INVITATION FOR BID
IFB # XXXXXXX

COOPERATIVE CONTRACT TO FURNISH & DELIVER
VARIOUS GROCERY ITEMS FOR THE
MASSACHUSETTS SCHOOL BUYING GROUP, ANDOVER, MA

March 28, 2018

BIDS DUE:

May 24 2018, 10:00 AM
Late Proposals Will Be Rejected

DELIVER COMPLETED SUBMISSIONS TO:

Town of Andover, MA
Central Purchasing Department
Attn: Janet Brewer
36 Bartlet St. Andover, MA 01810
Phone: 978-623-8950
e-mail: jbrewer@andoverma.gov

Town of Andover, Massachusetts

IFB # 005/08-17/301

Town of Andover, Massachusetts
Purchasing Department

COVER SHEET

The Town of Andover reserves the right to reject any or all Proposals, to omit any item or items called for, or to accept the Proposal deemed in the best interest of the Town. One Original and One (1) copy of the bid must be submitted **on or before 10:00 AM on May 24, 2018** to**:**

Janet Brewer, Actin Purchasing Agent
Purchasing Department
Town Office Building
36 Bartlet Street
Andover, Massachusetts 01810

The envelope containing the Bid and required information must be sealed and marked with Proposer's name, title of proposal, IFB number, and date of opening. The Proposer must sign all required signature pages in order for the proposal to be considered.

The Proposer acknowledges receipt of the following **ADDENDA #** _____

BUSINESS/INDIVIDUAL NAME_____

ADDRESS _____

CITY, STATE, ZIP CODE _____

TELEPHONE _____

EMAIL _____

INDIVIDUAL/AUTHORIZED SIGNATURE _____

AUTHORIZED OFFICER NAME (print) _____

DATE _____

By signing above, the authorized officer is certifying that a complete examination of all bid/rfp documents has been made and that the goods/services will be delivered within the time specified and at the prices stated.

All bidders must sign and submit with their bid the attached Certificate of Good Faith and Tax Compliance Form. Failure to do so will result in the bid being unresponsive and rejected.

If bidder/proposer is a co-partnership, all partners must execute both copies of the bid/proposal, unless one partner has been authorized to sign for the co-partnership, in which case evidence of such authority shall be submitted.

If bidder/proposer is a corporation, the authorized agent shall execute both copies of the bid/proposal. Evidence of authority to sign must be submitted.
The Town of Andover reserves the right to reject any or all bids/proposals and waive any informalities deemed to be in the best interests of the Town.

Town of Andover
Town Offices
36 Bartlet Street
Andover, MA 01810
(978) 623-8950
www.andoverma.gov

INVITATION TO BID

COOPERATIVE BID

Abby Kelley Foster Charter Public School, Acton-Boxborough Regional Schools, Acushnet Public Schools Andover Public Schools, Arlington Public Schools, Assabet Valley Regional Technical High School, Auburn Public Schools, Bellingham Public Schools, Belmont Schools, Berlin-Boylston, Billerica Public Schools, Blackstone-MIllville RSD, Braintree Public Schools, Burlington Public Schools, Cambridge Public Schools, Danvers Public Schools, Dartmouth Public Schools, Dedham Public Schools, Dracut Public Schools, Franklin Public Schools, Gloucester Public Schools, Greater Lawrence Technical School, Hingham Schools, Ipswich Public Schools, Littleton Public Schools, Lynnfield Public Schools, Methuen Public Schools, Middleboro Public Schools, Milford Public Schools, Millbury Public Schools, Milton Public Schools, Nashoba Regional, Nashoba Valley Technical High School, Needham Schools, North Attleboro Public Schools, Plainville Public Schools, Plymouth Public Schools, Quabbin Regional School District, Reading Public Schools, Scituate Public Schools, Somerville Public Schools, Stoughton Public Schools, Wachusett Regional School District, Wakefield Schools, Waltham Public Scools, Watertown Public Schools, Whitman-Hanson RSD and Wrentham Public Schools

Sealed bids for furnishing various grocery items to the aforementioned School Districts, will be received at the Office of Central Purchasing, Andover Town Offices, 36 Bartlet Street, Andover, Massachusetts 01810, until the time specified below at which time the bids will be publicly opened and read. The time received will be stamped on each bid and for a consistency of time the time stamp clock in the Purchasing Office will be the determining time.

ITEM	**BID OPENING**
IFB No. 005/08-17/301	May 24, 2018
Various Grocery Items	10:00 AM

Bid Documents and bid forms may be obtained at the Office of Central Purchasing, Andover Town Offices, 36 Bartlet Street, Andover, MA, or on the Central Purchasing Department webpage located at www.andoverma.gov/bids.

