



TOWN OF NORTH HEMPSTEAD
REQUEST FOR PROPOSALS
FOR
DESIGN, PRINTING AND ADVERTISING SERVICES

TOWN OF NORTH HEMPSTEAD

220 Plandome Road
P.O. Box 3000
Manhasset, NY 11030-2327
(516) 869-6311

Supervisor
Judi Bosworth

Town Board
Viviana L. Russell
Peter J. Zuckerman
Angelo P. Ferrara
Anna M. Kaplan
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Issue Date: January 14, 2015
Proposals Due: February 4, 2015

RFP No. TNH077-2015

TOWN OF NORTH HEMPSTEAD

REQUEST FOR PROPOSALS

I. INTRODUCTION

A. General Information

The Town of North Hempstead ("Town") is requesting proposals from qualified firms to provide design, printing and advertising services for a calendar of Town events for 2015. A firm may be selected from among responding firms based on a thorough analysis of each firm's ability to provide the Town with the highest quality services at the most cost-effective fees.

The following conditions apply to this RFP:

- There is no express or implied obligation for the Town to reimburse responding firms for any expenses incurred in preparing proposals in response to this request, and the Town will not reimburse such expenses.
- Any inquiries concerning this RFP must be in writing or by email and should be addressed to Procurement Supervisor Maria Gomes at contracts@northhempsteadny.gov. All inquiries must bear the RFP number assigned to this RFP
- To be considered, copies of a proposal must be received by the Office of the Town Supervisor at 220 Plandome Road, Manhasset, New York 11030 by 3:00 p.m. **February 4, 2015**. The Town reserves the right to reject any or all proposals submitted.
- During the evaluation process, the Town reserves the right, where it may serve the Town's best interest, to request additional information or clarification from a proposer, or to allow corrections on non-material errors or omissions or waive non-material requirements. At the discretion of the Town, firms submitting proposals may be requested to make oral presentations as part of the evaluation process. If conducted, oral presentations will be scheduled with each proposer being considered.
- The Town reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected.
- Submission of a proposal indicates acceptance by the firm of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Town and the firm selected.
- It is anticipated the selection of a firm will be completed on February 24, 2015. Following notification of the selected firm it is expected an agreement will be executed between both parties by March 1, 2015.
- The Town reserves the right, as best serves its interest, to change any of the projected

dates set forth in this RFP, including, but not limited, to the due date for receipt of proposals.

The Town reserves the right to reject all proposals.

B. Subcontracting

No subcontracting shall be permitted without the express permission of the Town.

II. NATURE OF SERVICES REQUIRED

A. Description of Services Required.

The Town requires the services of an experienced and professional design and printing firm to create an event calendar for the Town of North Hempstead's Parks and Community Services events. The calendar must be of high quality and advertise the Town's events in an attractive and professional manner.

The calendar will contain all events to be held by the Town for the months of May through December 2015. It is the Town's intention to also sell space on the calendar to advertisers in exchange for monetary consideration.

Below are specific requirements for the services:

1. Calendar Technical Requirements:

- a. Size should be 8 ½ x 11", 22 pages – front and back cover plus 8 months plus 2 pages for before May and after December; color glossy cover (4 pages)
- b. The printer will be responsible for mailing the calendar to residences within the Town. Calendars must be mailed so that they are received by the Town's residents by May 1, 2015. The printer will be required to use the Town's bulk mail permit for mailing the calendar.
- c. The successful vendor will be responsible for the overall design of the calendar. All calendar designs shall be submitted to the Town for approval prior to printing. The Town will provide to the successful vendor with the dates and subjects of the Town's events.

2. Sponsorships

- a. As stated above, the Town desires to sell advertising space on the calendar. At a minimum, the Town desires to raise the sum of \$15,000.00 (the "Revenue Goal") for advertising on the calendar. The actual amount of space devoted to each advertiser shall be proportionate to the amount paid by each advertiser for space on the calendar.
- b. Advertising will be sold in two manners:

- i. Town-Sold Advertising: The Town will endeavor to sell advertising on the calendar amounting to at least 80% of the Revenue Goal. The Town will be responsible for obtaining any necessary agreements for the advertising it sells for the calendar, and will provide to the successful vendor the form of the advertisement as provided to the Town.
- ii. Vendor-Sold Advertising: the successful vendor will be required to sell advertising on the calendar amounting to at least 20% of the Revenue Goal. The successful vendor will be responsible for having advertisers sign an advertising agreement (the form of which is attached hereto as Exhibit A) and provide the agreement to the Town for signature. Amounts charged by the vendor shall conform to the rate card attached as Exhibit B. All revenues collected by the successful vendor for the sale of advertising shall be paid directly by the advertiser to the Town. The successful vendor shall not be entitled to retain any of the fees collected for advertising. The successful vendor shall also be responsible co collecting and formatting the form of advertisement from the advertiser. Special Condition – if the successful vendor does not sell advertising in an amount at least 20% of the Revenue Goal, the Town shall be entitled to a discount in the total cost of the calendar in the amount of the difference between the amount raised by the successful vendor through advertising and the amount which is 20% of the Revenue Goal.

B. Minimum Qualifications and Experience:

1. Firms must be authorized to do business in the State of New York, but do not necessarily need to be based in New York.

