

Town of Needham
**Department of Public Facilities
Operations**
470 Dedham Avenue
Needham, Massachusetts 02492
Telephone 781-455-0442

ACKNOWLEDGEMENT OF RECEIPT

Release Date	Thursday, May 13, 2010
Bid Title	Natural Gas Fired Burner for the Department of Public Works Building
Bid Number	IFB 10PFO-750BXA
Bids are Due	10:30 AM, Friday, May 28, 2010 Second Floor Administration Office of the Public Works Department, 470 Dedham Avenue, Needham, Massachusetts, 02492
Please provide the requested information below as acknowledgment that you have received our bid package noted above. It is <u>recommended</u> that interested bidders complete this acknowledgment and return via Fax to the Department of Public Facilities Operations (781) 449-9023 or by mail. Only by doing this, will the Town be able to provide notification of any addenda or answered questions relating to this bid. Only those companies or individuals shown on the Distribution Register will receive addenda to this bid. By completing and returning this acknowledgement will ensure you are recorded on the Distribution Register. Bids from companies or individuals not acknowledging the addenda may be <u>rejected</u> as not responsive.	
Name of Company or Individual (Print)	
Name / Title of Contact (Print)	
Address (line 1) (Print)	
Address (line 2) (Print)	
Telephone Number	
Fax Number	
E-mail Address (Print)	
Signature	
Date	
* Any hand delivery or facsimile received after the due date and time will not be addressed. Please allow enough time for hand delivery or facsimile transmissions.	

(Advertised in the Needham Times issue of Thurs., May 13, 2010)
(Published in Goods and Services issue of Mon., May 10, 2010)



LEGAL NOTICE
TOWN OF NEEDHAM, MASSACHUSETTS
PUBLIC FACILITIES DEPARTMENT - OPERATIONS
INVITATION FOR BIDS
IFB 10PFO-750BXA

Natural Gas Fired Burner for the Department of Public Works Buildings

The Town of Needham invites sealed bids for a "Natural Gas Fired Burner for the Department of Public Works Building". Information and details of bidding requirements will be available beginning **Thursday, May 13, 2010** at the Second Floor Administration Office of the Public Works Department, 470 Dedham Avenue, Needham, Massachusetts 02492 or online at <http://needhamma.gov>.

Sealed bids will be received at the Second Floor Administration Office, DPW Building, 470 Dedham Avenue, Needham, Massachusetts 02492 until **10:30 AM, Friday, May 28, 2010** at which date and time they will be publically opened and read aloud at the Department of Public Works Second Floor Conference Room.

Bids are subject to the provisions of M.G.L. Chapter 30B as amended to date.

The right is reserved by the Town of Needham to reject or accept any or all bids if it is in the public interest to do so.

Kate Fitzpatrick
Needham Town Manager

**TOWN OF NEEDHAM, MASSACHUSETTS
PUBLIC FACILITIES DEPARTMENT - OPERATIONS
INVITATION FOR BIDS**

May 13, 2010

NATURAL GAS FIRED BURNER FOR THE DEPARTMENT OF PUBLIC WORKS BUILDING

Part 1. GENERAL BID INFORMATION:

1.01 Introduction

The Town of Needham (hereinafter referred to as the "Town"), acting through its Town Manager invites highly qualified Bidders to submit sealed bids to provide a natural gas fired burner for the Department of Public Works Building. The Department of Public Works Building is currently heated by fuel oil #2 and will be upgrading to natural gas before the next heating system. This burner will be essential in this conversion process.

The Town's Department of Public Facilities, Operations Division is responsible for the maintenance of the Municipal Buildings and Schools within the Town of Needham.

About Needham

The Town is located in Norfolk County, 10 miles southwest of Boston. It is bordered on the west and northwest by the Town of Wellesley, on the north and northeast by the City of Newton, on the east by the West Roxbury section of the City of Boston, on the southeast by the Town of Dedham, and on the south by the Towns of Westwood and Dover. Needham has a population of 28,911 (2000 Federal Census) and occupies a land area of approximately 12.75 square miles. Established as a Town in 1711, Needham is governed by a representative form of town meeting and a five-member Board of Selectmen. The day-to-day management is under the direction of a Town Manager. School affairs are administered by a seven-member School Committee and a Superintendent of Schools. The Town is classified as an economically developed suburb with above average wealth levels and higher education attainment. The Town has an "AAA" credit rating from Standard and Poor's.

