upon reasonable advance notice to Grantee at reasonable times and in a reasonable manner for the purpose of inspecting the Premises to determine compliance with this Affordable Housing Restriction or any other agreement between Grantor and Grantee. Grantee shall notify Grantor in writing of any alleged non-compliance by Grantee of this Affordable Housing Restriction or any other agreement between Grantor and Grantee, specifying in reasonable detail the nature of such alleged noncompliance and the requested cure. Grantee shall thereafter have thirty days from the date of its receipt of the notice to commence the cure of the alleged noncompliance and shall thereafter use its diligent efforts to complete such cure. If Grantee fails to use its diligent efforts and/or does not cause the alleged noncompliance to be cured, then Grantee may take any reasonable and appropriate action under the circumstances to cure any such violation. The first mortgagee of Grantor shall receive reasonable notice and opportunity to cure before such remedies are exercised.

15. Enforcement. Provided that the applicable notice and cure rights in Section 14 have expired, the Grantee may enforce this Affordable Housing Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Affordable Beds/Units to their condition prior to any such violation, and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee. Grantor covenants and agrees to reimburse Grantee all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Affordable Housing Restriction or in taking reasonable measures to cure any violation hereof, provided that a violation of this Affordable Housing Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. By its acceptance

of this Affordable Housing Restriction, Grantee does not undertake any liability or obligation relating to the condition of the Premises. If any provision of this Affordable Housing Restriction shall to any extent be held invalid, the remainder shall not be affected.

16. Further Assurances. The Grantor and its successors and assigns agrees to execute any notices or instruments appropriate to assuring the enforceability of this Affordable Housing Restriction upon Grantee's reasonable request. The benefits of this Affordable Housing Restriction shall be in gross and shall be assignable by the Grantee. The Grantor and the Grantee intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval of the date of filing or recording of any instrument evidencing such approval.

17. Notice. Any notice, request or other communication which either party hereto may be required or may desire to give hereunder shall be made in writing, and shall be deemed to have been properly given if hand delivered or if mailed by United States registered or certified mail, postage prepaid, return receipt request, to the parties at their respective addresses set forth below or such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. A notice sent by first class mail shall be deemed given two (2) days after mailing; a notice delivered by hand shall be deemed given upon receipt.

If to Grantor:

Northbridge Mashpee Assisted Living, LLC
c/o The Northbridge Companies
71 Third Avenue, Burlington, Massachusetts 01803
Attention: James C. Coughlin

If to Grantee:

Cape Cod Commission
3225 Main Street, PO Box 226
Barnstable, Massachusetts 02630
Phone: (508) 362-3828
Fax: (508) 362-3136
Attn: Affordable Housing Specialist

18. Amendment, Waiver. This Affordable Housing Restriction may not be amended without the written consent of the parties, nor may any obligation hereunder be waived or released, without first obtaining the written consent of the Grantee, which consent shall not be unreasonably withheld or delayed.

19. Mortgagee Consent and Subordination. To the extent that there are any mortgages or other liens encumbering the Premises and recorded with the Barnstable County Registry of Deeds (the "Registry") prior to the date and time of the recording with the Registry of this Affordable Housing Restriction, Grantor represents and warrants that it has obtained the consent

and subordination of such existing mortgagees and lienholders of the Project to the execution and recording of this Restriction and to the terms and conditions hereof, that all such mortgagees and lienholders have executed a consent and subordination to this Restriction, and that all such consents and subordinations shall be recorded simultaneously herewith.

20. Documentary Stamps. No documentary stamps are required as this Affordable Housing Restriction is not being purchased by the Grantee.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

Executed under seal as of this 10th day of April, 2018.

GRANTOR:

Northbridge Mashpee Assisted Living, LLC, a
Delaware limited liability company

By:

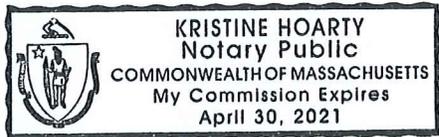

James C. Coughlin
Authorized Signatory
Hereunto duly authorized

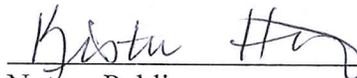
COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

April 10, 2018

Before me, the undersigned notary public, personally appeared James C. Coughlin, authorized real estate signatory, and proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed as it voluntarily for its stated purpose as authorized signatory of Northbridge Mashpee Assisted Living, LLC.