C. Additional Requirements. The following requirements will be made a part of any agreement entered into between the Town and the selected firm(s):

1. The Town reserves the absolute right to terminate the services at any time.
2. All work completed in designing and printing the calendar shall be deemed “work made for hire” and shall be the property of the Town and not the successful proposer.
3. The firm shall maintain full and complete books and records of accounts in accordance with accepted accounting practices and such other records as may be prescribed by the Town Comptroller, including a contemporaneous record of work indicating in brief summary, a description of the work performed. Such books and records shall be retained for a period of six (6) years and shall at all times be available for audit and inspection by the Town Comptroller, the Town’s auditors or a duly designated Town representative.
4. The firm will promptly provide a response to any requests from the Town’s Records Access/FOIL Officer.
5. The firm shall, to the fullest extent provided by law, defend and indemnify and save harmless the Town from claims, suits, action, damages and costs of every nature, kind, name and

description resulting from the negligent performance of the services. Such defense and indemnity shall not be limited by reason of enumeration of any insurance coverage provided by the firm. Negligent performance of service shall include, in addition to negligence founded upon tort, negligence based upon the firm's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work. Nothing shall create or give third parties any claim or right of action against the firm or the Town beyond those provided by law.

6. The firm shall procure and maintain during the term of any agreement resulting from this RFP, with a carrier holding an "A" rating from AM Best Company, or its equivalent, and furnish certificates of insurance evidencing its procuring, the following insurance policies:
 - (a) Commercial general liability insurance covering the liability of the firm, and indemnifying and holding harmless the Town, its agents, employees and representatives from any and all loss and/or damage arising out of the performance of the services with a combined single limit (bodily injury/property damage) of One Million Dollars (\$1,000,000). The Town shall be named as additional insured on said policy;
 - (b) Workers' compensation insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 57(2); and
 - (c) Disability benefits insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 220(8).

III. FEE STRUCTURE

Each proposal shall include Appendix A: Price Proposal and include the proposer's fees for the required services.

IV. TIME REQUIREMENTS

A. Proposed Calendar

The following is a list of key dates up to and including the date proposals must be submitted:

RFP issued	January 14, 2015
Due Date for proposal submissions	February 4, 2015

B. Notification and Contract Dates

Select firm notified	On or about	February 24, 2015
Contract date	On or before	March 1, 2015

- C. The Town reserves the right, as best serves its interest, to change any of the projected dates set forth in this RFP, including, but not limited to, the due date for receipt of proposals.

V. PROPOSAL REQUIREMENTS

A. General Requirements

1. Inquiries

Written inquiries concerning the RFP and its subject must be made to Maria Gomes, Procurement Supervisor at contracts@northhempsteadny.gov. Direct responses to all inquiries will be distributed to each potential proposer that has requested such responses.

2. Submission of Proposals

The following material is required to be received by the Due Date for a proposing firm to be considered.

a. The Proposal shall include:

i. Title Page

Title page showing the RFP subject; the firm's name; name, address and telephone number of the contact person; and the proposal date.

ii. Technical Proposal

A signed letter of transmittal stating the proposer's understanding of the services to be performed, a statement why the firm believes it to be best qualified to perform the engagement, the firm's past history in providing such services for municipalities, biographical information of those personnel that would provide services to the Town under an agreement and **a statement that the proposal is a firm and irrevocable offer. Such technical proposal must include, in addition to the above, all information and documentation described in Section II(B) above.**

iv. Completed price proposal attached as Attachment A

v. Fully completed Proposer's Qualification statement attached as Attachment B, including the statement of Understanding, Disclosure Statement, Non-Collusive Proposal Certification, Insurance Certification and Acknowledgement of Receipt of Addenda. The contract will be executed by the Town and the selected candidate only after an evaluation of each proposal and a selection of a firm.

vi. statement that the proposer accepts and agrees to the standard terms and conditions contained in Exhibit C attached hereto. Please note that these terms and conditions will be supplemented based on the proposals received and cannot be viewed by the proposers as the exclusive terms that the Town will require in any contract to be entered into.

- b. The completed proposal should be sent to the following address in a sealed envelope marked "Request for Proposals: Design, Printing and Advertising Services":

Office of the Supervisor
Town of North Hempstead
220 Plandome Road
Manhasset, New York 11030

B. Guidance on Completing a Proposal Submission

The purpose of a proposal submission is to demonstrate the qualifications, competence and capacity of the firms seeking to provide services to the Town. As such, the substance of proposals will carry more weight than the form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement.

The Technical Proposal should address all points outlined in the RFP. The Technical Proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the RFP requirements.

VI. SELECTION OF FIRM

A. The Town will approve a firm based on an evaluation of the proposals. The Town reserves the right to enter into negotiations with the proposer offering the next-best value should the Town be unable to negotiate and execute a contract with the awardee. Proposals will be evaluated based on the following point system:

- | | |
|---|-----------|
| 1. Compliance with RFP Requirements | 30 Points |
| 2. Proposer Experience in the services to be provided | 30 Points |
| 3. Fee Structure | 40 Points |

The Town may also take into account any other factors it deems necessary in evaluating each proposal.

B. Right to Reject Proposals

Submission of a proposal indicates acceptance by the firm of the conditions contained in the RFP unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Town and the firm selected. The Town reserves the right without prejudice to reject any or all proposals.

C. Minimum Service

The selection of a Consultant will not guarantee any minimum amount of services under the contract.

ATTACHMENT A

PRICE PROPOSAL

The proposer proposes to charge the following price as a lump sum for the services described in this RFP:

Cost for Services: \$ _____

The undersigned further stipulates that the information in this attachment and the proposer's fee proposal is, to the best of its knowledge, true and accurate.

Signature

Name of Proposer

Title of Person Signing

Sworn to and subscribed on
this _____ day of _____, 20____

(Notary Public)

ATTACHMENT B
PROPOSER'S QUALIFICATION STATEMENT

INSTRUCTIONS:

The Proposer's Qualifications Statement consists of the following documents:

1. Statement of Understanding;
2. Disclosure Form;
3. Noncollusive Proposal Certification;
4. Certification of Insurance (*to be completed by an authorized insurance agent*); and
5. Acknowledgement of Receipt of Addenda Form.

Please complete **ALL FIVE** forms and submit with the Bid/Proposal.

