

**AGENDA PACKET**  
**05/08/19 REGULAR MEETING**

*COMMONWEALTH OF MASSACHUSETTS*

Barnstable, ss.

At a regular meeting of the Barnstable County Board of Regional Commissioners, held in the East Wing Conference Room, in the Old Jail Building, on the twenty-fourth day of April, A.D. 2019

**Board Regional Commissioners:**

Ronald R. Beaty                      Present

Ronald Bergstrom                      Present

Mary Pat Flynn                      Present

**Assembly of Delegates:**

Brian O'Malley                      Provincetown Delegate

**Staff Present:**

Jack Yunits                      County Administrator

Steve Tebo                      Assistant County Administrator

Owen Fletcher                      Executive Assistant, Administration

Bill Traverse                      Information Technology, Information Technology

Ian Roberts                      Technical Support Specialist, Information Technology

Kristy Senatori                      Executive Director, Cape Cod Commission

Heather Harper                      Community Design/Affordable Housing Specialist

**1. Call to Order**

Chairman Bergstrom called the meeting to order at 10:00 A.M.

**2. Pledge of Allegiance****3. Moment of Silence****4. Public Comment**

Ben Niggel of Eastham complained regarding Commissioner Beaty blocker him on Twitter after Mr. Niggel called for his resignation on the platform.

**5. Approval of Minutes****a. Regular Meeting of April 10, 2019**

*Motion by Commissioner Beaty to approve the minutes of the Board of Regional Commissioners' Regular Meeting of April 10, 2019 as presented, 2nd by Commissioner Flynn, approved 3-0-0*

**6. General Business****a. Ordinance 19-03: Fiscal Year 2020 Proposed County Capital Budget**

*Motion by Commissioner Beaty to authorize to approve Ordinance 19-03: Fiscal Year 2020 Proposed County Capital Budget authorize the County to purchase capital equipment and implement capital improvements for use in conducting the business of the County and to borrow money to pay, as presented, 2nd by Commissioner Flynn, approved 3-0-0*

**b. Amended Proposed Ordinance 19-02: Establishing the Barnstable County Human Rights Advisory Board**

Chairman Bergstrom explained that he placed this item on the agenda due to the Assembly of Delegates decision to delay action while awaiting further testimony. Commissioner Beaty suggested that the Board delay any additional action until the Assembly made a decision on the item. Dave Schropfer of the Human Rights Committee explained the need for the new ordinance. Mr. Yunits indicated that the County would advertise for a Coordinator Position while the process of approving the ordinance moved forward. Delegate O'Malley suggested that the Human Services Advisory Board nominate individuals to fill the body. Dr. Reverend Kate Epperly of the Human Rights Commission detailed issues with the previous process to hire a Coordinator.

**c. Discussion regarding the status of Cape & Islands License Plate Funds**

Ms. Senatori and Ms. Harper explained the current status of the License Plate Funds. The Board discussed the most recent meeting of the Barnstable County Economic Development Council which is tasked with disbursing the funds.

**d. Discussion regarding the Board of Regional Commissioners' Meeting Venue**

*Motion by Commissioner Beaty to solidify that the Board of Regional Commissioners' meeting space as the Commissioners' Conference Room in the Superior Courthouse, as presented, 2nd by Commissioner Flynn, approved 3-0-0*

The Board expressed that they intended to move back to the previous venue, the Commissioners' Conference Room in the Superior Court. They noted that the East Wing Conference Room was too large and inconvenient. Mr. Yunits discussed the spacing concerns which could be helped by constructing offices in the current meeting room space and the additional costs of moving back to the prior venue.

**e. Discussion on adopting the County's website as the official method of posting notices for meetings of the Board of Regional Commissioners**

*Motion by Commissioner Flynn to authorize the Board of Regional Commissioners to use the County's website as the official posting location for Board meetings, as presented, 2nd by Commissioner Bergstrom, approved 3-0-0*

The Board engaged in a lengthy discussion regarding the use of the website, including concerns regarding technological failure and inclement weather. Mr. Yunits, Mr. Traverse, and Ms. O'Connell spoke regarding the County's internet hosting and the Assembly's use of the process.

**f. Proclaiming May 1, 2019 Cape Cod as "Law Day" in Barnstable County**

*Motion by Commissioner Beaty to proclaim May 1, 2019 Cape Cod as "Law Day" in Barnstable County, as presented, 2nd by Commissioner Flynn, approved 3-0-0*

**7. New Business – Other business not reasonably anticipated by the Chair**

There was no new business at this meeting.

**8. Commissioners' Actions**

- a. Authorizing the award of contracts to 1) Vektorino's Landscaping and Irrigation, LLC; and 2) St Peter Landscape, Inc. to provide general landscaping services at County properties for a three-year period from May 1, 2019 through April 30, 2022**

- b. Authorizing the award of contracts to 1) Monitor Equipment Co., Inc.; and 2) WB Mason for the Bulk Supply and Delivery of Copy Paper to schools in Barnstable County and Nantucket for a one-year period from May 1, 2019 through April 30, 2020**
- c. Authorizing the award of contracts to 1) Sprague Operating Resources; 2) Diesel Direct; 3) Noonan Brothers Petroleum, Inc and; 4) Cape Cod Biofuels, Inc. for the Supply and Delivery of Gasoline and Diesel Fuel to Barnstable County and other Political subdivisions for the period of July 1, 2019 through June 30, 2020**
- d. Authorizing the execution of a discharge of mortgage held by Barnstable County, acting by and through the Cape Cod Commission, dated December 22, 2008 recorded with the Barnstable County Registry of Deeds Book 23331 Page 140**
- e. Authorizing the execution of a discharge of mortgage held by Barnstable County, acting by and through the Cape Cod Commission, dated December 21, 2016 recorded with the Barnstable County Registry of Deeds Book 30184 Page 216**
- f. Authorizing the execution of a discharge of mortgage held by Barnstable County, acting by and through the Cape Cod Commission, dated August 29, 2006 recorded with the Barnstable County Registry of Deeds Book 21308 Page 188**
- g. Authorizing the execution of a discharge of mortgage held by Barnstable County, acting by and through the Cape Cod Commission, dated May 20, 2009 recorded with the Barnstable County Registry of Deeds Book 23814 Page 208**
- h. Authorizing the execution of Certificates for Dissolving Septic Betterments**

*Motion by Commissioner Beaty to approve items 8a through 8h, as presented, 2nd by Commissioner Flynn, approved 3-0-0*

## **9. Commissioners' Reports**

There were no Commissioner Reports at this meeting.

## **10. County Administrator and Staff Reports**

Mr. Yunits updated the Board on his meetings regarding a possible relocation of the Fire Rescue Training Academy to Joint Base Cape Cod.

## **11. Adjournment**

*Barnstable, ss. at 10:58 A.M. on this twenty-fourth day of April, A.D. 2019, Commissioner Beaty made a motion to adjourn, 2nd by Commissioner Flynn, approved 3-0-0*

Approved, Board of Regional Commissioners:

\_\_\_\_\_  
Ronald Bergstrom, Chair

\_\_\_\_\_  
Mary Pat Flynn, Vice-Chair

\_\_\_\_\_  
Ronald R. Beaty, Commissioner

\_\_\_\_\_  
Date

The foregoing records have been read and approved, May , 2019.

A true copy, attest:

\_\_\_\_\_  
Janice O'Connell, Regional Clerk

# AGENDA ITEM 6a

Discussion regarding the County's Other Post-Employment Benefits (OPEB) obligations, approve the OPEB Trust Agreement, and call the first meeting of the Board of Trustees of the OPEB Liability Trust

**OTHER POST-EMPLOYMENT BENEFITS (“OPEB”) TRUST  
BARNSTABLE COUNTY**

TRUST AGREEMENT made this 8<sup>th</sup> day of May 2019 between the Governmental Unit of Barnstable County, acting through its Board of Regional Commissioners (the “Governmental Unit”) and the duly serving members of the Board of Trustees (the “Trustees”).

**WITNESSETH:**

WHEREAS, the Governmental Unit has established certain other post employment benefits (“OPEB”), other than pensions, for eligible former employees of the Governmental Unit; and

WHEREAS, the Governmental Unit wishes to establish an irrevocable trust (hereinafter the “Trust”) for the purpose of funding OPEB obligations as required to be reported under General Accounting Standards Board (“GASB”) Statements 74 and 75; and

WHEREAS, the Trust is established by the Governmental Unit with the intention that it qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code and Regulations issued thereunder and as a trust for OPEB under G.L. c.32B, §20.

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants hereinafter set forth, the Governmental Unit and the Trustees hereby agree as follows.

**ARTICLE I DEFINITIONS**

As used herein, the following terms shall have the following meanings:

- 1.1. “Code” means the Internal Revenue Code of 1986, as amended from time to time.
- 1.2. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time and any successor statute.
- 1.3. “GASB 74 and 75,” shall mean Government Accounting Standards Board, Statement No. 74 and Statement No. 75, Accounting and Financial Reporting by Employers for Post-Employment Benefits Other Than Pensions.
- 1.4. “Other post-employment benefits” or “OPEB,” shall mean post-employment benefits other than pensions as that term is defined in GASB 74 and 75 including post-employment healthcare benefits, regardless of the type of plan that provides them, and all post-employment benefits provided separately from a pension plan, excluding benefits defined as termination offers and benefits.

1.5. “Retired Employee” means those persons who have retired from employment with the County and who are qualified to receive retirement benefits pursuant to G.L. c.32 or as otherwise provided by law.

1.6. “Trust” means the Governmental Unit of Barnstable County OPEB Trust as hereby established.

1.7. “Trustee” means the duly serving members of the Board of Trustees, and any successor Trustee appointed as provided pursuant to Article 5.

1.9. “Trust Fund” means all the money and property, of every kind and character, including principal and income, held by the Trustee under the Trust.

## **ARTICLE 2 PURPOSE**

2.1. The Trust is created for the sole purpose of providing funding for OPEB, as determined by the Governmental Unit, or as may be required by collective bargaining agreement, or by any general or special law providing for such benefits, for the exclusive benefit of the Governmental Unit’s Retired Employees and their eligible dependents and for defraying the reasonable administrative, legal, actuarial and other expenses of the Trust. The assets held in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein.

2.2. It is intended that the Trust shall constitute a so called “Qualified OPEB Trust” according to the standards set forth in GASB 74 and 75 and that it further qualify as a Integral Part Trust for all purposes under Article 115(c) of the Code or under any comparable provision of future legislation that amends, alters, or supersedes the Code.

## **ARTICLE 3 ESTABLISHMENT OF TRUST**

3.1. In order to implement and carry out the provisions of G.L. c.32B, §20, the Governmental Unit hereby establishes this Trust which shall be known as the “Governmental Unit of Barnstable County OPEB Trust.”

3.2. The Trust shall be irrevocable, and no Trust funds shall revert to the Governmental Unit until all benefits owed to Retired Employees have been satisfied or released.

3.3. The principal location of the Trust shall be the office of the Governmental Unit Treasurer, located at 3195 Main Street, Barnstable, MA 02630.

3.4. The Trustees hereby accept the duties imposed upon them by this Trust Agreement and agree to perform said duties as a fiduciary duty in accordance with the terms and conditions of this Trust Agreement.

3.5. The Trustees shall hold legal title to all property of the Trust and neither the Governmental Unit, nor any employee, official, or agent of the Governmental Unit, nor any individual, shall have any right title or interest to the Trust.

3.6. The Trust shall consist of such sums of money as shall from time to time be paid or delivered to the Trustees by the Governmental Unit, which together with all earnings, profits, increments and accruals thereon, without distinction between principal and income, shall constitute the Trust hereby created and established. Nothing in this Agreement requires the Governmental Unit to make contributions to the Trust to fund OPEB. Any obligation of the Governmental Unit to pay or fund benefits shall be determined in accordance with applicable law and any agreement to provide OPEB.

#### **ARTICLE 4 TRUST FUNDING**

4.1. The Trust Fund shall be credited with all amounts appropriated or otherwise made available by the Governmental Unit and employees of the Governmental Unit as a contribution to the Trust for the purposes of meeting the current and future OPEB costs payable by the Governmental Unit, or any other funds donated or granted specifically to the Governmental Unit for the Trust, or to the Trust directly.

4.2. The Trustees shall be accountable for all delivered contributions but shall have no duty to determine that the amounts received are adequate to provide the OPEB Benefits determined by the Governmental Unit.

4.3. The Trustees shall have no duty, expressed or implied, to compel any contribution to be made by the Governmental Unit, but shall be responsible only for property received by the Trustees under this Trust Agreement.

4.4. The Governmental Unit shall have no obligation to make contributions to the Trust to fund OPEB, and the size of the Trust may not be sufficient at any one time to meet the Governmental Unit's OPEB liabilities. This Trust Agreement shall not constitute a pledge of the Governmental Unit's full faith and credit or taxing power for the purpose of paying OPEB, and no retiree or beneficiary may compel the exercise of taxing power by the Governmental Unit for such purposes.

The obligation of the Governmental Unit to pay or fund OPEB obligations, if any, shall be determined by the Governmental Unit or applicable law. Distributions of assets in the Trust are not debts of the Governmental Unit within the meaning of any constitutional or statutory limitation or restriction.

4.5. Earnings or interest accruing from investment of the Trust shall be credited to the Trust. Amounts in the Trust Fund, including earnings or interest, shall be held for the exclusive purpose of, and shall be expended only for, the payment of the costs payable by the Governmental Unit for OPEB obligations to Retired Employees and their dependents, and defraying the reasonable expenses of

administering any plan providing OPEB Benefits as provided for in this Trust Agreement.

4.6. Amounts in the Trust Fund shall in no event be subject to the claims of the Governmental Unit's general creditors. The Trust Fund shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of the Governmental Unit, or of retirees or dependents who are entitled to OPEB.

**ARTICLE 5  
TRUSTEES**

5.1. The Trust shall be administered by a Board of Trustees consisting of three (3) members, who shall include the Governmental Unit Treasurer, Governmental Unit County Administrator, and the current Chairman of the Board of Regional Commissioners. Upon the expiration of the term or sooner resignation or removal of the Governmental Unit Treasurer or Governmental Unit County Administrator the position of Trustee shall be deemed vacant.

5.2. The Board of Regional Commissioners shall call for the first meeting of the Trustees and the current Chairman of the Board of Regional Commissioners-Trustee shall serve as the initial Chairperson of the Trustees to facilitate the organization of the Trustees.

5.3. In the event a Trustee resigns, is removed or is otherwise unable to serve, the Board of Regional Commissioners shall appoint a Trustee to fill the vacancy.

5.4. Whenever a change occurs in the membership of the Board of Trustees, the legal title to property held by this Trust shall automatically pass to those duly appointed successor Trustees.

5.5. Each future Trustee shall accept the office of Trustee and the terms and conditions of this Trust Agreement in writing.

5.6. Upon leaving office, a Trustee shall promptly and without unreasonable delay, deliver to the Trust's principal office any and all records, documents, or other documents in his possession or under his control belonging to the Trust.

5.7. The Trustees shall be special municipal employees for purposes of G.L. c.268A and shall be subject to the restrictions and prohibitions set forth therein.

**ARTICLE 6  
POWERS OF THE TRUSTEES**

6.1. The Trustees shall have the power to control and manage the Trust and the Trust Fund and to perform such acts, enter into such contracts, engage in such proceedings, and generally to exercise any and all rights and privileges, although not specifically mentioned herein, as the Trustees may deem necessary or advisable to administer the Trust and the Trust Fund or to carry out the purposes of this

Trust. In addition to the powers set forth elsewhere in this Agreement, the powers of the Trustees, in connection with their managing and controlling the Trust and the Trust Fund, shall include, but shall not be limited to, the following:

6.1.1. To enter into an administrative services contract or other contracts with one or more insurance companies, nonprofit hospital, medical or dental service corporations, or with one or more health care organizations or health maintenance organizations, or with one or more third-party administrators or other entities to organize, arrange, or provide for the delivery or payment of health care coverage or services (including dental services), whereby the funds for the payment of claims of eligible persons, including appropriate service charges of the insurance carrier, third party administrator or other intermediary, shall be furnished by the Trustees from the Trust Fund for the payment by such intermediary to the health care vendors or persons entitled to such payments in accordance with the terms and provisions of said contract.

6.1.2. To purchase contracts of insurance or reinsurance through such broker or brokers as the Trustees may choose and to pay premiums on such policies.

6.1.3. To receive, hold, manage, invest and reinvest all monies which at any time form part of the Trust, whether principal or income, provided however that there shall be no investment directly in mortgages or in collateral loans and further provided that the Trustees shall comply with the provisions of Article 7 of this Trust Agreement, applicable law and any investment policy adopted by the Trustees concerning the investment and management of the Trust Funds.

6.1.4. To borrow or raise money for the purposes of the Trust, in such amount, and upon such terms and conditions as the Trustees shall deem advisable, subject to applicable law and statutes; and for any sum so borrowed to issue the promissory note of the Trust, and to secure the repayment thereof by creating a security interest in all or any part of the Trust or the Trust Fund; and no person lending such money shall be obligated to see that the money lent is applied to Trust purposes or to inquire into the validity, expedience or propriety of any such borrowing.

6.1.5. To hold cash, uninvested, for such length of time as the Trustees may determine without liability for interest thereon.

6.1.6. To employ suitable agents, advisors and counsel as the Trustees may deem necessary and advisable for the efficient operation and administration of the Trust, to delegate duties and powers hereunder to such agents, advisors and counsel, and to charge the expense thereof to the Trust. The Trustees are entitled to rely upon and may act upon the opinion or advice of any attorney approved by the Trustees in the exercise of reasonable care. The Trustees shall not be responsible for any loss or damage resulting from any action or non-action made in good faith reliance upon such opinion or advice. All delegated authority shall be specifically defined in any by-laws adopted by the Trustees or the written minutes of the Trustees' meetings.

6.1.7. To hire employees or independent contractors as the Trustees may deem necessary or advisable to render the services required and permitted for the proper operation of the Trust, and to

charge the expense thereof to the Trust Fund.

6.1.8. To continue to have and to exercise, after the termination of the Trust and until final distribution, all of the title, powers, discretions, rights and duties conferred or imposed upon the Trustees hereunder, by any by-laws adopted by the Trustees or by law.

6.1.9. To construe and interpret this Trust Agreement and other documents related to the purposes of the Trust.

6.1.10. To maintain bank accounts for the administration of the Trust and the Trust Fund and to authorize certain Trustees or other appropriate persons to make payments from any appropriate account for purposes of the Trust.

6.1.11. To receive and review reports of the financial condition and of the receipts and disbursements of the Trust and the Trust Fund.

6.1.12. To adopt by-laws, rules, regulations, formulas, actuarial tables, forms, and procedures by resolution from time to time as they deem advisable and appropriate for the proper administration of the Trust, including participation criteria, provided the same are consistent with the terms of this Trust Agreement.

6.1.13. To purchase as a general administrative expense of the Trust so-called director's liability insurance and other insurance for the benefit of the Trust and/or the protection of the Trustees, Trust officers, employees, or agents against any losses by reason of errors or omissions or breach of fiduciary duty or negligence.

6.1.14. To enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration and operation of the Trust and to do all acts as they, in their discretion, may deem necessary or advisable. Except as otherwise directed by the Trustees, all such contracts and agreements, or other legal documents herein authorized, shall be executed by the Chairperson, or Secretary as may be voted by the Trustees.

6.1.15. To receive contributions or payments from any source whatsoever but such contributions or payments may not be utilized for any purpose unrelated to the provision of OPEB as herein provided or properly authorized expenses.

6.1.16. To pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the Trust.

6.1.17. To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper in connection with the administration of the Trust, although the power to do such acts is not specifically set forth herein.

6.1.18. To compromise, settle or arbitrate any claim, debt, or obligation of or against the Trust or Trust

Fund; to enforce or abstain from enforcing any right, claim, debt or obligation, and to abandon any shares of stock, bonds, or other securities, or interests determined by it to be worthless; to prosecute, compromise and defend lawsuits, but without the obligation to do so, all at the risk and expense of the Trust;

6.1.19. To hire one or more consultants, actuaries, accountants, attorneys or other professionals to assist with the administration of the Trust Fund and to pay such amounts that the Trustees deem to be reasonable, including, without limiting the generality of the foregoing, third party firms to provide legal, tax, accounting and audit services to the Trust.

6.1.20. To comply with all requirements imposed by applicable provisions of law.

## **ARTICLE 7 LIMITATION OF TRUSTEES' POWERS, DUTIES AND RESPONSIBILITIES**

7.1 Nothing contained in the Trust Agreement, either expressly or by implication, shall be deemed to impose any powers, duties or responsibilities on the Trustees other than those set forth in this Trust Agreement.

7.2. The Trustees shall have such rights, powers and duties as are provided to a named fiduciary for the investment of assets under ERISA. The Trustees shall not be liable for the making, retention or sale of any investment or reinvestment made by the Trustees as herein provided or for any loss to or diminution of the Trust Fund or for anything done or admitted to be done by the Trustees with respect to the Trust Agreement or the Trust Fund except as and only to the extent that such action constitutes a violation of the law or gross negligence.