Bids shall be submitted in a sealed envelope stating the name of the bidder on the outside. These bids will be opened in the second floor conference room at the Andover Town Offices, 36 Bartlet Street, Andover MA.

NO SECURITY IS REQUIRED ON THIS BID.

No bidder may withdraw his bid for a period of thirty (30) days after the date set for the opening thereof.

The bidding and award of this Contract will be under the provisions of M.G. L. Chapter 30B.

Andover is an affirmative action/equal opportunity purchaser. The right is reserved by the Massachusetts School Buying Group, on behalf of all of the member communities, to reject any or all bids, or to waive any informality in the bids, if it is deemed to be in the public interest to do so.

Janet Brewer
Acting Purchasing Agent

ADV: Andover Townsman – August 24, 2017
Goods & Services Bulletin – August 21, 2017

PART 1. GENERAL INFORMATION

1.1 PROCUREMENT DESCRIPTION

The Town of Andover Central Purchasing Department, on behalf of the following member School Districts of the Massachusetts School Buying Group:

Abby Kelley Foster Charter Public School, Acton-Boxborough Regional Schools, Acushnet Public Schools Andover Public Schools, Arlington Public Schools, Assabet Valley Regional Technical High School, Auburn Public Schools, Bellingham Public Schools, Belmont Schools, Berlin-Boylston, Billerica Public Schools, Blackstone-MIllville RSD, Braintree Public Schools, Burlington Public Schools, Cambridge Public Schools, Danvers Public Schools, Dedham Public Schools, Dracut Public Schools, Franklin Public Schools, Gloucester Public Schools, Greater Lawrence Technical School, Hingham Schools, Ipswich Public Schools, Littleton Public Schools, Lynnfield Public Schools, Methuen Public Schools, Middleboro Public Schools, Milford Public Schools, Millbury Public Schools, Milton Public Schools, Nashoba Regional, Nashoba Valley Technical High School, Needham Schools, North Attleboro Public Schools, Plainville Public Schools, Plymouth Public Schools, Quabbin Regional School District, Reading Public Schools, Scituate Public Schools, Somerville Public Schools, Stoughton Public Schools, Wachusett Regional School District, Wakefield Schools, Waltham Public Schools, Watertown Public Schools, Whitman-Hanson RSD and Wrentham Public Schools

is issuing this Invitation for Bids to interested bidders to furnish and deliver various grocery items. Prices bid must be F.O.B. to each listed school district.

Any contract that results from this procurement shall be for a term of one year, commencing on July 1, 2018 and ending on June 30, 2019. ~~with the option to renew for an additional one year, at the sole discretion of the Massachusetts State Buying Group and its participating School Districts.~~

1.2 APPLICABLE LAW

This procurement will be conducted pursuant to Massachusetts General Laws Chapter 30B, Section 5.

1.3 APPROVAL

Any contract that may result from the procurement shall be subject to the approval of the Town Manager/Mayor/School Superintendent, or his/her designee, in each of the participating communities.

1.4 INCORPORATION BY REFERENCE

All requirements, specifications, terms, conditions and addenda issued and as described in this Invitation for Bids shall be incorporated by reference into any contract that may result.

1.5 TIME FOR AWARD

Any contract that may result from the procurement shall be awarded within thirty (30) days after the bid opening. The time for award may be extended for an additional thirty (30) days by agreement between the Town(s) and apparent low bidder.

1.6 RIGHT TO CANCEL/REJECT

The Massachusetts School Buying Group, on behalf of all participating communities, reserves the right to cancel this Invitation for Bids or reject in whole or in part any and all bids if the Town determines that cancellation or rejection serves the best interests of the Town and all the participating communities.

1.7 TAXATION

Purchases made by the members of the Massachusetts School Buying Group are exempt from the payment of Federal excise tax and the payment of Commonwealth of Massachusetts sales tax and any such taxes must not be included in the bid pricing.

Copies of the tax exempt paperwork shall be available upon request of the selected contractor.

1.8 OBTAINING THE INVITATION FOR BIDS

The Invitation for Bids shall be available beginning March 28, 2018.

The Invitation for Bids and related documents shall be available for free download from the Town's Purchasing Department webpage located on the Town's website at http://www.andoverma.gov/Bids.aspx?CatID=19

Hardcopies of the Invitation for Bids and related documents may be obtained at the Office of the Purchasing Agent, 36 Bartlet Street Andover, MA 01810 between the hours of 8:30 AM-4:30 PM on Monday-Friday.

PART 2. INSTRUCTIONS TO BIDDERS

2.1 REQUIREMENTS AND SUBMISSIONS

Below please find a description of the requirements and submissions that must be included as part of a bid. Bids must be sealed and marked as noted.

2.1.1 BID PRICING FORM

Every bid must include a completed 'Bid Pricing Form'. See attached. All material, equipment and labor is FOB - DESTINATION.

2.1.2 NON-COLLUSION

Every bid must include a certification of good faith with signature, certifying that the bid was made in good faith and without collusion or fraud. See 'Non-Collusion & Tax Compliance Form' attached.

2.1.3 TAX COMPLIANCE

Every bid must include a written certification, with signature, that the bidder has complied with all state laws relating to taxes, reporting of employees and contractors, and child support. See 'Non-Collusion & Tax Compliance Form' attached.

2.1.4 CORPORATE BIDDER & SIGNATURES FORM

If the bid is being submitted by a corporation, the bid must include a certification, with signature, that the individual submitting the bid has been authorized to bind the corporation. See 'Certificate of Corporate Authority' attached. If submitting the bid as either an individual or co-partnership, the Signatures Form, with signature, must be submitted. See "Signatures Form" attached.

2.1.5 REFERENCE FORM

Every bid must include at least three (3) references from where bidder has provided a similar supply/service. See 'Reference Form' attached.

2.2 BID DELIVERY

Below please find a description of the manner in which sealed bids must be submitted.

2.2.1 DUE DATE AND TIME

Bids shall be received by the Office of the Purchasing Agent on or before Thursday, May 24, 2018 at 10:00 AM.

Any bid received after that time shall be rejected as non-responsive. For a matter of uniformity regarding time, the Time Stamp Clock in the Office of the Purchasing Agent will be the official determining time. Bids submitted via email or facsimile will not be accepted.

2.2.2 ADDRESS

Hard copies of sealed bids shall be delivered to the Office of the Purchasing Agent, 36 Bartlet Street, Andover, MA 01810.

2.2.3 HOURS OF OPERATION

Bids must be delivered during the normal hours of operation of the Town of Andover: 8:30 AM – 4:30 PM Monday through Friday.

2.2.4 COPIES

Please see the "Bid Submission" section of the Bid Specifications for more information.

2.2.5 LABELING

The outside of the envelope containing the sealed bid must be labeled with 1) the bid number 2) the bid opening date and time 3) the name of the bidder and 4) the title of the bid.

2.3 SIGNATURES

A bid must be signed as follows: 1) if the bidder is an individual, by her/him personally; 2) 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 with the corporate seal affixed (See attached "Signatures Form" and "Corporate Vote Form").

2.4 QUESTIONS, CHANGES, MODIFICATIONS AND WITHDRAWALS

2.4.1 QUESTIONS/REQUESTS FOR CLARIFICATION

Questions concerning this Invitation for Bid must be submitted in writing to: Janet Brewer at jbrewer@andoverma.gov at least five (5) days prior to the bid opening date. Written responses will be mailed to all bidders on record as having picked up the Invitation for Bids.

2.4.2 CHANGES

If any changes are made to this Invitation for Bid, addenda will be issued. Addenda will be posted in the Office of the Purchasing Agent, on the website and e-mailed to all bidders on record as having picked up the Invitation for Bid.

2.4.3 MODIFICATIONS AND WITHDRAWALS

A bidder may correct, modify, or withdraw a bid by written notice received by the Town of Andover prior to the time and date set for bid opening.

Modifications must be submitted in a sealed envelope clearly labeled "Modification No.__" to the address listed in part one of this section. Each modification must be numbered in sequence, and must reference the Invitation for Bids.

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 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.

2.5 UNFORESEEN OFFICE CLOSURES

If, at the time of the scheduled bid opening, the Office of the Purchasing Agent is closed due to uncontrolled events such as fire, snow, ice, wind, or building evacuation, the bid opening will be postponed until the next normal business day and at the same scheduled time as the original deadline. Bids will be accepted until that date and time.

2.6 BID OPENING PROCEDURE

At the time and place fixed for opening of bids, the Town will cause to be opened and publicly read aloud every bid received within the time set for receiving bids, irrespective of any irregularities therein. Bidders and other persons properly interested may be present, in person or by representative.

PART 3. EVALUATION & SELECTION

3.1 RULE FOR AWARD

Any contract that results from the Invitation for Bids will be awarded to the responsive and responsible vendor offering the products and services described in this Invitation for Bids at the lowest total price. All quantities listed in the Bid Price Sheet are ***estimates only*** and vendors shall be advised that no

member school district of the Massachusetts School Buying Group shall be restricted to the amount listed on the Bid Price Sheet.

Each School District of the Massachusetts School Buying Group will be responsible for making their own specific arrangements with the selected vendor(s) as well as executing their own contract. The Town of Andover has incorporated its contract into this IFB as a means of reference and will execute the attached contract with the awarded vendor.

In the event of a tie of two vendors, the vendors will be invited to the procurement office for a coin toss to break the tie. In the event of a tie of more than two vendors, the vendors will be invited to the procurement office for a random drawing to break the tie.

PART 4. TERMS & CONDITIONS

4.1 TERM OF CONTRACT

The contract period for the initial term shall commence on July 1, 2018 and terminate on June 30, 2019. ~~Each of the participating communities will have the option to renew the contract, at their sole discretion, for one additional year.~~

4.2 ASSIGNMENTS AND SUBCONTRACTING

The selected contractor(s) shall not assign, sell, subcontract or otherwise transfer any interest in this contract without the prior written consent of the Town.

4.3 PAYMENT

The School District shall make every effort to furnish payment within thirty (30) days of receipt of a reasonably detailed invoice. Any invoice received must reference the contract or IFB number.

4.4 INSURANCE REQUIREMENTS

All insurance requirements for the Town of Andover are in listed in Section 32.2.4 of the attached Contract. Vendors are hereby notified that each participating School District of the Massachusetts School Buying Group will be responsible for issuing their own Contract with their own terms, conditions and insurance requirements.

4.5 INDEMNIFICATION

The Contractor shall indemnify, defend and save harmless the Town, its officers, agents and employees from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees) brought or recovered against them that may arise in whole or in part out of or in connection with the work being performed or to be performed, or out of any act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The Contractor further agrees to reimburse the Town for damage to its property caused by Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including

damages caused by his, its or their use of faulty, defective or unsuitable material or equipment, unless the damage is caused by the Town's gross negligence or willful misconduct. The existence of insurance shall in no way limit the scope of this indemnification.

4.6 FEDERAL AND STATE LAW

The selected contractor shall comply with all applicable Federal, State and Local laws and ordinances.

4.7 PROTECTION OF TOWN/CITY/SCHOOL PROPERTY

The successful contractor shall maintain adequate protection of the individual school within the property of all schools involved. Including, but not limited to protection from any harm arising in connection with the delivery of bid items and shall pay or cause payment to be made for any such damage incurred. All delivery personnel entering school properties must have a current approved CORI.

4.8 INSPECTIONS

Products received under this contract shall be subject to inspection at any time by state and/or local inspectors at such times and places as may be consistent with public interest. If analysis of samples taken should prove that quality of the products does not meet necessary requirements, the Town reserves the right to cancel the contract at once.

FURNISH & DELIVER VARIOUS GROCERY ITEMS TO THE MASSACHUSETTS SCHOOL BUYING GROUP, ANDOVER, MA

Bid No. 005/08-17/301

REFERENCES FORM

Bidders Name: _____
Bidders Address:_____
_____

Bidder must provide references for similar type projects performed within the past three years. Attach additional pages if necessary.

Reference:_____ Contact:_____
Address: _____ Phone: _____
_____ Fax: _____
Description and date of Project:_____
_____

Reference:_____ Contact:_____
Address: _____ Phone: _____
_____ Fax: _____
Description and date of Project:_____
_____

Reference:_____ Contact:_____
Address: _____ Phone: _____
_____ Fax: _____
Description and date of Project:_____
_____

Reference:_____ Contact:_____
Address: _____ Phone: _____
_____ Fax: _____
Description and date of Project:_____
_____

CERTIFICATION OF GOOD FAITH & NON-COLLUSION

The undersigned certifies under pains and penalties of perjury that this bid 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.

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to M.G.L. c. 62C, §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 authorized individual submitting bid/proposal

_____

Printed Name

_____

Name of Business (if applicable)

_____

Social Security or Federal Tax Identification Number

SIGNATURES

(IF AN INDIVIDUAL)

Date_____, 20_____ ____

Signature of Bidder_____(SEAL)
(Owner and Proprietor)

Business Name D/B/A _____

Business Address _____

(IF A CO-PARTNERSHIP)

Date_____,20_____ ____

Firm Name_____(SEAL)

By_____(SEAL)

Business Address _____

_____

Names and Addresses _____

of all _____

Members of Firm _____

_____

(IF A CORPORATION)

Date_____, 20_____ ____

Corporate Name _____

By _____
President or Authorized Agent*

Business Address _____

_____

***Statement of authorization, duly signed by proper authority, to be attached hereto.**

CORPORATE VOTE

At a duly authorized meeting of the Board of Directors of _____ _____ held on _____ at which all the Directors were present or waived notice, it was voted that _____, _____ of this company, be and he/she hereby is authorized to execute contracts and bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution of any contract or obligation in this company's name on its behalf by _____, shall be binding upon this company.

A TRUE COPY ATTEST:

_____

Clerk,

Date of this Contract

_____

I hereby certify that I am the Clerk of _____, that _____ is duly elected _____ of said company, and the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

_____

Clerk Corporate Seal

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____,

_____

Notary Public

If a corporation, complete above or attach to each signed copy of the bid/written request/quotation, a notarized copy of vote of corporation authorizing the signatory to sign this bid/written request/quotation form. If attesting clerk is the same person as the individual executing this contract, have signature notarized above.

Town of ANDOVER

Contract

(GOODS / SERVICES)

DATE: _____

This Contract is entered into on, or as of, this date by and between the Town of Andover (the "Town"), and

_____
["Contractor"]

_____

_____

_____
[Address of the Contractor]

_____ _____ _____
[Telephone Number] [FAX Number] [E-Mail]

1. This is a Contract for the procurement of the following:

2. The Contract price to be paid to the Contractor:

3. Payment will be made as follows:

4. Definitions

4.1 Acceptance: All Contracts require proper acceptance of the described goods or services by the Town of Andover. Proper acceptance shall be understood to include inspection of goods and certification of acceptable performance for services by authorized representatives of the Town to insure that the goods or services are complete and are as specified in the Contract.

4.2 Contract Documents: All documents relative to the Contract including (where used) Invitation to Bid, Request for Proposals, Instructions to Bidders/Proposers, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, and all Addenda issued during the bidding period or proposal. The Contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the document is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.

4.3 The Contractor: The "other party" to any Contract with the Town. This term shall (as the sense and particular Contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract. Use of the term "Contractor" shall be understood to refer to any other such label used. The Contractor's relationship to the Town is that of an independent contractor and not that of an agent or employee of the Town. There is no relationship of employment or agency between the Town and the Contractor and neither party shall have or exercise any control or direction over the method by which the other performs its work or functions aside from such control or directions as provided in this Contract which the parties view as consistent with their independent contractor relationships.

4.4 Date of Substantial Performance: The date when the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract documents, as modified by approved Amendments and Change Orders.

4.5 Goods: Goods, Supplies or Materials.

4.6 SubContractor: Those having a direct Contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or Specifications of this work, but does not include one who merely furnishes material not so worked.

4.7 Work: The services or materials contracted for, or both.

5. Term of Contract and Time for Performance

This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before _____, unless extended pursuant to a provision for extension contained in the Contract documents at the sole discretion of the Town, and not subject to assent by the Contractor, and subject to the availability and appropriation of funds as certified by the Town Accountant. The time limits stated in the Contract documents are of the essence of the Contract.

6. Subject to Appropriation

Notwithstanding anything in the Contract documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant. The Town may immediately terminate or suspend this Agreement without liability on the part of the Town for damages, penalties or other charges in the event the appropriation(s) funding this Agreement is terminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Agreement.

7. Permits and Approvals

Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor.

8. Termination and Default

8.1 Without Cause. The Town may terminate this Contract at its sole discretion on seven (7) calendar days notice when in the best interests of the Town by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor. Upon termination without cause, Contractor will be paid for services rendered to the date of termination.

8.2 For Cause. If the Contractor is determined by the Town to be in default of any term or condition of this Contract, the Town may terminate this Contract on seven (7) days notice by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor.

8.3 Default. The following shall constitute events of a default under the Contract:

1) any material misrepresentation made by the Contractor to the Town; 2) any failure to perform any of its obligations under this Contract including, but not limited to the following: (i) failure to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Contractor's reasonable control, (ii) failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Contractor's reasonable control, (iii) failure to perform this Contract in a manner reasonably satisfactory to the Town, (iv) failure to promptly re-perform within a reasonable time the services that were rejected by the Town as unsatisfactory, or erroneous, (v) discontinuance of the services for reasons not beyond the Contractor's reasonable control, (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and non-discrimination, (vii) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract, and (viii) failure to comply with any and all requirements of federal or state law and/or regulations, and Town bylaws and/or regulations.

9. The Contractor's Breach and the Town's Remedies

Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of this Contract, and the Town of Andover shall have all the rights and remedies provided in the Contract documents, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract, including damages and specific performance, and the right to select among the remedies available to it by all of the above.

From any sums due to the Contractor for services, the Town may keep the whole or any part of the amount for expenses, losses and damages incurred by the Town as a consequence of procuring services as a result of any failure, omission or mistake of the Contractor in providing services as provided in this Contract.

10. Statutory Compliance

10.1 This Contract will be construed and governed by the provisions of applicable federal, state and local laws and regulations; and wherever any provision of the Contract or Contract documents shall conflict with any provision or requirement of federal, state or local law or regulation, then the provisions of law and regulation shall control. Where applicable to the Contract, the provisions of the Massachusetts General Laws are incorporated by reference into this Contract, including, but not limited to, the following:

M.G.L. Chapter 30B – Procurement of Goods and Services.

M.G.L. Chapter 30, Sec. 39, *et seq*: - Public Works Contracts.

M.G.L. Chapter 149, Section 44A, *et seq*: Public Buildings Contracts.

10.2 Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, this Section shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.

10.3 The Contractor shall give all notices and comply with all laws and regulations bearing on the performance of the Contract. If the Contractor performs the Contract in violation of any applicable law or regulation, the Contractor shall bear all costs arising therefrom.

10.4 The Contractor shall keep itself fully informed of all existing and future State and National Laws and Municipal By-laws and Regulations and of all orders and decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, of the materials used in the work or in any way affecting the conduct of the work. If any discrepancy or inconsistency is discovered in the Drawings, Specifications, Scope of Business or Contract for this work in violation of any such law, by-law, regulation, order or decree, it shall forthwith report the same in writing to the Town. It shall, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify the Town of Andover, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or subcontractors of any such law, by-law, regulation or decree.

11. Conflict of Interest

Both the Town and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract; and by executing the Contract documents the Contractor certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

12. Certification of Tax Compliance

This Contract must include a certification of tax compliance by the Contractor, as required by General Laws Chapter 62C, Section 49A (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision).

13. Affirmative Action; Non-Discrimination

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151B (Law Against Discrimination) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended.

The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law.

14. Condition of Enforceability Against the Town

This Contract is only binding upon, and enforceable against, the Town if: (1) the Contract is signed by the Town Manager or its designee; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds; and (3) endorsed with approval by the Town Counsel as to form.

15. Corporate Contractor

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate or if a Limited Liability Corporation, a Manager's Certificate or other documentation satisfactory to the Town certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This Contract shall not be enforceable against the Town of Andover unless and until the Contractor complies with this section.

The Contractor, if a foreign corporation, shall comply with the provisions of the General Laws, Chapter 181, Section 3, and any Acts and Amendments thereof, and in addition thereto, relating to the appointment of the Commissioner of Corporations as its attorney, shall file with the Commissioner of Corporations a Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said Contractor shall comply with all the laws of the Commonwealth.

16. Liability of Public Officials

To the full extent permitted by law, no official, employee, agent or representative of the Town of Andover shall be individually or personally liable on any obligation of the Town under this Contract.

17. Indemnification

The Contractor shall indemnify, defend and save harmless the Town, the Town's officers, attorneys, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including

reasonable attorneys' fees) that may arise in whole or in part out of or in connection with the work being performed or to be performed, or out of any act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The duty to defend shall immediately accrue and be owing upon the utterance of such a claim by any person or entity regardless of merit and shall not be dependent upon a finding of negligence or any other finding of fact and trial. The duty to defend shall be absolute and will include and shall not be defeated or in any way undermined by the utterance of claims not covered by this Agreement. The Contractor further agrees to reimburse the Town for damage to its property caused by the Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including damages caused by his, its or their use of faulty, defective, or unsuitable material or equipment, unless the damage is caused by the Town's gross negligence or willful misconduct. The existence of insurance shall in no way limit the scope of the Contractor's indemnification under this contract. The duty to defend shall immediately accrue and the owing upon the utterance of such a claim by any person or entity regardless of merit and shall not be dependent upon a finding of negligence or any other findings of fact at trial. The duty to defend shall be absolute and will include and shall not be defeated or in any way undermined by the utterance of claims not covered by this Contract.

18. Workers Compensation Insurance

The Contractor shall provide by insurance for the payment of compensation and the furnishing of other benefits under Chapter 152 of the General Laws of Massachusetts (The Worker's Compensation Act) to all employees of the Contractor who are subject to the provisions of Chapter 152 of the General Laws of Massachusetts.

Failure to provide and continue in force such insurance during the period of this Contract shall be deemed a material breach of this Contract, shall operate as an immediate termination thereof, and the Contractor shall indemnify the Town for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article.

The Contractor shall furnish to the Town evidence of such insurance prior to the execution of this Contract in a form satisfactory to the Town before the same shall be binding on the parties thereto, except if specifically waived by the Town.

18.1 The Contractor further understands and agrees that in rendering services to the town under this Contract that the Contractor is an independent contractor and not an employee of the Town, that the Contractor is not covered by the Town's Workers' Compensation, or liability insurance, that the Contractor shall not make any claim against the Town, its officers, agents and employees and that the Contractor indemnifies, holds harmless, and releases the Town from any claims of the Contractor or of any other party that may arise in whole or in part out of or in connection with the work being performed by the Contractor.

19. Documents, Materials, Etc.

Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except agents, servants, or employees of the Contractor) without the prior written approval of the Town, except as otherwise required by law. The Contractor shall comply with the provisions of Chapter 66 and Chapter 66A of the General Laws of Massachusetts as they relates to public documents, and all other state and federal laws and regulations relating to confidentiality, security, privacy and use of confidential data.

Any materials produced in whole or in part under this Contract shall not be subject to copyright, except by the Town, in the United States or any other country. The Town shall have unrestricted authority to, without payment of any royalty, commission, or additional fee of any type or nature, publicly disclose, reproduce, distribute and otherwise use, and authorize others to use, in whole or in part, any reports, data or other materials prepared under this Contract.

All data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for by the Town shall vest in the Town. The Contractor shall at all times, during or after termination of this Contract, obtain the prior written approval of the Town before making any statement bearing on the work performed or data collected under this Contract to the press or issues any material for publication through any medium.

20. Confidentiality

The Contractor shall comply with M.G.L. ch. 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.

21. Record-Keeping and Retention, Inspection of Records

The Contractor shall maintain records, books, files and other data as specified in this Contract and in such detail as shall properly substantiate claims for payment under this Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under this Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. The Town shall have access during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

22. Assignment

The Contractor shall not assign or delegate, in whole or in part or otherwise transfer any liability, responsibility, obligation, duty or interest under this Contract without the written approval of the Town.

23. Subcontracting By Contractor

Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under this Contract must be in writing, authorized in advance by the Town and shall be consistent with and subject to the provisions of this Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under this Contract. The Town is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

24. Risk of Loss

The Contractor shall bear the risk of loss for any Contractor materials used for this Contract and for all deliveries, Town personal or other data which is in the possession of the Contractor or used by the Contractor in

the performance of this Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Town.

25. Minimum Wage/Prevailing Wage

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, §1, *et seq*. (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor will at all times comply with the wage rates as determined by the Commissioner of the Department of Labor and Industries, under the provisions of General Laws Chapter 149, 26 to 27D (Prevailing Wage Law), as shall be in force and as amended. The Contractor will, in addition to any other submissions required by the Prevailing Wage Law, submit certified weekly payrolls to the Town with the information described in General Laws Chapter 149, §27B.

26. Audit, Inspection and Recordkeeping

At any time during normal business hours, and as often as the Town may deem it reasonably necessary, there shall be available in the office of the Contractor for the purpose of audit, examination, and/or to make excerpts or transcript all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

27. Payment

The Town agrees to make all reasonable efforts to pay to the Contractor the sum set forth in the Contractor's bid or proposal within thirty (30) days of receipt of an invoice detailing the work completed and acceptance from the Town of the work completed.

28. Waiver and Amendment

Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Contract may be made only by written amendment executed by all signatories to the original Contract, prior to the effective date of the amendment.

To the extent allowed by law, any conditions, duties, and obligations contained in this Contract may be waived only by written agreement by both parties.

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

29. Forum and Choice of Law

This Contract and any performance herein shall be governed by and be construed in accordance with the laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth of Massachusetts, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

30. Notices

Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth in the Contract and to the Town of Andover by being sent to the Town Manager, Town Hall, 36 Bartlet Street, Andover, Massachusetts 01810.

31. Binding on Successors

This Contract shall be binding upon the Contractor, its assigns, transferees, and/or successors in interest (and where not corporate, the heirs and estate of the Contractor).

32. Complete Contract

This instrument, together with its endorsed supplements, and the other components of the contract documents, constitutes the entire contract between the parties, with no agreements other than those incorporated herein.

33. Contractor Certifications

33.1 By signing this contract, the Contractor certifies under the penalties of perjury that pursuant to General Laws Chapter 62C sec. 49A, the Contractor has filed all state tax returns, paid all taxes and complied with all laws of the Commonwealth relating to taxes; and that pursuant to General Laws Chapter 151A, sec. 19A, the Contractor has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions.

33.2 By signing this contract, the Contractor certifies under the penalties of perjury that this contract has been obtained in good faith and without collusion or fraud with any other person. As such in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, client or other organization, entity or group of individuals.

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

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

33.5 Debarment. The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulations including, Executive Order 147, M.G.L. ch. 29, §29F, M.G.L. ch. 30, §39R, M.G.L. ch. 149, §27C, M.G.L. ch. 149, §44C, M.G.L. ch. 149, §148B and M.G.L. ch. 152, §25C.

34. Additional Provisions:

34.1 Applicable to Contracts for the Procurement of Goods

34.1.1 "Goods" shall mean Goods, Supplies, or Materials, as described in the Contract.

34.1.2 Change Orders:
Change orders may not increase the quantity of services by more than twenty-five (25.0%) percent, in compliance with Massachusetts General Laws Chapter 30B, §13.

This Contract for purchase includes the following delivery, installation or setup requirements:

_____

_____

_____

34.2 Applicable to Contracts for Services

34.2.1 "Services" shall mean furnishing of labor, time, or effort by the Contractor. This term shall not include employment agreements, collective bargaining agreements, or grant agreements.

34.2.2 Change Orders:
Change orders for contracts subject to Massachusetts General laws Chapter 30B may not increase the total contract price by more than twenty-five (25%) per cent and shall be, in compliance with General Laws Chapter 30B, §13.

34.2.3 Minimum Wage/Prevailing Wage:
The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, §1, *et seq*. (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor will at all times comply with the wage rates as determined by the Commissioner of the Department of Labor and Industries, under the provisions of General Laws Chapter 149, 26 to 27D (Prevailing Wage Law), as shall be in force and as amended. The Contractor will, in addition to any other submissions required by the Prevailing Wage Law, submit certified weekly payrolls to the Town with the information described in General Laws Chapter 149, §27B.

34.2.4 Insurance:
The Contractor shall obtain and maintain the following insurance:

34.2.4.1 Workers Compensation Insurance of the scope and amount required by the laws of the Commonwealth of Massachusetts.

34.2.4.2 Broad Form Commercial General Liability coverage with limits of at least $1 Million per occurrence and $2 Million aggregate, and which shall cover bodily injury, death, or property damage arising out of the work.

34.2.4.3 Automobile Liability Coverage, including coverage for owned, hired, or borrowed vehicles with limits of at least $1 Million per person, and $1 Million per accident. The intent of the Specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the Town from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the work.

34.2.4.4 All required insurance shall be certified by a duly authorized representative of the insurers on the "ACORD" Certificate of Insurance form incorporated into and made a part of this agreement. Properly executed certificates and endorsements signifying adequate coverage in effect for the duration of the contract must be submitted to the Town prior to execution of this Contract by the Town with renewal certificates issued not less than 30 days prior to expiration of a policy period,. Copies of any or all policies of insurance shall be provided to the Town upon request.

34.2.4.5 The Town shall be named as an additional insured on the above referenced liability policies, and the Contractor's insurance shall be the primary coverage. The cost of such insurance, including required endorsements or amendments, shall be the sole responsibility of the Contractor.

34.2.4.6 Contractual liability must recognize the indemnities contained in this Agreement.

34.2.4.7 Coverages are to be maintained for a period of three years after final payment.

34.2.4.8 The Contractor shall maintain all required insurance in full force and effect as required by this Contract or the Contractor shall be in material breach hereof.

34.2.4.9 The General Liability and Automobile Liability policies shall include a Waiver of Subrogation in favor of the Town

IN WITNESS WHEREOF the parties have hereto and to two other identical instruments set forth their hands the day and year first above written.

THE TOWN	THE CONTRACTOR
_____	_____
Division/Department Head Contract Manager	Company Name
_____	_____
Town Manager Date Andrew P. Flanagan	Signature Date
_____	_____
School Superintendent Dr. Sheldon Berman	Print Name & Title
APPROVED AS TO FORM:	
	Federal Identification No.:_____
_____	
Town Counsel Date	

CERTIFICATION AS TO AVAILABILITY OF FUNDS:

_____

Town Accountant Date