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT ANY PROPOSAL THAT FAILS TO INCLUDE COMPLETE AND ACCURATE ORIGINALS OF ALL FOUR FORMS INCLUDING ALL APPROPRIATE ACKNOWLEDGMENT(S) AND BEARING THE SIGNATURE OF A NOTARY PUBLIC.

STATEMENT OF UNDERSTANDING

By signing in the space provided below, the undersigned certifies, under penalty of perjury, as follows:

1. I am duly authorized to submit this Proposal on behalf of the below listed sole proprietorship/company/partnership/corporation.
2. That he/she has read and understands all terms and conditions pursuant to this RFP.
3. That he/she has the capacity to and will abide by all terms and conditions pursuant to this RFP.
4. That he/she agrees to accept payment in accordance with the requirements of the RFP; and
5. That he/she agrees that the proposed submitted to the Town shall be irrevocable and that he/she will, if his/her proposal is accepted, enter into a contract with the Town of North Hempstead pursuant to the terms and conditions set forth in the RFP.
6. That he/she certified that his/her sole proprietorship/company/partnership/corporation will carry all types of insurance specified in the contract.

The undersigned further stipulates that the information in this Proposal is, to the best of its knowledge, true and accurate.

Signature

Name of Proposer

Title of Person Signing

Sworn to and subscribed on
this _____ day of _____, 20__

(Notary Public)

DISCLOSURE FORM

The signatory of this questionnaire certifies under oath the truth and correctness of all Statements and of all answers to interrogatories hereinafter made.

Provide answers to each of the following and supporting documentation, where necessary:

1. **Adverse Equal Opportunity Determinations:** Identify all adverse determinations against your Company/Corporation/Partnership, or its employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints concerning violations of state, Federal or municipal equal opportunity laws or regulations.

2. **Convictions and Unscrupulous Practice:** Has your Company/Corporation/Partnership, or any of its employees present or past, or anyone acting on its behalf, ever been cited for unscrupulous practice, or been convicted of any crime or offense arising directly or indirectly from the conduct of your Company/Corporation/Partnership's business, or has any of your Company/Corporation/Partnership's officers, director or persons exercising substantial policy discretion ever been convicted of any crime or offense involving business/financial misconduct or fraud? If so, describe the convictions and surrounding circumstances in detail.

3. **Pending or Threatened Actions/Suits:** Describe any past or present action, suit, proceeding or investigation pending or threatened against your Company/Corporation/Partnership including, without limitation, any proceeding known to be contemplated by government authorities, private parties, or current or former clients.

4. **Criminal Misconduct:** Has your Company/Corporation/Partnership, or any of its employees, or anyone acting on its behalf, been indicted or otherwise charged in connection with any criminal matter arising directly or indirectly from the conduct of your Company/Corporation/Partnership's business which is still pending, or has any of the Company/Corporation/Partnership's officers, directors or persons exercising substantial policy discretion been indicted or otherwise charged in connection with any criminal matter involving business or financial misconduct or fraud which is still pending? If so, describe the indictments or charges and surrounding circumstances in detail.

5. **Conflicts of Interest:** disclose any of the following, and describe any procedures your Company/Corporation/Partnership has, or would adopt, to assure the Town that a conflict of interest would not exist in the future):
 - (a) Any material financial relationships that your Company/Corporation/Partnership or any Company/Corporation/Partnership employee has that may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.

(b) Any family relationship that any employee of your Company/Corporation/Partnership has with a member, employee, or official of the Town or that may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.

(c) Any other matter that your Company/Corporation/Partnership believes may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.

6. **Financial Disclosure:** Submit with this Disclosure Statement Form, any one of the following three items:

- (a) a financial statement, prepared on an accrual basis, in a form which clearly indicates: Bidder's (1) assets, liabilities and net worth; (2) date of financial Statement; and (3) name of firm preparing statement.
- (b) a letter of credit reference from a recognized bank or financial institution; or
- (c) a certified copy of a credit report from a recognized credit bureau, such as Dun and Bradstreet or TRW.

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT ANY PROPOSAL THAT FAILS TO INCLUDE COMPLETE DISCLOSURE STATEMENT FORM.

Dated at _____, this _____ day of _____, 20_____.

(Signature, if Individual)

By: _____ (Signature)

(Seal, if corporation)

Print Name: _____
(Legal Business Name of Company/Partnership/Corporation)

Print Title: _____

[MANDATORY AFFIDAVIT(S) AND ACKNOWLEDGMENT APPEARS ON FOLLOWING PAGE]

-----**(Affidavit for Individual)**-----

_____ being duly sworn, deposes and says, under penalty of perjury, that: a) _____ he/she is an authorized representative of the Proposer; b) he/she has read all Statements and answers to this DISCLOSURE STATEMENT FORM, including the attached letter of credit/certified copy of credit report or financial statement submitted pursuant to interrogatory number 7 Financial Disclosure; c) the attached letter of credit/certified copy of credit report or financial statement, taken from his/her books, is a true and accurate statement of his/her financial condition as of the date thereof; and b) all of the foregoing qualification information is true, complete, and accurate.

-----**(Affidavit for Partnership)**-----

_____ being duly sworn, deposes and says, under penalty of perjury, that: a) he/she is a member of the partnership of _____, b) he/she has read all statements and answers this DISCLOSURE STATEMENT FORM, including the attached letter of credit/certified copy of credit report or financial statement submitted pursuant to interrogatory number 7 Financial Disclosure; c) he/she is familiar with the books of said partnership showing its financial condition; c) the attached letter of credit/certified copy of credit report or financial statement, taken from the books of said partnership, is a true and accurate statement of the financial condition of the partnership as of the date thereof; and d) all of the foregoing qualification information is true, complete and accurate.