7.3. The Trustees, in their discretion, may purchase as an expense of the Trust Fund such liability insurance for themselves or any other fiduciary selected by the Trustees as may be reasonable. The County, in its discretion, may also purchase liability insurance for the Trustees, and as the County may select, for any person or persons who serve in a fiduciary capacity with respect to the Trust.

7.4. The Governmental Unit shall not assume any obligation or responsibility to any person for any act or failure to act of the Trustees, any insurance company, or any beneficiary of the Trust Fund. The Trustees shall have no obligation or responsibility with respect to any action required by this Trust Agreement to be taken by the County, any insurance company, or any other person, or for the result or the failure of any of the above to act or make any payment or contribution, or to otherwise provide any benefit contemplated by this Trust Agreement.

7.5. Neither the Trustees nor the Governmental Unit shall be obliged to inquire into or be responsible for any action or failure to act on the part of the other. No insurance company shall be a party to this Trust Agreement, for any purpose, or be responsible for the validity of this Trust Agreement, it being intended that such insurance company shall be liable only for the obligations set forth in the policy or contract issued by it.

7.6. The Trustees shall invest and manage Trust assets as a prudent investor would, using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital, pursuant to G.L. c.203C.

**ARTICLE 8  
ACTIONS BY THE TRUSTEES**

8.1 A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees.

8.2 The Trustees may, by instrument executed by all of the Trustees, delegate to any attorney, agent or employee such other powers and duties as they deem advisable, including the power to execute, acknowledge or deliver instruments as fully as the Trustees might themselves and to sign and endorse checks for the account of the Trustees of the Trust.

8.3 No Trustee shall be required to give bond.

**ARTICLE 9  
LIABILITY OF THE TRUSTEES**

9.1 A Trustee shall not be liable for any mistake of judgment or other action made, taken or omitted by the Trustee in good faith, nor for any action taken or omitted by any other Trustee or any agent or employee selected with reasonable care, and the duties and obligations of the Trustees hereunder shall be expressly limited to those imposed upon them by this Trust Agreement.

9.2 No successor Trustee shall be held responsible for an act or failure of a predecessor Trustee.

9.3 Trustees are public employees for purposes of G.L. c.258 and shall be indemnified by the County against any civil claim, action, award, compromise, settlement or judgment by reason of an intentional tort to the same extent and under the same condition as other public employees of the Town.

9.4 A Trustee shall not be indemnified for violation of the civil rights of any person if he acted in a grossly negligent, willful or malicious manner, or in connection with any matter where it is shown to be a breach of fiduciary duty, an act of willful dishonesty or an intentional violation of law by the Trustee.

**ARTICLE 10  
MEETINGS OF THE TRUSTEES**

10.1. The Board of Trustees may meet at such times and at such places as the Trustees shall determine.

10.2 The Trustees shall comply with the Open Meeting Law, G.L. c.30A, §18-25 and its implementing regulations.

10.2. A quorum at any meeting shall be a majority of the Trustees then in office.

**ARTICLE 11  
TAXES, EXPENSES, AND COMPENSATION**

11.1. It is intended that the Trust will be a Code Article 115 trust. As such, it is expected that there will be no income taxes owed by the Trust. To the extent that any taxes are imposed on the Trust, the Trustees shall use the assets of the Trust Fund to pay for any taxes owed.

11.2. All reasonable costs and expenses of managing and administering the Trust and the Trust Fund, including such compensation for the Trustees as may be approved by Governmental Unit OR County Ordinance from time to time, and reimbursement for reasonable fees incurred through the use of third party vendors or agents, shall be paid from the Trust Fund unless the County chooses to pay the expenses directly.

**ARTICLE 12  
ACCOUNTS**

12.1. The Trustees shall keep complete and accurate accounts of all of the Trust's receipts, investments and disbursements under this Trust Agreement. Such records, as well as all other Trust records, shall be retained and made available for public inspection and or copying in accordance with the requirements of the Public Records Law, G.L. c.66, §10 and G.L. c.4, §7, clause 26 and their implementing regulations. The person or persons designated by the County shall be entitled to inspect such records upon request at any reasonable time.

12.2. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices. The results of the audit shall be provided to the Governmental Unit at the same time as it is presented to the Trustees.

12.3. The Trust Fund shall be subject to the Commonwealth of Massachusetts Public Employee Retirement Administration Commission's triennial audit.

**ARTICLE 13  
ANNUAL REPORTS**

13.1. The Trustees shall furnish to the Governmental Unit annually, or more frequently if the Governmental Unit so requests, a statement of account showing the condition of the Trust Funds and all investments, sales, income, disbursements and expenses of the Trust and the Trust Fund.

**ARTICLE 14  
INVESTMENT OF TRUST FUNDS**

14.1. The Trustees hereby authorize and direct the Governmental Unit Treasurer to invest and reinvest the amounts in the Trust Fund not needed for current disbursement, consistent with the prudent investor rule, and as provided in the Investment Policy, if applicable.

14.2. In no event shall the funds be invested directly in mortgages or in collateral loans.

**ARTICLE 15  
CUSTODY OF THE TRUST FUNDS**

15.1. The Trustees hereby appoint the Governmental Unit Treasurer as custodian of the Trust Fund and authorize the Treasurer to employ an outside custodial service to maintain custody of the Trust Funds. All funds in the Trust Fund shall be accounted for separately from all other funds of the Town.

15.2. The Governmental Unit Treasurer, with the authorization of the Trustees, shall establish one or more checking accounts, which may be interest bearing or non-interest bearing accounts. Such checking account or accounts shall be funded solely from the Trust Funds, and the Trustees may authorize the Governmental Unit Treasurer to draw on such checking accounts for the payment of OPEB and for the administrative expenses of the Trust.

**ARTICLE 16  
TERMINATION OF TRUST**

16.1. The Trust shall continue unless and until terminated pursuant to law or by an instrument in writing signed by at least three Trustees, provided, however, that continuance of the Trust shall not be deemed to be a contractual obligation of the Governmental Unit.

16.2. Upon termination of the Trust, subject to the payment of or making provision for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the County and held by the Governmental Unit Treasurer to be used exclusively for providing OPEB to Retired Employees and their eligible dependents and for no other purpose.

16.3. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

**ARTICLE 17  
AMENDMENTS**

17.1. The Trust may only be amended as set forth herein. The Governmental Unit may amend the Trust at any time as may be necessary to comply with the requirements for tax exemption under

Section 115 of the Code, to conform the Trust to the laws of the Commonwealth of Massachusetts and to meet the standards set forth in GASB 74 and GASB 75 to be treated as funded through a qualifying trust or equivalent arrangement.

17.2. This Trust Agreement may be amended, but not revoked, from time to time by the County, subject to the following limitations:

17.2.1. The assets of the Trust may not be used for or diverted to any other purposes prior to satisfaction of the Governmental Unit's OPEB obligations, and reasonable expenses of administering the Trust.

17.2.2. The duties and liabilities of the Trustees cannot be substantially changed without their written consent.

17.3 Any amendment to this Trust shall be executed in writing.

#### **ARTICLE 18 MERGER**

18.1. The Governmental Unit may provide for the merger of the Trust with one or more other trusts established by the Governmental Unit or other government entities for similar purposes as may be provided by law.

#### **ARTICLE 19 SEVERABILITY OF INVALID PROVISIONS**

19.1. If any provision of this Trust Agreement is determined invalid, illegal, or unenforceable for any reason, then the provision shall be severed from the remaining provisions of the Trust Agreement for any reason, and the remaining parts of the Agreement shall be construed to give the maximum practical effect to the purposes stated herein, as if the invalid, illegal, or unenforceable provision was never a part.

#### **ARTICLE 20 MISCELLANEOUS**

20.1. This Trust Agreement shall be interpreted, construed and enforced, and the Trust hereby created shall be administered in accordance with and governed by the laws of the United States and of the Commonwealth of Massachusetts.

20.2. The titles to Articles of this Trust Agreement are placed herein for convenience of reference only, and the Trust Agreement is not to be construed by reference thereto.

20.3. No person shall be obliged to see to the application of any money paid or property delivered to the Trustees, or as to whether or not the Trustees have acted pursuant to any authorization herein required, or as to the terms of this Trust Agreement. In general, each person dealing with the Trustees

may act upon any advice, request or representation in writing by the Trustees, or by the Trustee's duly authorized agent, and shall not be liable to any person in so doing. The certification of the Trustees that they are acting in accordance with this Trust Agreement shall be conclusive in favor of any person relying thereon.

20.4. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one instrument, which may be sufficiently evidenced by any counterpart.

20.5. Until advised to the contrary, the Trustees may assume this Trust is entitled to exemption from taxation under Section 115 of the Internal Revenue Code of 1986 or under any comparable section or sections of future legislation that amend, supplement or supersede one or both of those sections of the Internal Revenue Code.

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be executed in their respective names by their duly authorized officers as of the day and year first above written.

(Signature Page Follows)

Witnessed By:

\_\_\_\_\_  
County Administrator

\_\_\_\_\_  
County Clerk

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

BOARD OF REGIONAL COMMISSIONERS:

\_\_\_\_\_  
Chairman of Board of Regional Commissioners

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

BOARD OF TRUSTEES:

\_\_\_\_\_  
Trustee  
(current Chairman of Board of Regional Commissioners)

\_\_\_\_\_  
Trustee  
(current County Treasurer)

\_\_\_\_\_  
Trustee  
(current County Administrator)

# AGENDA ITEM 6c

Ordinance 19-04, to make appropriations for Barnstable County's operating budget for the Fiscal Year 2020, including the operations of the County Assembly, Executive branch, County agencies, boards, commissions, departments and institutions and the maintenance of certain County functions; for interest, reserve funds and serial bond requirements of the County

# BARNSTABLE COUNTY

In the Year Two Thousand Nineteen

## Ordinance 19-04

To make appropriations for Barnstable County's operating budget for the Fiscal Year 2020, including the operations of the County Assembly, Executive branch, County agencies, boards, commissions, departments and institutions and the maintenance of certain County functions; for interest, reserve funds and serial bond requirements of the County.

### ***BARNSTABLE COUNTY hereby ordains:***

**Section 1.** To provide for the operations of the County Assembly, Executive branch, the several agencies, boards, commissions, departments and institutions of the County, and for sundry other functions, and to meet certain requirements of law, the sums set forth in Section Two and Section Three for the several purposes and subject to the conditions specified in Sections Four through Thirteen, are hereby appropriated from the County General Fund; Grants and Other Financing Sources, subject to the provisions of Massachusetts General Laws regulating the disbursement of public funds and the approval thereof, for the fiscal year ending June thirtieth, two thousand and twenty.

### **GENERAL GOVERNMENT**

#### **Section 2.**

- (a) To appropriate a total of \$3,728,950.82 for General Government; funded as follows:  
County General Funds \$3,476,450.82 and Other Financing Sources \$252,500.00 for the purposes set forth below:

#### **EXECUTIVE**

The mission of the County is to promote and sustain a pro-active government that enhances the quality of life for the citizens of Barnstable County. The budget established each year for Barnstable County is based on the program priorities set by the Board of Regional Commissioners and objectives of County leadership, considering affordability and value to the County and its towns and citizens. The emphasis in the fiscal year 2020 budget process has been on a collaborative effort to enhance the delivery of services in a cost control environment and to maintain and improve the delivery of priority services to the towns and residents of Barnstable County.

As outlined in Article 3 of the Barnstable County Home Rule Charter, the Executive powers of the County shall be vested solely in the Board of Regional Commissioners and may be exercised either directly by such Board, or through several County agencies under its direction and supervision. The Board of Regional Commissioners shall cause this Charter, the laws, ordinances and orders for the government and administration of the County to be enforced. The Chief Administrative Officer for the County shall be the County Administrator, who shall be appointed by a majority vote of the Board of Regional Commissioners to serve for an indefinite term. The County Administrator shall have, possess

and may exercise all the powers, rights, and duties commonly associated with the office of chief administrator of a local government.

The Board of Regional Commissioners meets weekly on Wednesdays at the Superior Courthouse on Route 6A in Barnstable. Through these meetings the Board of Regional Commissioners make County policy, establish the goals of the County, and conduct the day-to-day business of the County.

## **RESOURCE DEVELOPMENT OFFICE**

The Resource Development Office, founded in the belief that common problems can be solved through regional solutions, is committed to the advancement of grant programs and creative uses of existing resources on Cape Cod. The objective of the department is to develop methods that facilitate communication between County officials, the public and local officials sharing information and developing partnerships to further enhance regional efforts and innovations. The mission of the office is achieved through grant administration within Barnstable County departments, outreach and education, sharing specialized knowledge and understanding of grant writing, monitoring and grant compliance.

## **ASSEMBLY OF DELEGATES**

The Barnstable County Assembly of Delegates is the legislative branch of County Government. As the County's law-making body, the Assembly's work takes the form of ordinances and resolutions which may be initiated by Delegates, Assembly committees, the Board of County Commissioners or by an initiative petition. The Assembly of Delegates appropriates the County's annual operating and capital budgets and supplemental requests. At the direction of the Speaker, operating and capital budgets and supplemental budgets are assigned to Standing Committees or the full Assembly for review. The Assembly or its Standing Committees meet with department managers and discuss the effectiveness of programs and consider Barnstable County's future needs for regional services.

Because it is difficult to forecast the number and/or complexities of legislative initiatives that the Assembly of Delegates will be required to deal with, it is impossible to predict what the volume of output or priorities will be in any given year. The budget is designed to assure that the functions of the Assembly are carried out and that the public is well served.

## **DEPARTMENT OF FINANCE**

The Finance Department is responsible for the oversight of all financial activities of the County including financial reporting and auditing, management of County funds, administration of debt, processing of payroll and accounts payable, and the annual development and ongoing monitoring of the County operating and capital budgets, fiscal grant monitoring and grant compliance.

The department is also charged with the management of purchasing and group insurance programs, as well as the provision of information systems and data processing. The services provided by the department enable the County to coordinate financial and analytical activities, control costs, and improve the overall operational effectiveness of the County with its object to identify, prioritize and provide services on a regional basis in areas of need.

## **INFORMATION TECHNOLOGY OFFICE**

The mission of the Information Technology Office is to provide the County of Barnstable with high quality advice and support in the high technology and communication field. The IT staff will maintain the infrastructure needed to keep the County working productively. The IT staff also administers the County's networks and multi-user systems.

## **COUNTY SERVICES**

**(b)** To appropriate a total of \$7,488,255.61 for County Services; funded as follows: County General Funds \$7,104,823.71, Grant Funds \$288,430.97 and Other Financing Sources \$95,000.93. For the purposes set forth below:

## **DEPARTMENT OF FACILITIES**

The Department of Facilities is charged with asset management. The department is responsible for all physical plant operations, general maintenance and planning at the County Complex, the Fire Training Academy, the Children's Cove, the Farm property in Barnstable, the Second District Courthouse in the town of Orleans, and other properties located in the towns of Barnstable and Bourne.

## **COOPERATIVE EXTENSION SERVICE**

The Cape Cod Cooperative Extension is Barnstable County's education department. Extension programs are conducted in Barnstable County in cooperation with the University of Massachusetts in Amherst, the United States Department of Agriculture and the Woods Hole Oceanographic Institution's Sea Grant Program. The Extension has been supported by County, federal and state funds and county, federal and state laws and agreements. Research findings are translated into practical applications and shared throughout the region at workshops, conferences, field demonstrations, technical assistance, educational materials, exhibits, newspaper articles, radio and television. Education programs focus on horticulture/agriculture, aquaculture, shellfish management, coastal processes, natural resources, nutrition and food safety, water quality and management, recycling, hazardous products, and 4-H youth development issues facing the County.

## **REGISTRY OF DEEDS**

The mission of the Registry of Deeds is to deliver effective and efficient services to all users of the Registry of Deeds. The primary responsibility of the Registry of Deeds is to receive for recording instruments, documents and plans, pertaining to the titles of real estate in Barnstable County. The Registry indexes and scans these instruments, creating a database of landowners, lien holders and all other interested parties. These records are available to be researched in both book and computer formats. The Registry of Deeds has continued to expand its base of information retrieval and storage to better assist the public in its recording and research needs. Computerization of these functions has progressed a long way in allowing the Registry of Deeds to successfully handle the volume of plans and instruments processed for recording.

## **HEALTH AND HUMAN SERVICES**

(c) To appropriate a total of \$6,079,772.36 for Health and Human Services; funded as follows: County General Funds \$3,701,796.79, Grant funds \$1,484,575.56 and Other Financing Sources \$893,400.01 for the purposes set forth below:

### **DEPARTMENT OF HEALTH AND THE ENVIRONMENT**

The Department of Health and the Environment's objective is to protect the public health and environment and to promote the physical and mental health and well being of the residents of Barnstable County. The population growth in the region has presented unprecedented challenges to local Boards of Health to address public health, water quality, community sanitation, wastewater disposal, workplace safety, hazardous materials, and a host of other environmental and public health issues that have heightened regional-specific significance. In addition, world events have underscored the need for preparing for emergencies that could undoubtedly challenge the public health emergency response resources. The department addresses the public health needs of the citizenry as identified primarily by the Boards of Health and maintains a very high level of expertise to assist both logistically and administratively to carry out programs that protect the public health and environment. Barnstable County is used by the State DPH as a model of regional efficiency as it continues its initiative to implement regionalization statewide for health department services based in part on the successes in Barnstable County. The Department's mission is supported by four divisions within the Department: Administration, Public Health Nursing, Laboratory and Environmental Health.

### **DEPARTMENT OF HUMAN SERVICES**

The Barnstable County Human Services Department plans, develops and implements programs that enhance the overall delivery of human services in Barnstable County and promotes the health and social well-being of County residents through regional efforts designed to improve coordination and efficiency of human services and designed to

strengthen the fabric of community care available to all. The Department serves as a grant facilitator for all 15 towns in areas of housing, serving the health needs of everyone (SHINE), continuing care and substance and opioid use prevention.

### **CHILDREN’S COVE**

Children’s Cove provides coordinated and comprehensive multidisciplinary services to child victims of sexual abuse/serious physical abuse and their families.

## **PUBLIC SAFETY**

(d) To appropriate a total of \$2,212,740.84 for Public Safety, funded as follows: County General Funds \$1,937,740.84 and Other Financing Sources \$275,000.00 for the purposes set forth below:

### **COUNTY CONTRIBUTION TO THE SHERIFF’S DEPARTMENT RETIREES & PUBLIC SAFETY OFFICERS**

The County is mandated by the Commonwealth of Massachusetts to appropriate the sum of \$1,601,421 for the unfunded pension liability associated with retirees of the Sheriff’s Department, retired from the Barnstable County Retirement Association. The department was transferred to the Commonwealth in 2010. Funds are required to be appropriated annually through the year 2035.

The County has budgeted the sum of \$50,000 to provide support for the training efforts of public safety officers in FY20.

### **FIRE AND RESCUE TRAINING ACADEMY**

The Fire and Rescue Training Academy provides current, high-quality, safe and realistic fire and rescue training from beginning to the most advanced levels. As technology changes so does the fire service. The Fire and Rescue Training Academy conducts ongoing reviews of each program to assure that each meets the most current accepted standards. Course instructors, being firefighters in service at numerous fire departments, bring training, invaluable practical experience and advanced education to the classroom. The Academy utilizes a multitude of training props and scenarios to expose each student to real life situations in a safe environment. Portable training props can be deployed to the individual departments for training and the Academy employs a “train the trainer” concept, the result of which is a department’s ability to further train internally as time permits.

### **SHARED COSTS AND DEBT SERVICE**

(e) To appropriate a total of \$2,807,690.37 for Shared Costs and Debt Service, funded as follows: County General Funds \$2,807,690.37 for the purposes set forth below:

The budgets for Shared Costs and Debt Service support costs, which are not applicable to specific departments. These types of costs include property & casualty insurances, group insurances for retirees, contingencies and non-contributory retirement costs.

The annual budgeting process is designed to accurately portray the costs of service for each department. All applicable costs have been allocated to the proper sub-program and cost center. Costs associated with active employees are allocated to each sub-program or department. Some elements of these programs remain in Shared Costs. The following sub-programs are included in Shared Costs and Debt Service:

#### **FRINGE BENEFITS**

The Fringe Benefits sub-program of Shared Costs provides funds for health, dental, and life insurance costs for the County's and the Cape Cod Commission's retirees. The County contributes 75% of the costs of these benefits. This budget also includes the cost of previous Early Retirement Incentives offered in 2002 & 2003, the remaining costs of retirement for the closed County Hospital and Worker's Compensation costs.

#### **MISCELLANEOUS & CONTINGENCY**

The Miscellaneous & Contingency sub-program of Shared Costs provides funds for architectural and engineering services, legal counsel and auditing services, property & casualty and other insurance premiums, and provisions for other contingencies not otherwise appropriated. This sub-program provides funds for costs of Legal Settlements.

#### **DEBT SERVICE**

The Debt Service sub-program provides funding for repayments of General Obligation Bonds of the County, including principal and interest, exclusive of the Clean Water Trust obligations funded and repaid through the Septic Loan Fund. Funding is also provided for interest and pay-downs on short-term obligations from the issuance of Bond Anticipation Notes (B.A.N.S.).