The Town provides a full range of governmental services including police and fire protection, emergency medical services, collection, disposal, and recycling of solid waste, sewers, streets, water services, health and human services, Town library, and recreation. The Town also provides public education in grades kindergarten through twelve. The Town currently operates 1 pre-school, 5 elementary schools, 1 sixth grade school, 1 middle school, and a senior high school. Technical education is offered to grades nine through twelve by the Minuteman Regional Vocational Technical School District. The total expenditures in the most recent fiscal year exceed \$100 million.

1.02 Proposed Contract Term

The Town of Needham invites sealed bids for "Natural Gas Fired Burner for the Department of Public Works Building" in Needham, MA to be provided by June 30, 2010. The successful Contractor must enter into the Form Agreement prepared by Town Counsel of the Town of Needham (Sample Attached), or a contract in substantially similar format.

1.03 Mandatory Pre-Bid Conference and Requests for Interpretation

Bidders shall promptly raise the issue of any ambiguity, inconsistency or error, which they may discover upon examination of the bid documents, the work site or any other conditions which apply to the work. Bidders must note that statements made orally are not binding on the Town and only written responses by the Town will be considered. **Questions** must be sent in writing by fax to 781-453-2510 or by email to claffey@needhamma.gov by **2 pm, Thursday, May 20, 2010**. To identify questions coming in, please write in the subject area the following: **Natural Gas Fired Burner for the DPW Building IFB 10PFO-750BXA - Questions**. Requests properly presented that in the opinion of the Town require interpretation, correction, or change in the Bid Documents shall result in an issuance of an Addendum to the Bid Documents. Such Addenda shall subsequently become part of the contract. Addenda will be issued by the end of the day on **Monday, May 24, 2010**, and are required to be acknowledged in the bid package submission.

1.04 Bid Submission

All bids shall be submitted to the Director of Public Facilities, Town of Needham, Second Floor Administration Office, 470 Dedham Avenue, Needham, MA 02492. Each bid shall be sealed in an envelope on which is clearly indicated: **Name & Address of Bidder, IFB 10PFO-750BXA, Natural Gas Fired Burner for the Department of Public Works Building, due 10:30 am, Friday, May 28, 2010.** All submitted bids shall include Invitation for Bids, Bid Information, Bid Scope of Work all Addenda issued and all portions of BID FORMS (A-D) completed and submitted in order for a submission to be deemed acceptable. Bidders will submit insurance certificates, validating current coverage in accordance with "Attachment A" at the time of bid submission. Bids received at the 2nd Floor Administration Office after the time of opening of bids designated in the Invitation for Bids will be returned to the bidder unopened.

1.05 Bid Form

All bids must be made on the attached bid forms (A-D).

Unit prices bid shall be firm for the duration of the contract. No mid-year price adjustments will be allowed. Fuel surcharges or vehicle charges or adjustments will not be allowed. Payment for materials and/or service will be made only after satisfactory performance or all requirements of the specification and upon approval by the Director of Public Facilities Operations or his designate. The Town reserves the right to accept or reject any or all bids, wholly or in part, and to make the award in the best interest of the Town.

1.06 Insurance Requirement

Must have proof of insurance at time of award.

The selected Bidder shall indemnify and save the owner harmless from and against all claims, suits, damages and outlays resulting from or by reason of loss, damage or injury of or to any person or property, wherever located which shall be caused by any action or operation under this agreement.

1.07 Duration of Bid Prices

All bids are to remain valid for 90 days after the opening of the bids.

1.08 Contractor Selection

The Town will review all bids, and will select the most responsive and responsible Bidder, which has submitted its bid information to be in the best interest of the Town.

The Town reserves the right to waive any informalities in or to reject any or all Bids if it is in the public interest to do so.

Upon Bidder selection, the Town will send to the selected Bidder, three (3) contracts (Sample Attached – Attachment A) to be executed by the Bidder and returned to the Town with the appropriate insurance certificates and required bonds. The Town will then counter execute the three (3) contracts and return one complete contract to the Bidder.

Part 2. Scope of Purchase

Replace the existing oil burner with one (1) new Power Flame Model: C3-G-25B (or equivalent) complete with factory tested Autoflame Micro Modulation Combustion Control system. The new burner will be designed to fire natural gas only.