-----**(Affidavit for Corporation)**-----

_____ being duly sworn, deposes and says, under penalty of perjury, that: a) he/she is _____ of _____ (Full Legal Name of Corporation); b) he/she has read all statements and answers this DISCLOSURE STATEMENT FORM, including the attached letter of credit/certified copy of credit report or financial statement submitted pursuant to interrogatory number 7 Financial Disclosure; c) he/she is familiar with the books of said corporation showing its financial condition; c) the attached letter of credit/certified copy of credit report or financial statement, taken from the books of said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof; and d) that all of the foregoing qualification information is true, complete and accurate.

-----**(Acknowledgement)**-----

_____ being duly sworn, deposes and says, under penalty of perjury, that he/she is _____ of _____ (Name of Proposer) that he/she is duly authorized to make the foregoing affidavit and that he/she makes it on behalf of () himself/herself: () said partnership; () said corporation.

Sworn to before me this _____ day of _____, 20____, in the County of _____, State of _____.

My commissioner expires: _____

(Notary Public)

NONCOLLUSIVE PROPOSAL CERTIFICATION

By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

- (1) The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly, to any other proposer or to any competitor; and
- (3) No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

I, hereby certify under the penalties of perjury that the foregoing statement is true.

By: _____ Proposer's Signature	_____ Date
_____ Print Name	_____ Title
_____ Legal Name of Individual or Business Name of Company/Partnership/Corporation	_____ Proposer's State Tax Identification # (Do Not Use SS#)
_____ Address	_____ Email Address

[MANDATORY ACKNOWLEDGMENT APPEARS ON FOLLOWING PAGE]

INSURANCE CERTIFICATION

TO BE COMPLETED BY AN AUTHORIZED INSURANCE AGENT

INSTRUCTIONS:

Please complete this Insurance Certification and attach copies of proof of insurance as follows:

- (a) **Commercial General Liability/Automobile Liability:** ACCORD-25 FORM.
- (b) **Worker's Compensation:** Certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 57 (2) evidencing proof of workers' compensation insurance *or* proof of Bidder not being required to secure same.
- (c) **Disability Benefits Insurance:** Certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 220 evidencing proof of disability benefits insurance *or* proof of Bidder not being required to secure same.

This form and all supporting documentation must be submitted with this Bid/Proposal even if said information is on-file with the Town in connection with another bid, project or contract.

(Name and Address of Bidder)

Name of Bid: _____ Bid Number: _____

(1) Commercial General Liability with completed operations (plus X.C.U. when applicable), to which the Town of North Hempstead has been added as additional insured, and Automobile Liability: \$ 2,000,000.00 Combined single limit (bodily and personal injury/property damage).

Insurance Carrier (Commercial General Liability): _____

Policy Number(s): _____

(2) Worker's Compensation:

Insurance Carrier: _____ Policy Number(s): _____

(3) The above insurance is effective with New York State admitted insurance companies, and is A rated or equivalent to A rated.

(4) Policy cancellation or non-renewal shall be effective only upon thirty (30) days prior notice by certified mail to:
Town of North Hempstead, Office of the Town Attorney, 220 Plandome Road, P.O.B. 3000, Manhasset, New York 11030
Authorized Insurance Agent's Signature and Title:

Name, Insurance Affiliation and Address:

_____ Dated _____

ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM

The bidder hereby acknowledges that he/she has received and that he/she has considered in the preparation of his/her proposal, all requirements in the following Addenda to this RFP:

Note: This acknowledgement shall be signed by the person executing the Statement of Understanding.
Insert additional pages, as necessary.

ADDENDUM NUMBER	DATE OF ADDENDUM	ACKNOWLEDGEMENT

<input type="checkbox"/> <u>NO ADDENDUM</u> WAS RECEIVED IN CONNECTION WITH THIS PROPOSAL. ACKNOWLEDGEMENT: _____
--

IMPORTANT NOTICE:

THIS FORM MUST BE COMPLETED AND SUBMITTED BY ALL PROPOSERS. IF NO ADDENDA ARE RECEIVED, CHECK THE "NO ADDENDUM" BOX ABOVE AND SIGN THE ACKNOWLEDGMENT.

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT AND PROPOSAL THAT FAILS TO INCLUDE THIS ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM

EXHIBIT A

ADVERTISING AGREEMENT

THIS ADVERTISING AGREEMENT (the "Agreement") is made and entered into the date this Agreement is executed on behalf of the Town (as such term is defined below), is entered into by and between the Town of North Hempstead (the "Town"), having an address at 220 Plandome Road, Manhasset, New York 11030 and _____ (the "Advertiser") having an address at _____.

RECITALS

WHEREAS, Town is in the process of publishing calendar (the "Calendar") containing information regarding the Town's events; and

WHEREAS, Advertiser desires to purchase advertising space to place an advertisement (the "Advertisement") in the Calendar, which advertisement may be in the form of the Advertiser's business name and contact information listed in the Calendar or a designed advertisement; and

WHEREAS, Town desires to sell such space to the Advertiser for the Advertising.

In consideration of the promises and mutual covenants contained in this Agreement, the parties agree as follows:

1. Advertisement Display and Services

The Town has received from the Advertiser a Designed Advertisement with all content provided by the Advertiser. The form of the Advertisement is attached to this Agreement. The Town agrees to publish the Advertisement in the Calendar in all editions of the Calendar published during a period commencing on the date hereof and terminating one hundred eighty (180) days thereafter. If the Advertiser desires to remove the Advertisement from the Calendar prior to the end of this period, the Advertiser must request the Town in writing. No refund will be made for such early withdrawal of Advertisement. In addition, Advertiser agrees that the Town cannot and will not remove the Advertisement from copies of the Calendar already printed prior to the date of the Advertiser's request to remove the Advertisement.

2. Payment

The Advertiser shall pay the Town for publication of the Advertisement in the Calendar, the sum of \$ _____. All fees and payments are due and payable upon the execution and delivery of this Agreement.