#### **APPROPRIATED RESERVES**

The Appropriated Reserves sub-program provides funding for certain reserves of the County and funding that provides Other Funding Sources for funds outside of the County's General Fund Operating Budget

**TOTAL FY 2020 OPERATING BUDGET**

**Section 3.**

To appropriate a total of \$22,317,410 to fund the Operating Budgets of the General Fund as follows: County General Funds \$19,028,502.53, Grants \$1,773,006.53 and Other Financing Sources \$1,515,900.94 according to the schedule set forth on the following pages.

**Section 4.**

[ INSERT HERE – ATTACHMENT AT BACK OF THIS DOCUMENT FOR REFERENCE]

**Section 5.**

(a) Appropriations shown according to numbered groups within departmental Budget Items and Programs are made for expenditure for general purposes as follows:

Category A – Group 1 – for salaries and other compensation for personal services;  
Category B – Group 8 – for capital structures, improvements and CIP;  
Category C – Group 9 – for fringe benefits; and  
Category D – Group 2 – for contractual services, Group 3 – for supplies & materials, Group 4 – for other current charges, Group 5 – for equipment and CIP Equipment and Obligations and Group 7 – for not otherwise classified.

(b) Funds appropriated in any category may not be transferred to another category without the prior written approval of the Board of Regional Commissioners and the ratification of such approval by a majority vote of the Assembly of Delegates. Such ratification may be by Resolution.

**Section 6.** No liability in excess of the total appropriations for any departmental Budget Item or Program as provided in this ordinance shall be incurred by any official of the County except in cases of emergency and then only upon the prior written approval of the Board of Regional Commissioners. The amount and circumstances of any such liability approved by the Board of Regional Commissioners, the Assembly of Delegates shall act on said approval by Resolution.

**Section 7.** No transfers shall be made from the Capital Trust Fund (Budget Item 930) except pursuant to a supplemental appropriation ordinance.

**Section 8.** Transfers to departmental Budget Items or Programs made be made from the Reserve Fund (Budget Item 930) for extraordinary, unforeseen, necessary, non-recurring liabilities, provided that any such transfer shall be approved by the Board of Regional Commissioners and by a vote of the Assembly of Delegates, representing a majority of the population of Barnstable County.

**Section 9.**

- (a) Transfers from the Reserve for Salary Adjustments (Budget Items 930 and 500) may be made only for increases in compensation for personal services in accordance with the Barnstable County personnel compensation plan approved in writing by the Board of Regional Commissioners or pursuant to the terms of any collective bargaining agreement covering employees of Barnstable County executed by the Board of Regional Commissioners.
- (b) Transfers within the General Fund for Fringe Benefits (Group 9) may be made from sub-programs with excess appropriations in Group 9 to sub-programs where original appropriations are insufficient to cover the direct allocation of group insurance costs, retirement assessments, workers' compensation claims and payroll tax deductions. Such transfers shall be determined by the Director of Finance/Treasurer, with the approval of the Board of Regional Commissioners.

**Section 10.** Usual expenses of travel, including highway tolls and parking fees, necessary for the performance of the duties of any County official or employee, other than travel from home to the regular workplace of such official or employee, shall be eligible for reimbursement, provided that no expenditure shall be made for the reimbursement of expenses of travel outside the Commonwealth unless such travel shall have been approved in advance in writing by the department head or other County official designated by the Board of Regional Commissioners to determine the expenditure of funds appropriated for such Budget Item. Such travel by any department head or other such designated official shall have been so approved by the Board of Regional Commissioners. The Board of Regional Commissioners shall from time to time promulgate a schedule of standard mileage rates for reimbursement of travel by private automobile designed fairly to reflect the full, actual costs of motor vehicle operation. Such funds shall be expended from the department budget.

**Section 11.** Notwithstanding any other provision of this ordinance, expenditures from the appropriation for the Assembly of Delegates (Budget Item 130) shall be as determined by the Assembly of Delegates which may authorize the Speaker or the Deputy Speaker or a designee of the Assembly to approve for payment any expenditure or liability incurred by any Delegate or by any officer, employee or consultant of the Assembly in the proper performance of his duties as such.

**Section 12.** The Board of Regional Commissioners may borrow money in anticipation of, and to be repaid from, the County tax for the fiscal year ending June thirtieth, two thousand and nineteen levied pursuant to Section thirty and thirty-one of Chapter thirty-five of the general laws, and obligated state revenues to be paid to the County for said fiscal year. Such borrowing shall not exceed the sum of (i) one half the amount of such tax plus (ii) the amount of such state revenues. They may issue therefore County notes maturing up to one year, which may be renewed from time to time; not to exceed ten years and the mandatory pay-downs per State statute. Notes issued hereunder may be sold at such discount or bear such rate, or rates, of interest as the County Treasurer may deem proper with the approval of the Board of Regional Commissioners; any discount to be treated as interest paid in advance,

pursuant to Section thirty-seven of Chapter 35 of the general laws. Article 4, Section 4-2 (1) of the Barnstable County Home Rule Charter and Section 2.6 of the Administrative Code of Barnstable County. Such notes shall be signed by the Treasurer or Assistant Treasurer, countersigned by a majority of the Board of Regional Commissioners, and shall expressly be made payable from the taxes or state revenues of said fiscal year, but shall nevertheless be negotiable.

**Section 13.**

(a) The Board of Regional Commissioners is hereby authorized to make necessary repairs, replacements and improvements to, and to purchase and install equipment for use in, buildings and facilities of the County, and to employ professional services for the design of such repairs, replacements, improvements and for the specifications of such purchases and installation of equipment, as presented in the FY2019 Capital Improvement Plan and appropriated in the FY2019 departments' budgets.

(b) For the purpose set forth in Section 12, the County Treasurer, with the approval of the Board of Regional Commissioners, may borrow from time to time, on the credit of the County, such sums as may be necessary but not exceeding in the aggregate the limitation set forth by statute, and may issue bonds or notes of the County therefore, which shall bear on their face Barnstable County Facilities and Equipment Loan, County Ordinance of 2015. Each authorized issue shall constitute a separate loan, and such loans are payable within the terms and conditions prescribed by Massachusetts General Laws.

(c) All bonds or notes issued pursuant to the ordinance shall be signed by the County Treasurer or Assistant Treasurer and countersigned by a majority of the Board of Regional Commissioners. The County may sell securities at public or private sale upon such terms and conditions as the Board of Regional Commissioners may deem proper but not for less than their par value. Indebtedness incurred under this ordinance shall, except as herein provided, be subject to Chapter thirty-five of the Massachusetts General Laws.

Adopted by the Assembly of Delegates on May 1, 2019

---

E. Suzanne McAuliffe, Speaker  
Assembly of Delegates

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

---

Ronald Bergstrom  
Chairman

---

Mary Pat Flynn  
Vice Chairman

---

Ronald Beaty, Jr.  
Commissioner

# AGENDA ITEM 6d

Ordinance 19-05, Adopting an Operating Budget for the Cape Cod Commission for the Fiscal Year 2020

# BARNSTABLE COUNTY

In the Year Two Thousand Nineteen

## Ordinance 19-05

Adopting an Operating Budget for the Cape Cod Commission for the Fiscal Year 2020, beginning July 1, 2019 and ending June 30, 2020. The Cape Cod Regional Government, known as Barnstable County hereby ordains;

**SECTION 1.** A budget consisting of the appropriations listed in SECTION 2 below be adopted for the Fiscal Year July 1, 2019 through June 30, 2020.

**SECTION 2.** Appropriations for said budget are as follows:

**PLANNING AND DEVELOPMENT**

Cape Cod Commission	\$6,049,370
Total Planning and Development	<b>\$6,049,370</b>

**TOTAL FY 2020 BUDGET**            **\$6,049,370**

**SECTION 3.** No appropriation listed above may be exceeded without appropriate ordinance action to amend the budget.

**SECTION 4.** The public notice for this proposed ordinance was published at least 48 hours prior to the February 13, 2019 meeting of the Board of Regional Commissioners.

**SECTION 5.** This ordinance shall take effect on July 1, 2019.

Adopted by the Assembly of Delegates on May 1, 2019

---

E. Suzanne McAuliffe, Speaker  
Assembly of Delegates

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

---

Ronald Bergstrom  
Chairman

---

Mary Pat Flynn  
Vice Chairman

---

Ronald Beaty, Jr.  
Commissioner

# AGENDA ITEM 6e

Ordinance 19-06, Adopting an Operating Budget for the Dredge Enterprise Fund for the Fiscal Year 2020

BARNSTABLE COUNTY

In the Year Two Thousand Nineteen

**Ordinance 19-06**

Adopting an Operating Budget for the Dredge Enterprise Fund for the Fiscal Year 2020, beginning July 1, 2019 and ending June 30, 2020.

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

**SECTION 1.** A budget consisting of the appropriations listed in SECTION 2 below be adopted for the Fiscal Year July 1, 2018 through June 30, 2019.

**SECTION 2.** Appropriations for said budget are as follows:

**COUNTY SERVICES**

Dredge	\$2,232,144
<b>Total County Services</b>	<b>\$2,232,144</b>

**TOTAL FY 2020 BUDGET**                      **\$2,232,144**

**SECTION 3.** No appropriation listed above may be exceeded without appropriate ordinance action to amend budget.

**SECTION 4.** The public notice for this proposed ordinance was published at least 48 hours prior to the February 13, 2019 meeting of the Board of Regional Commissioners.

**SECTION 5.** This ordinance shall take effect July 1, 2019.

Adopted by the Assembly of Delegates on May 1, 2019

---

E. Suzanne McAuliffe, Speaker  
Assembly of Delegates

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

---

Ronald Bergstrom  
Chairman

---

Mary Pat Flynn  
Vice Chairman

---

Ronald Beaty, Jr.  
Commissioner

# AGENDA ITEM 8a

Authorizing the appointment of Stephen Tebo, Assistant County Administrator, as the Barnstable County Chief Procurement Officer, effective May 15, 2019



# BARNSTABLE COUNTY

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

**Justyna Marczak**  
Human Resources Director  
Phone: (508) 375-6646  
Fax: (508) 362-4136  
jmarczak@barnstablecounty.org

## MEMORANDUM

**DATE:** May 7, 2019  
**TO:** County Commissioners  
**FROM:** Justyna Marczak, Human Resources Director  
**SUBJECT:** Chief Procurement Officer Appointment

---

Please authorize the appointment of Stephen Tebo, Assistant County Administrator, as the Barnstable County Chief Procurement Officer, effective May 15, 2019.

Approved:

\_\_\_\_\_  
Ronald Bergstrom, Chair

\_\_\_\_\_  
Mary Pat Flynn, Vice-Chair

\_\_\_\_\_  
Ronald R. Beaty, Commissioner

\_\_\_\_\_  
Date

# AGENDA ITEM 8b

Authorizing the filling of three vacant positions in Facilities Department, due to early retirement – Working Supervisor, Maintenance and Repair Person and Equipment Specialist



# BARNSTABLE COUNTY

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

**Justyna Marczak**  
Human Resources Director  
Phone: (508) 375-6646  
Fax: (508) 362-4136  
jmarczak@barnstablecounty.org

## MEMORANDUM

**DATE:** May 7, 2019  
**TO:** County Commissioners  
**FROM:** Justyna Marczak, Human Resources Director  
**SUBJECT:** Chief Procurement Officer Appointment

---

Please authorize the filling of three vacant positions in Facilities Department, due to early retirement – Working Supervisor, Maintenance and Repair Person and Equipment Specialist.

Approved:

\_\_\_\_\_  
Ronald Bergstrom, Chair

\_\_\_\_\_  
Mary Pat Flynn, Vice-Chair

\_\_\_\_\_  
Ronald R. Beaty, Commissioner

\_\_\_\_\_  
Date

# AGENDA ITEM 8c

Authorizing the execution of documents for a grant from the United States Department of Housing and Urban Development (HUD), in the amount of \$427233.00, for the annual allocation award for HOME Program Year 2019, for a period from July 1, 2019 through June 30, 2020



**BARNSTABLE COUNTY**  
**DEPARTMENT OF HUMAN SERVICES**  
3195 Main Street, Post Office Box 427  
Barnstable, Massachusetts 02630  
Office: 508-375-6628 | Fax: 508-362-0290  
www.bchumanservices.net

## **BARNSTABLE COUNTY HOME PROGRAM**

### **MEMORANDUM**

To: Jack Yunits, County Administrator / County Commissioners  
CC Beth Albert  
From: Renie Hamman, HOME Program Manager *RH*  
RE: Barnstable County HOME Program  
HUD 2019 Allocation / Certifications to be Signed  
Date: May 2, 2019

---

HUD has announced its annual allocation for the HOME Program for Program Year 2019 (July 1, 2019 to June 30, 2020). As you are aware, to receive this annual award, HUD requires an Application and certain Certifications to be signed by the accepting grantee, Barnstable County and submitted to HUD.

Please find two originals of the following documents that need to be signed and executed by the Chair of the County Commissioners:

- Application for Federal Assistance SF-424
- Assurances – Construction Programs
- Certifications – General
- Specific HOME Certifications

Once these documents are executed, please return the originals to my attention for submission to HUD. Please feel free to let me know if you have any questions.

Thank you,  
Renie Hamman, HOME Program Manager

---

**Application for Federal Assistance SF-424**

* 1. Type of Submission: <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application	* 2. Type of Application: <input type="checkbox"/> New <input checked="" type="checkbox"/> Continuation <input type="checkbox"/> Revision	* If Revision, select appropriate letter(s): <input type="text"/> * Other (Specify): <input type="text"/>
--	--	--

* 3. Date Received: <input type="text"/>	4. Applicant Identifier: <input type="text" value="DC-25-0217"/>
---	---

5a. Federal Entity Identifier: <input type="text"/>	5b. Federal Award Identifier: <input type="text" value="M-19-DC-25-2017"/>
--	---

**State Use Only:**

6. Date Received by State: <input type="text"/>	7. State Application Identifier: <input type="text"/>
---	---

**8. APPLICANT INFORMATION:**

\* a. Legal Name:

* b. Employer/Taxpayer Identification Number (EIN/TIN): <input type="text" value="04-6001419"/>	* c. Organizational DUNS: <input type="text" value="0766124070000"/>
--	---

**d. Address:**

* Street1:	<input type="text" value="3195 Main Street"/>
Street2:	<input type="text" value="P.O. Box 427"/>
* City:	<input type="text" value="Barnstable"/>
County/Parish:	<input type="text"/>
* State:	<input type="text" value="MA: Massachusetts"/>
Province:	<input type="text"/>
* Country:	<input type="text" value="USA: UNITED STATES"/>
* Zip / Postal Code:	<input type="text" value="02630-0427"/>

**e. Organizational Unit:**

Department Name: <input type="text" value="Human Services"/>	Division Name: <input type="text"/>
---	--

**f. Name and contact information of person to be contacted on matters involving this application:**

Prefix: <input type="text" value="Mrs."/>	* First Name: <input type="text" value="Irene"/>
Middle Name: <input type="text"/>	
* Last Name: <input type="text" value="Hamman"/>	
Suffix: <input type="text"/>	

Title:

Organizational Affiliation:

* Telephone Number: <input type="text" value="508-375-6622"/>	Fax Number: <input type="text" value="508-362-0290"/>
---	---

\* Email:

**Application for Federal Assistance SF-424**

**\* 9. Type of Applicant 1: Select Applicant Type:**

B: County Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

\* Other (specify):

**\* 10. Name of Federal Agency:**

U.S. Department of Housing and Urban Development

**11. Catalog of Federal Domestic Assistance Number:**

14.239

CFDA Title:

HOME Investment Partnership Program

**\* 12. Funding Opportunity Number:**

\* Title:

**13. Competition Identification Number:**

Title:

**14. Areas Affected by Project (Cities, Counties, States, etc.):**

Add Attachment

Delete Attachment

View Attachment

**\* 15. Descriptive Title of Applicant's Project:**

Annual HOME allocation to create and preserve housing for the region's low income households.

Attach supporting documents as specified in agency instructions.

Add Attachments

Delete Attachments

View Attachments

**Application for Federal Assistance SF-424**

**16. Congressional Districts Of:**

\* a. Applicant

\* b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

Add Attachment

Delete Attachment

View Attachment

**17. Proposed Project:**

\* a. Start Date:

\* b. End Date:

**18. Estimated Funding (\$):**

* a. Federal	<input type="text" value="427,233.00"/>
* b. Applicant	<input type="text" value="0.00"/>
* c. State	<input type="text" value="0.00"/>
* d. Local	<input type="text" value="0.00"/>
* e. Other	<input type="text" value="0.00"/>
* f. Program Income	<input type="text" value="45,000.00"/>
* g. TOTAL	<input type="text" value="472,233.00"/>

**\* 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

a. This application was made available to the State under the Executive Order 12372 Process for review on

b. Program is subject to E.O. 12372 but has not been selected by the State for review.

c. Program is not covered by E.O. 12372.

**\* 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**

Yes  No

If "Yes", provide explanation and attach

Add Attachment

Delete Attachment

View Attachment

**21. \*By signing this application, I certify (1) to the statements contained in the list of certifications\*\* and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances\*\* and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

\*\* I AGREE

\*\* The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

**Authorized Representative:**

Prefix:  \* First Name:

Middle Name:

\* Last Name:

Suffix:

\* Title:

\* Telephone Number:  Fax Number:

\* Email:

\* Signature of Authorized Representative:

\* Date Signed:

## ASSURANCES - CONSTRUCTION PROGRAMS

OMB Number: 4040-0009  
Expiration Date: 02/28/2022

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards of merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
20. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE Chair - Barnstable County Commissioners
APPLICANT ORGANIZATION Barnstable County	DATE SUBMITTED 

## CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

**Affirmatively Further Fair Housing** --The jurisdiction will affirmatively further fair housing.

**Uniform Relocation Act and Anti-displacement and Relocation Plan** -- It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR Part 24. It has in effect and is following a residential anti-displacement and relocation assistance plan required under 24 CFR Part 42 in connection with any activity assisted with funding under the Community Development Block Grant or HOME programs.

**Anti-Lobbying** --To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**Authority of Jurisdiction** --The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

**Consistency with plan** --The housing activities to be undertaken with Community Development Block Grant, HOME, Emergency Solutions Grant, and Housing Opportunities for Persons With AIDS funds are consistent with the strategic plan in the jurisdiction's consolidated plan.

**Section 3** -- It will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR Part 135.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

## **APPENDIX TO CERTIFICATIONS**

### **INSTRUCTIONS CONCERNING LOBBYING CERTIFICATION:**

#### **Lobbying Certification**

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Specific HOME Certifications**

The HOME participating jurisdiction certifies that:

**Tenant Based Rental Assistance** -- If it plans to provide tenant-based rental assistance, the tenant-based rental assistance is an essential element of its consolidated plan.

**Eligible Activities and Costs** -- It is using and will use HOME funds for eligible activities and costs, as described in 24 CFR §§92.205 through 92.209 and that it is not using and will not use HOME funds for prohibited activities, as described in §92.214.

**Subsidy layering** -- Before committing any funds to a project, it will evaluate the project in accordance with the guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other Federal assistance than is necessary to provide affordable housing;

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

# AGENDA ITEM 8d

Authorizing the execution of documents for the HOME Program project closing for Little Pond Place, in the Town of Falmouth

## MEMORANDUM

To: Irene Hamman, Barnstable County  
From: Attorney Michael Dutton  
Date: May 2, 2019  
Re: HOME Consortium documents / Little Pond project

You have asked me to provide a brief description of each document that requires signature from the Barnstable County Commissioners, including the purpose of each and a short plain-English description of each document's intent. Below, I have given a brief description of the documents requiring Commissioners' signature, as well as a description of the documents we produce which do not require their signatures.