The Needham DPW presently does not have natural gas on site.

Power Flame Model C3-G-25B (or equivalent)
Model: Full Modulation
Gas Rate: 4185MBH

Each Power Flame (or equivalent) will come with the following:

Prepurge: Proven Open Damper Prepurge Sequence
3.00 HP 208V, 3PH Blower Motor
LED Lights – Power On, Demand, Main Fuel, FSG Failure, Opt LED
Burner On/Off Control Switch
135 Ohm Manual Potentiometer w/Manual/Auto Switch
Intermittent Gas Pilot w/ 6kv Ignition Transformer
Combustion Air flow Proving Switch
B25-MOD-AS Seq. Draft Control with Rotary Actuator
VFD Model RCAC w/display
High Efficiency TEFC 3450RPM 3HP Motor

Part 2. Scope of Purchase - continued

Integrated High Efficiency Autoflame Control Package

Autoflame Combustion Management System (or equivalent)

Three (3) year combustion control system warranty
Easy access single rear cover plate
Wilkinson (or equivalent) advanced technology burner assemblies with integrated servo motor positioners
Burner end plate with observation window
Factory mounted Autoflame air servo motor for precision air flow
Precision machined combustion air inlet damper with bearings
Natural gas pilot ignition
Burner jct. box wiring to multi-pin quick connect terminal socket
15 Ft. flying lead and plug for interconnection between panel and burner

One (1) MM Module Mini MKVII EVO Control (or equivalent)

Micro modulation – Fuel/Air ration controller
Independently controlled fuel and air positioning motors with an accuracy of 0.1 of an angular degree
2 separate fuel curves
3 Servo motor channel control
1 Variable speed drive control
Internal Flame Safeguard control
Standard UV Detection
Self-Check UV Detection
Ionization Rod Detection
Precise Target Setpoint Control (PID)
Outdoor Reset
NFPA Compliant
NEMA 4/IP65 Enclosure
Keypad Push Button Control
20 X 4 line LCD Display
Error Diagnostic Codes Displayed
Single Point Change Facility for Commissioned fuel/Air ratio
User Definable Optimum Ignition Position
Lockout History of last 16 incidents with Date and Time
Password Protection, User Configurable Options and Parameters
Outdoor Air Reset

Part 2. Scope of Purchase - continued

Power Flame Control Panel (or equivalent)

A factory assembled, wired and tested control panel shall be burner mounted and includes the following:

1. Autoflame Mini MK7 EVO microprocessor flame-safeguard control (or equivalent)
2. Magnetic motor starters
3. Fuse blocks for safety protection
4. Control transformer
5. Signal lights for:
 - a. power
 - b. ignition
 - c. low gas pressure
 - d. flame failure
6. Terminal strip for field wiring
7. Control cabinet directory with the following information
 - a. Wiring diagram of the burner system
 - b. Combustion test results

If utilizing equivalent you must submit specifications on all equivalent products.

Bid Form A		
Natural Gas Fired Burner for the Department of Public Works Building		
A	Cost of All Inclusive Parts as Specified in Scope	\$
B	Any Additional Delivery Charges That May Apply	\$
C	Total Cost of Project (A+B)	
D	Prompt Payment Discount if Offered	\$
E	Prompt Payment Days if Offered	
F	Warranty Period	

Acknowledgement of Any Addenda Issued

All submitted bids shall include Invitation for Bids IFB 10PFO-750BXA Bid Information, Bid Scope of Work, all Addenda issued, and all portions of the BID FORM (A-D) must be completed and submitted in order for a submission to be deemed acceptable. Bidders will submit insurance certificates, validating current coverage in accordance with "Attachment A" (sample attached) at the time of bid submission.

Bid Company Name

BID FORM: B

TOWN OF NEEDHAM

Natural Gas Fired Burner for the DPW Building

AUTHENTICATION

The undersigned agrees that, if selected as the contractor for any or all of the above bid items, he/she shall be obligated to provide those services in accordance with the terms of these specifications at the bid price upon receipt of a fully executed contract.

NAME OF BIDDER: _____

ADDRESS: _____

AUTHORIZED SIGNATURE : _____

TITLE: _____

CONTACT PERSON: _____

DATE: _____ PHONE No. _____

FAX NO.: _____ EMAIL: _____

BID FORM: C

COMMONWEALTH OF MASSACHUSETTS

CERTIFICATE OF NON-COLLUSION

The undersigned certifies, under penalties of perjury, that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word person shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the Commonwealth under the provisions of Section twenty-nine F of chapter twenty-nine, or any other applicable debarment provision of any other chapter of the General Laws or any rule or regulation promulgated hereunder.

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. c. 62C, Section 49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature of Individual Submitting Bid or Proposal: _____

Title: _____

Name of Business: _____

Address: _____

Telephone: _____

Social Security # or Federal Identification #: _____

Approval of a contract or other agreement will not be granted unless this certification form is signed by the applicant.

Your Social Security Number or Federal Identification Number will be furnished to the Massachusetts Department of Revenue (DOR) to determine whether you have met tax filing or tax payment obligations. The Town is required to furnish a list to the DOR at the end of its fiscal year, showing the vendors to whom more than \$5,000 is paid during the 12 months ending June 30. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of Massachusetts General Laws, Chapter 62C, Section 49a.

BID FORM: D
Complete Only If Applicable

CERTIFICATE OF AUTHORITY
CORPORATE

1. I hereby certify that I am the Clerk/Secretary of _____
(insert full name of Corporation)
2. corporation, and that _____
(insert the name of officer who signed the contract and bonds.)
3. is the duly elected _____
(insert the title of the officer in line 2)
4. of said corporation, and that on _____
(insert a date that is **ON OR BEFORE** the date
the officer signed the **contract and bonds.**)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. _____ the _____
(insert name from line 2) (insert title from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: _____ AFFIX CORPORATE
(Signature of Clerk or Secretary)* SEAL HERE

7. Name: _____
(Please print or type name in line 6)*

8. Date: _____
(insert a date that is **ON OR AFTER** the date the
officer signed the **contract and bonds.**)

The name and signature inserted in lines 6 & 7 must be that of the Clerk or Secretary of the corporation.

Attachment A

SAMPLE
SHORT FORM AGREEMENT
BETWEEN TOWN AND CONTRACTOR
(M.G.L. Chapter 30B Contract)

THIS AGREEMENT for Natural Gas Fired Burner for the DPW Building (hereinafter the "Project") is made the _____ day of _____, 201_, by and between _____ a corporation (*or partnership, etc.*) organized under the laws of the Commonwealth of Massachusetts (*or the State of* _____), with a usual place of business at _____, hereinafter called the **Contractor**, and the Town of Needham, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, acting through its Town Manager, hereinafter referred to as the **Town**.

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

ARTICLE 1. CONTRACT DOCUMENTS

The Contract Documents consist of the following, and in the event of conflicts or discrepancies among them, they shall be interpreted on the basis of the following priorities:

- FIRST** THIS AGREEMENT BETWEEN OWNER AND CONTRACTOR
- SECOND** CONTRACTOR'S BID DATED _____
- THIRD** THE INVITATION FOR BIDS, BID SPECIFICATIONS, MANDATORY PRE-BID CONDUCTED ON _____, ADDENDA __
- FORTH** COPIES OF ALL REQUIRED BONDS, CERTIFICATES OF INSURANCE AND LICENSES REQUIRED UNDER THE CONTRACT

EACH OF WHICH IS ATTACHED HERETO. These documents form the entire agreement between the parties and there are no other agreements between the parties. Any amendment or modification to this agreement must be in writing and signed by an official with the authority to bind the **Town**.

ARTICLE 2. SCOPE OF THE WORK

The **Contractor** shall furnish all materials, labor, equipment and perform all work shown on the contract documents, and the **Contractor** agrees to do everything required by this Agreement and the contract documents.

ARTICLE 3. TERM OF AGREEMENT

The work to be performed under this Agreement shall be commenced immediately and shall be entirely completed by _____. The **Contractor** hereby agrees that if he fails to carry on the work with reasonable speed or stops work altogether without due cause, as determined in each case by the **Town**, the **Town** may give notice to the **Contractor** in writing to proceed with the work or to carry on the work more speedily. Three days after the presentation of such notice if the work is not proceeding to the satisfaction of the **Town**, the **Contractor** shall be considered to have defaulted in the performance of this Agreement.