3. Content

Advertiser shall deliver the Advertisements to Town digitally via _____ upon execution of this Agreement. Advertiser shall be solely responsible for providing the Advertisement in the format required for display. Town does not provide for the design of the Advertisement. Advertiser acknowledges that Town or its printing contractor will not be responsible or liable for the quality of any portion of the Advertisement that does not meet established mechanical criteria. The Advertiser represents that the content of such Advertisement complies with the Town's Advertising policy, a copy of which is attached hereto. If at any time Advertiser desires to modify its content, it shall provide a written request to Town with a copy of the revised Advertisement. Town shall, within a reasonable time, effectuate replacing the Advertisement with the modified Advertisement.

4. Liability

Advertiser shall be fully responsible and liable for the content contained in the Advertisement. The Town and its printing contractor are not responsible for, and in no way warrants, guarantees, or ratifies, the representations made or implied in the contents of the Advertisement.

5. Prohibited Content

Advertisements shall not contain any material that is prohibited by the Town's Advertising Policy.

6. Acceptance

The Town reserves the right to review and approve the suitability of the Advertisement submitted. Town may reject or cancel any Advertisement for any reason which it believes in good-faith to be detrimental. If the Town so rejects Advertiser's Advertisement or terminates its display, then this Agreement shall be terminated, and Town will return any prepaid advertising fees to Advertiser. The Town shall have no liability to the Advertiser beyond the fees paid by the Advertiser for placing the Advertisement.

7. License

Advertiser grants the Town a limited, non-transferable, non-exclusive license to copy, use, store, set up, publicly display, publicly perform and transmit the Advertiser's Advertisement (including any trade names, trademarks and service marks shown) during the term of this Agreement and solely in connection with this Agreement. Upon termination of this Agreement, the Town will remove the Advertiser's Advertisement, destroy all copies of it (except copies retained as required by law) and cease further display of the Advertisement.

Nothing in this Agreement grants Advertiser any right to use the name, trademark, or service mark of Town in any advertisement, sales promotion, or press release without Town's prior written approval.

8. Proprietary Rights

Advertiser acknowledges that the contents of the Calendar, including, without limitation, all trade names, trademarks, service marks, content, text, images, software, functionality, page and other design and layout, media and other materials therein, is proprietary to or licensed by Town, protected under copyright, trademark and other intellectual property laws and such contents may not be reproduced without the consent of Town.

Advertiser retains all right, title and interest including copyright and other proprietary or intellectual property rights in the content of the Advertisement, Advertiser's trade names, trademarks and service marks therein.

9. Advertiser Warranty.

Advertiser warrants to Town that:

- (i) Advertiser has the right and authority to enter into and perform its obligations under this Agreement;
- (ii) the Advertisement shall conform to the description and specifications set forth by Town;
- (iii) the Advertisement shall not constitute or be the subject of a notice or claim of any false designation of origin, false advertising or unfair competition under the law of any country;
- (iv) the Advertisement does not and shall not contain or be alleged to contain any content, work, name, mark, designation, materials or link that actually or potentially violates any applicable law or regulation, or infringes any proprietary, intellectual property, contract or tort right of any person or misappropriates a person's trade secret, name, likeness or identity.

10. Disclaimer

The services and site are provided "as is" without warranty of any kind, express or implied and any use of the services or Calendar are at Advertiser's sole risk. Town does not warrant that the services or Calendar will be uninterrupted or error free, nor does Town make any warranty as to the performance or any results that may be obtained by use of the services or Calendar. Town makes no other warranties, express or implied, including, without limitation, any implied warranties of merchantability and fitness for a particular purpose, concerning the subject matter of this agreement.

11. Independent Contractor

Town shall provide the Services as an independent contractor and Town shall not act as an employee, agent or broker of the Advertiser. As an independent contractor, Town will be solely responsible for paying any and all taxes levied by applicable laws on its compensation. Town understands that Advertiser will not withhold any amounts for payment of any taxes from Town's compensation.

12. Termination

(a) Either party may terminate this Agreement for convenience by providing fifteen (15) days written notice ("Termination Notice") to the other party.

(b) If a party violates its obligations to be performed under this Agreement, the other party may terminate the Agreement by sending a fifteen (15) days notice in writing. Upon receiving such notice, the defaulting party shall have fifteen (15) days from the date of such notice to cure any such default. If the default is not cured within the required fifteen (15) day period, the party providing notice shall have the right to terminate this Agreement.

13. Assignment

Town shall not assign any of their rights under this Agreement, or delegate the performance of any of the obligations or duties hereunder, without the prior written consent of the Advertiser and any attempt by Town to so assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be void and of no effect. Notwithstanding the foregoing, the Town may utilize the Town of North Hempstead for assistance in developing the Calendar.

14. Notices

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving party's regular business hours or by facsimile before or during receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth at the top of this Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

15. Governing Law

This Agreement is to be construed in accordance with and governed by the internal laws of the State of New York.

16. Claims and Actions

Unless otherwise specified in this Agreement or required by Law, all claims or actions with respect to this Agreement shall be resolved exclusively by a court of competent jurisdiction located in Nassau County, New York, and the parties expressly waive any objections to the same on any grounds, including venue and *forum non conveniens*.

17. Severability

If any provision of this Agreement shall be held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect.

18. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION, BUSINESS INTERRUPTION, LOSS OF OR UNAUTHORIZED ACCESS TO INFORMATION, DAMAGES FOR LOSS OF PROFITS,

INCURRED BY THE OTHER PARTY ARISING OUT OF THE SERVICES PROVIDED UNDER THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL NEITHER PARTY'S LIABILITY ON ANY CLAIM, LOSS OR LIABILITY ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT SHALL EXCEED THE AMOUNTS PAID TO TOWN BY ADVERTISER.