**Lender Advisor Agreement.** On large projects, where there are multiple lenders and equity investors, a company is hired by the multiple lenders to track the construction and report progress and problems to the lender group. Essentially, the Advisor looks out for the common interests of the lending group. The Lender Advisor Agreement is the agreement that outlines the work expected of the Advisor, including the types of reports, frequency of reports, initial cost review, change order processing, requisition review, and quality review. The Agreement allows the multiple lenders to more cost-effectively track a large project. *The Commissioners should sign 7 copies of the signature page (no need to print 7 full documents).*

**Master Subordination Agreement.** With multiple lenders on a project, it is important to identify whose mortgage takes priority if the developer defaults. The Master Subordination Agreement is the document that defines each lender's priority. It is used in place of multiple agreements among multiple lenders in order to save time, effort, and confusion. Generally, and in the case of the Little Pond project, the County shares a second priority with other state funded lenders including Mass Housing and the Department of Housing and Community Development, CDAC, and MA Affordable Housing Trust. First priority is reserved for the private bank lender who is extending over \$8.5 million. Second priority is shared among the non-bank lenders, including the sponsor. We traditionally add language, as we have in the Little Pond Agreement, which ensures the County's affordable housing restriction priority. *The Commissioners should sign 7 copies of the signature page (no need to print 7 full documents).*

**Barnstable HOME Loan Agreement.** The Agreement, in simple terms, outlines the entire transaction as it relates to Barnstable County and the developer. *The Commissioners should sign 2 copies of the signature page (no need to print 2 full documents).*

**Affordable Housing Restriction.** This document does not require County signature. It is the document that is filed at the Barnstable Registry of Deeds that ensures that the property's affordable units are restricted as such. It is often referred to as the "deed restriction." In the case of the Little Pond, there are eleven HOME financed units out of the 40 total affordable units. *The Commissioners do not need to sign this document.*

**Promissory Note.** This is the borrowers promise to pay. In the event the borrower does not default prior to 2059, the borrower can request an extension of the note for an additional 40 years. This is an incentive to extend the affordability of the units. Absent a request, the borrower will owe the County \$140,000 in July of 2059. Again, the County does not sign this document. *The Commissioners do not need to sign this document.*

**HOME Contract.** The HOME contract is required by the federal regulations of the HOME consortium program. It outlines the specific obligations of the developer to report to the County, and the types and frequency of such reports. These reports are then collected and compiled by the County and submitted to HUD. Through this agreement the County agrees to commit the HOME funds and the developer agrees to abide by the affordable restrictions and the document and reporting requirements as stipulated by HUD and the County. *The Commissioners should sign 2 copies of the signature page (no need to print 2 full documents).*

**Leasehold Mortgage.** Similar to residential mortgages, the mortgage in this case secures the lender's (County's) loan, the restrictive covenants, and the affordability restrictions. The mortgage grants to the County a security interest in the building, fixtures, machinery, etc. Since the project sits upon property leased to the developer, the document is a leasehold mortgage instead of a mortgage. *The Commissioners do not need to sign this document.*

If you have any questions or need additional information, please feel free to ask.



## **MASTER SUBORDINATION AGREEMENT**

### **Property Address:**

41 Spring Bars Road  
Falmouth, Massachusetts

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This Master Subordination Agreement (this "Agreement") is made as of the \_\_\_\_\_ day of May, 2019 by and among Citizens Bank, having an address at 20 Cabot Road, Medford, MA 02155 (the "Senior Lender"); The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, 100 Cambridge Street, Suite 300, Boston, Massachusetts 02114 (the "Agent Lender"), for itself and as agent for the following lenders: Massachusetts Housing Partnership Fund Board, a Massachusetts public instrumentality and body politic and corporate, with an office at 160 Federal Street, 2nd Floor, Boston, Massachusetts 02110 ("MHP"); The Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development under the Affordable Housing Trust Fund Statute, M.G.L. c. 121D, by the Massachusetts Housing Finance Agency ("MHFA"), as Administrator, having an address at One Beacon Street, Boston, Massachusetts 02108 ("AHT"); Community Economic Development Assistance Corporation, a body politic and corporate, duly organized and existing in accordance with Chapter 40H of the Massachusetts General Laws with an office at 18 Tremont Street, Suite 500, Boston, Massachusetts 02108 ("CEDAC"); the Town of Falmouth, Massachusetts, acting by and through its Affordable Housing Trust, having an address at 59 Town Hall Square, Falmouth, Massachusetts 02540 (the "Town"); and Massachusetts Housing Partnership Fund Board, having a mailing address of 160 Federal Street, Boston, Massachusetts 02110, as agent for The Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development under the Housing Stabilization and Investment Trust Fund Statute, M.G.L. c. 121F ("HSITF") (the foregoing lenders, together with the Agent Lender, collectively the "Participating Lenders"); Barnstable County, acting by and through its County Commissioners, having an address at 3195 Main Street, P.O. Box 427, Barnstable, Massachusetts 02630 (the "County"), Affirmative Investments, Inc., a Massachusetts corporation having an address at 33 Union Street, Unit

2, Boston, Massachusetts 02108 (the "Developer"); Falmouth Housing Corporation, a Massachusetts non-profit corporation, having an address at 704 Main Street, Massachusetts 02540 (the "Sponsor"); and Little Pond Place, LLC, a Massachusetts limited liability company, having an address at 33 Union Street, Unit 2, Boston, Massachusetts 02108 (the "Borrower"). The Senior Lender, the Participating Lenders, the County, the Developer and the Sponsor are each referred to as a Lender and collectively are referred to as the "Lenders".

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## **BACKGROUND**

- A. The Borrower is the owner or ground lessee of certain real property and improvements thereon as more particularly described on Exhibit A (the "Property").
- B. The Borrower is obtaining financing from the Lenders to construct at the Property 40 units of housing of which not less than 40 units will be affordable housing (the "Project"), as more fully set forth in the Massdocs Affordable Housing Restriction (defined below) between the Borrower and the Participating Lenders of contemporaneous date herewith.
- C. The Senior Lender has agreed to provide a construction loan to the Borrower for the Project in the original principal amount of Eight Million Five Hundred Thousand Dollars (\$8,500,000.00) (the "Senior Loan"). The Senior Loan is evidenced and secured by the following documents, each of even date herewith: (a) a Promissory Note in the amount of the Senior Loan (the "Senior Note"), (b) a Construction Loan Agreement, (c) a first priority Mortgage and Security Agreement and Assignment of Leases and Rents encumbering the Property (the "Senior Mortgage"), recorded with the Barnstable Registry of Deeds (the "Registry") herewith, and (d) such other instruments as may be required by the Senior Lender (all such instruments being hereinafter collectively referred to as the "Senior Loan Documents").
- D. The Participating Lenders have agreed to provide a subordinate loan in the aggregate amount of \$3,635,000.00 to the Borrower for the Project comprised of the \$550,000.00 loan from the Agent Lender to the Borrower under the HOME Program (the "DHCD HOME Loan"), the \$1,000,000.00 loan from AHT to the Borrower under the AHT Program (the "AHT Loan"), the \$355,000.00 loan from CEDAC to the Borrower under the CBH Program (the "CBH Loan"), the \$550,000.00 loan from MHP to the Borrower under the HSF Program (the "HSF Loan"), the \$430,000.00 loan from MHP to the Borrower under the CATNHP Program (the "CATNHP Loan"), and the \$750,000.00 loan from the Local AHT to the Borrower under the Falmouth

Affordable Housing Trust Program (the "Local AHT Loan") (the foregoing loans collectively the "Participating Lender Loan"). The Participating Lender Loan is evidenced and secured by the following documents, each of even date herewith: (a) six Promissory Notes in the amount of the DHCD HOME Loan, AHT Loan, CBH Loan, HSF Loan, CATNHP Loan and Local AHT Loan, respectively, (b) a Loan Agreement, (c) a Mortgage Security Agreement and Conditional Assignment of Leases and Rents recorded at the Registry herewith encumbering the Property (the "Participating Lender Mortgage"), and (d) such other documents as may be required by the Participating Lenders (all such instruments being hereinafter collectively referred to as the "Participating Lender Loan Documents").

- E. The County has agreed to provide a subordinate loan to the Borrower for the Project in the original principal amount of One Hundred Forty Thousand Dollars (\$140,000.00) (the "Barnstable HOME Loan"). The Barnstable HOME Loan is evidenced and secured by the following documents, each of even date herewith: (a) a Promissory Note in the amount of the Barnstable HOME Loan, (b) a Loan Agreement, (c) a Mortgage, Security Agreement and Assignment of Leases and Rents encumbering the Property, recorded in the Registry herewith (the "Barnstable HOME Mortgage"), and (d) such other instruments as may be required by the County (all such instruments being hereinafter collectively referred to as the "Barnstable HOME Loan Documents").
- F. The Sponsor has agreed to provide a subordinate loan to the Borrower for the Project in the original principal amount of One Million Five Hundred Eighty Thousand Dollars (\$1,580,000.00) (the "Sponsor State LIHTC Loan"). The Sponsor State LIHTC Loan is evidenced and secured by the following documents, each of even date herewith: (a) a Promissory Note in the amount of the Sponsor State LIHTC Loan, (b) a Loan Agreement, (c) a Mortgage, Security Agreement and Assignment of Leases and Rents encumbering the Property, recorded in the Registry herewith, and (d) such other instruments as may be required by the Developer (all such instruments being hereinafter collectively referred to as the "Sponsor State LIHTC Loan Documents"). **[Note: State credit lender still TBD.]**
- G. The Sponsor has agreed to provide a subordinate loan to the Borrower for the Project, in the principal amount of approximately Two Hundred and Five Thousand Dollars (\$205,000.00) (the "Sponsor Foundation Loan"), which loan is evidenced by a loan agreement by and between the Borrower and the Sponsor and secured by a Mortgage granted by the Borrower to the Sponsor (collectively, the "Sponsor State LIHTC Loan Documents").
- H. The Developer has agreed to provide a subordinate loan to the Borrower for the Project in the anticipated amount of Two Hundred Thousand Dollars (\$200,000.00) (the "Deferred Developer Fee Loan" and, together with the Sponsor State LIHTC Loan and the Sponsor Foundation Loan, the "Subordinate Loans"). The Deferred Developer Fee Loan is evidenced and secured by the following documents, each of even date herewith: (a) a Promissory Note in the amount of the Deferred Developer Fee Loan, (b) a Development Agreement, (c) a Mortgage encumbering the Property, recorded in the Registry herewith, and (d) such other instruments as may be required by the Developer (all such instruments being hereinafter collectively referred to as the "Deferred Developer Fee Loan Documents" and, together with

the Sponsor State LIHTC Loan Documents and the Sponsor Foundation Loan Documents, the "Subordinate Loan Documents."

- I. The Participating Lenders, the County, the Developer and Sponsor are collectively referred to as the "Junior Lenders". The Participating Lender Loan Documents, the Barnstable HOME Loan Documents and the Subordinate Loan Documents are collectively referred to as the "Junior Loan Documents."
- J. The Borrower has also granted to the Participating Lenders an affordable housing restriction (the "MassDocs Affordable Housing Restriction"), recorded with the Registry herewith, setting forth certain affordable housing restrictions, covenants and agreements with respect to the Property.
- K. The Borrower has also granted to the County an affordable housing restriction (the "HOME Affordable Housing Restriction" and, together with the MassDocs Affordable Housing Restriction, the "Affordable Housing Restriction"), recorded with the Registry herewith, setting forth certain affordable housing restrictions, covenants and agreements with respect to the Property.
- L. The Borrower is also entering into a Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants in favor of The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development (the "Regulatory Agreement") governing the low-income housing tax credits available to the Project under Section 42 of the United States Internal Revenue Code of 1986 as amended (the "Code") recorded with the Registry herewith.
- M. The Property is subject to and has the benefit of a comprehensive permit, issued by the Town of Falmouth, Massachusetts, acting by and through its Zoning Board of Appeals (the "Municipality") pursuant to M.G.L. c. 40B, §§ 20-23 (the "Act") and recorded with the Registry in Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Comprehensive Permit").
- N. The Regulatory Agreement includes a Chapter 40B Rider to Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants that contains provisions relating to the Act and the Comprehensive Permit (the "40B Rider").
- O. The Lenders wish to establish the relative priorities of (i) their respective notes, mortgages and assignments of rents, financing statements and agreements and the Affordable Housing Restriction with respect to the Property notwithstanding the order of recording of the Lenders' documents; (ii) their respective security interests with respect to the personal property and fixtures owned by the Borrower and used in connection with the Property; and (iii) rights arising from their respective loan documents (all the documents in the foregoing paragraphs, collectively, the "Loan Documents").

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## **AGREEMENTS**

Now, therefore, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the parties hereby mutually covenant and agree as follows:

**1. LENDERS' PRIORITY.**

- A.** Subject to the provisions of Section 1.G. below, the covenants and obligations of the Borrower under the Junior Loan Documents and the Affordable Housing Restriction shall be subordinate in all respects, including, without limitation, payment, lien and bankruptcy, to the covenants and obligations of the Borrower under the Senior Note and the Senior Loan Documents, subject to the terms of this Agreement. The Junior Loan Documents and the Affordable Housing Restriction and the liens created thereunder shall be subject and subordinate (i) to the lien created by, as well as to all of the terms, covenants and conditions contained in, each of the Senior Loan Documents; and (ii) to any and all advances secured by the Senior Loan Documents, whether prior to or subsequent to the execution and recording of the Junior Loan Documents, Affordable Housing Restriction, or of this Agreement, including, without limitation, any and all increases therein made or incurred with respect to principal (but only if such increases are made in accordance with this Agreement), interest and other charges payable to the Senior Lender and secured by the Senior Loan Documents or to preserve the Property or the priority of the lien of the Senior Mortgage, or the collection of any indebtedness secured by the Senior Loan Documents (all of the foregoing clauses (i) and (ii) are collectively referred to as the "Senior Debt"). In case of any inconsistency between the provisions of this Agreement and the provisions of the Loan Documents, the provisions of this Agreement shall govern.
- B.** Notwithstanding the order in which the various mortgages and documents evidencing the security interests granted by the Borrower to the Lenders have been or are hereafter recorded and/or perfected the order of priority of the Loan Documents and the obligations secured thereby is and shall be:
- First:               the Senior Loan
- Second:            the Participating Lender Loan and the Barnstable HOME Loan (in a shared pari passu position)
- Third:              the Subordinate Loans (in a shared pari passu position) **[CONFIRM]**
- C.** The Junior Lenders each agree that the Affordable Housing Restriction is senior to the Junior Loan Documents, but subordinate to the Senior Loan Documents; provided, however, that the Senior Lender agrees that the Affordable Housing Restriction shall not terminate if the Property is acquired through foreclosure or by deed in lieu of foreclosure by (i) the Borrower, (ii) any person with a direct or indirect financial interest in the Borrower, (iii) any person related to a person described in clause (ii) by blood, adoption or marriage, (iv) any person who is or at any time was a business associate of a person described in clause (ii), and (v) any entity in which any of the foregoing have a direct or indirect financial interest (each a "Related Party"). For the purposes of this paragraph, an affidavit, duly recorded and executed under the penalties of perjury, by any purchaser from the Senior Lender at a foreclosure sale or by deed in lieu of foreclosure, stating that such purchaser is not a Related Party and further that (x) such purchaser has notified the Participating Lenders, in writing, of the identity of such purchaser, and its organizational structure and ultimate beneficial owners on HUD Form 2530 or its equivalent, if

applicable, (y) a period of at least thirty (30) days has elapsed since such notice was given, and (z) the Senior Lender has not notified such purchaser that it has received written notice from the Participating Lenders that any of them has actual knowledge such purchaser is a Related Party, shall be conclusive evidence that such purchaser is not a Related Party, unless the Senior Lender itself has knowledge that such purchaser is a Related Party. Furthermore, if the Property is subsequently acquired by a Related Party during the period in which the Affordable Housing Restriction would have remained in effect but for the provisions of this Section, the Affordable Housing Restriction shall be revived and shall apply to the Property as though no lapse had occurred.

- D.** Subject to the provisions of Section 1.G. below, each of the Lenders agrees that notwithstanding any other provision to the contrary herein, the Affordable Housing Restriction shall terminate upon foreclosure or the grant of a deed in lieu of foreclosure only to the extent it is "financially infeasible" (as defined below) to maintain the level of affordability required by the Affordable Housing Restriction or some lesser level of affordability. Financial infeasibility shall be determined by the Senior Lender in its sole discretion, which determination shall be made by the Senior Lender during and in the context of the Senior Lender Standstill Period provided for in Section 4 below, provided, further that the Senior Lender may modify or change such determination from time to time both during and after the Senior Lender Standstill Period, and the Senior Lender shall promptly give written notice of such determination and any modification or change of such determination to the holders of the Affordable Housing Restriction. "Financially infeasible" shall mean (i) with respect to the operation of the Property, that the rent and other income from the Property is, or is reasonably projected to be, less than the reasonable expenses required (or reasonably projected to be required) to maintain and operate the Property and (ii) with respect to a sale of the Property, that the restrictions would prevent (or be reasonably projected to prevent) the Senior Lender from recovering all amounts due and owing with respect to its financing of the Property, including without limitation, principal, interest, charges, costs, expenses, late fees and prepayment premiums. With respect to the determination of financial infeasibility by the Senior Lender, a duly executed affidavit setting forth its determination of financial infeasibility shall be conclusive evidence of such determination.
- E.** Each of the Lenders agrees that, notwithstanding any provision to the contrary in the Loan Documents granted to it, the Affordable Housing Restriction and the Loan Documents of the other Lenders shall be a permitted encumbrance or permitted exception under its respective Loan Documents.
- F.** All Lenders will each make reasonable efforts to consult with the other Lenders as to matters affecting their rights as lien holders, except that no other Lender shall have any obligation to consult with the Sponsor or the Developer as to any matter concerning which, in its sole judgment, the Sponsor or the Developer may have a conflict of interest as sponsor of the Project.
- G.** Notwithstanding the foregoing, the restrictions required by the Comprehensive Permit, as well as the rights and remedies of the parties with respect thereto, shall not lapse and

shall apply to any mortgage holder or purchaser of Borrower's interest in the Property if the Borrower's interest in the Property is acquired through foreclosure or similar remedial action under the provisions of any mortgage or upon the conveyance of the Borrower's interest in lieu of foreclosure. Pursuant to the Comprehensive Permit, for so long as the Property is not in compliance with the established standards and requirements of the Municipality's zoning by-law, the Property shall be subject to the affordability requirements of the Comprehensive Permit and as set forth in the 40B Rider.

- H. The parties hereto agree to execute, deliver and record such instruments as may be reasonably necessary or desirable to evidence or effectuate the provisions of this Agreement.

## **2. PARI PASSU INTERESTS OF THE COUNTY AND THE PARTICIPATING LENDERS**

- A. the County and the Participating Lenders agree that, notwithstanding the order of recording of the Participating Lender Mortgage and the Barnstable HOME Mortgage and all related Junior Loan Documents granted by the Borrower to one or more of such Lenders, the Participating Lender Mortgage and the Barnstable HOME Mortgage shall be deemed to be of equal priority, to the same extent as if the Participating Lender Loan Documents and the Town Loan Documents were secured by a single mortgage granted jointly and severally to all of such Lenders.
- B. Subject to the limitations set forth in Section 6 below and provided that a Participating Lender or the Town has not received notice and is not otherwise aware of any Event of Default (as defined in Section 4 below) (continuing beyond any applicable notice or grace periods) outstanding under any of the Participating Lender Loan Documents or the Town Loan Documents, all payments received by any of the Participating Lenders or by the Town in accordance with the terms of their respective Loan Documents may be accepted and applied in accordance with the Loan Document pursuant to which such payments were made. All payments received by any Participating Lender or by the Town after such Participating Lender or the Town has received or otherwise becomes aware of an Event of Default (whether by the exercise of remedies or otherwise) or as a result of a voluntary prepayment, eminent domain award or casualty proceeds (not applied to restoration of the Property and continuation of the Project in compliance with the Affordable Housing Restriction), or other payment not made in the ordinary course of business, shall be held in trust for the benefit of all of the Participating Lenders and for the Town and shall be disbursed to them on a pro rata basis, determined in accordance with the ratio of the total amount of principal and accrued interest then owed to each of them to the total aggregate amount of principal and accrued interest then owed to all of them. Notwithstanding the foregoing, all payments received by any of the Participating Lenders or by the Town shall be applied only in a manner consistent with the HOME regulations promulgated at 24 C.F.R. Part 92.
- C. The Participating Lenders and the Town will each make reasonable efforts to consult with the other Lenders as to matters affecting their rights as lien holders. Each Participating Lender and the Town will execute, deliver and record such additional instruments as may be necessary or desirable from time to time in order to effectuate the provisions of this

Section 2.

**3. INSURANCE PROCEEDS/CONDEMNATION AWARDS/TAX AND INSURANCE ESCROWS AND RESERVES.**

Each Junior Lender, its successors or assigns or any other legal holder of the Junior Lenders' mortgages, hereby agrees to and does subordinate unto the legal holder(s) of the Senior Mortgage:

- A.** All of its right, title, interest or claim, if any, up to the amount of the Senior Debt, in and to the proceeds of all policies of insurance covering the Property, for application towards the restoration of the Property (if all conditions precedent thereto under the Senior Loan Documents are met) or to the indebtedness secured thereby;
- B.** All of its right, title and interest or claim, if any, up to the amount of the Senior Debt, in and to all awards or other compensation made for any taking of any part of the Property, for application toward the restoration of the Property (if all conditions precedent thereto under the Senior Loan Documents are met) or to the indebtedness secured thereby; and
- C.** All of its right, title and interest or claim, if any, up to the amount of the Senior Debt, in and to any and all sums in tax and insurance escrows and reserve accounts held for or in the name of the Borrower respecting the Property, for application toward the purposes for which such reserves or escrows were collected; provided that the same shall be applied in all cases in accordance with the provisions of the Senior Loan Documents.