Notary Public
My Commission Expires: April 30, 2021

ACCEPTANCE OF GRANT BY GRANTEE

The above Affordable Housing Restriction is accepted this ____ day of _____, 2018.

BARNSTABLE COUNTY

BY: _____

BY: _____

BY: _____

As County Commissioners

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

On this ____ day of _____, 2018, before me, the undersigned Notary Public, personally appeared _____, who proved to me through satisfactory evidence of identification, which were _____ to be persons whose name are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

(Official Signature and Seal of Notary)

EXHIBIT A

Property Description

LEGAL DESCRIPTION

A certain parcel of land in Mashpee, Barnstable County, Massachusetts situated off the Easterly side of Great Neck Road South being shown as **Parcel Lot 3A** on a plan entitled "Plan of Land at Great Neck Road South, Mashpee, Massachusetts, Prepared for GNRS-MA LLC", dated July 24, 2015, recorded in Plan Book 665, Pages 46 and 47 (the "**ANR Plan**"), more particularly described as follows:

Beginning at a point on the easterly sideline of Great Neck Road South at the northwesterly corner of the herein described premises, said point being the southwest corner of Lot 2B as shown on said plan;

Thence running in a southerly direction by the easterly sideline of said Great Neck Road South along a curve turning to the left with a radius of 2,623.57', an arc length of 167.23', a chord bearing of S 18°43'25" E, and a chord length of 167.20' to a point, being a Point of Curvature of the road sideline;

Thence still running by said Great Neck Road South S 20°32'59" E a distance of 37.87' to a point, being the northwesterly corner of Lot 4A;

Thence turning and running by said Lot 4A S 40°47'11" E a distance of 249.51' to a point;

Thence turning and running by said Lot 4A a distance of 484.02' to a point at the northwesterly corner of Lot 4A and a corner of the remainder of Parcel 2A as shown on Plan Book 400 Page 40;

Thence continuing by said Parcel 2A N 34°10'10" E a distance of 82.93',

Thence turning and running by said Parcel 2A N 40°17'24" W a distance of 150.66' to a point;

Thence turning and running still by said Parcel 2A S 70°33'58" W a distance of 85.50' to a point on the easterly line of Lot 2B;

Thence turning and running by said Lot 2B S 40°17'12" E a distance of 21.40' to a point;

Thence turning and running by said Lot 2B S 70°35'18" W a distance of 243.99' to a point;

Thence turning and running by said Lot 2B S 31°19'49" W a distance of 31.60' to a point;

Thence turning and running by said Lot 2B S 70°35'54" W a distance of 145.80' to the point of beginning on the easterly sideline of Great Neck Road South.

Exhibit B

Affordable Assisted Living Units and Memory Care Beds/Units

Apartment Number	Unit Type	Approx. Square Feet	HCP Accessible
228	Assisted Living Studio	417	X
220	Assisted Living 1 Bedroom	492	
231	Assisted Living 1 Bedroom	492	
240	Assisted Living 1 Bedroom	492	
242	Assisted Living 1 Bedroom	492	
117 A	Memory Care Bed	261	
117 B	Memory Care Bed	261	

Number of Affordable Assisted Living Units: 5

Number of Memory Care Beds: 2

An alternate assisted living unit or memory care bed may be substituted to fulfill the requirements under this Agreement.

EXHIBIT C

Initial Maximum Monthly Rents for Affordable Beds/Units

	<u>Rent</u>
Assisted Living Studio	\$3,018.75 per month
Assisted Living 1 Bedroom	\$3,234.38 per month
Memory Care Bed	\$3,018.75 per month

CONSENT AND SUBORDINATION

Eastern Bank, for one dollar and other consideration, does hereby consent to the terms and conditions that certain Cape Cod Commission Affordable Housing Restriction dated _____, 2018, granted by Northbridge Mashpee Assisted Living, LLC to Barnstable County and recorded or to be recorded in the Barnstable County Registry of Deeds; and does hereby subordinate the lien of that certain Mortgage and Security Agreement from Northbridge Mashpee Assisted Living, LLC to Eastern Bank dated as of March 17, 2017, recorded in the Barnstable County Registry of Deeds in Book 30366, Page 218 to said Cape Cod Commission Affordable Housing Restriction, with the same force and effect as if said Cape Cod Commission Affordable Housing Restriction had been recorded in the Barnstable County Registry of Deeds prior to the recording of said Mortgage and Security Agreement.