19. Indemnification

Advertiser shall at its own expense indemnify and hold harmless, and at the Town's request defend the Town its affiliates, subsidiaries, successors and assigns officers, directors, employees, sublicensees, and agents from and against any and all claims, losses, liabilities, damages, demand, settlements, loss, expenses and costs (including attorneys' fees and court costs) which arise directly or indirectly out of or relate to (a) any breach of this Agreement, or (b) the gross negligence or willful misconduct of a party's employees or agents;

20. Entire Agreement; Amendment:

This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether written or oral, between the parties relating to the subject matter hereof and all past courses of dealing or industry custom. No modification of or amendment to this Agreement shall be effective unless in writing and signed by each of the parties.

21. Waiver

The waiver by either party of a breach of or a default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

22. Captions

The headings used in this Agreement are for convenience only and shall not be used to limit or construe the contents of any of the sections of this Agreement.

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

(ADVERTISER)

TOWN OF NORTH HEMPSTEAD

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: Judi Bosworth
Title: Town Supervisor
Date: _____

TOWN OF NORTH HEMPSTEAD

ADVERTISING POLICY

The following serves as the policy ("Policy") of the Town of North Hempstead (the "Town") governing placement, acceptance, and other matters relating to Advertising.

1) Definitions.

- a) "Advertising" herein means a notice(s) or announcement(s) in a public medium promoting a product, service, or event. An entity placing Advertising is an "Advertiser."
- b) "Property" herein means all property of the Town, including real and personal property, publications, signage, web services, the Town website or any other asset or property of the Town.

2) General Provisions.

- a) The Town has sole and absolute discretion with respect to interpretation and enforcement of this policy and all other Advertising matters.
- b) The Town in its sole discretion may change this policy at any time.
- c) No Property of the Town shall be intended or considered as an open, limited, or designated public forum, and no person shall have a right to access or use any Town Property or publication for any purpose other than as authorized by the Town.
- d) Advertisers are solely responsible for obtaining necessary permission to use photographs, trademarks, trade names, copyrighted material or any other legally protected property and shall hold the Town harmless for any such use, including all consequences or damages resulting therefrom. All commercial messages or advertisements shall be accepted and published by the Town upon the representation that the agency is authorized to publish the entire contents and subject matter thereof. Advertisers agree to indemnify and hold harmless the Town, its officers, agents and employees against all damages, costs and expenses including, without limitation, attorney's fees resulting from any claim, action or proceeding alleging that the commercial message or Advertisement infringes on any copyright, violates any right of privacy, or other personal or property right, constitutes libelous matter, plagiarism, unfair competition, unfair trade practice, infringement of trademarks, or other matter contrary to law or contains any formula or instructions injurious to the user of a Advertiser's product.
- e) Advertisers assume liability for all content (including text photographs, representations, illustrations, sketches, maps, labels, trademarks or other copyrighted matter) of Advertisements printed or placed and also assume responsibility of any claims arising therefrom made against the Town.
- f) The Town is not liable for delays in publication or presentation of Advertisements messages in any event or for any reason, including acts of God, action by any governmental or quasi-governmental entity, lack of funds, fire, flood, insurrection, riot, explosion, embargo, strikes whether legal or illegal,

labor or material shortage, transportation interruption of any kind, work slowdown, or any condition beyond the control of the Town affecting publication or presentation of Advertisement in any manner.

- g) If an error or omission occurs in the publication or placement of any Advertisement message, the Town's liability shall be limited to the amount of the reduction in the value of the Advertisement due to the error or omission, but in no event shall liability exceed the total cost payable for the Advertisement space.

3) Advertising Provisions.

- a) Advertising may be sold by the Town subject to the approval of the Supervisor. All advertisers must execute an advertising agreement that has been approved by counsel to the Town.
- b) The Town has sole discretion for determining the types of Advertising that will be accepted and displayed on its Property, and under no circumstances shall The Town's acceptance of any Advertising be considered an endorsement of the product(s) and/or service(s) advertised or for the company that manufactures, distributes, or promotes such product(s) or service(s).
- c) Advertising from an entity that is engaged in any of the following activities, that has a mission of supporting any of the following subject matters, or that, in the sole discretion and judgment of the Town, is deemed to be unsuitable for and contrary to community standards or appropriateness for government publications, shall be prohibited on any Town Property:
 - i) Promotion of the sale or consumption of alcoholic or cereal malt beverages, in name, likeness or implication or promotion of establishments that are licensed for and primarily sell alcoholic or cereal malt beverages, including bars; provided, however, restaurants or other food services establishments and hotels or other places of lodging may be authorized when the commercial message or advertisement promotes only the food services or lodging;
 - ii) Promotion of the sale or consumption of tobacco products or depiction of the use of tobacco products;
 - iii) Commentary, advocacy or promotion of issues, candidates, campaigns or organizations of a social, political, religious, or rhetorical nature;
 - iv) Promotion of gambling, pari-mutual betting, or games of chance, in name, likeness or implication, or promotion of establishments providing such services or activities of a related or similar nature;
 - v) Depiction in any form of nudity or semi-nudity, profanity, obscenity, or lewdness, or characterizations which suggest, depict or promote any such element or sexually oriented products, activities or materials;
 - vi) Promotion in any form of illegal drugs, illegal drug use or illegal drug materials, or characterizations which suggest or depict the promotion or glorification of any such products, activities or materials;
 - vii) Promotion of the use or sale of firearms, explosives or other weapons, or the depiction, suggestion or glorification of violence or acts of a violent nature;