Notwithstanding any provision to the contrary in the Senior Loan Documents, the Senior Lender hereby agrees that in the event of a casualty or condemnation affecting the Property, the Senior Lender shall consent to the application of any insurance proceeds or condemnation awards to the restoration of the Property if all of the following conditions are met: (i) sufficient insurance proceeds or condemnation awards are available and/or the Borrower deposits with the Senior Lender sufficient funds to pay the entire cost of repair, restoration, rebuilding or replacement as estimated by the Borrower and approved by the Senior Lender, such approval not to be unreasonably withheld; (ii) the Senior Lender approves in advance plans and schedule for such repair, restoration, rebuilding or replacement, such approval not to be unreasonably withheld; (iii) the insurance proceeds or condemnation awards, together with the Borrower's additional funds, if any, are held by the Senior Lender and disbursed pursuant to customary construction disbursement procedures as work is completed; (iv) the Borrower obtains such payment and performance bonds as are required by the Senior Lender; (v) the Borrower delivers to the Senior Lender an assignments of each contract for repair and a consent to each such assignment by the relevant contractor; and (vi) the Senior Lender determines that the fair market value of the Property after repair will be not less than its fair market value immediately prior to the casualty or condemnation. In the event that, following the application and disposition of the insurance proceeds and condemnation award and other funds in accordance with the above, any balance remains, then such excess shall be made payable to the Junior Lenders in the order and manner set forth in Sections 1.1.B. and 2.2.B. hereof and/or to such other persons legally entitled to the same.

**4. DEFAULT AND FORECLOSURE.** So long as any indebtedness to more than one Lender remains outstanding, each Lender shall provide to all other Lenders written notice of any "Event of

Default" as defined in the applicable loan documents of such Lender except that no such notice shall be required to be given by the other Lenders to the Sponsor or the Developer.

No Junior Lender shall take possession of the Property (except in the event of an emergency in order to protect the value thereof as collateral), commence any proceeding to foreclose its respective mortgage, whether by sale, possession or otherwise, or to accept any assignment or transfer in lieu of foreclosure or exercise any rights against any guarantor unless there has been an "Event of Default" as defined in its respective Loan Documents, and then not without first providing the Senior Lender and the other Lenders (except the Sponsor or the Developer) with written notice of any such Junior Lender's intent to commence such proceedings or to take such action and a reasonable opportunity, not less than sixty (60) days after receipt of such notice, to attempt to structure a work-out or other arrangement to avoid such foreclosure, assignment, transfer, or exercise of rights to the reasonable satisfaction of such Junior Lender. If, upon expiration of the foregoing sixty (60)-day period, the Lenders (other than the Sponsor or the Developer) have not agreed upon a work-out or other arrangement to avoid foreclosure, assignment, transfer or exercise of rights and such Junior Lender intends to take possession of the Project, such Junior Lender shall first provide to the Senior Lender for its review and approval a plan for the completion and operation of the Project, such approval not to be unreasonably withheld. Senior Lender agrees to respond to such plan within fourteen (14) days of receipt, provided, however, that failure to respond within fourteen (14) days shall not be deemed approval by Senior Lender. Notwithstanding the foregoing, if the Senior Lender elects by notice to the Junior Lenders and is diligently proceeding to either cure the "Event of Default" under such Junior Lender's Loan Documents or foreclose its mortgage, such Junior Lender shall suspend any and all action to foreclose its mortgage. Notwithstanding the other provisions of this Section 4, neither the Sponsor nor the Developer shall commence any proceeding to foreclose its mortgage, whether in the event of default or upon maturity, and whether by sale, possession, or otherwise or accept any assignment or transfer in lieu of foreclosure without the written consent of the other Lenders, which consent may be withheld in their sole discretion.

The Senior Lender shall not foreclose the Senior Mortgage whether by sale, possession or otherwise or accept any assignment or transfer in place of foreclosure unless there has been an "Event of Default" as defined in the Senior Mortgage or in the Senior Loan Documents, and then not without first providing the Junior Lenders (except the Sponsor or the Developer) with written notice of the Senior Lender's intent to commence such proceedings or to take such action and a reasonable opportunity, not less than sixty (60) days after receipt of such notice (the "Senior Lender Standstill Period"), to effect a cure, work-out or other arrangement to avoid such foreclosure, assignment or transfer, to the reasonable satisfaction of the Senior Lender. Nothing contained in this paragraph shall limit the rights of the Senior Lender to exercise rights and remedies under its Loan Documents within the Senior Lender Standstill Period, other than the commencement of any proceedings to foreclose the Senior Mortgage, whether by sale, possession or otherwise, or the acceptance of an assignment or transfer in lieu of foreclosure.

In the event Senior Lender conducts a foreclosure or other proceeding to enforce its rights under the Senior Mortgage and terminates the Affordable Housing Restriction in whole or in part and the Property is sold for a price in excess of the sum of the outstanding principal balances of all notes secured by mortgages on the Property plus all future advances, accrued interest and all reasonable

costs and expenses which the Senior Lender is entitled to recover pursuant to the terms of the Senior Mortgage, such excess shall be paid to the Participating Lenders and to the County (in the manner set forth in Sections 1.1.B. and 2.2.B. above) in consideration of the loss of the value and benefit of the rights and restrictions contained in the Affordable Housing Restriction and terminated in connection with such proceeding, provided, however, that prior to the payment of such excess by the Senior Lender to the Participating Lenders and to the County, the Participating Lenders and the County shall indemnify and hold harmless the Senior Lender, as the case may be, from and against any loss, cost or damage that it may suffer as a result of a claim made on account of the payment of such excess to the Participating Lenders and to the County, the Senior Lender agreeing to give the Participating Lenders and the County prompt notice of any such claim and agreeing not to object to the intervention by the Participating Lenders or the County in any proceeding relating thereto. To the extent that the Borrower possesses any interest in any amount which would otherwise be payable to the Participating Lenders or to the County under this paragraph, to the full extent permissible by law, the Borrower hereby assigns its interest in such amount to the Participating Lenders and to the County.

The failure to send any notices under this section shall not affect the validity of any notice given to the Borrower or otherwise affect foreclosure proceedings or the exercise of any remedies by any Lender, or the validity of this Agreement.

No provision hereof shall be construed to limit the right of any of the Participating Lenders to take action against the Borrower to enforce any of the Affordable Housing Restriction (such as, but not limited to, injunctive relief), provided that such action shall not include acting as mortgagee in possession, accepting a deed in lieu of foreclosure, or commencing foreclosure proceedings, or in any other way affecting the priority of payments due to the Senior Lender or the collateral granted to it as security, except in accordance with the provisions of this Agreement.

Each Junior Lender agrees that its Junior Loan Documents shall not include provisions pursuant to which a default or Event of Default would arise thereunder solely by reason of a default or Event of Default occurring under a loan from such Junior Lender to the Borrower that is unrelated to the acquisition, development or operation of the Property and is not secured by the Property (a "Cross-Default Provision") and if any Cross-Default Provision is included in such Junior Lender's Junior Loan Documents, such Cross-Default Provision shall be null and void.

The Senior Lender agrees that if a default or Event of Default arises under the Senior Loan Documents solely because of a breach of a Cross-Default Provision, unless and until an independent default or Event of Default arises under the Senior Loan Documents (that is, as a result of a breach of covenant, warranty or representation other than a Cross-Default Provision), the Senior Lender shall (i) use reasonable efforts to notify the Junior Lenders of the breach of the Cross-Default Provision and (ii) refrain from exercising any remedy under the Senior Loan Documents on account of such default or Event of Default unless all of the Junior Lenders have consented in writing to such exercise, such consent not to be unreasonably withheld or delayed.

**5. LOAN INCREASES.** The Junior Lenders agree that if (i) an Event of Default has occurred under the Senior Note and the Senior Lender elects to convert unpaid and unaccrued interest under the Senior Note to additional principal due thereunder; or (ii) the Senior Lender has reasonably determined that it is necessary to advance additional funds to make reasonably necessary repairs or to prevent the occurrence of serious physical harm to the Property; (iii) the Senior Lender has

reasonably incurred expenses to protect its interest in the Property, and as a result after notice to the other Lenders, the Senior Lender increases the amount of the Senior Loan by such amount(s), the Junior Lenders will execute such additional documents as the Senior Lender deems reasonably necessary to be assured that the Junior Loan Documents and the Borrower's obligations thereunder are subordinate to the Senior Loan Documents as they may be increased and/or amended for purposes set forth herein.

Similarly, the Junior Lenders agree that if a Junior Lender (other than the Sponsor or the Developer) increases the amount of its loan for any of the above-described reasons, the other Junior Lenders will execute such additional documents as may be reasonably necessary to ensure that the Junior Lender Loan Documents remain pari passu after such increase, and that the Subordinate Loan Documents remain subordinate to the Participating Lender Loan Documents and the Barnstable HOME Loan Documents, as they may be increased and/or amended for purposes set forth herein, remain in the same order of priority as is set forth in Section 1.B. above.

**6. SUBORDINATION OF PAYMENTS.** The Junior Lenders agree that, except upon the maturity date of any Junior Loan (other than the Subordinate Loans) and except for certain required repayments from Excess Principal Advances (as defined in the Promissory Note evidencing the AHT Loan) or from Gross Cash Receipts (as defined in the Promissory Note evidencing the CBH Loan), no payments, prepayments or other distributions will be paid or payable under the terms of the Junior Loan Documents from the income of the Borrower and/or the Property unless at the time of such payment, prepayment or distribution, the income generated by the Borrower and/or the Property, as demonstrated by the Borrower's audited or certified financial statements, is sufficient to pay in a timely manner (i) all operating expenses necessary to operate properly the Property in accordance with the budget most recently approved by the Senior Lender, (ii) required contributions to reserves for replacements under the Senior Loan Documents or the Loan Documents of any Lender equal in priority, and (iii) all amounts due and payable under the Senior Loan Documents. The Sponsor and the Developer further agrees that each shall receive only payments from the Borrower that are due under the Subordinate Loan Documents approved by the other Lenders in accordance with their terms, and under no circumstances will the Sponsor or the Developer accept a prepayment from the Borrower. Upon the occurrence of an Event of Default under the Senior Loan Documents, as determined by the Senior Lender and as set forth in writing to the Junior Lenders, no payments will be accepted under the Junior Loan Documents without the prior written consent of the Senior Lender, subject to Section 4 hereof. In the event the Junior Lenders receive any payments or other distributions of any kind from the Borrower or from any source whatsoever in respect to the Junior Loan Documents after receipt of notice of such an Event of Default, other than as permitted above, such payments or other distributions shall be received in trust and the Junior Lenders receiving such payments or distributions shall make all good faith efforts to see that such payments or distributions are promptly forwarded to the Senior Lender. Upon the occurrence of an Event of Default under the Participating Lender Loan Documents, as determined by such Lender(s) and as set forth in writing to the Sponsor and the Developer, no payments will be accepted under the Subordinate Loans without prior written consent of such Lender(s).

**7. LENDER AMENDMENTS.** Except as otherwise provided in Section 4 herein, no Junior Lender shall modify or amend its respective Loan Documents in any material manner without the prior written

consent of the Senior Lender and the Participating Lenders, which consents shall not be unreasonably withheld or delayed. The Senior Loan Documents shall not be modified or amended in a material manner that adversely affects the Junior Lenders' interests without the prior written consents of the Junior Lenders, which consents shall not be unreasonably withheld or delayed.

**8. BANKRUPTCY.** No Junior Lender shall, without the prior written consent of the Senior Lender and the Participating Lenders, commence or join with any other creditor in commencing any bankruptcy, reorganization or insolvency proceedings with respect to the Borrower.

**9. ASSIGNMENT TO MHP.** The parties hereto acknowledge and agree that the Senior Lender has entered into an agreement pursuant to which the Senior Lender intends to assign the Senior Loan to MHP by its endorsement of the Senior Note to the order of MHP and the assignment of the other Senior Loan Documents to MHP (the "Assignment"). At the time of the Assignment, the amount of the Senior Loan shall be Two Million Three Hundred Thousand Dollars (\$2,300,000.00) and MHP shall succeed to the rights and priorities of the Senior Lender under this Agreement. Also, at the time of the Assignment, MHP shall become a "Holder" as such term is defined in the Affordable Housing Restriction in its capacity as Senior Lender and Affordable Housing Restriction shall thereafter be considered a Senior Loan Document. The Affordable Housing Restriction shall thereafter be senior to the Senior Mortgage in accordance with the provisions of Section 21.D. of the Affordable Housing Restriction. The Junior Lenders agree that, effective as of the Assignment, the Junior Loan Documents (if not discharged as of the date of the Assignment) are and shall be subject to the terms of this Agreement, subordinate to the Senior Loan Documents to the extent of the remaining principal balance thereof and to the same extent as if the Senior Loan Documents had been executed, delivered and recorded, as applicable, prior to the execution, recording and delivery of the Junior Loan Documents. The Junior Lenders agree to execute, acknowledge and deliver to MHP such additional assurances of the subordination of each of the Junior Loan Documents to the Senior Loan Documents, as MHP may require, provided they are consistent with the terms of this Agreement.

**10. NOTICES.** Except for any notice required under applicable law to be given in a different manner, any notice, request or other communication which any 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, if sent by recognized overnight courier, receipt confirmed, or if mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their respective addresses first set forth above, or to 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 any of the forgoing methods shall be deemed given upon documented receipt or refusal.

**11. TERMINATION OF AGREEMENT.** The relative priorities of each Lender, as set forth herein, and the rights of each Lender, as provided hereunder, are applicable and available to that Lender only until the repayment of the obligations of the Borrower to that Lender which are subject to this Agreement and the expiration of the provisions of the Affordable Housing Restriction granted for the benefit of such Lender. Upon the repayment in full of such obligations and expiration of such Affordable Housing Restriction, that Lender shall no longer be a party hereunder, and the various relative priorities included above shall be deemed amended by the deletion of that (former) Lender herefrom, except that in the event that such (former) Lender is required, pursuant to Section 547 of

the Bankruptcy Reform Act of 1978 or a successor provision, to repay any amount paid to that (former) Lender by the Borrower in satisfaction of such liabilities, then such Lender shall be deemed a party hereto entitled to all benefits hereunder to the extent that the proceeds of the collateral are thereafter distributed pursuant hereto.

**12. LOAN DISBURSEMENTS.**

- A.** Each advance of proceeds under each Lender’s Loan (“Advance”) shall be made on the basis of a requisition (“Requisition”) submitted by the Borrower to the Lender from whom such Advance is being requested (the “Disbursing Lender”), with a copy of the Requisition sent simultaneously to the other Lenders. To the extent that the Requisition requests an Advance to pay for any construction work or other so-called “hard costs”, such work and all invoices therefore shall also be inspected by the Lenders’ construction consultants.
- B.** Each Requisition shall be in the form required under the Disbursing Lender’s Loan Documents. The Disbursing Lender shall review the Requisition to determine that such Requisition conforms to the requirements of the Disbursing Lender’s Loan Documents, and the other Lenders shall each review the Requisition to determine that such Requisition is consistent with the Project’s construction budget and timeline, and to ensure that nothing has come to the attention of the Disbursing Lender and to the other Lenders which would justify a refusal of the Requisition. Each Lender’s construction consultant shall be given notice of and shall have the right to attend all construction progress meetings and shall have the right to receive copies of all revised plans and change orders during the course of construction. As part of such review, each Lender shall also have the right to have such Lender’s own construction consultant inspect the construction work and the Requisition.
- C.** The Lenders shall cooperate in making disbursements of proceeds from their respective Loans to the Borrower by (i) using the AIA requisition forms or other common requisition forms acceptable to the Lenders and similar requisition/disbursement procedures; (ii) sharing all information derived from construction progress inspections, subject to the provisions of any separate disbursement agreement among the Lenders or any of them; and (iii) using good faith efforts to approve (or disapprove) within ten (10) business days after receipt of a fully executed copy of each Requisition, the disbursement of funds under any Loan to the Project. Notwithstanding any of the foregoing provisions of this Section 12 to the contrary, nothing in this Agreement shall be deemed to preclude each Lender from making its own independent determination as to making or refusing to make an Advance to the Borrower under the terms of that Lender’s separate agreement or agreements with the Borrower. Further, nothing in this Section 12 shall preclude a Lender from making an Advance of its own Loan proceeds to the Borrower from its own funds in response to a Requisition from the Borrower, notwithstanding the disapproval or objection by another Lender; provided that the Borrower acknowledges and agrees that the disapproving or objecting Lender(s) reserve their respective rights to withhold any further disbursements of their respective proceeds in accordance with the terms of their respective loan documents.

- D.** If no disapproval is given within the ten (10) business day period referred to above in preceding subsection C., then the Disbursing Lender may proceed to disburse funds, without prejudice to the right of any other Lender to subsequently disapprove in connection with its own Advances. In the event of disapproval, the disapproving Lender, shall specify in writing the reasons for disapproval and shall promptly forward such written disapproval to the other Lenders and the Borrower. Further, in the event of disapproval pursuant to clause (iii) in the preceding subsection C., the Borrower agrees to hold the Lender or Lenders to whom the Requisition was made harmless from any liability of any nature whatsoever arising out of such disapproval by any other Lender. If (x) a Lender objects to any Requisition and/or (y) a Requisition is revised to reflect the objections of a Lender, the Borrower will be responsible for forwarding to each Lender copies of the reasons cited for the objection, as well as the modified Requisition.
- E.** Upon the objection or disapproval of any Lender to a Requisition from the Borrower, the Borrower and the Lenders agree to seek in good faith a resolution of the reasons for the objection or disapproval. Notwithstanding any of the foregoing provisions of this Section 12 to the contrary, nothing in this Agreement shall be deemed to preclude each Lender from making its own independent determination as to making or refusing to make an Advance to the Borrower under the terms of that Lender's separate agreement or agreements with the Borrower. Further, nothing in this Section 12 shall preclude a Lender from making an Advance of its own Loan proceeds to the Borrower from its own funds in response to a Requisition from the Borrower, notwithstanding the disapproval or objection by another Lender; provided that the Borrower acknowledges and agrees that the disapproving or objecting Lender(s) reserve their respective rights to withhold any further disbursements of their respective proceeds in accordance with the terms of their respective agreements.
- F.** If the Borrower seeks additional funding from any Lender or approval from any Lender for any material revision to the Borrower's budget (each, a "Budget Revision"), the Borrower shall submit copies of the request for Budget Revision to all Lenders, and no Budget Revision shall be permitted without the written consent of all Lenders (other than the Sponsor or the Developer). The Lenders (other than the Sponsor or the Developer) agree that they shall consult each other in good faith within ten (10) business days of receipt of a request for a Budget Revision to determine whether to approve or disapprove of such Budget Revision. If verbal or written approval of the Budget Revision is given by the other Lenders, then the Borrower may make the Budget Revision. In the event of disapproval by any Lender of a request for a Budget Revision, the disapproving Lender shall specify in writing the reasons for disapproval and shall promptly forward such written disapproval to the other Lenders and the Borrower (the "Budget Disapproval Notice"). Upon the disapproval of any Lender to a request for Budget Revision from the Borrower, the Borrower and the Lenders agree to seek in good faith a resolution of the reasons for disapproval. If the Borrower and the Lenders are unable to agree in good faith upon a resolution of the reasons for disapproval of the requested Budget Revision within ten (10) business days of receipt of the Budget Disapproval Notice, then the requested Budget Revision shall not be made.

**13. SHARING OF EXCESS PRINCIPAL ADVANCES.** Each of the Participating Lenders' Promissory Notes contains a provision with respect to repayment of Excess Principal Advances (as defined therein). Repayments of Excess Principal Advances shall be shared pro rata by the Participating Lenders in accordance with the ratio of the outstanding principal amount owed to each of them to the total aggregate outstanding principal balance owed to all/both of them. For purposes of the foregoing sharing formula, at the election of the Undersecretary of the Massachusetts Department of Housing and Community Development, the outstanding principal amount of the HOME Loan shall be deemed to include the aggregate amount of tax credit equity invested in or loaned to Borrower.

**14. SHARING OF NET CASH FLOW.** Some or all of the Participating Lenders' Promissory Notes contain a provision requiring payments to the extent of 50% of the amount by which Gross Cash Receipts exceed Gross Cash Expenditures (both as defined therein) (the "Cash Flow Notes"). Such payments shall be allocated pro rata among the Cash Flow Notes in accordance with the ratio of the outstanding principal amount under each Cash Flow Note to the total aggregate outstanding principal balance under all Cash Flow Notes. For purposes of the foregoing sharing formula, at the election of the Undersecretary of the Massachusetts Department of Housing and Community Development, the outstanding principal amount under the HOME Note shall be deemed to include the aggregate amount of tax credit equity invested in or loaned to Borrower.

