

Town of Needham
Needham Public Schools
1330 Highland Avenue – 1st Floor
Needham, Massachusetts 02492
Telephone 781-455-0400 X207 Fax 781-455-0417

Acknowledgement of Receipt

Release Date	May 6, 2010
Bid Title	Optional Student Accident Insurance
Bid Number	IFB 11SCH-010GX
Bid are Due	11:00 am, Friday, May 21, 2010 Needham Public Schools, 1330 Highland Avenue, Needham, MA 02492,
Please provide the requested information below as acknowledgment that you have received our Invitation to Bid (IFB) noted above. It is <u>recommended</u> that interested bidders complete this acknowledgment and return via Fax to the Needham Public Schools, Director of Financial Operations at (781) 455-0417 or by mail. Only by doing this, will the School Department be able to provide notification of any addenda or answered questions relating to this RFP. Only those companies or individuals shown on the Distribution Register will receive addenda to this IFB. 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	
Name / Title of Contact	
Address (line 1)	
Address (line 2)	
Telephone Number	
Fax Number	
E-mail Address	
Signature	
Date	
Facsimile transmissions for written inquiries must be sent prior to the above date and time deadlines. 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.	

**NEEDHAM PUBLIC SCHOOLS
1330 Highland Avenue
Needham, MA 02492**

May 2010

INVITATION FOR BIDS

Town of Needham

School Department

Optional Student Accident Insurance

Town Bid # 11SCH-010GX

The Needham School Committee invites sealed bid proposals for Optional Student Accident Insurance, for the three (3) year period beginning July 1, 2010, extending to June 30, 2013. Copies of the bid requirements are available from the Office of the Director of Financial Operations, 1330 Highland Avenue, Needham, MA 02492, beginning May 6, 2010 at 8:00 AM.

Bids are returnable to the Office of the Director of Financial Operations, 1330 Highland Avenue, Needham, MA 02492 until May 21, 2010 at 11:00 AM, at which time and place they will be publicly opened. Needham Public Schools reserves the right to reject in whole or in any part or all bids, if doing so serves the best interest of the District. The Needham School Committee, acting through its Superintendent, is the awarding authority for this bid.

Daniel Gutekanst
Superintendent of Schools
Town of Needham
Needham, Massachusetts

NEEDHAM PUBLIC SCHOOLS
1330 Highland Avenue
Needham, MA 02492

April 2010

Optional Student Accident Insurance
INVITATION FOR BID (IFB)

I. INFORMATION & INSTRUCTIONS TO BIDDERS

1. Questions:

Bidders must read these specifications carefully. Questions about the specifications shall be submitted in writing or faxed to:

Barry S. Nectow
Assistant to the Director of Financial Operations
Needham Public Schools
1330 Highland Avenue
Needham, MA 02492
Telephone (781) 455-0400 Ext. 207
Fax (781) 455-0417

2. Bid Addenda

If any changes are made to this IFB, an addendum will be issued. Addenda will be mailed emailed or faxed to all bidders on record as having received the IFB.

3. Bid Preparation and Submission:

- A. Bids will be received by the Director of Financial Operations, Needham Public Schools, 1330 Highland Avenue, Needham, MA 02492, until May 21, 2010 at 11:00 a.m., at which time and place they will be publicly opened.
- B. Bids shall be prepared, considered, and the Contract awarded in accordance with Massachusetts General Law (M.G.L.) Chapter 30B.
- C. Bids are to be enclosed in a sealed envelope, plainly marked as follows: "Bid for Optional Student Accident Insurance " If forwarded by mail, the bid must be enclosed in another envelope addressed as specified in the bid specifications.

- D. Bidders may correct, modify or withdraw a bid by written notice received by the Director of Financial Operations prior to the time and date set for the bid opening. Bid modifications must be submitted in a sealed envelope clearly labeled "Modification No.____." Each modification must be numbered in sequence, and must reference the original IFB.

After the bid opening, a bidder may not change any provision of the bid in a manner prejudicial to the interests of the Town or fair competition. Minor informalities will be waived or the bidder will be allowed to correct them. If a mistake and the intended bid are clearly evident to Needham Public Schools on the face of the bid document, the mistake will be corrected to reflect the intended correct bid, and the bidder will be notified in writing; the bidder may not withdraw the bid. A bidder may withdraw a bid if a mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident.