- viii) Use of language or descriptive material which taken in form and context is deemed to be unsuitable for and contrary to community standards of appropriateness for governmental or family publications;
 - ix) Use of words, language, representations or descriptive material of any kind having more than one meaning or connotation, one of which would otherwise be prohibited under this Policy;
 - x) Inclusion of materials, depictions, promotions or offerings which are the type prohibited by, or by their nature would violate, any postal restrictions or regulations or any federal, State, or local law, rule, or regulation.
- d) Advertising must also clearly identify the advertiser. Any Advertising that could be misconstrued as editorial content must be clearly labeled as Advertising.
- e) The Town recognizes and maintains a distinct separation between Advertising content and editorial content. All Advertising content on Town Property shall be clearly and unambiguously identified as such.
- f) All content must be created by the Advertiser. The Town will not develop or create advertising content.
- g) The Town reserves the right to reject, cancel, or remove Advertising at any time for any reason. In such a case, it will provide prompt notice to the advertiser upon rejection, cancellation, or removal of any Advertising, together with an explanation following the rejection, cancellation, or removal. The Town also reserves the right to determine the appropriate placement of all Advertising on the Site.
- h) It is the responsibility of the Advertiser to comply with all applicable domestic and foreign laws, including applicable laws and regulations of regulatory bodies. The Town will not monitor compliance with applicable laws and regulations. However, The Town reserves the right to review all Advertising for compliance with applicable laws and regulations and, if The Town becomes aware of any breach or potential breach of any applicable law or regulation, The Town reserves the right to remove the Advertising.
- i) No Advertising shall be permitted that may harm the good name or reputation of The Town.

Exhibit B – Rate Card

EXHIBIT C – STANDARD TERMS AND CONDITIONS

1. Compensation

(a) Claim Forms, Claim Form Review and Approval. Payments shall be made to the Consultant in arrears and shall be expressly contingent upon (i) the Consultant submitting a claim form (the “Claim Form”) in a form satisfactory to the Town, that (a) states with reasonable specificity the services provided and the payment requested as consideration for such services, (b) certifies that the services rendered and the payment requested are in accordance with the terms of this Agreement, and (c) is accompanied by documentation satisfactory to the Town supporting the amount claimed, and (ii) review, approval and audit of the Claim Form by the Town and/or the Comptroller. Draw downs for the payment of eligible expenses shall be made against the activities specified herein and in accordance with applicable performance requirements.

(b) Timing of Payment Claims. The Consultant shall submit claims no more frequently than once a week and no later than one (1) months following the Town’s receipt of the services that are the subject of the claim. Any claims submitted in violation of this clause 3(c) shall not be due and payable by the Town and the Consultant hereby expressly waives any and all rights thereto.

(c) No Duplication of Payments. Payments for the Services shall not duplicate payments for any work performed or to be performed under any other agreements made between the Consultant and any funding source including the Town.

2. Termination

(a) The Town reserves the absolute right to terminate the Agreement at any time by service of a written notice sent by certified mail to the address set forth above. The Town will be responsible for payment of any portion of the Services completed prior to termination and satisfactory to the Town’s Comptroller.

(b) Contractor Assistance Upon Termination. In connection with the termination or impending termination of this Agreement, the Contractor shall, regardless of the reason for termination, take all actions reasonably requested by the Town (including those set forth in other provisions of this Agreement) to assist the Town in transitioning the Contractor’s responsibilities under this Agreement. The provisions of this Section shall survive the termination of this Agreement.

(c) Accounting Upon Termination. Within thirty (30) days of the termination of this Agreement, the Contractor shall provide the Supervisor with a complete accounting up to the date of termination of all monies received from the Town, and shall immediately refund to the Town any unexpended balance remaining as of the time of termination.

(d) Reimbursement Upon Termination. Payment to the Contractor following termination shall not exceed authorized expenditures made prior to termination, and may be suspended by the Town pending the Contractor’s reasonable compliance with the terms and provisions of (b) and (d) above.

3. Representations

The Contractor warrants and represents as of the effective date of this Agreement:

(a) it has full corporate right, power and authority to enter into this Agreement, and to perform the acts required of it hereunder; and

(b) when executed and delivered by Contractor, this Agreement will constitute the legal, valid and binding obligation of Contractor, enforceable against such party in accordance with its terms.

4. Refusal to Testify

If any person when called to testify before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a municipal department, or other municipal agency which is empowered to compel the attendance of witnesses and examine them under oath to testify in an investigation concerning any transaction or contract had with the State of New York, or any political subdivision thereof, a public authority, or with any public department, agency or office of the state, or of any political subdivision thereof, or of a public authority, refuses to answer any relevant question concerning such transaction or contract even though offered immunity against the use of his (its) answer and evidence derived therefrom in any subsequent criminal case in which he (it) is a defendant, then any such person or any firm, partnership, or corporation of which he (it) is a member, partner, director, or official shall be disqualified for a period of five years after such refusal from submitting bids to, receiving awards from, or entering into any contracts with the Town of North Hempstead or any department or agency or official thereof. If such a person refuses to answer any relevant question as aforesaid, then this Agreement may be cancelled and terminated by the Town without the Town incurring any penalty or damages by virtue of such cancellation or termination. Any monies owed for goods delivered or work done prior to cancellation shall be paid.

5. Amendments

This Agreement may only be amended or modified by written agreement duly executed by the Parties.

6. Independent Contractor

The Contractor is an independent contractor of the Town. The Contractor shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the Contractor (a "Contractor Agent"), be (a) deemed a Town employee, (b) commit the Town to any obligation, or (c) hold itself, himself, or herself out as a Town employee or Person with the authority to commit the Town to any obligation. As used in this Agreement the word "Person" means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

7. Indemnification

(a) To the fullest extent permitted by law, the Contractor:

- (i) shall indemnify and hold harmless the Town, and its officers, employees, agents, and servants (collectively, the "Indemnified Parties"), from and against any and all liabilities, losses, costs, expenses (including, without limitation, reasonable attorneys' fees and disbursements), and damages (collectively, "Losses"), including Losses attributable to

acts or omissions of the Contractor or Contractor's Agents, if any, arising out of or in connection with this Agreement, except, however, that the Contractor shall not be held liable for occurrences resulting from the negligence of the Town.