IN WITNESS WHEREOF the undersigned has caused this instrument to be executed under seal as of May 16, 2018, 2018.

Eastern Bank

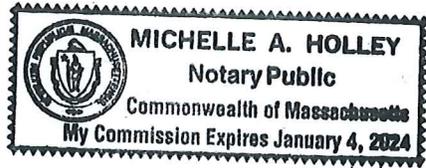
By: [Signature]
Name: Christopher Scoville
Title: Senior Vice President

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. May 16, 2018

Before me, the undersigned notary public, personally appeared Christopher Scoville, and proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed as it voluntarily for its stated purpose as Senior Vice President of Eastern Bank.

[Signature]
Notary Public
My Commission Expires:



AGENDA ITEM 8b

Authorizing the creation of a new fund for a Northeastern Regional Aquaculture Center subaward from Roger Williams University, to the Cape Cod Cooperative Extension, in the amount of \$10,371.00, for the period of April 1, 2018 through March 31, 2020



B A R N S T A B L E C O U N T Y

Resource Development and AmeriCorps Cape Cod

P.O. Box 427
Barnstable, MA 02630
Quan Tobey
(508) 375-6965 phone



DATE: May 30, 2018

TO: County Commissioners

FROM: Quan Tobey

SUBJECT: New Fund Memo for NRAC subaward for the C.C. Cooperative Extension

Barnstable County and the C.C. Cooperative Extension has received a subaward through Roger Williams University to partner on a project titled, "Identification of the Cause of Hemic Neoplasia in *Mercenaria mercenaria* and Development of Management Methods." Total funding for the two year contract is \$10,371.00.

Please sign below so the Finance Department may establish a new fund for this subaward. The subaward is attached for your reference. Funding for this project allows the C.C. Cooperative Extension to:

1. Extension will lead the field work and collaborate directly with local industry members and resource managers during the 2-year grant period and will disseminate and present results of the research.
2. Extension will contact Wellfleet hard clam growers and resource managers to identify suitable sites for test plots in year I. We will manage seed procurement, planting, and oversight of plots over 2 years.
3. Extension will hold a public meeting in Wellfleet to explain study and gather feedback on grower experiences, as well as answer questions.
4. Extension will present research results in year II to the public in Wellfleet, as well as at regional/national meetings. In addition, a fact sheet will be produced for the industry which will explain the nature of the disease and include management recommendations.
5. Extension will organize two regional workshops to share results of this study and importance of recognizing emerging diseases and their potential economic impact on industry. Workshops will also include education on biosecurity and basic disease management recommendations.

Respectfully submitted,

Quan Tobey

Leo G. Cakounes
Chair

Mary Pat Flynn
County Commissioner

Ronald R. Beaty
Vice-Chair

Date

AGENDA ITEM 8c

Authorizing the execution of a contract with Kenmark Office Systems Inc, for the supply and delivery of toners to Barnstable County and other political subdivisions, for the period of July 1, 2018 through June 30, 2019

AGREEMENT BETWEEN

Barnstable County
3195 Main Street
Barnstable, MA 02630

and

Kenmark Office Systems
340 Main St.
Mashpee, MA 02649

THIS AGREEMENT is made this _____ day of _____ 2018 by and between Kenmark Office Systems, Inc. (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: Barnstable County issued an Invitation for Bids for the Supply and Delivery of Toners to Barnstable County and other Political Subdivisions

WHEREAS: The Invitation for Bids was bid in compliance with MA General Law Chapter 30B

WHEREAS: The vendor is the responsive, responsible bidder offering the lowest prices as highlighted on the spreadsheet Attachment A.

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 contractor shall perform the scope of services set forth in the Barnstable County Invitation for Bids dated April 23, 2018 and the Contractor's proposal dated April 27, 2018.
3. Time of Performance. Work in connection with this Agreement shall begin July 1, 2018 and continue until June 30, 2019.
4. Payment. The County shall compensate the Contractor the prices submitted in its bid and highlighted on the attached spreadsheet for Savin/Ricoh toners.

Upon acceptance of the Contractor's invoice, payment will be made within thirty (30) days. If an invoice is not accepted by the County within fifteen (15) days, it shall be returned to the Contractor with a written explanation for the rejection. At the end of each County fiscal year Contractor must submit any outstanding invoices for services performed or delivered during the fiscal year (July 1-June 30) to the County no later than July 31st of the year when the resources were prepared.

5. Termination or Suspension of Contract for Cause. If through any sufficient cause, the Customer or the County shall fail to fulfill or perform its duties and obligations under this Contract, or if either party shall violate or breach any of the provisions of this Contract, either party shall thereupon have the right to terminate or suspend this Contract, by giving written notice to the other party of such termination or suspension and specifying the effective date thereof. Such notice shall be given at least fifteen (15) calendar days before such effective date.

6. Termination for Convenience of County. The County shall have the right to discontinue the work of the Contractor and cancel this contract by written notice to the Contractor of such termination and specifying the effective date of such termination. In the event of such termination or suspension of this Contract, the Contractor shall be entitled to just and equitable compensation for satisfactory work completed, for services performed and for reimbursable expenses necessarily incurred in the performance of this Contract up to and including the date of termination or suspension.

7. Changes. The County may, from time to time, require changes in the Scope of Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Customer costs, which are mutually agreed upon by the 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 County pursuant to this Contract shall be subcontracted or delegated in whole or in part to any other organization, association, individual, corporation, partnership or other such entity without the prior written approval of the 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 County and Others. No officer, member or employee of the County, and no member of its governing body of the locality or localities in which the Project is situated or being carried out who exercises any functions or responsibility in the review or approval of the undertaking or carrying out of the Project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly financially interested or has any personal or pecuniary interest, direct or indirect, in this Contract or the proceeds thereof.

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

12. Assignability. The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the 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 Scope of Services described in the bid documents.

23. Vendors shall submit invoices within 60 days of completing the work.

IN WITNESS WHEREOF, the County and Contractor have executed this Agreement this _____ day of _____ in the year two thousand and Seventeen.

FOR THE COUNTY:

BARNSTABLE COUNTY COMMISSIONERS:

Leo Cakounes

Mary Pat Flynn

Ron Beaty

Date

FOR THE CONTRACTOR: *[Signature]* President

Date 5/30/18

KenMark Office Systems
340 Main St.
P.O. Box 827
Mashpee, MA 02649



AGENDA ITEM 8d

Authorizing the execution of a contract with The Tree House Inc, for the supply and delivery of Dell Toner to Barnstable County, for the period of July 1, 2018 through June 30, 2019

AGREEMENT BETWEEN

Barnstable County
3195 Main Street
Barnstable, MA 02630

and

The Tree House Inc
PO Box 413
Norwood, MA 02002

THIS AGREEMENT is made this _____ day of _____ 2018 by and between The Tree House, Inc. (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: Barnstable County issued an Invitation for Bids for the Supply and Delivery of Toners to Barnstable County and other Political Subdivisions

WHEREAS: The Invitation for Bids was bid in compliance with MA General Law Chapter 30B

WHEREAS: The vendor is the responsive, responsible bidder offering the lowest prices as highlighted on the spreadsheet Attachment A.

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 contractor shall perform the scope of services set forth in the Barnstable County Invitation for Bids dated April 23, 2018 and the Contractor's proposal dated May 2, 2018.
3. Time of Performance. Work in connection with this Agreement shall begin July 1, 2018 and continue until June 30, 2019.
4. Payment. The County shall compensate the Contractor the prices submitted in its bid and highlighted on the attached spreadsheet for Dell toners.

Upon acceptance of the Contractor's invoice, payment will be made within thirty (30) days. If an invoice is not accepted by the County within fifteen (15) days, it shall be returned to the Contractor with a written explanation for the rejection. At the end of each County fiscal year Contractor must submit any outstanding invoices for services performed or delivered during the fiscal year (July 1-June 30) to the County no later than July 31st of the year when the resources were prepared.

5. Termination or Suspension of Contract for Cause. If through any sufficient cause, the Customer or the County shall fail to fulfill or perform its duties and obligations under this Contract, or if either party shall violate or breach any of the provisions of this Contract, either party shall thereupon have the right to terminate or suspend this Contract, by giving written notice to the other party of such termination or suspension and specifying the effective date thereof. Such notice shall be given at least fifteen (15) calendar days before such effective date.

6. Termination for Convenience of County. The County shall have the right to discontinue the work of the Contractor and cancel this contract by written notice to the Contractor of such

6. Termination for Convenience of County. The County shall have the right to discontinue the work of the Contractor and cancel this contract by written notice to the Contractor of such termination and specifying the effective date of such termination. In the event of such termination or suspension of this Contract, the Contractor shall be entitled to just and equitable compensation for satisfactory work completed, for services performed and for reimbursable expenses necessarily incurred in the performance of this Contract up to and including the date of termination or suspension.

7. Changes. The County may, from time to time, require changes in the Scope of Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Customer costs, which are mutually agreed upon by the 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 County pursuant to this Contract shall be subcontracted or delegated in whole or in part to any other organization, association, individual, corporation, partnership or other such entity without the prior written approval of the 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 County and Others. No officer, member or employee of the County, and no member of its governing body of the locality or localities in which the Project is situated or being carried out who exercises any functions or responsibility in the review or approval of the undertaking or carrying out of the Project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly financially interested or has any personal or pecuniary interest, direct or indirect, in this Contract or the proceeds thereof.

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

12. Assignability. The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the 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.

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 Scope of Services described in the bid documents.

23. Vendors shall submit invoices within 60 days of completing the work.

IN WITNESS WHEREOF, the County and Contractor have executed this Agreement this _____ day of _____ in the year two thousand and Seventeen.

FOR THE COUNTY:

BARNSTABLE COUNTY COMMISSIONERS:

FOR THE COUNTY:

BARNSTABLE COUNTY COMMISSIONERS:

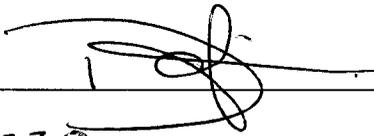
Leo Cakounes

Mary Pat Flynn

Ron Beaty

Date

FOR THE CONTRACTOR:



David Rizzo

Date

5/25/18

AGENDA ITEM 8e

Authorizing the execution of a contract with Univar USA Inc., for the supply and delivery of chemicals to water departments in Barnstable County, for the period of July 1, 2018 to June 30, 2019

AGREEMENT BETWEEN

Barnstable County
3225 Main Street
Barnstable, MA 02630

and

Univar USA Inc.
200 Dean Sievers Place
Morrisville, PA 19067

THIS AGREEMENT, made this _____ day of _____ 2018 by and between Univar USA Inc. (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: Barnstable County issued an Invitation for Bids for Water Chemicals for Water Departments on for the period of July 1, 2018 through June 30, 2019.

WHEREAS: The Invitation for Bids was bid in compliance with MA General Law Chapter 30B.

WHEREAS: The vendor is the responsive, responsible bidder offering the lowest price for the towns indicated on the spreadsheet.

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

1. Employment of Contractor. The County hereby agrees to engage the Contractor to perform the services hereinafter set forth in the Scope of Services. Contractor shall not be considered an employee of Barnstable County. Contractor hereby agrees to hold the County harmless from any claims regarding worker's compensation benefits, unemployment compensation benefits, retirement benefits, or any other benefit normally attributable to the status of "employee" and Contractor specifically agrees to pay for all damages incurred by the County, including costs, benefits, and reasonable attorney fees in the event the Contractor files such claim.
2. Scope of Services. The Contractor shall perform the scope of services as set forth in Barnstable County's Invitation for Bids dated February 26, 2018 and the Contractor's bid dated April 2, 2018 incorporated herein by reference as Attachment A.
3. Time of Performance. Work in connection with the Agreement shall begin July 1, 2018 and continue until June 30, 2019.
4. Payment. The Towns shall compensate the Contractor the prices as highlighted on the attached spreadsheet for services provided under Scope of Services. Upon acceptance of the Contractor's invoice, payment will be made within thirty (30) days. If an invoice is not accepted by the County within fifteen (15) days, it shall be returned to the Contractor with a written explanation for the rejection. At the end of each County fiscal year Contractor must submit any outstanding invoices for services performed or delivered during the fiscal year (July 1-June 30) to the County no later than July 31st of the year when the resources were prepared.
5. Termination or Suspension of Contract for Cause. If through any sufficient cause, the Contractor or the Town 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/Town. The County/Town 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 Contractor Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by the County and the Contractor, shall be incorporated in written amendments to this Contract.

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

9. Subcontracting. None of the services to be provided by the Contractor pursuant to this Contract shall be subcontracted or delegated in whole or in part to any other organization, association, individual, corporation, partnership or other such entity without the prior written approval of the County. No subcontract or delegation shall relieve or discharge the Contractor from any obligation or liability under this Contract except as specifically set forth in the instrument of approval. If this Contract is funded in whole or in part with federal funds, Contractor further agrees to comply with the provisions of the Office of Management and Budget Circular A-110, as amended, with respect to taking affirmative steps to utilize the services of small and minority firms, women's business enterprises and labor surplus area firms. All subcontracts shall be in writing and shall contain provisions which are functionally identical to, and consistent with, the provisions of this Contract. The County shall have the right to obtain a copy of the subcontract upon request.

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

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

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

13. Recordkeeping, Audit, and Inspection of Records. The Contractor shall maintain books, records, and other compilations of data pertaining to the requirements of the Contract to the extent and in such detail as shall properly substantiate claims for payment under the Contract. All such records shall be kept for a period of seven (7) years or for such longer period as is specified herein. All retention periods start on the first day after final payment under this Contract. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the applicable retention period, whichever is later. If this contract is funded

in whole or in part with state or federal funds, the state or federal grantor agency, the County or any of its duly authorized representatives or designees, shall have the right at reasonable times and upon reasonable notice, to examine and copy, at reasonable expense, the books, records and other compilations of data of the Contractor which pertain to the provisions and requirements of this Contract. Such access shall include on-site audits, review and copying of records.

14. Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by the Contractor under this Contract which the County requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

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

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

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

18. Choice of Law. This Contract shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Contractor and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which the County is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This paragraph shall not be construed to limit any rights a party may have to intervene in any action, wherever pending, in which the other is a party. All parties to this contract and covenant agree that any disputes be litigated in the District or Superior courts in Barnstable County.

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

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

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

permitted by law.

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

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

FOR THE COUNTY:

BARNSTABLE COUNTY COMMISSIONERS:

Ron Beaty

Mary Pat Flynn

Leo Cakounes

Date

FOR THE CONTRACTOR:



Michael Crea, Municipal Specialist
Univar USA Inc.

Date: May 29, 2018





AGENDA ITEM 8f

Authorizing the renewal of a contract with Fine Point Associates LLC, to provide monitoring of HOME Consortium Affordable Housing Projects, in an amount not to exceed \$55,000.00, 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

May 30, 2018

MEMORANDUM

TO: County Commissioners
FROM: Elaine Davis, Chief Procurement Officer
RE: Bid Renewal

Barnstable County issued a Request for Proposals (RFP) for a qualified contractor to work with County staff to provide monitoring to ensure affordable housing projects developed with Barnstable County HOME Consortium funds meet the requirements of HUD's HOME Investment Partnership Program. This RFP was solicited last fiscal year for a term of one year with a one-year option to renew. It was awarded to Fine Point Associates LLC as the responsive, responsible bidder offering the most advantageous proposal.

Please vote to renew the contract with Fine Point Associates LLC for one additional year under the same terms and conditions as the original contract, not to exceed \$55,000.00. The term of the renewal is July 1, 2018 through June 30, 2019 and is the final renewal for this contract.

Thank you.

County Commissioners:

Ronald R. Beaty, Jr.

Mary Pat Flynn

Leo Cakounes

Date

AGENDA ITEM 8g

Authorizing the discharge of a mortgage by Marie G. Hughes to Barnstable County, acting by and through the Cape Cod Commission, dated March 17, 1999