**15. REPLACEMENT LOAN.** The Participating Lenders hereby acknowledge and agree that the Senior Loan will mature prior to the maturity date of the Junior Loans. Provided the conditions enumerated below are met, the Junior Lenders will consent to a refinancing of the Senior Loan on its maturity date by a new permanent loan in an amount equal to the sum of the then outstanding principal balance of the Senior Loan plus reasonable closing costs plus funds to address necessary capital improvements as approved by the Junior Lenders (the "Refinanced Permanent Loan"):

- A.** Borrower shall notify each of the Participating Lenders separately with the proposed terms of such new loan not less than sixty (60) days prior to such refinancing;
- B.** Such loan shall have a minimum term of fifteen (15) years and a minimum amortization period of twenty (20) years;
- C.** The interest rate of such loan shall be fixed for the entire term at a then-competitive and commercially reasonable rate of interest;
- D.** Borrower shall be in compliance with all terms and conditions set forth in the Participating Lender Loan Documents, including but not limited to requirements of the Affordable Housing Restriction;
- E.** Borrower shall provide evidence to each of the Participating Lenders separately that the proceeds of such Refinanced Permanent Loan inure only to the benefit of the Project, such evidence to be satisfactory to Participating Lenders in such lenders' sole discretion;
- F.** The lien position of the Participating Lender Loan shall not be lower than as set forth in Section 1.B;
- G.** Borrower shall have provided to the Participating Lenders an updated cash flow analysis, a copy of the commitment letter or term sheet for the Refinanced Permanent Loan and other requested documentation at least thirty (30) days prior to such refinancing;

- H.** Borrower shall pay to the Participating Lenders a reasonable transaction fee in an amount to be determined by the Participating Lenders and reimburse the Participating Lenders for legal fees incurred by the Participating Lenders in connection with the closing of the Refinanced Permanent Loan;
- I.** Borrower must be current on all Participating Lender reporting requirements including but not limited to provision of the most recent audited and management-prepared financial statements and evidence of current insurance coverage;
- J.** Borrower may not use the proceeds of the Refinanced Permanent Loan to pay off or make partial repayments of any loans subordinate to the Participating Lender Loan or to make a distribution to any beneficial owner of Borrower without specific additional consent by the Participating Lenders.

The holder of the Senior Loan at such time shall have the option of assigning its rights hereunder to a lender making such Refinanced Permanent Loan (a "Replacement Lender") and such Replacement Lender, upon accepting such assignment in a written instrument delivered to the Junior Lenders, shall be entitled to all of the rights and shall be subject to all of the obligations of a Senior Lender hereunder. The Junior Lenders agree (x) that the mortgages securing the Junior Loans shall be and remain subordinate in all respects to any executed and recorded document(s) securing the Replacement Loan, (y) that this Agreement shall remain in full force and effect, with the Refinanced Permanent Loan assuming the position of the Senior Loan under this Agreement and (z) upon request of the Replacement Lender, to execute reasonable documentation confirming the subordination of their respective loans to the Refinanced Permanent Loan on the same terms and conditions as set forth in this Agreement.

**16. MISCELLANEOUS.** This Agreement shall be governed by the laws of The Commonwealth of Massachusetts and shall inure to the benefit of, and be binding upon, the undersigned and their respective successors and assigns. The provisions of this Agreement are intended solely for the purpose of defining the relative rights of the parties and no relationship of partnership, joint venture or other joint enterprise shall be deemed to be created hereby by and among the Lenders or any of them. This Agreement shall remain in effect so long as the Loan Documents given to at least two Lenders hereunder remain outstanding. Nothing contained herein is intended to or shall impair the obligations of the Borrower to any Lender or to make the Borrower a third party beneficiary hereof, and no violation of any of the provisions hereof by any Lender shall constitute a defense for, or confer any other rights upon, the Borrower. Except as otherwise expressly provided herein, the rights of the parties to enforce the provisions of this Agreement shall not at any time be prejudiced or impaired (i) by any act or failure to act on the part of any of the parties, including, without limitation, any forbearance, waiver, consent, compromise, amendment, extension or renewal with respect to the Borrower's obligations to a party or any taking or release of or failure to protect or preserve any property of the Borrower, or (ii) by noncompliance by the Borrower with the terms of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**17. LOW INCOME HOUSING TAX CREDIT REGULATORY AGREEMENT.** Each Lender hereby consents to the recording at the Registry of the Regulatory Agreement. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Lender agrees that

if such Lender or any successor or assign of such Lender, ever succeeds to or acquires all or any part of Borrower's interest in the Project, such Lender and any successor or assign of such Lender shall be bound by the terms and conditions of Section 42(h)(6)(E)(ii) of the Code that, during the three-year period following the termination of the Regulatory Agreement as the result of the Lender or any successor or assign of such Lender succeeding to or acquiring such interest by foreclosure or deed in lieu of foreclosure, such Lender and its successors and assigns shall not evict or terminate the tenancy (other than for good cause) of an existing tenant of any low income unit in the Project nor increase the gross rent with respect to any such unit unless otherwise permitted under Section 42 of the Code.

*[SIGNATURES ON NEXT PAGE]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as a sealed instrument under Massachusetts law, as of the date and year first above written.

SENIOR LENDER:  
CITIZENS BANK, NA

BY:

\_\_\_\_\_  
Name: Eugene J. Clerkin

Title: Senior Vice President, Community Development Lending

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of May, 2019, before me, the undersigned notary public, personally appeared Eugene J. Clerkin, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, as Senior Vice President of Citizens Bank, NA, for its stated purpose as the voluntary act of Citizens Bank, NA.

\_\_\_\_\_  
Notary Public

My commission expires:

AGENT LENDER:

THE COMMONWEALTH OF MASSACHUSETTS ACTING BY AND THROUGH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

By:

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

Title:

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of May, 2019, before me, the undersigned notary public, personally appeared \_\_\_\_\_ of the Department of Housing and Community Development ("DHCD"), proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, as \_\_\_\_\_ of DHCD, a Department duly organized and existing pursuant to Massachusetts General Laws Chapter 23B as amended by Chapter 19 of the Acts of 2007, for its stated purpose as the voluntary act of DHCD.

\_\_\_\_\_  
Notary Public

My commission expires:

COUNTY:  
BARNSTABLE COUNTY

BY:

\_\_\_\_\_  
Name: Ronald Bergstrom, Chair  
Title: Barnstable County Commissioner

BY:

\_\_\_\_\_  
Name: Mary Pat Flynn  
Title: Barnstable County Commissioner

BY:

\_\_\_\_\_  
Name: Ronald R. Beaty  
Title: Barnstable County Commissioner

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of May, 2019, before me, the undersigned notary public, personally appeared \_\_\_\_\_,  
and \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that each signed it voluntarily, as Barnstable County Commissioners, for its stated purpose as the voluntary act of Barnstable County.

\_\_\_\_\_  
Notary Public

My commission expires:

DEVELOPER:  
AFFIRMATIVE INVESTMENTS, INC.

By:

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

Title:

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of May, 2019, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, as \_\_\_\_\_ of Affirmative Investments, Inc., for its stated purpose as the voluntary act of Affirmative Investments, Inc.

\_\_\_\_\_  
Notary Public

My commission expires:

SPONSOR:  
FALMOUTH HOUSING CORPORATION

\_\_\_\_\_

By:

\_\_\_\_\_

Name:

Title:

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of May, 2019, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, as \_\_\_\_\_ of Falmouth Housing Corporation, for its stated purpose as the voluntary act of Falmouth Housing Corporation.

\_\_\_\_\_

Notary Public

My commission expires:

BORROWER:  
**LITTLE POND PLACE, LLC**

By: LITTLE POND PLACE MANAGER, LLC, its Managing Member

By: \_\_\_\_\_  
Name:  
Title:

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of May, 2019, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, as \_\_\_\_\_ of Little Pond Place Manager, LLC, for its stated purpose as the voluntary act of Little Pond Place, LLC.

\_\_\_\_\_  
Notary Public  
My commission expires:

**EXHIBIT A: LEGAL DESCRIPTION**

41 Spring Bars Road, Falmouth, Massachusetts

The land with all improvements thereon located in Falmouth, Barnstable County, Massachusetts, shown as Lot 1 on a plan entitled “Plan of Land prepared for Three Hundred Committee in Teaticket, Falmouth, MA, Scale: 1”=50’, Date: March 29, 2019”, prepared by Holmes and McGrath, Inc., which plan is recorded with the Barnstable County Registry of Deeds in Plan Book 679, Page 75. Said Lot 1 is comprised of 11.39+ acres according to said plan.



## **LENDER ADVISOR AGREEMENT**

This Lender Advisor Agreement (this "Agreement"), is made and entered into as of the \_\_\_\_ day of May, 2019, among Newbanks, Inc., with an address at 614 Nashua Street, Suite 215, Milford, New Hampshire 03055 (the "Advisor"), Citizens Bank, NA, with an address at 20 Cabot Road, Medford, Massachusetts 02155 (the "Construction Lender"), Massachusetts Housing Partnership Fund Board, with an address at 160 Federal Street, Suite 2, Boston, Massachusetts 02110 (the "Permanent Lender"), Barnstable County, with an address at 3195 Main Street, P.O. Box 427, Barnstable, Massachusetts 02630 (the "Barnstable HOME Lender"), CREA Little Pond Place, LLC with an address at c/o CREA, LLC, 30 South Meridian Street, Suite 400, Indianapolis, Indiana 46204 (the "Investor"), The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development (the "Agent"), acting on its own behalf and as agent for the following lenders: Massachusetts Housing Partnership Fund Board, The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development under the Affordable Housing Trust Fund Statute, M.G.L. c. 121D, by its administrator Massachusetts Housing Finance Agency, the Community Economic Development Assistance Corporation, the Town of Falmouth, Massachusetts, acting by and through its Affordable Housing Trust, and Massachusetts Housing Partnership Fund Board, as agent for The Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development under the Housing Stabilization and Investment Trust Fund Statute, M.G.L. c. 121F (collectively with the Agent, the "MassDocs Lenders") (collectively with the Permanent Lender, the Barnstable HOME Lender, the Investor and the Construction Lender, the "Financing Parties"), and Little Pond Place, LLC with an address at 33 Union Street, Unit 2, Boston, Massachusetts 02108 (the "Borrower").

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### **BACKGROUND**

- A. The Construction Lender has issued a commitment to provide construction and/or permanent financing for a project known as Little Pond Place located at 41 Spring Bars Road, Falmouth, Massachusetts (the "Project");
- B. The Permanent Lender has committed to make a permanent first mortgage loan to the Borrower;
- C. The Investor has committed to make an equity investment in Borrower;
- D. The other Financing Parties have also issued commitments to provide construction and/or permanent financing for the Project;
- E. The Financing Parties are desirous of receiving a construction cost review and progress reports as to the status and quality of the construction by the Borrower, its contractors, agents and employees on the Project; and

F. The Advisor offers cost review and construction observation services.

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## **AGREEMENTS**

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements as hereinafter set forth, it is mutually covenanted and agreed by and among the parties as follows:

### **1. Designated Representatives.**

The Advisor agrees that \_\_\_\_\_ shall be the contact person for the Advisor, who will have primary responsibility for carrying out the obligations of the Advisor hereunder. The Advisor agrees to notify the Financing Parties of any proposed change in the contact person, it being agreed that any substitute contact person must be reasonably acceptable to the Financing Parties. If the Financing Parties determine that the designated contact person is not satisfactory, they will notify the Advisor and the Advisor shall designate an alternate contact person reasonably acceptable to the Financing Parties.

The Borrower shall designate in writing a person to act as the Borrower's representative with respect to the work to be performed under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret and define the Borrower's policies and decisions with respect to materials, equipment, elements and systems pertinent to the Advisor's performance of the Services hereunder.

The persons listed in Exhibit D attached hereto are hereby designated to act as the primary contact for their respective institutions with respect to the Advisor's performance of the Services hereunder and electronic copies of all reports and other work product produced by the Advisor hereunder shall be furnished to such persons at their e-mail addresses set forth in Exhibit D.

### **2. Services.**

The Advisor agrees to perform timely the following cost review, site visit and final certification services (the "Services"):

#### **(a) Initial Project Review.**

Prior to closing of the construction financing for the Project, the Advisor will perform a detailed construction cost review for the Project (an "Initial Project Review") which will include the scope of work, including the size of the Project, the unit size, unit mix and density of the Project, and the type of building, amenity package and parking spaces and will render an opinion regarding:

- (1) overall quality of the construction plans and specifications and an opinion as to whether the plans are sufficiently detailed for construction and conform to federal and state laws and codes applicable to the Project, including but not limited to building, health, fire, safety and handicapped access codes;
- (2) whether the level and quality of the construction/rehabilitation as detailed in the plans and specifications is adequate to maintain the use of the Project as affordable rental housing over the term of the Permanent Lender's loan;

- (3) the general adequacy of the proposed construction documents and the level of quality of the specified materials, equipment, building components and systems;
- (4) availability of sewer, water, electric, telephone and gas utilities to the Project as represented by the Borrower, the Project architect or the Project surveyor;
- (5) review of all permits provided by the Borrower;
- (6) general compliance of the plans and specifications with the recommendations set forth in the geotechnical and structural reports, if any; and
- (7) general adequacy of the construction contract in its entirety, including all qualifications, assumptions and exhibits.

Additionally, the Advisor will include with the analysis any additional comments or explanations that would reasonably be deemed relevant to the Initial Project Review.

(b) **Site Visits.**

The Advisor will visit the Project site monthly and view the construction work at the Project in connection with its review of each Requisition (as defined below), and will make such additional progress review of the construction work as may be requested by the Financing Parties and agreed to by the Advisor (each, a "Site Visit"). It is anticipated that regular physical Site Visits will occur on the frequency described above, unless the Financing Parties and the Advisor agree that more or less frequent Site Visits are appropriate.

(c) **Site Visit Reports.**

The Advisor will provide the Financing Parties with a written review after each Site Visit, in a form approved by the Financing Parties, as to the status of the construction at the time of the Site Visit and the workmanship and general adherence to plans and specifications of the Project, as they may appear and be observable at the time of the Site Visit (each, a "Periodic Report"). As part of each Periodic Report, the Advisor will also do the following:

- (1) Review the contractor's estimate of the percentage of overall completion of the Project in accordance with the construction cost breakdown, review the anticipated completion date(s), identify any foreseeable delays, review the contractor's estimate of the cost to complete and comment on the adequacy of the remaining budget;
- (2) assess whether the level of workmanship is above or below average. If the level of workmanship is below average, then the Advisor will comment on the deficiency and track the status of the deficiency in subsequent Periodic Reports;
- (3) take digital photographs of completed work and specific deficiencies;
- (4) estimate the quantity and assess the security of significant materials stored on site, and verify that the Contractor has provided evidence of insurance coverage for stored materials;
- (5) review each proposed change order and comment on the reasonableness of the associated costs and the need for and appropriateness of the proposed changes,

and on the likely impact of the proposed change order on the Project budget and schedule;

- (6) review the retainage amount and comment on any inconsistencies with the retainage requirements specified in the construction contract;
- (7) advise the Financing Parties of any matters related to the issuance of permits and approvals needed during construction that could affect the completion of the Project.

(d) **Requisition Review.**

Upon receipt by the Advisor of a request for payment from the contractor (each, a "Requisition", and together, the "Requisitions"), the Advisor will verify that such Requisition is in a form acceptable to the Financing Parties and is consistent with the estimated disbursement schedule attached as Exhibit A (as it may be revised from time to time by agreement of the Financing Parties), and that the following supporting documentation for such Requisition has been supplied: Requisition (AIA Form G702/703 or similar form(s) agreed to by the Borrower and the Financing Parties); monthly updated schedule; change order log (pending and approved); general contractor and subcontractor lien waivers). Upon completing such review, the Advisor will make a Site Visit to review the progress of the Project work to date and to review completion of all work covered by such Requisition.

In connection with each Site Visit and Requisition review undertaken in connection with a Requisition request, the Advisor will include as part of the Periodic Report a written recommendation to the Financing Parties as to whether the Advisor (1) confirms the Project architect's approval of the Requisition, (2) recommends disapproval of all or part of the Requisition (together with a summary of the reasons for such disapproval) or (3) needs additional information to make such recommendation (together with a summary of the additional information needed). The Advisor agrees to use reasonable efforts to complete the Site Visit and Requisition review and provide the Periodic Report with such recommendation to the Financing Parties within five (5) days after receipt of a Requisition. If the Advisor recommends disapproval or needs additional information, the Advisor shall promptly inform the Borrower and provide the Borrower with a copy of the summary described above. The Advisor will assist and advise the Financing Parties in any discussions with the Borrower to resolve the issues associated with such disapproval or inadequate supporting information.

It is expressly understood and agreed that the Advisor's review of a Requisition shall be deemed to constitute a certification by the Advisor to the Financing Parties that, to the best of his/her or its knowledge: (i) with respect to any construction-related item on the Requisition, the item represents sums due for work actually performed and/or materials actually delivered or installed; (ii) all observed work has been completed in a good and workmanlike manner and, if not, the Project architect has presented a plan for remediation of any deficient work; and (iii) the quality of observed Project work completed as of the time of the Advisor's Site Visit is generally in accordance with the construction contract and the plans and specifications for the Project previously delivered to the Advisor as amended by field changes.

If any Financing Party advancing funds for a Requisition disapproves all or any portion of such Requisition, such Lender shall promptly notify the Borrower and the other Financing Parties of such disapproval (together with a summary of the reasons supporting such disapproval).

(e) **Final Certification.**

Promptly upon completion of construction of the Project, the Advisor will (1) make a final Site Visit, (2) certify to the Financing Parties that, to the best of his/her or its knowledge, all work and materials are in substantial compliance with the plans and specifications and that lien releases have been duly delivered (on the form attached hereto as Exhibit B) and (3) review the schedule of punch list items and recommend any changes or additions to such punch list schedule and an appropriate aggregate holdback amount for the final punch list items. The Advisor will identify any observed areas where construction does not conform to the final plans and specifications. The Advisor will coordinate the final Site Visit at construction completion with the Financing Parties.

**3. Compensation.**

The Borrower will pay the Advisor the sum of \$2,500 for the Initial Project Review. Said amount will be payable prior to the closing of the construction financing or from the initial disbursement of loan proceeds upon the closing of the construction financing. Whether or not the construction financing closes, the Borrower will pay all fees and expenses incurred for the Initial Project Review.

The Borrower will pay the Advisor the sum of \$1,795 for each Site Visit/Periodic Report. The fee for each Site Visit/Periodic Report may be advanced by a Financing Party whose loan proceeds are being disbursed for construction from the loan disbursement next following such Site Visit. If the fee for a Site Visit/Periodic Report is paid by a Financing Party who does not have available loan proceeds to advance, the Borrower shall reimburse such Financing Party for such amount upon the Financing Party's request.

There will be no separate fee for the final certification, such final certification being considered part of the final Site Visit.

**4. Documentation Provided to Advisor**

The Borrower has supplied (or will promptly supply when available) copies of the following to the Advisor:

- (a) complete site, structural, mechanical, electrical, heating/ventilating/air conditioning, life safety and architectural plans and specifications including all modifications and addenda;
- (b) report(s) of soil and foundation investigation, including engineer's recommendations concerning the foundation design, structural reports and environmental reports;
- (c) general contract and contracts for consultants retained by the Borrower for the construction period;
- (d) proposed disbursement schedule (attached hereto as Exhibit A);

- (e) contractor's cost breakdown;
- (f) letters or other documentation verifying the availability of needed utilities, water, sanitary sewers, gas, electricity and telephone;
- (g) building permits and other permits required for construction;
- (h) building code analysis prepared by a registered architect or engineer; and
- (i) evidence of zoning compliance or comprehensive permit.

The Borrower shall promptly supply to the Advisor and the Financing Parties from time to time during the term of this Agreement copies of any changes to the foregoing and copies of any of the foregoing not available on the date hereof.

**5. Borrower's Cooperation.**

The Borrower authorizes and permits the Advisor, through its duly authorized agents or employees, to come upon the Project site at such times as may be reasonably requested by the Advisor. The Borrower further agrees to cooperate with the Advisor in the performance by the Advisor of the Services. In addition to the documentation described above, the Borrower will make available to the Advisor any and all data, files, information, drawings, specifications, and access to employees of the Borrower as may be reasonably requested by the Advisor in connection with the performance of the Services.

**6. Assignment/Delegation.**

This Agreement may not be assigned by the Advisor without the prior written approval of the Financing Parties. The Services may not be subcontracted or delegated in whole or in part to any other person or entity without the prior written approval of the Financing Parties.

**7. Termination.**

Any Financing Party may withdraw from this Agreement by written notice to the Advisor which notice shall specify an effective date of withdrawal. The Agent may withdraw from this Agreement on behalf of all the MassDocs Lenders. If all Financing Parties withdraw from this Agreement, this Agreement shall terminate effective as of the effective date of the last such withdrawal. The Advisor may terminate this Agreement by written notice to all Financing Parties, which notice shall specify an effective date of termination which shall not be sooner than 30 days after the date of such notice. Upon termination of this Agreement, the Advisor will return to the Financing Parties all documents and other materials which it has received from the Financing Parties and the Borrower in the course of providing the Services; the Advisor will promptly deliver to the Financing Parties all finished or unfinished documents, data, studies and reports, and all other property, prepared, purchased or otherwise obtained by the Advisor in the course of performing the Services; and the Advisor will promptly submit a final invoice for work performed up to the effective date of termination.