- (ii) shall, upon the Town's demand and at the Town's direction, promptly and diligently defend, at the Contractor's sole risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more of the Indemnified Parties and which arise out of the negligent performance of the Contractor, or its independent contractors, if any, in connection with this Agreement, and the Contractor shall pay and satisfy any judgment, decree, loss, or settlement in connection therewith.
 - (iii) shall, and shall cause the Contractor's Agents to, cooperate with the Town in connection with the investigation, defense, or prosecution of any action, suit, or proceeding arising out of or in connection with this Agreement.
- (b) The obligations of the Contractor pursuant to Section 7(a) hereof shall not be limited by reason of enumeration of any insurance coverage provided under this Agreement.
- (c) Nothing in this Section 7 or elsewhere in this Agreement shall create or give to third parties any claim or right of action against the Town beyond that which legally exist regardless of the provisions of this Agreement.
- (d) The Contractor's indemnification obligation hereunder shall survive the expiration or termination of this Agreement.

8. Insurance

During the term of the Agreement, Contractor shall obtain the following insurance coverage for the underlying Services, with a carrier holding an "A" rating from AM Best Company, or its equivalent, and shall furnish proof of its procuring of the following insurance policies, or such other documents as are set forth hereunder:

- (a) Commercial general liability insurance covering the liability of the Contractor, and indemnifying and holding harmless the Town, its agents, employees and representatives from any and all loss and/or damage arising out of the performance of this Agreement with a combined single limit (bodily injury/property damage) of One Million Dollars (\$1,000,000). The Town shall be named as additional insured on said policy;
- (b) Workers' compensation insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 57(2); and
- (c) Disability benefits insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 220(8).

The Town shall be entitled to thirty (30) days advance written notice of the cancellation or termination of any and all policies listed above at (a) through (c).

9. Compliance With Laws

The Contractor shall comply with any and all applicable and relevant Federal, State and local Laws, including those relating to conflicts of interest, discrimination, and confidentiality, in connection with its performance under this Agreement. As used in this Agreement the word "Law" means any and all statutes, rules, regulations, orders, ordinances, writs, injunctions, official resolutions, official interpretations, or decrees, as the same may be amended from time to time, enacted, adopted, promulgated, released, or issued, by or on behalf of any government or political subdivision thereof, quasi-governmental authority, court, or official investigative body.

10. Inspection of Contractor's Work and Records

The Contractor shall retain all books, documents, papers, accounting records and other evidence pertaining to cost incurred for a minimum period of six (6) years after final settlement and shall make them available for inspection and audit by the Town.

11. Entire Agreement

This Agreement represents the full and entire understanding and agreement between the parties hereto with regard to the subject matter hereof and supercedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

12. No Assignment or Transfer

Contractor's rights under this Agreement shall not be subcontracted or assigned nor its obligations assumed or transferred, except Contractor shall be permitted to assign and transfer all rights and obligations of this Agreement to a newly formed New York corporate entity provided the Contractor is a principal and majority shareholder of such corporate entity.

13. Waiver

Failure by any party to enforce at any time, for any reason, or for any period of time, any of the provisions of this Agreement, shall not be or constitute a waiver of any such provision or provisions and shall in no way affect such party's rights to later enforce such provision or provisions.

14. Headings

The headings of the Sections of this Agreement are for purposes of identification only and are not intended to limit the terms hereof or proscribe the rights and responsibilities of the Town or the Contractor provided for herein.

15. Legal Provisions Deemed Included; Severability; Construction

(a) Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form then (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of either party this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either party.

(b) In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) Each Party has cooperated in the negotiation and preparation of this Agreement, so if any construction is made of the Agreement it shall not be construed against either Party as drafter.

16. Consent to Jurisdiction and Venue; Governing Law

(a) Unless otherwise specified in this Agreement or required by Law, all claims or actions with respect to this Agreement shall be resolved exclusively by a court of competent jurisdiction located in Nassau County, New York, and the parties expressly waive any objections to the same on any grounds, including venue and *forum non conveniens*.

(b) This Agreement shall be construed and interpreted in accordance with the laws of the State of New York.

17. Limitations on Actions and Special Proceedings Against the Town

No action or special proceeding shall lie or be prosecuted or maintained against the Town upon any claims arising out of or in connection with this Agreement unless:

(a) Notice. At least thirty (30) days prior to seeking relief the Contractor shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing to the Supervisor for adjustment and the Town shall have neglected or refused to make an adjustment or payment on the demand or claim for thirty (30) days after presentment. The Contractor shall send or deliver copies of the documents presented to the Supervisor under this Section to the Town Attorney (at the address specified above for the Town) on the same day that documents are sent or delivered to the Supervisor. The complaint or necessary moving papers of the Contractor shall allege that the above-described actions and inactions preceded the Contractor's action or special proceeding against the Town.

(b) Time Limitation. Such action or special proceeding is commenced within the earlier of (i) one (1) year of the first to occur of (A) final payment under or the termination of this Agreement, and (B) the accrual of the cause of action, or (ii) the time specified in any other provision of this Agreement.

18. Executory Clause

Notwithstanding any other provision of this Agreement:

(a) Approval and Execution. The Town shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all relevant and required Town approvals have been obtained, including, if required, approval by the Town Board, and (ii) this Agreement has been executed by the Supervisor (as defined in this Agreement).

(b) Availability of Funds. The Town shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement.

19. Merger

It is understood that the Agreement represents the entire Agreement of the parties hereto, and all previous understandings are merged herein, and no modifications thereof shall be valid unless it meets the requirements of this Agreement.