ARTICLE 4. THE CONTRACT SUM

The **Town** shall pay the **Contractor** for the performance of this Agreement the sum of \$ _____ (_____ dollars), including all reimbursable expenses.

ARTICLE 5. PAYMENT

a) The **Town** shall make payment as follows:

One final payment of the entire contract amount thirty days after receipt of an invoice provided the work be then fully completed or the goods and supplies delivered and the Agreement fully performed.

b) With any invoice the **Contractor** shall submit evidence satisfactory to the **Town** that the goods or supplies have been delivered, or that the work has been completed and that all payrolls, material bills and other indebtedness connected with the work has been paid. The billings shall include, if applicable, all charges for consultants, subcontractors, plans, equipment, models, renderings, travel, reproductions, postage and delivery, and all other expenses. There shall not be any markup for overhead, administration or profit for any of the above-listed services.

c) If for any reason the Town makes a payment under this Contract in error, the Town may recover the amount overpaid or, if applicable, may apply any overpayment to a future installment payment.

d) Invoices for services procured under this contract are to be sent to:

Town of Needham
Department of Public Facilities Operations
Accounts Payable
470 Dedham Ave
Needham, Massachusetts 02492

e) The Town is not responsible for payment of invoices sent to an address other than specified in 5.d of this Agreement.

ARTICLE 5A. PROMPT PAYMENT DISCOUNTS

The **Contractor** will allow a _____% prompt payment discount for payment made by the **Town** within _____ days from the date of receipt of the invoice, or the date of the receipt of the product or service, whichever occurs later.

ARTICLE 6. NONPERFORMANCE

In the case of any default on the part of the **Contractor** with respect to any of the terms of this Agreement, the **Town** shall give written notice thereof, and if said default is not made good within such time as the **Town** shall specify in writing, the **Town** shall notify the **Contractor** in writing that there has been a breach of the Agreement and thereafter the **Town** shall have the right to terminate this contract and secure the completion of the work remaining to be done on such terms and in such manner as the **Town** shall determine, and the **Contractor** shall pay for the completion of such work and reimburse the **Town** for all expenses incurred by reason of said breach. The **Contractor** in case of such breach shall be entitled to receive payment only for work completed satisfactorily prior to said breach, so long as the total paid hereunder does not exceed the Contract sum, and the amount of any balance due the **Contractor** shall be determined by the **Town** and certified to the **Contractor**.

ARTICLE 7. TERMINATION

- a) In addition to the provisions of Article 6, the **Town** shall have the right to terminate this Agreement if funds are not appropriated or otherwise made available to support the continuation of the Agreement after the first year.
- b) The **Contractor** shall have the right to terminate this Agreement if the **Town** fails to make payment within 30 days after it is due.

ARTICLE 8. EMPLOY COMPETENT PEOPLE

The **Contractor** shall employ only competent people to do the work. Whenever the **Town** shall notify the **Contractor** in writing that any person under the **Contractor's** employ is, in the **Town's** opinion, incompetent, unfaithful, disorderly or otherwise unsatisfactory, or not employed in accordance with the provisions of this Agreement, such person shall be discharged from the work and shall not again be employed on the Project, except with the consent of the **Town**.

ARTICLE 9. CHANGE IN SCOPE OF SERVICES

If this contract is pursuant to M.G.L. Ch. 30B, the **Town** may increase the quantity of supplies or services or both specified in this Agreement provided:

- a) the unit prices remain the same or less;
- b) the procurement officer has specified in writing that an increase is necessary to fulfill the actual needs of the **Town** and is more economical and practical than awarding another contract;
- c) the **Town** and **Contractor** agree to the increase in writing;
- d) the increase in the total contract price does not exceed 25 percent but a contract for the purchase of gasoline, special fuel, fuel oil, road salt or other ice and snow control supplies shall not be subject to this limit; and
- e) the **Town**, with the agreement of the **Contractor**, may reduce the unit price for supplies or services or both specified in a contract to be paid by the **Town** at any time during the term of the contract or when an option to renew, extend or purchase is exercised.

ARTICLE 10. NOTICE

All notices required to be given under this Agreement shall be given in writing and shall be effective upon receipt by hand delivery or certified mail to:

The Town of Needham: Charles Laffey, Director
Dept. of Public Facilities, Operations Division
470 Dedham Ave
Needham, MA 02492

AND TO

Kate Fitzpatrick
Town Manager
1471 Highland Avenue
Needham, Massachusetts 02492

Notices to the Town of Needham must be sent to BOTH in order for it to be effective.

The Contractor: Name _____
Title _____
Company _____
Address _____

ARTICLE 11. INDEMNIFICATION

The **Contractor** shall indemnify, defend, and save harmless the **Town** and all of the **Town's** officers, agents and employees from and against all suits and claims of liability of every name and nature, including costs of defending any action, for or on account of any injuries to persons or damage to property of the **Town** or any person, firm, corporation or association arising out of or resulting from any act, omission, or negligence of the **Contractor**, subcontractors and its and their agents or employees in the performance of the work covered by this Agreement and/or failure to comply with terms and conditions of this Agreement, but only in respect of such injuries or damages sustained during the performance and prior to the completion and acceptance of the work covered by this Agreement and to the extent such injuries or damages are not covered by the Town's insurance. The foregoing provisions shall not be deemed to be released, waived or modified in any respect by reason of any surety or insurance provided by the **Contractor** under the Contract.

ARTICLE 12. PREVAILING WAGE RATES

If the work under this Agreement involves the construction of public works the **Contractor** agrees to pay the prevailing wage and comply with G. L. c. 149, §§ 26 - 27D and a Statement of Compliance is included in the Contract Documents. Pursuant to M.G.L. c. 149 §§ 26 & 27B, the **Contractor** (and every Subcontractor) shall file weekly certified payroll records with the **Town** for all employees who have worked on the Project. The **Town** and the **Contractor** must preserve said records for a period of not less than three years.

ARTICLE 13. MATERIALS AND WORKMANSHIP

Unless otherwise specified, all materials and equipment incorporated in the work under the Contract shall be new. All workmanship shall be first class and by persons qualified in the respective trades.

ARTICLE 14. GUARANTEE OF WORK

- a) Except as otherwise specified, all work shall be guaranteed by the **Contractor** against defects resulting from the use of inferior materials, equipment, or workmanship for one year from the date of final completion of the Contract.
- b) If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which in the opinion of the **Town** are rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract, the **Contractor** shall, promptly upon receipt of notice from the **Town** and at its own expense:

ARTICLE 14. – continued

- 1) Make goods and services conform to this Agreement;
- 2 Make good all damage to the **Town**, or equipment or contents thereof, which, in the opinion of the **Town**, is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Agreement; and
- 3) Make good any work or material, or the equipment or site, which is disturbed in fulfilling any such guarantee.

ARTICLE 15. GOVERNING LAW

This Agreement and performance hereunder are governed in all respects by the laws of the Commonwealth of Massachusetts and all other applicable by-laws and administrative rules, regulations and orders.

ARTICLE 16. CONSENT TO VENUE

- a) The **Contractor** agrees that it shall commence and litigate all legal actions or proceedings arising in connection with this Agreement exclusively in the Dedham District Court or in the Norfolk Superior Court, both of which are located in the County of Norfolk, Commonwealth of Massachusetts. The aforementioned choice of venue is intended to be mandatory and not permissive in nature, thereby precluding the possibility of litigation commenced by the **Contractor**, with respect to or arising out of this Agreement, in any court or forum other than those specified in this paragraph.
- b) It is further agreed that the parties to this Agreement hereby waive their rights to a jury trial.
- c) Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or objection to venue with respect to any proceeding brought in accordance with this Article and stipulates that the Norfolk Division of the Superior Court Department of the Massachusetts Trial Court shall have in personam jurisdiction and venue over each of them for the purposes of litigating any dispute, controversy, or proceeding out of or related to this Agreement. In the event the **Contractor** commences suit or other proceeding in any other court or forum, it agrees to immediately dismiss its suit or other proceeding and if it fails to do so and the Town acts to dismiss or otherwise dispose of the suit, the **Contractor** shall dismiss its suit and be liable to the **Town** for the reasonable legal fees and costs needed to have the matter dismissed.
- d) The **Contractor** hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by these paragraphs by postage prepaid, registered mail, return receipt requested, to

its address as set forth in this Agreement.

ARTICLE 16. - continued

- e) The **Contractor** shall not enter into any agreement with or employ the services of any subcontractor unless the agreement with the subcontractor provides that the subcontractor is subject to and will comply with the provisions of this Article.