**8. Compliance.**

The Advisor shall be responsible for any violation(s) of any federal, state or local laws, ordinances, rules, regulations or orders committed in the performance of this Agreement. The Advisor also certifies that, to the extent applicable, it is in compliance or shall comply with: (1) all

federal and state tax laws; (2) all laws and regulations relating to payments to the Employment Security System and required workers' compensation insurance policies pursuant to M.G.L. c. 151A, sec. 19A (employment security) and M.G.L. 152 (worker's compensation); and (3) the provisions of Section 7 of Chapter 521 of the Acts of 1990, as amended by Chapter 329 of the Acts of 1991 (child care assistance offered by employers having fifty or more full time employees), and 102 CMR 12.00 (minimum standards for child care). As evidenced by the signature of the Advisor's authorized representative below, the Advisor certifies under the pains and penalties of perjury, (x) the Advisor is current in the payment of all taxes due to The Commonwealth of Massachusetts as required by M.G.L. c. 62C, sec. 49A; and (y) pursuant to Executive Order 481, that the Advisor shall not knowingly use undocumented workers in connection with the performance of this Agreement; that pursuant to federal requirements, Advisor shall verify the immigration status of all workers assigned to this Agreement without engaging in unlawful discrimination and that the Advisor shall not knowingly or recklessly alter, falsify or accept altered or falsified documents from any such worker(s). The Advisor understands and agrees that breach of any of these terms during the period of this Agreement may be regarded as a material breach, subjecting the Advisor to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.

**9. Indemnification.**

The Advisor shall indemnify, defend and hold harmless the Financing Parties, including their officers, agents and employees, from and against any and all claims, liabilities, losses, damages, costs and expenses to the extent caused or arising out of the breach of the terms hereof by Advisor or the negligent acts or reckless conduct of the Advisor, its officers, employees, agents or representatives in the performance of the Services. The Advisor's review of Project documentation pursuant hereto shall not result in any responsibility of the Advisor for compliance of the Project with laws, regulations or codes, all of which shall be the sole responsibility of the Project architect, the contractor and/or the Borrower.

**10. Independent Contractor.**

The parties intend and agree that the Advisor is an independent contractor and not an employee or agent of the Financing Parties. Subject to the terms and conditions of this Agreement, the Advisor alone will control the manner and means by which the Services are provided.

**11. Miscellaneous.**

- (a) Nothing contained in this Agreement shall be deemed or construed to modify or amend the terms and conditions of the loan documents evidencing and securing the loans from the Financing Parties to the Borrower in connection with the Project, including, without limitation, all conditions precedent to an advance of loan proceeds to the Borrower.
- (b) No delay or omission by a Lender in exercising any right or remedy under this Agreement or any of such Lender's loan documents shall be deemed to operate as a waiver of such right or remedy or any other right or remedy available hereunder or thereunder or at law. No waiver by a Lender of any default shall constitute a waiver of any other default or of the same default on a future occasion.

- (c) Any notice required or permitted to be given under this Agreement will be deemed to have been given if made in writing and sent by recognized overnight courier service, delivered by hand or sent certified mail, postage prepaid, to the relevant party at its address set forth above, and shall be deemed given one day after deposit with a recognized overnight courier service, upon receipt if delivered by hand and three days after being mailed.
- (d) This Agreement contains the entire agreement of the parties. No amendment of this Agreement and no waiver of any provision hereof shall be effective unless in writing and duly executed by the parties affected thereby. If any portion of this Agreement is found to be unenforceable, the remaining portions of this Agreement will continue to be enforced to the fullest extent permitted by law. Time is of the essence of this Agreement.
- (e) This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Financing Parties and the permitted successors and assigns (if any) of the Advisor and the Borrower, and shall be governed by the laws of The Commonwealth of Massachusetts. This Agreement may be executed in any number of counterparts.
- (f) The Advisor, the Borrower and the Financing Parties acknowledge that additional lenders or investors supplying financing for the Project (the "Additional Financing Parties") may desire to avail themselves of the services of the Advisor with respect to the Project and the Advisor agrees to extend reliance on the Advisor's work product hereunder to such Additional Financing Parties, provided that each such Additional Financing Party executes a joinder to this Agreement in the form attached hereto as Exhibit C. The Advisor shall not be required to deliver copies of its work product to any party who has not executed this Agreement or a joinder hereto.
- (g) All services provided by the Advisor are to be performed to best of the Advisor's professional experience and knowledge, based on Site Visits, review of Project documentation to the extent made available and the representations of development team members. The Advisor shall have no responsibility or authority to direct the contractor, the Borrower or their consultants relative to matters concerning the owner/contractor agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first set forth above.

ADVISOR:  
NEWBANKS, INC.

BY:

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

Title:

CONSTRUCTION LENDER:  
CITIZENS BANK, NA

BY:

\_\_\_\_\_  
Name: Eugene J. Clerkin

Title: Senior Vice President, Community Development Lending

PERMANENT LENDER:

MASSACHUSETTS HOUSING PARTNERSHIP FUND BOARD

BY:

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

Title:

BARNSTABLE HOME LENDER:  
BARNSTABLE COUNTY

BY:

---

Name: Ronald Bergstrom, Chair  
Title: Barnstable County Commissioner

BY:

---

Name: Mary Pat Flynn  
Title: Barnstable County Commissioner

BY:

---

Name: Ronald R. Beaty  
Title: Barnstable County Commissioner

INVESTOR:  
CREA Little Pond Place, LLC

BY:

---

Name:

Title:

AGENT:

THE COMMONWEALTH OF MASSACHUSETTS, acting by and through the Department of Housing and Community Development

By:

---

Name:

Title:

BORROWER:  
LITTLE POND PLACE, LLC,

By: LITTLE POND PLACE MANAGER, LLC, its Managing Member

By: \_\_\_\_\_  
Name:  
Title:

**ADVISOR INFORMATION**

Advisor's Tel. No. \_\_\_\_\_

Advisor's Tax ID No. \_\_\_\_\_

Advisor is a minority business enterprise sole proprietor \_\_\_\_

Advisor is a women's business enterprise sole proprietor \_\_\_\_

Advisor is a MA Supplier Diversity Office (SDO) certified minority business enterprise\_\_\_\_

Advisor is a MA Supplier Diversity Office (SDO) certified women's business enterprise \_\_\_\_

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**EXHIBIT A: DISBURSEMENT SCHEDULE**

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## EXHIBIT B: ADVISOR'S FINAL CERTIFICATE

TO: Citizens Bank; The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development; Massachusetts Housing Partnership Fund Board; The Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development under the Affordable Housing Trust Fund Statute, M.G.L. c. 121D, by its administrator, the Massachusetts Housing Finance Agency; Community Economic Development Assistance Corporation; the Town of Falmouth, Massachusetts, acting by and through its Affordable Housing Trust; HSITF; Massachusetts Housing Partnership Fund Board; Barnstable County; and CREA Little Pond Place, LLC (collectively, the "Financing Parties")

FROM: Newbanks, Inc. (the "Advisor")

RE: Little Pond Place, 41 Spring Bars Road, Falmouth, Massachusetts (the "Project")

Little Pond Place, LLC (the "Owner")

The undersigned, acting as consulting Advisor to the Financing Parties for the above-referenced Project, in order to induce the Financing Parties to advance funds for the purpose of funding construction, taking out the construction loan and/or funding a permanent loan for the Project, does hereby certify to the best of his/her or its knowledge that:

- A. We have reviewed the plans and specifications for the Project (the "Plans and Specifications") in the form approved by you, as presently amended. A list of the Plans and Specifications is attached hereto as Exhibit 1. The Project is complete and all work has been done in accordance with the Plans and Specifications and in a good workmanlike manner.
- B. All closeout submittals required by the Plans and Specifications (including documentation of lead paint and asbestos abatement, if applicable, including any required certifications from the abatement contractor, engineer's affidavits as to adequacy of utilities and as-built record drawings) have been submitted by the contractor.
- C. To the knowledge of the undersigned, there are no petitions, actions or proceedings pending or threatened to revoke, rescind, alter or declare invalid any permits, liens, certificates or agreements for or relating to the Project.
- D. The level of construction/rehabilitation as detailed in the Plans and Specifications, if properly maintained during occupancy, is adequate to maintain the use of the Project as affordable rental housing over 20 years.

The foregoing Certificate is given to induce you to advance funds for construction, to take out the construction loan and/or for funding of a permanent loan for the Project, and it is intended that you shall rely upon this Certificate in making any such advances. This Certificate is rendered

based on an examination of the Project, the Plans and Specifications and all other matters which we deem relevant.

Executed under Massachusetts law this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ADVISOR:  
NEWBANKS, INC.

By:

\_\_\_\_\_

Name:

Title:

EXHIBIT 1 List of Plans and Specifications

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**EXHIBIT C: JOINDER TO LENDER ADVISOR AGREEMENT**

\_\_\_\_\_ (the "Additional Financing Party") joins in the execution of the Lender Advisor Agreement dated May \_\_\_\_, 2019 among Newbanks, Inc., Citizens Bank; The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development; Massachusetts Housing Partnership Fund Board; Barnstable County; and CREA Little Pond Place, LLC (the "Lender Advisor Agreement") for the purpose of establishing itself thereunder as a Financing Party. Pursuant to Section 14(f) of the Lender Advisor Agreement, the Additional Financing Party hereby agrees to become a party to the Lender Advisor Agreement for the purposes of receiving the services of the Advisor thereunder and to perform all the obligations of a Financing Party thereunder. Notices to the Additional Financing Party under the Lender Advisor Agreement should be sent as set forth below.

IN WITNESS WHEREOF, the Additional Financing Party has caused this Joinder to be executed under seal, by an official thereunto duly authorized, as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name:  
Title:

Notices should be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

**EXHIBIT D: CONTACT LIST FOR FINANCING PARTIES**

COMPANY/AGENCY: Citizens Bank, NA  
CONTACT PERSON: \_\_\_\_\_  
EMAIL: \_\_\_\_\_

COMPANY/AGENCY: Barnstable County  
CONTACT PERSON: Renie Hamman, HOME Program Manager  
EMAIL: irene.hamman@barnstablecounty

COMPANY/AGENCY: CREA Little Pond Place, LLC  
CONTACT PERSON: \_\_\_\_\_  
EMAIL: \_\_\_\_\_

COMPANY/AGENCY: Massachusetts Department of Housing and Community Development  
CONTACT PERSON: Matt Gibney  
EMAIL: matthew.gibney@state.ma.us

COMPANY/AGENCY: Affordable Housing Trust Fund  
CONTACT PERSON: Hana Migliorato  
EMAIL: HMigliorato@masshousing.com

COMPANY/AGENCY: Massachusetts Housing Partnership  
CONTACT PERSON: Matt Gibney  
EMAIL: matthew.gibney@state.ma.us

COMPANY/AGENCY: Community Economic Development Assistance Corporation  
CONTACT PERSON: Will Morgan  
EMAIL: wmorgan@cedac.org

COMPANY/AGENCY: Town of Falmouth  
CONTACT PERSON: Carla Feroni  
EMAIL: carla.feroni@falmouthma.gov

COMPANY/AGENCY: Massachusetts Housing Partnership  
CONTACT PERSON: \_\_\_\_\_  
EMAIL: \_\_\_\_\_

# AGENDA ITEM 8e

Authorizing the award of a contract to Avenu Holdings Company; for Index Verification, Online Correction, Microfilm, Book Printing for the Barnstable County Registry of Deeds, for a period from July 1, 2019 through June 30, 2020

# COUNTY OF BARNSTABLE

## PURCHASING

### DEPARTMENT OF FINANCE

SUPERIOR COURT HOUSE

P.O. BOX 427

BARNSTABLE, MASSACHUSETTS 02630

Phone: (508) 375-6637

Fax: (508) 362-4136

Email:

edavis@barnstablecounty.org

**Elaine Davis**  
Chief Procurement Officer

May 1, 2019

#### MEMORANDUM

**TO:** County Commissioners

**FROM:** Elaine Davis, Chief Procurement Officer

**RE:** Notice of Bid Award

---

Barnstable County issued an Invitation for Bids for Index Verification, Online Correction, Microfilm, Book Printing for the Barnstable County Registry of Deeds. Three bids were received as follows:

Avenu Holdings Company	\$1.24 per instrument .67 per instrument auditing, verifying and online corrections only .08 per instrument microfilming
Data Preservation Solutions	\$3.95 per instrument 1.15 per instrument auditing, verifying and online corrections only .15 per instrument microfilming
Info Quick Solutions	\$1.40 per instrument 1.00 per instrument auditing, verifying and online corrections only .14 per instrument microfilming

Please vote to award the contract to Avenu Holdings company as the responsive, responsible bidder offering the lowest price.

Thank you.

County Commissioners:

---

Ronald R. Beaty, Jr.

---

Mary Pat Flynn

---

Ronald Bergstrom

---

Date

## AGREEMENT BETWEEN

Barnstable County  
3295 Main Street  
Barnstable, MA 02630

and

Conduent Enterprise Solutions, an Avenu Holdings Company  
5860 Trinity Center Parkway  
Suite 120  
Centreville, VA 20120

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2019 by and between Conduent Enterprise Solutions, an Avenu Holdings Company (hereinafter referred to as Contractor), and Mary Pat Flynn, Ronald Beaty and Ronald Bergstrom as they are the Commissioners of Barnstable County, but without any personal liability.

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

WHEREAS: The County Commissioners issued an Invitation for Bids for Index Verification, Online Correction, Microfilm, Book Printing & Binding for the Barnstable County Registry of Deeds for the period of July 1, 2019 through June 30, 2020, with the option to renew for two additional one-year periods.

WHEREAS: The bids were bid in compliance with MA General Law Chapter 30B.

WHEREAS: The contractor is the responsive, responsible bidder offering the lowest prices

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

1. Employment of Contractor. The Vendor hereby agrees to perform the services hereinafter set forth in the Scope of Services. Contractor hereby agrees to hold the County harmless from any claims regarding worker's compensation benefits, unemployment compensation benefits, retirement benefits, or any other benefit normally attributable to the status of "employee" and Contractor specifically agrees to pay for all damages incurred by the County or Town, including costs, benefits, and reasonable attorney fees in the event the Contractor files such claim.

2. Scope of Services. The Vendor shall provide Index Verification, Online Correction, Microfilm, Book Printing & Binding for the Barnstable County Registry of Deeds for the period of July 1, 2019 through June 30, 2020, with the option to renew for two additional one-year periods as Described in the Scope of Services attached as Appendix A.

3. Time of Performance. July 1, 2019 through June 30, 2020, with the option to renew for two additional one-year periods.

4. Payment: As shown in the bidders' cost proposal attached as Appendix A:  
1.24 per instrument  
.67 per instrument auditing, verifying and online corrections only  
.08 per instrument microfilming \$1.24 per instrument for auditing

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 attached "Appendix A".

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 Nineteen.

**FOR THE COUNTY:**

BARNSTABLE COUNTY COMMISSIONERS:

\_\_\_\_\_  
Ronald Beaty

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Ronald Bergstrom

\_\_\_\_\_  
Date

**FOR THE CONTRACTOR:**

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_

# AGENDA ITEM 8f

Authorizing the award of a contract to, and execution of a contract with, M&M Trucking for the transportation of Municipal Solid Waste (MSW) from Town Transfer Stations, for the Towns of Chatham and Eastham, for the period of July 1, 2019 through June 30, 2020, with the option to renew for two (2) additional one-year periods

# COUNTY OF BARNSTABLE

## PURCHASING

### DEPARTMENT OF FINANCE

SUPERIOR COURT HOUSE

P.O. BOX 427

BARNSTABLE, MASSACHUSETTS 02630

Phone: (508) 375-6637

Fax: (508) 362-4136

Email:

edavis@barnstablecounty.org

**Elaine Davis**  
Chief Procurement Officer

May 3, 2019

#### MEMORANDUM

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

---

Barnstable County issued an Invitation for Bids the transportation of Municipal Solid Waste (MSW) from Town Transfer Stations for the period of July 1, 2019 through June 30, 2020, with the option to renew for two additional one-year periods. Two bids were received from M&M Trucking and ABC Disposal Service, Inc.

Please vote to award the bid to M&M Trucking as the responsive, responsible bidder offering the lowest prices for the Towns of Chatham and Eastham as follows:

Chatham - \$275.00 per ton to Yarmouth Regional Facility  
Eastham - \$300.00 per ton to Yarmouth Regional Facility

There is also a \$15 per ton transfer/rail fee to be added to these prices and paid by the towns. The towns will enter into their own contracts with the vendors.

Thank you.

County Commissioners:

\_\_\_\_\_  
Ronald R. Beaty, Jr.

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Ronald Bergstrom

\_\_\_\_\_  
Date

# AGENDA ITEM 8g

Authorizing the award of a contract to Robert Childs, for the disposal of Construction and Demolition Waste from Town Transfer Stations, for the Towns of Chatham and Eastham, for the period of July 1, 2019 through June 30, 2020, with the option to renew for two (3) additional one-year periods

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 3, 2019

**MEMORANDUM**

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

---

Barnstable County issued an Invitation for Bids the Disposal of Construction and Demolition Waste from Town Transfer Stations for the period of July 1, 2019 through June 30, 2020, with the option to renew for two additional one-year periods. Two bids were received from Robert Childs and ABC Disposal Service, Inc.

Please vote to award the bids to Robert Childs as the responsive, responsible bidder offering the lowest prices as follows:

Town of Chatham - \$168 per ton to dispose at NER in Taunton  
Town of Eastham - \$173 per ton to dispose at NER in Taunton

The towns will enter into their own contracts with the vendors.

Thank you.

County Commissioners:

\_\_\_\_\_  
Ronald R. Beaty, Jr.

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Ronald Bergstrom

\_\_\_\_\_  
Date

# AGENDA ITEM 8h

Authorizing the execution of a contract with WB Mason, for the Bulk Supply and Delivery of Copy Paper to schools in Barnstable County and Nantucket, for a one-year period from May 1, 2019 through April 30, 2020

AGREEMENT BETWEEN

Barnstable County  
3295 Main Street  
Barnstable, MA 02630

and

WB Mason, Co., Inc.  
55 Falmouth Road  
Hyannis, MA 02630

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2019 by and between WB Mason (hereinafter referred to as Contractor), and Mary Pat Flynn, Ronald Beaty and Ronald Bergstrom as they are the Commissioners of Barnstable County, but without any personal liability.

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

WHEREAS: The County Commissioners issued an Invitation for Bids for the Supply and Bulk Delivery of Copy Paper to schools in Barnstable and Nantucket.

WHEREAS: The bids were bid in compliance with MA General Law Chapter 30B.

WHEREAS: The contractor is the responsive, responsible bidder offering the lowest price.

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

1. Employment of Contractor. The Vendor hereby agrees to perform the services hereinafter set forth in the Scope of Services. Contractor hereby agrees to hold the County harmless from any claims regarding worker's compensation benefits, unemployment compensation benefits, retirement benefits, or any other benefit normally attributable to the status of "employee" and Contractor specifically agrees to pay for all damages incurred by the County or Town, including costs, benefits, and reasonable attorney fees in the event the Contractor files such claim.
2. Scope of Services. The Vendor shall provide the supply and delivery of copy paper as specified in the Scope of Services and their bid attached to this contract as Appendix A.
3. Time of Performance. July 1, 2019 through December 30, 2019, unless an extension of time is agreed to between the location and the vendor.
4. Payment. \$27.71 per carton.
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 attached "Exhibit A".

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 Nineteen.

**FOR THE COUNTY:**

BARNSTABLE COUNTY COMMISSIONERS:

\_\_\_\_\_  
Ronald Beaty

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Ronald Bergstrom

\_\_\_\_\_  
Date

**FOR THE CONTRACTOR:**

\_\_\_\_\_  
*Lee Smith*

\_\_\_\_\_  
4/29/19  
Date

\_\_\_\_\_

# AGENDA ITEM 8i

Authorizing the award of a contract to, and execution of a contract with Browntech Inc., to provide computer Programming and Maintenance Services, eFiling Support and Online Streaming Backup/Disaster Recovery to the Barnstable County Registry of Deeds, for a period from July 1, 2019 through June 30, 2020, with two (2) one-year options to renew

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

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

**Elaine Davis**  
Chief Procurement Officer

May 1, 2019

**MEMORANDUM**

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

---

Barnstable County issued an Invitation for Bids for a qualified vendor to provide computer Programming and Maintenance Services, eFiling Support and Online Streaming Backup/Disaster Recovery to the Barnstable County Registry of Deeds for the period of July 1, 2019 through June 30, 2020, with the option to renew for two additional one-year periods. One bid was received from Browntech, Inc.

Please vote to award the contract to Browntech as the sole qualified bidder at the prices listed on the attached price proposal submitted with their bid.

Thank you.

County Commissioners:

\_\_\_\_\_  
Ronald R. Beaty, Jr.

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Ronald Berstrom

\_\_\_\_\_  
Date

**BID -COMPUTER PROGRAMMING 2019**

April 29, 2019

**RESPONSE TO SPECIFICATIONS**

**Browntech meets or exceeds all requirements with the following notations.**

**EXCEPTIONS TO SPECIFICATIONS:**

Since the Land Indexing application installed at Barnstable is owned by Browntech, and we have an iSeries installed in-house, it is more efficient and cost effective for us to make changes and enhancements at our location, rather than at the Registry. We reserve the right to do so as mutually agreed.

Since the Land Indexing application installed at Barnstable is owned by Browntech, changes and enhancements to the software become the property of Browntech.