- E. Bids received after the date and time specified shall not be considered.
- F. Bids are to be prepared and submitted on the bid forms provided herein. Bids submitted on other forms, which are incomplete, or which are not signed, may be rejected.
- G. A bid must be signed as follows: 1) if a bidder is an individual, by him/her personally; if the bidder is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the bidder is a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and the corporate seal affixed.
- H. A complete bid will include one original and one copy of the following forms, completed in full and appropriately signed:

Bid Form I	Bidder Information & Certification
Bid Form II	Statement of Bidder Qualifications
Bid Form III	Bid Form
Bid Form IV	Certificate of Compliance with Massachusetts Tax Laws & Non-Collusion
Bid Form V	Certificate of Corporate Vote

- I. The School Committee of Needham (Committee) reserves the right to reject in whole or in part any or and all bids, if the Committee determines that cancellation or rejection serves the best interests of the District.
- J. All bid prices submitted in response to this IFB must remain firm for sixty (60) days following the bid opening.

4. Rule for Award - Contract Issuance:

- A. The Needham School Committee will award one contract for all Optional Student Accident Insurance services specified herein to the responsive and responsible bidder with the lowest grand total price over the three-year contract period, July 1, 2010, extending to June 30, 2013.

In the event that multiple bidders submit the same grand total bid price, the Director of Financial Operations will re-calculate each year's bid price to determine the net present value of each

payment, using a discount factor equal to 5%. The responsive and responsible bidder with the lowest grand total price, in net present value terms, will be named the low bidder.

- B. The Needham School Committee will award the contract under this bid within sixty (60) business days after the opening of the bids, conditioned on submission by the successful bidder of evidence of ability to perform satisfactorily to the Committee, and execution of a signed contract.
- C. The successful bidder must enter into the Short Form Agreement prepared by Town Counsel of the Town of Needham (Appendix A), or a contract in substantially similar format.
- D. Should there be a reason why the contract cannot be awarded within the time referenced herein, the time for award may be extended by mutual agreement between the Needham Public Schools (NPS) and the successful bidder.

5. **Contract Adjustments:**

Without invalidating the Contract, the Needham School Committee may, at any time, and from time to time, by written order, change, increase or omit any part of the work, or change the Contract, or specifications, or require the company who is awarded the contract (Contractor) to furnish extra equipment or extra labor relating to the work, and the Contractor shall conform to such orders. No change in the work shall be allowed, unless the order is signed by a Needham School Committee representative.

6. **Bidder Qualifications:**

A. To be considered qualified under this bid:

- a. Bidders must provide all services specified herein, and comply with all bid submission requirements.
- b. Bidders must provide evidence of satisfactory ability, experience and capital to execute the requirements, specifications, and conditions of this Bid.

B. The School Committee reserves the right to investigate the financial responsibility of any and all bidders to determine what assurance the owner may have of subsequent service. It further reserves the right to withhold the awarding of any contract under its jurisdiction when the bidder is unable to furnish satisfactory evidence of adequate ability, experience and/or capital to execute the completion of a project in accordance with the prescribed requirements, specifications and conditions of the Bid Documents.

II. PURCHASE DESCRIPTION & SCOPE OF SERVICES

- 1. The bid will cover the provision of **Optional Student Accident Insurance** to students attending Needham Public Schools, beginning July 1, 2010, extending to June 30, 2013.
- 2. Coverage must include the following:

- a. School Time Plan covering injuries at school, going to and from school, participation in school – sponsored activities, release time and school sports, except inter-scholastic football; and
 - b. 24-Hour Plan providing complete accident coverage as an extension of the School Time Plan.
3. Coverage must be available to all Needham Public Schools students. (Estimated enrollment in 2010/11 is 5,258.)
4. A complete bid must be accompanied by a sample brochure outlining the coverage benefits and rates available to Needham Public Schools students.
5. The successful bidder must provide Needham Public Schools with printed insurance brochures for distribution to the student body for the upcoming school year no later than July 1 of each prior school year. Failure to deliver the required number of brochures by the aforementioned deadline may be grounds for termination of the contract.
6. The successful bidder must provide the Director of Financial Operations, Needham Public Schools 1330 Highland Avenue, Needham, MA 02492, with a list of students who purchased the insurance during the prior school year, sorted by school.
7. ***The successful bidder must accept all premiums directly from the insurees, unless waived in writing by the Needham School Department. The Needham Public Schools will not make any payments directly to the successful bidder under this contract.***

III. ASSUMPTION OF LOSS AND LIABILITY

1. The Contractor agrees that it shall pay or cause to be paid for all labors performed or furnished, all materials used or employed in the performance of the work under the contract(s), and all rental or hire of appliances and equipment employed in the work.
2. The Contractor is retained solely for the purpose and to the extent set forth in this agreement. During the term of this contract(s), the Contractor's relationship to the Town shall be that of an independent contractor. The Contractor shall have no capacity to involve the Town in any contract(s), or to incur any liability on the part of the Town.