ARTICLE 17. WORK PRODUCT

Upon payment of all amounts due under this Agreement, the **Town** shall become the owner of all work product, specifications, plans, maps, data, conclusions, computations and electronic data created under this Agreement. The **Town** agrees that the information contained therein was produced specifically for this Agreement and agrees to hold the **Contractor** harmless from any liability of the **Town's** use of these documents in any future project not directly related to the subject matter of this Agreement. Prior to engaging the services of any Subcontractor the **Contractor** shall provide to the **Town** in writing from the Subcontractor that he assents to this Work Product Article.

ARTICLE 18. SUBCONTRACTING

The **Contractor** shall not subcontract any of the work, which it is required to perform under this Contract to any corporation, entity or person without the prior written approval of the **Town**.

ARTICLE 19. INDEPENDENT CONTRACTOR

All of the services to be performed under the terms of this Agreement will be rendered by the **Contractor** as an independent contractor. None of the terms of this Agreement shall create a principle-agent, master-servant or employer-employee relationship between the **Town** and the **Contractor**.

ARTICLE 20. BINDING AGREEMENT AND ASSIGNMENT OF INTEREST

This Agreement shall be binding upon the **Town** and the **Contractor** and the partners, successors, heirs, executors, administrators, assigns and legal representatives of the **Town** and the **Contractor**. Neither the **Town** nor the **Contractor** shall assign, sublet or transfer any interest in this Agreement without the written consent of each other, and such consent shall not be unreasonably withheld.

ARTICLE 21. CONFLICT OF INTEREST

By execution of this Agreement with the **Town**, the **Contractor** acknowledges that the **Town** is a municipality for the purposes of Massachusetts General Law Chapter 268A (the Massachusetts conflict of interest statute), and agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with the obligations of the **Contractor** based on said statute.

ARTICLE 22. CONFIDENTIALITY

The **Contractor** shall comply with Massachusetts General Law Chapter 66A if the **Contractor** becomes a "holder" of "personal data". The **Contractor** shall also protect the physical security and restrict any access to personal or other **Town** data in the **Contractor's** possession, or used by the **Contractor** in the performance of this Contract, which shall include, but is not limited to the **Town's** public records, documents, files, software, equipment or systems.

ARTICLE 23. SEVERABILITY

If a court declares one or more of the provisions of this Agreement invalid, the validity of the remaining provision of this Agreement shall not be affected thereby.

ARTICLE 24. CERTIFICATE OF COMPLIANCE WITH MASSACHUSETTS TAX LAWS

Pursuant to M.G.L., c. 62C, §49A, the undersigned, acting on behalf of the **Contractor**, certifies under the pains and penalties of perjury, to the best of the undersigned's knowledge and belief, that the **Contractor** is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Social Security Number or
Federal Identification Number

Signature of Individual
or Corporate Name

BY: _____
Corporate Officer (if applicable)

IN WITNESS WHEREOF the parties hereto have executed THREE copies of this Agreement the day and year first above written.

CONTRACTOR: _____

By*: _____

Title: _____

** My signature above certifies that I am duly authorized, or that I have attached a signed Certificate of Vote from my Board of Directors giving me authority, to sign this Contract.*

TOWN OF NEEDHAM, by its Town Manager:

Kate Fitzpatrick

David S. Tobin, Town Counsel
Town of Needham

Date:

SAMPLE

CERTIFICATE OF AUTHORITY **CORPORATE**

1. I hereby certify that I am the Clerk/Secretary of _____
(insert full name of Corporation)
2. corporation, and that _____
(insert the name of officer who signed the contract and bonds.)
3. is the duly elected _____
(insert the title of the officer in line 2)
4. of said corporation, and that on _____
(insert a date that is **ON OR BEFORE** the date
the officer signed the **contract and bonds.**)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. _____ the _____
(insert name from line 2) (insert title from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: _____ AFFIX CORPORATE
(Signature of Clerk or Secretary)* SEAL HERE
7. Name: _____
(Please print or type name in line 6)*
8. Date: _____
(insert a date that is **ON OR AFTER** the date the
officer signed the **contract and bonds.**)

The name and signature inserted in lines 6 & 7 must be that of the Clerk or Secretary of the corporation.