**RATES:**

Browntech agrees to provide the above services on a time and materials basis, using the following rate structure:

	July 1, 2019 - June 30, 2020	July 1, 2020 - June 30, 2021	July 1, 2021 - June 30, 2022
SENIOR CONSULTANT	\$190/hour	\$195/hour	\$200/hour
SENIOR ANALYST	\$180/hour	\$185/hour	\$190/hour
STAFF ANALYST/PROGRAMMER	\$150/hour	\$154/hour	\$158/hour
JUNIOR PERSONNEL	\$100/hour	\$103/hour	\$106/hour
(per diem expenses as agreed when appropriate)			

**RATES:**

Annual fees

Basic Application, eFile, Queuing System,

Credit Cards

On-line Backup/Disaster Recovery

\$5,800

\$17,000

\$5,900

\$17,100

\$6,000

\$17,200

AGREEMENT BETWEEN

Barnstable County  
3295 Main Street  
Barnstable, MA 02630

and

Browntech, Inc.  
PO Box 278  
Norwood, MA 02062

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2019 by and between Brownntrech, Inc. (hereinafter referred to as Contractor), and Mary Pat Flynn, Ronald Beaty and Ronald Bergstrom as they are the Commissioners of Barnstable County, but without any personal liability.

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

WHEREAS: The County Commissioners issued an Invitation for Bids for Computer programming and maintenance services, eFiling support and online streaming backup/disaster recovery to the Barnstable County Registry of Deeds for the period of July 1, 2019 through June 30, 2020, with the option to renew for two additional one-year periods.

WHEREAS: The bids were bid in compliance with MA General Law Chapter 30B.

WHEREAS: The contractor is the responsive, responsible bidder offering the lowest prices

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

1. Employment of Contractor. The Vendor hereby agrees to perform the services hereinafter set forth in the Scope of Services. Contractor hereby agrees to hold the County harmless from any claims regarding worker's compensation benefits, unemployment compensation benefits, retirement benefits, or any other benefit normally attributable to the status of "employee" and Contractor specifically agrees to pay for all damages incurred by the County or Town, including costs, benefits, and reasonable attorney fees in the event the Contractor files such claim.
2. Scope of Services. The Vendor shall provide Computer programming and maintenance services, eFiling support and online streaming backup/disaster recovery to the Barnstable County Registry of Deeds for the period of July 1, 2019 through June 30, 2020, with the option to renew for two additional one-year periods.
3. Time of Performance. July 1, 2019 through June 30, 2020, with the option to renew for two additional one-year periods.
4. Payment – prices as shown on price proposal attached as Appendix A.
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 attached "Appendix A".

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 Nineteen.

**FOR THE COUNTY:**

BARNSTABLE COUNTY COMMISSIONERS:

\_\_\_\_\_  
Ronald Beaty

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Ronald Bergstrom

\_\_\_\_\_  
Date

**FOR THE CONTRACTOR:**

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_

# AGENDA ITEM 8j

Authorizing the award of a contract to, and execution of a contract with, FinePoint Associates LLC, to provide monitoring for Barnstable County HOME Consortium projects, for an amount not to exceed \$22,500.00 annually, for a period from July 1, 2019 through June 30, 2020, with two (2) one-year options to renew

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

April 29, 2019

**MEMORANDUM**

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

---

Barnstable County issued a Request for Proposals on behalf of the Department of Human Services, for a qualified contractor to work with County staff to provide monitoring for the purpose of ensuring affordable housing projects developed with Barnstable County HOME Consortium funds meet the requirements of HUD's HOME Investment Partnership Program.

One bid was received from FinePoint Associates, LLC. The review committee gave the proposal a "Highly Advantageous" rating.

Please award the contract to FinePoint Associates, LLC as the sole bidder offering an advantageous proposal.

Thank you.

County Commissioners:

\_\_\_\_\_  
Ronald R. Beaty, Jr.

\_\_\_\_\_  
Ronald Bergstrom

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Date

AGREEMENT BETWEEN

Barnstable County  
3295 Main Street  
Barnstable, MA 02630

and

FinePoint Associates, LLC  
PO Box 1242  
Westford, MA 01886

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2019 by and between Finepoint Associates, LLC (hereinafter referred to as Contractor), and Mary Pat Flynn, Ronald Beaty and Ronald Bergstrom as they are the Commissioners of Barnstable County, but without any personal liability.

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

WHEREAS: The County Commissioners issued a Request for Proposals for a qualified contractor to work with County staff to provide monitoring for the purpose of ensuring affordable housing projects developed with Barnstable County Home Consortium Funds.

WHEREAS: The bids were bid in compliance with MA General Law Chapter 30B.

WHEREAS: The contractor is the responsive, responsible bidder offering a highly advantageous proposal.

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

1. Employment of Contractor. The Vendor hereby agrees to perform the services hereinafter set forth in the Scope of Services. Contractor hereby agrees to hold the County harmless from any claims regarding worker's compensation benefits, unemployment compensation benefits, retirement benefits, or any other benefit normally attributable to the status of "employee" and Contractor specifically agrees to pay for all damages incurred by the County or Town, including costs, benefits, and reasonable attorney fees in the event the Contractor files such claim.
2. Scope of Services. The Vendor shall provide monitoring to ensure the affordable housing projects developed with the Barnstable County HOME consortium funds meet the requirements of HUD's HOME Investment Partnership Program.
3. Time of Performance. July 1, 2019 through June 30, 2020, with the option to renew for two additional one-year periods at the prices submitted in the cost proposal, hereby attached as Appendix A.
4. Payment. Not to exceed \$22,500 annually.
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 attached "Exhibit A".

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 Nineteen.

**FOR THE COUNTY:**

BARNSTABLE COUNTY COMMISSIONERS:

\_\_\_\_\_  
Ronald Beaty

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Ronald Bergstrom

\_\_\_\_\_  
Date

**FOR THE CONTRACTOR:**

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_

## Appendix A to Contract

Barnstable County Commissioners  
Superior Court House  
P.O. Box 427  
3195 Main Street  
Barnstable, MA 02630  
ATTENTION Department of Human Services Proposal

To County Commissioners:

Enclosed is our Cost Proposal, under separate cover, per your request. Please note we have offered two scenarios for your consideration. Feel free to contact me to discuss them.

Sincerely,



Elaine K. Nickerson  
Partner  
FinePoint Associates, LLC

Enclosure

Cost Proposal

- a. A statement of costs per type of monitoring (e.g. desk review for annual rents and income verification for rental developments, on-site monitoring; and coordination of HQS) as outlined in the Scope of Services/Non-Price Proposal Requirements. Such statement shall not exceed a total of \$ 22,500.00.

**FinePoint Associates LLC  
Price Proposal for Barnstable County  
HOME Monitoring**

**2019-2020**

Staff	Hourly Rates*
E. Nickerson	\$128.75
K. Joyce	\$99.00
L. Tickle	\$103.00
S. Vicino	\$86.50

\*effective 4/1/2019-3/31/20

Please find below two pricing scenarios for your consideration:

**I. Separate Site Monitoring and Training**

A. Site Monitoring:

In order to keep within the budget stated of \$22,500, and using 6.25 hours per site in our calculations, we estimate that we will be able to complete 39 site evaluations in year one, and elements 1-7 of the Scope of Services. We have based the time per site on our 2018 activity.

Using these factors, and staff loads; 80% Ms. Joyce and Ms. Vicino, 15% Ms. Tickle and 5% Ms. Nickerson, we estimate the cost for 39 sites at 6.25 hours per site to be approximately **\$22,103.00**.

Variables in time per site include whether or not the site also has DHCD HOME funds, whether more than one site can be reviewed in one day or at one time, the expertise of site staff and their pre-visit preparation.

B. Training:

We propose the Training be held on Cape Cod, at a facility arranged for and paid for by the Consortium. The Consortium will also arrange for audio visual equipment for the presentation by FinePoint, and copies of handouts for attendees. (FinePoint will use our own laptop)

The Training will be scheduled at least one week *after* our State-wide Training sessions for DHCD to reduce preparation time. We estimate a training session from 10AM-3PM will work well for this audience. The cost will be charged based on time to prepare the presentation, travel and delivery. Ms. Laurie Tickle and Ms. Kate Joyce will conduct this work.

Preparation = 16 hours each= \$3,232.00

Delivery plus travel time = 8 hours each = \$1,616.00

**Total estimate for initial training session; \$4,848.**

---

## II. All Inclusive Monitoring and Training Session

To Include all 8 elements of the Scope of Services:  
Using the same assumptions as above:

FinePoint calculates that we could complete approximately 31 site evaluations. At a cost estimated at \$17,570.

Together with the one Training Session at \$4,848.

For total cost of **\$22,418.00**

Please note- FinePoint Associates LLC's hourly rates increase by 3% annually, on April 1.

Cost Proposal

- b. A statement identifying any costs not included.

FinePoint has included all anticipated costs in our estimated cost proposal.

# AGENDA ITEM 8k

Authorizing the award of a contract to, and execution of a contract with, Foth Cleengineering, for assistance to the County Dredge Department, for an amount not to exceed \$49,880.00, for a period through November 8, 2019, with two (2) one-year options to renew

# COUNTY OF BARNSTABLE

## PURCHASING

### DEPARTMENT OF FINANCE

SUPERIOR COURT HOUSE

P.O. BOX 427

BARNSTABLE, MASSACHUSETTS 02630

Phone: (508) 375-6637

Fax: (508) 362-4136

Email:

edavis@barnstablecounty.org

**Elaine Davis**  
Chief Procurement Officer

May 1, 2019

#### MEMORANDUM

**TO:** County Commissioners

**FROM:** Elaine Davis, Chief Procurement Officer

**RE:** Notice of Bid Award

---

Barnstable County issued a Request for Proposals for a qualified consultant to assist the County Dredge Department in coordinating and planning within the department, assist in preparing the Dredge schedule and provide oversight and guidance for the County and all towns utilizing its services. Proposals were due on April 4, 2019 and seven (7) proposals were received. The evaluation committee consisted of Heather McElroy from the Cape Cod Commission, Jack Yunits, County Administrator, Steve Tebo, Assistant County Administrator and Steve McKenna, Coastal Zone Management.

The evaluation committee met on April 30, 2019 to review the proposals. It was determined that four of the proposals did not meet the minimum evaluation criteria. The remaining three proposals were Foth Cleengineering, Woods Hole Group and BSC Group and were evaluated based on the RFP's comparative criteria. All three rated well, with Foth having the highest rating. The committee felt that they most clearly articulated the scope of work and would best meet the needs of the project.

The price proposals were opened and were all within \$400 of each other. Although Foth Cleengineering was the highest at \$49,880, the evaluation committee determined that because they would best meet the needs of the Department, the minimal additional cost was justified.

Please vote to award the contract to Foth Cleengineering as the bidder submitting the most advantageous proposal based on both price and technical merits. The initial contract will be for six months, beginning with the execution of the contract. The County may choose to extend the contract for two additional one-year periods, solely at their own discretion.

Thank you.

County Commissioners:

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Ronald R. Beaty, Jr.

---

Mary Pat Flynn

---

Ronald Bergstrom

---

Date

AGREEMENT BETWEEN

Barnstable County  
3295 Main Street  
Barnstable, MA 02630

and

Foth Cleengineering  
15 Creek Road  
Marion, MA 02738

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2019 by and between Foth Cleengineering (hereinafter referred to as Contractor), and Mary Pat Flynn, Ronald Beaty and Ronald Bergstrom as they are the Commissioners of Barnstable County, but without any personal liability.

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

WHEREAS: The County Commissioners issued a Request for Proposals for a consultant to assist the County Dredge Department.

WHEREAS: The bids were bid in compliance with MA General Law Chapter 30B.

WHEREAS: The contractor is the responsive, responsible bidder offering the most advantageous proposal.

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

1. Employment of Contractor. The Vendor hereby agrees to perform the services hereinafter set forth in the Scope of Services. Contractor hereby agrees to hold the County harmless from any claims regarding worker's compensation benefits, unemployment compensation benefits, retirement benefits, or any other benefit normally attributable to the status of "employee" and Contractor specifically agrees to pay for all damages incurred by the County or Town, including costs, benefits, and reasonable attorney fees in the event the Contractor files such claim.
2. Scope of Services. The Vendor shall provide consultation with the County Dredge Department as outlined in the Scope of Services attached to this contract as Appendix A.
3. Time of Performance. Six (6) months from date of execution of the contract, with the option to renew for two additional one-year periods.
4. Payment – \$49,880.00 for the initial six-month term. Pricing for additional contract renewals will be based on the rate schedule submitted in their price proposal and attached to this contract as Appendix A.
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 attached "Appendix A".

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 Nineteen.

**FOR THE COUNTY:**

BARNSTABLE COUNTY COMMISSIONERS:

\_\_\_\_\_  
Ronald Beaty

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Ronald Bergstrom

\_\_\_\_\_  
Date

**FOR THE CONTRACTOR:**

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_

# AGENDA ITEM 81

Authorizing the execution of a contract with RJ Gabriel Construction Co, Inc., for Drainage and Guardrail Items, for a period from April 1, 2019 through March 31, 2020, with an option to renew for one (1) additional year

AGREEMENT BETWEEN

Barnstable County  
3195 Main Street  
Barnstable, MA 02630

and

RJ Gabriel Construction Co, Inc  
785 Bedford St.  
Bridgewater, MA 02324

THIS AGREEMENT is made this *30th* day of *April* 2019 by and between R.J Gabriel Construction Co., Inc. (hereinafter referred to as Contractor), and Mary Pat Flynn, Ron Beaty and Ron Bergstrom as they are the Commissioners of Barnstable County, but without any personal liability.

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

WHEREAS: The County issued an Invitation for Bids for Drainage and Guard Rail Items for Towns in Barnstable County

WHEREAS: The Invitation for Bids was issued in compliance with MA General Law Chapter 149

WHEREAS: The vendor is the responsive, responsible bidder offering the lowest prices for drainage structures as highlighted on the attached spreadsheet incorporated herein as Appendix 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 February 20, 2019 and the Contractor's bid dated March 19, 2019 incorporated herein as Appendix B.
3. Time of Performance. Contract period is April 1, 2019 through March 31, 2020, with the option to renew for one additional year.
4. Payment. The Towns shall compensate the Contractor for services provided low bids prices submitted in their bid and as highlighted on the attached spreadsheet.

Upon acceptance of the Contractor's invoice, payment will be made within thirty (30) days. If an invoice is not accepted by the Town within fifteen (15) days, it shall be returned to the Contractor with a written explanation for the rejection. At the end of each Town fiscal year Contractor must submit any outstanding invoices for services performed or delivered during the fiscal year (July 1-June 30) to the Town no later than July 31<sup>st</sup> 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 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 Town. The 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 Town may, from time to time, require changes in the Scope of Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Customer costs, which are mutually agreed upon by the Town and the Customer, shall be incorporated in written amendments to this Contract.

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

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

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 Town 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 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 Town 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".

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

24. Vendors must submit Certified Payroll Statements prior to being paid for work.

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

**FOR THE COUNTY:**

BARNSTABLE COUNTY COMMISSIONERS:

\_\_\_\_\_  
Ron Bergstrom

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Ron Beaty

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**FOR THE CONTRACTOR:**  
  
\_\_\_\_\_  
David A. Gabriel 4/30/19  
Date

Appendix A to contract

# AGENDA ITEM 8m

Authorizing the execution of a contract with Steelco Chain Link Fence Erecting Co., Inc., for Drainage and Guardrail Items, for a period from April 1, 2019 through March 31, 2020, with an option to renew for one (1) additional year

AGREEMENT BETWEEN

Barnstable County  
3195 Main Street  
Barnstable, MA 02630

and

Steelco Chain Link Fence Erecting Co., Inc  
PO Box 520  
19 Brook Road  
Needham Heights, MA 02494

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2019 by and between Steelco Chain Link Fence Co., Inc (hereinafter referred to as Contractor), and Mary Pat Flynn, Ron Beaty and Ron Bergstrom as they are the Commissioners of Barnstable County, but without any personal liability.

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

WHEREAS: The County issued an Invitation for Bids for Drainage and Guard Rail Items for Towns in Barnstable County

WHEREAS: The Invitation for Bids was issued in compliance with MA General Law Chapter 149

WHEREAS: The vendor is the responsive, responsible bidder offering the lowest prices as highlighted on the attached spreadsheet incorporated herein as Appendix 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 February 20, 2019 and the Contractor's bid dated March 21, 2019 incorporated herein as Appendix B.

3. Time of Performance. Contract period is April 1, 2019 through March 31, 2020, with the option to renew for one additional year.

4. Payment. The Towns shall compensate the Contractor for services provided low bids prices submitted in their bid and as highlighted on the attached spreadsheet.

Upon acceptance of the Contractor's invoice, payment will be made within thirty (30) days. If an invoice is not accepted by the Town within fifteen (15) days, it shall be returned to the Contractor with a written explanation for the rejection. At the end of each Town fiscal year Contractor must submit any outstanding invoices for services performed or delivered during the fiscal year (July 1-June 30) to the Town no later than July 31<sup>st</sup> 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 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 Town. The 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 Town may, from time to time, require changes in the Scope of Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Customer costs, which are mutually agreed upon by the Town and the Customer, shall be incorporated in written amendments to this Contract.

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

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

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 Town 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 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 Town 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".

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

24. Vendors must submit Certified Payroll Statements prior to being paid for work.

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

**FOR THE COUNTY:**

BARNSTABLE COUNTY COMMISSIONERS:

\_\_\_\_\_  
Ron Bergstrom

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Ron Beaty

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**FOR THE CONTRACTOR:**

\_\_\_\_\_

\_\_\_\_\_  
Date

# AGENDA ITEM 8n

Authorizing the execution of a contract with Premier Fence LLC, for Drainage and Guardrail Items, for a period from April 1, 2019 through March 31, 2020, with an option to renew for one (1) additional year

AGREEMENT BETWEEN

Barnstable County  
3195 Main Street  
Barnstable, MA 02630

and

Premier Fence LLC  
1010 Turnpike Street  
Canton, MA 02021

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2019 by and between Premier Fence LLC (hereinafter referred to as Contractor), and Mary Pat Flynn, Ron Beaty and Ron Bergstrom as they are the Commissioners of Barnstable County, but without any personal liability.

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

WHEREAS: The County issued an Invitation for Bids for Drainage and Guard Rail Items for Towns in Barnstable County

WHEREAS: The Invitation for Bids was issued in compliance with MA General Law Chapter 149

WHEREAS: The vendor is the responsive, responsible bidder offering the lowest prices as highlighted on the attached spreadsheet incorporated herein as Appendix 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 February 20, 2019 and the Contractor's bid dated March 20, 2019 incorporated herein as Appendix B.
3. Time of Performance. Contract period is April 1, 2019 through March 31, 2020, with the option to renew for one additional year.
4. Payment. The Towns shall compensate the Contractor for services provided low bids prices submitted in their bid and as highlighted on the attached spreadsheet.

Upon acceptance of the Contractor's invoice, payment will be made within thirty (30) days. If an invoice is not accepted by the Town within fifteen (15) days, it shall be returned to the Contractor with a written explanation for the rejection. At the end of each Town fiscal year Contractor must submit any outstanding invoices for services performed or delivered during the fiscal year (July 1-June 30) to the Town no later than July 31<sup>st</sup> 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 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 Town. The 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 Town may, from time to time, require changes in the Scope of Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Customer costs, which are mutually agreed upon by the Town and the Customer, shall be incorporated in written amendments to this Contract.

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

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

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 Town 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 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.

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

24. Vendors must submit Certified Payroll Statements prior to being paid for work.

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

**FOR THE COUNTY:**

BARNSTABLE COUNTY COMMISSIONERS:

\_\_\_\_\_  
Ron Bergstrom

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Ron Beaty

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**FOR THE CONTRACTOR:**

\_\_\_\_\_

\_\_\_\_\_  
Date

# AGENDA ITEM 80

Authorizing the execution of Certificates for Dissolving Septic Betterments



**BARNSTABLE COUNTY  
COMMUNITY SEPTIC MANAGEMENT  
LOAN PROGRAM**

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



Kendall Ayers  
Program Administrator

Phone: (508) 375-6610

Fax: (508) 375-6854

[www.barnstablecountysepticloan.org](http://www.barnstablecountysepticloan.org)

**MEMORANDUM**

**DATE:** May 7, 2019  
**TO:** County Commissioners  
**FROM:** Community Septic Management Loan Program  
**SUBJECT:** Certificates for Dissolving Septic Betterments

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Please execute Certificates for Dissolving Septic Betterments certifying that the betterment assessments upon the hereinafter described parcels of real estate in the Notices of Betterment Assessment recorded in Barnstable County Registry of Deeds or Barnstable Registry District of the Land Court as listed below, stating that betterments to be assessed pursuant to a betterment agreement for septic improvements, in accordance with General Laws, Chapter 111, Section 127B 1/2 have, together with any interest and costs thereon, been paid or legally abated.

Approved:

Board of Regional Commissioners

\_\_\_\_\_  
Ronald Bergstrom, Chair

\_\_\_\_\_  
Ronald R. Beaty, Vice-Chair

\_\_\_\_\_  
Mary Pat Flynn, Commissioner

\_\_\_\_\_  
Date