IV. EVIDENCE OF ABILITY TO PERFORM

1. It is the intent of the Needham School Committee not to award a contract(s) to any bidder who does not furnish evidence of satisfactory ability, experience and capital to execute the requirements, specifications, and conditions of this Bid.
2. Bidders may be required to further submit the following pertinent information:
 - a. A balance sheet and a statement of profit and loss prepared and certified by the bidder's certified public accountant reflecting financial status for each of the three (3) preceding fiscal years.
3. The School Committee reserves the right to investigate the financial responsibility of any and all bidders to determine what assurance the owner may have of subsequent service. It further reserves the right to withhold the awarding of any contract(s) under its jurisdiction when the bidder is unable to furnish

satisfactory evidence of adequate ability, experience and/or capital to execute the completion of a project in accordance with the prescribed requirements, specifications and conditions of the Bid Documents.

V. REMEDIES OF THE COMMITTEE

1. If the Contractor fails to perform services or perform services in a manner which is not pursuant to the terms and conditions of this contract(s), the Committee may make a reasonable purchase or contract(s) to procure services in substitution, and may deduct the cost of any substitute contract(s), or the damages sustained by the Committee due to non-conformance of services, together with incidental and consequential damages from the contract(s) price, from sums due or to become due to the Contractor.
2. If the damages sustained by the Town as determined by the Superintendent exceed sums due or to become due, the Contractor shall pay the difference to the School Committee upon demand.
3. The Contractor agrees that if it is determined at any time by the Committee that the Contractor has substantially violated any of the provisions of this contract(s), the Committee shall, after having given the Contractor a hearing before the Committee, terminate this contract(s) at any time. Determination may be based on default in performance, nonconformity of performance, deficiency excused by failure to pre-suppose conditions, breach of the terms and conditions of this contract(s), failure in any respect to perform the service with promptness and diligence, bankruptcy, receivership or if a general assignment for the benefit of the Contractor's creditors impairs the value of service under this contract(s).
4. The Committee reserves the right to amend this contract(s) or any part thereof, from time to time, upon giving written notice to the Contractor seven (7) days in advance of the implementation date of the amendment.
5. The Committee reserves the right to assess penalty fees against the Contractor for failure to perform as specified, not to exceed the per diem amount per failure.

VI. COMMITTEE'S RIGHTS

1. The Committee reserves the right to reject any or all bids or any parts thereof whenever the interest of the Town shall require and award the contract(s) to the lowest responsible bidder.
2. All specifications will be incorporated into the Contract(s) by reference.
3. The Committee reserves the right to cancel the contract(s) unilaterally on thirty (30) days notice for violation of any part of the contract(s), but in so doing, will not waive any rights or remedies which the Town may have against the Contractor.

Bid Form I
Needham Public Schools
BIDDER INFORMATION & CERTIFICATION

BIDDER IDENTIFYING INFORMATION:

Company Name: _____
Main Office Address: _____
Official Mailing Address: _____
Contact Person: _____
Telephone Number: _____ Fax Number: _____
E-Mail Address: _____

The named organizational entity submitting this Bid is (check one):

Proprietorship ☐

Partnership ☐

Corporation ☐

NAMES AND ADDRESSES OF PRINCIPALS:

List below the names and addresses of all owners or partners. If the bidder is a corporation, list the names and addresses of the principal stockholders and the names of the executive personnel:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

SIGNATURE/ ACKNOWLEDGEMENT:

This section must be signed by an individual with the authority to commit the bidding entity to a binding agreement. If the Bidder is an individual, this section must be signed by the Bidder, personally. If a partnership, the Bid must be signed by the name of the partnership, followed by the signature of each partner. If a corporation, the Bid must be signed by an authorized officer, whose signature shall be attested by the Secretary of the Corporation and the Corporate Seal affixed (see Bid Form V.)

The undersigned assures that this bid, as presented on Bid Forms I-V, is made in good faith, without fraud, collusion, or connection of any kind with any other bidder for the same work. Additionally, the undersigned assures that he/she has informed himself/herself fully of the information presented in Section I :
INFORMATION AND INSTRUCTIONS TO BIDDERS, and that he/she has made his own examinations and estimates and from them makes this Bid.

Bid Form I
Needham Public Schools
BIDDER INFORMATION & CERTIFICATION (PAGE 2)

The undersigned also understands that the School Committee reserves the right to waive any informalities in, to reject any and all bids, or any part thereof, and/or accept any bid or part thereof, or to select a bidder whose bid is not the lowest, which it considers to be in the best interests of the Needham Public Schools and the Town of Needham.

With the above understanding, the undersigned proposes to furnish Optional Student Accident Insurance and to comply in all respects with said specifications for the sum or sums stated herein. In addition, the undersigned agrees, that, if awarded this contract, he/she will execute a contract within sixty (60) business days, after presentation by the awarding authority, in accordance with the terms of this Bid.

Signature of Bidder *: _____

Name of Bidder: _____

Title of Bidder: _____

Date: _____

* If a partnership, additional partners should sign below:

Signature: _____ Signature: _____

Name: _____ Name: _____

Date: _____ Date: _____

Signature: _____ Signature: _____

Name: _____ Name: _____

Date: _____ Date: _____

Bid Form II
Needham Public Schools
STATEMENT OF BIDDER QUALIFICATIONS

The following information is provided as evidence of the bidder's qualifications to perform work, as bid upon, in accordance with the contract specifications. All questions must be answered. Additional data may be submitted on separate, 8.5 x 11 inch attached sheets.

Company Name: _____

When Organized: _____ Where Incorporated if a Corporation: _____

Number of Years of Contracting Under Present Name: _____

- 1. List of References: Please submit a list of organizations and communities to whom you have provided optional student accident insurance in the past. References provided shall include rates, and any other material or information to adequately describe the services rendered.**

A. Reference: _____ Contact: _____
Address: _____
Phone: _____ Fax: _____
Contract Value \$: _____ Contract Years: _____
Description and Date(s) of Services Provided: _____

B. Reference: _____ Contact: _____
Address: _____
Phone: _____ Fax: _____
Contract Value \$: _____ Contract Years: _____
Description and Date(s) of Services Provided: _____

Bid Form II
Needham Public Schools
STATEMENT OF BIDDER QUALIFICATIONS (PAGE 2)

List of Contracts (Continued):

C. Reference: _____ Contact: _____
Address: _____
Phone: _____ Fax: _____
Contract Value \$: _____ Contract Years: _____
Description and Date(s) of Services Provided: _____

D. Reference: _____ Contact: _____
Address: _____
Phone: _____ Fax: _____
Contract Value \$: _____ Contract Years: _____
Description and Date(s) of Services Provided: _____

E. Reference: _____ Contact: _____
Address: _____
Phone: _____ Fax: _____
Contract Value \$: _____ Contract Years: _____
Description and Date(s) of Services Provided: _____

F. Reference: _____ Contact: _____
Address: _____
Phone: _____ Fax: _____
Contract Value \$: _____ Contract Years: _____
Description and Date(s) of Services Provided: _____

Bid Form II
Needham Public Schools
STATEMENT OF BIDDER QUALIFICATIONS (PAGE 4)

6. From the references listed in 1, identify three (3) different contracts similar in size and scope to the proposed contract in which you have performed work:

1. _____
2. _____
3. _____
4. _____
5. _____

The undersigned hereby authorizes and requests any person, firm, or corporation to furnish information requested by the Needham School Committee relative to the information provided comprising this Statement of Bidder's Qualifications.

Bidder: _____

By: _____

Title: _____

Dated: _____

**Bid Form III
Needham Public Schools
BID FORM**

1. The undersigned proposes to furnish Optional Student Accident Insurance for Needham Public Schools students in accordance with the accompanying specifications, for the contract prices specified below, subject to additions and deductions according to the terms of the specifications, for a period of three years, beginning July 1, 2010, extending to June 30, 2013.
2. Except where otherwise noted, the bid price shall be construed to cover all costs incurred by the contractor in the performance of this contract.
3. Rule for Award: One contract for all Optional Student Accident Insurance specified herein will be awarded to the responsive and responsible bidder with the lowest grand total price over the five-year contract period, July 1, 2010, extending to June 30, 2013.

In the event that multiple bidders submit the same grand total bid price, the Director of Financial Operations will re-calculate each year's bid price to determine the net present value of each payment, using a discount factor equal to 5%. The responsive and responsible bidder with the lowest grand total price, in net present value terms, will be named the low bidder.

4. All bid prices are to be indicated in ink (or typewritten), and written in both longhand and numerals. If there appears to be discrepancy between these figures, the price indicated in longhand shall prevail.

Company Name: _____

A. Minimum Qualifications

Please confirm compliance with the scope of services described in Section II:

Scope of Service	Yes, I can meet the Minimum Criteria (Please place a check in the box below)
1. Bidder agrees the bid will cover the provision of Optional Student Accident Insurance to students attending Needham Public Schools, beginning July 1, 2010, extending to June 30, 2013.	
2. Bidder agrees coverage will include the following:	
a. <u>The School Time Plan</u> covers injuries at school, going to and from school, participation in school – sponsored activities, release time and school sports, except inter-scholastic football; and	
b. <u>The 24-Hour Plan</u> provides complete accident coverage as an extension of the School Time Plan.	

**Bid Form III
Needham Public Schools
BID FORM (Page 2)**

Scope of Service	Yes, I can meet the Minimum Criteria (Please place a check in the box below)
3. Bidder agrees coverage will be available to all Needham Public Schools students. (Estimated enrollment in 2010/11 is 5,258.)	
4. Bidder agrees a bid is complete when accompanied by a sample brochure outlining the coverage benefits and rates available to Needham Public Schools students.	
5. Bidder agrees that a successful bidder will provide Needham Public Schools with printed insurance brochures for distribution to the student body for the upcoming school year no later than July 1 of each prior school year. Failure to deliver the required number of brochures by the aforementioned deadline may be grounds for termination of the contract.	
6. Bidder agrees that the successful bidder will provide the Director of Financial Operations, Needham Public Schools, 1330 Highland Avenue, Needham, MA 02492, with a list of students who purchased the insurance during the prior school year, sorted by school.	
<i>7. Bidder agrees that the successful bidder will accept all premiums directly from the insurees, unless waived in writing by the Needham School Department. The Needham Public Schools will not make any payments directly to the successful bidder under this contract.</i>	

B. Bid Price Proposal

I. School Time Plan

Contract Year	Cost to Participants	Name of Ins. Policy Underwriter	Annual Bid Price in Longhand
2010/2011	\$		
2011/2012	\$		
2012/2013	\$		
Three-Year Total (A)		\$	

**Bid Form III
Needham Public Schools
BID FORM (Page 3)**

II. 24-Hour Plan

Contract Year	Cost to Participants	Name of Ins. Policy Underwriter	Annual Bid Price in Longhand
2010/2011	\$		
2011/2012	\$		
2012/2013	\$		
Three-Year Total (B)			

Grand Total Bid Price (BII+BIIB)=

Grand Total Bid Price (In longhand): _____

BIDDER SIGNATURE:

Signature: _____

Print Name: _____

Print Title: _____

Date: _____

Bid Form IV
Needham Public Schools
CERTIFICATE OF COMPLIANCE WITH MASSACHUSETTS TAX LAWS & NON-COLLUSION

I. Certificate of Compliance with Massachusetts Tax Laws:

Pursuant to Mass. Gen. L. Ch. 62C, Sec. 49, I certify under the pains and penalties of perjury that the **CONTRACTOR**, to my best knowledge and belief, has filed all state tax returns and paid all state taxes required under the laws of the Commonwealth of Massachusetts.

Social Security Number or
Federal Identification Number

Signature of Individual
or Corporate Name

BY: _____
Corporate Officer (if applicable)

II. Certificate of Non-Collusion:

Massachusetts General Law, Chapter 701 of the Acts of 1983 requires that bidders certify as follows:

The undersigned certifies under the pains and penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any 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.

Signature of Individual Submitting Bid

Print name of Person Signing Bid

Name of Business or Entity

Date Signed

Bid Form V
Needham Public Schools
CERTIFICATE OF CORPORATE VOTE

At a duly authorized meeting of the Board of Directors of _____.
(Name of Corporation)

held on _____(1), at which all the Directors were present or waived notice, it was voted
(Date)

that _____ of this corporation, be it he or she, hereby is
(Name of Officer Authorized to Sign for Corporation)

authorized to execute bid documents, contracts and bonds in the name _____
(Corporate Office)

and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any bid document or contract or obligation in this corporation's name on its behalf under seal of the corporation, shall be valid and binding upon this corporation.

ATTEST: _____
(Clerk or Secretary)

Place of Business:

I hereby certify that I am the clerk/secretary of the _____ and that
(Name of Corporation)

_____ is the duly elected
(Name of Officer Authorized to Sign for Corporation)

_____ of said corporation, and that the above vote has not
(Corporate Office)

been amended or rescinded and remains in full force and effect as of the date set forth below.

ATTEST: _____
(Clerk or Secretary)

Date _____(2)

- (1) This date must be on or before the date of the Contract
- (2) This date must be on or before the date of the Contract

Appendix A
SHORT FORM AGREEMENT
BETWEEN TOWN AND CONTRACTOR

THIS AGREEMENT for **Optional Student Accident Insurance** (hereinafter the "Project") is made the _____ day of _____, 20____, 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 School Committee, 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:

1. This Agreement;
2. The **Contractor's** Bid or Proposal;
3. The Invitation For Bids, Bid Specifications, Request For Proposals Or Purchase Description, if any;
4. Drawings required for the Project, if applicable and
5. 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

This Agreement shall be for a term of _____ year(s), commencing on _____, 20____ and ending on _____, 20____, unless sooner completed and subject to annual appropriation. This Agreement shall not be renewed or extended unless provisions for renewal or extension were contained in the Request for Proposals, in which event the Agreement may be extended or renewed at the sole option of the **Town**, and upon the terms described therein.

ARTICLE 4. THE CONTRACT SUM

The Contractor must accept all premiums directly from the insurees, unless waived in writing by the Needham Public Schools. The Needham Public Schools will not make any payments directly to the Contractor under this contract.

ARTICLE 5. PAYMENT

This section left intentionally blank.

ARTICLE 5A. PROMPT PAYMENT DISCOUNTS

This section left intentionally blank.

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.

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:

Needham Public Schools:

Name: Anne Gulati
 Title: Director of Financial Operations
 Address 1330 Highland Avenue
Needham, MA 02492

The Contractor:

Name _____
 Title _____
 Company _____
 Address _____

ARTICLE 11. INSURANCE

- a) The **Contractor** shall, at its own expense, obtain and maintain general liability and motor vehicle liability insurance policies protecting the **Town** in connection with any operations included in this Contract, and shall have the **Town** as an additional insured on the policies. General liability coverage shall be in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury liability and \$1,000,000 per occurrence and \$2,000,000 aggregate for property damage liability. Motor vehicle coverage shall include coverage for owned, hired and non-owned vehicles and shall be in the amount of at least \$1,000,000 per person and \$2,000,000 per occurrence for bodily injury liability and \$1,000,000 per occurrence for property damage liability. In the event this Agreement is for professional services, the **Contractor** shall carry professional malpractice or Errors and Omissions liability insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate, with a maximum deductible of \$10,000.
- b) All insurance coverage shall be in force from the time of the Agreement to the date when all work under the contract is completed and accepted by the **Town**. Since this insurance is normally written on a year-to-year basis, the **Contractor** shall notify the **Town** should coverage become unavailable or if its policy should change.

- c) The **Contractor** shall, before commencing performance of this contract, provide for the payment of compensation and the furnishing of other benefits by an insurance company duly licensed to do business in accordance with Massachusetts General Laws, Chapter 152, as amended, to all employed under the contract and shall continue such insurance in full force and effect during the term of the contract.
- d) Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the contract. Any cancellation of insurance whether by the insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the **Town** at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice.

ARTICLE 12. 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 13. 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 14. 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 15. 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:
 - 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 16. 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 17. 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.
- 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 18. 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** a writing from the Subcontractor that he assents to this Work Product Article.

ARTICLE 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 Superintendent of Schools:

This is to certify that this procurement
was made on behalf of the Town of
Needham in accordance with the
requirements of M.G.L., Ch. 30B.

Procurement Officer
Date: