



TOWN OF NORTH HEMPSTEAD

REQUEST FOR SEALED BIDS

FOR

DEBRIS REMOVAL AT SCHUMACHER HOUSE

**TOWN OF NORTH HEMPSTEAD
DEPARTMENT OF BUILDING SAFETY,
INSPECTION AND ENFORCEMENT**

**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
Lee R. Seeman
Dina M. De Giorgio**

Commissioner
John Niewender

**Issue Date: September 28, 2015
Proposals Due: October 16, 2015**

RFB No. TNH130-2015

TOWN OF NORTH HEMPSTEAD

REQUEST FOR SEALED BIDS

I. INTRODUCTION

A. General Information

The Town of North Hempstead ("Town") is requesting sealed bids from qualified firms to perform removal of asbestos, lead and debris from the Schumacher House, located at Clinton G. Martin Park, New Hyde Park, New York.

The following conditions apply to this RFB:

- There is no express or implied obligation for the Town to reimburse responding firms for any expenses incurred in preparing bids in response to this request, and the Town will not reimburse such expenses.
- Any inquiries concerning this RFB must be in writing or by email and should be addressed to Maria Gomes, Procurement Coordinator at contracts@northhempsteadny.gov. All inquiries must bear the RFB number assigned to this RFB
- To be considered, bids must be received by the Procurement Division at 220 Plandome Road, Manhasset, New York 11030 by 11:00 a.m. **October 16, 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 bidder, or to allow corrections on non-material errors or omissions or waive non-material requirements.
- The Town reserves the right to retain all bids submitted and to use any ideas in a proposal regardless of whether that bid is selected.
- Submission of a bid indicates acceptance by the firm of the conditions contained in this RFB, unless clearly and specifically noted in the bid 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 October 20, 2015. Following notification of the selected firm it is expected an agreement will be executed between both parties by November 1, 2015.
- The Town reserves the right, as best serves its interest, to change any of the projected dates set forth in this RFB, including, but not limited,

to the due date for receipt of proposals.

The Town reserves the right to reject all bids.

B. Subcontracting

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

II. SCOPE OF SERVICES

A. Project Summary

The Town requires a firm to perform the removal of asbestos and lead and removal of debris from the Schumacher House, located at Clinton G. Martin Park, New Hyde Park, New York. The purpose of the removal is to prepare and make safe all areas of the interior structure for future repair/restoration. All levels of structure including cellar to be clear of all debris not associated with interior finish and structure.

B. Statement of Work

The Town has, though an outside firm, tested for the presence of asbestos and lead paint at the structure. Copies of the test results are attached to this RFB. The successful firm will be required to perform the following basic tasks:

1. Perform the removal of asbestos, lead and mercury and dispose of such materials in compliance with applicable law and the requirements of this RFB.
2. Remove all materials, equipment and debris from the structure and dispose of such materials in compliance with applicable law and the requirements of this RFB.

In performing these tasks, the following requirements must be observed:

1. Successful bidder must remove of all decayed loose material at each level.
2. All recyclable materials and undamaged restoration type material will be stored and separated on site.
3. Any materials in their present form which are salvageable or recyclable must be separated and stored on location. Removal of unsecured debris to be loaded and removed by contractor.
4. Materials "Compromised" or containing coatings or chemicals to be properly documented and secured before removal.
5. All records of materials for sanitation shall be kept on site.
6. During the work, if the selected bidder encounters thermostats or light switches containing mercury, such equipment shall be left in place for removal by the Town or removed at the direction of the Town for recycling.
7. The successful bidder is responsible for performing all necessary shoring of the structure to perform the work. The successful bidder is responsible for compliance with the New York State Labor Law and the Occupational Safety and Health Act along with all applicable federal and state laws, rules and regulations. If required, shoring will be designed by a New York State Licensed Engineer, signed and stamped, and submitted for

approval of the Department of Building Safety, Inspection and Enforcement and the Department of Public Works.

8. Debris must be removed manually where possible. Where necessary, light equipment may be used to remove debris, upon approval of the Department of Building Safety, Inspection and Enforcement.
9. The successful bidder, or approved subcontractor, must be licensed to perform abatement of asbestos and lead.
10. Successful bidder must provide all necessary labor and equipment to perform the services and will be responsible for obtaining all necessary permits and issuing all necessary notices. Successful bidder shall be responsible for securing the site and work areas. Successful bidder shall be responsible for air monitoring throughout the work.
11. Contractor will be responsible for providing to the Town all necessary post-abatement reports and manifest documents.
12. Contractor shall be responsible for the payment of prevailing wages pursuant to Articles 8 and 9 of the New York State Labor Law for all trades used to perform the services. Prevailing wage schedules are attached here as Attachments D1 (Article 8) and D2 (Article 9) for reference and to be used in creating proposals.
13. Successful bidder is responsible for compliance with Part 56 of Title 12 of the New York State Codes, Rules and Regulations regarding the removal and disposal of asbestos containing materials and compliance with Part 67 of Title 10 of the New York State Codes, Rules and Regulations regarding the removal and disposal of lead containing materials and any other state and federal laws rules and regulations.

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. **Bidders must attend a mandatory viewing of the property, scheduled for October 8, 2015 at 8:00am. The Town will not accept proposals from firms that do not attend the mandatory walkthrough.**
2. The Town reserves the absolute right to terminate the services at any time.
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 RFB, 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).
7. Each bid must be accompanied by a Certified check or Bid Bond payable to the Town for not less than 5% of the Bid amount. All such checks, except those of the three lowest bidders will be returned as soon as practicable after Bid opening. Checks of the three lowest bidders will be returned as soon as practicable after the award of contract, (or rejection of Bids), but the Owner will not retain them more than forty-five (45) days after opening of Bids, except by mutual agreement.
8. WHEN THE CONTRACT IS EXECUTED AND SIGNED BY THE CONTRACTOR, THE CONTRACTOR SHALL SIMULTANEOUSLY FURNISH A FAITHFUL PERFORMANCE BOND FOR AN AMOUNT NOT LESS THAN ONE HUNDRED PERCENT (100%) OF THE CONTRACT AMOUNT AND A LABOR AND MATERIALS PAYMENT BOND (FOR PAYMENT TO ALL PERSONS PERFORMING LABOR OR FURNISHING MATERIALS IN CONNECTION THEREWITH) FOR NOT LESS THAN ONE HUNDRED PERCENT (100%) OF THE CONTRACT AMOUNT. These bonds shall stipulate that they are for the contract awarded for the work described in this RFB and that they will remain in effect for the duration of the contract. The bonds shall be issued by a surety company acceptable to and approved by the Town.

III. FEE STRUCTURE

Each bid shall include Appendix A: Price Proposal and include the bidder's bid 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:

RFB issued	September 25, 2015
Mandatory Walkthrough	October 8, 2015
Due Date for bid submissions	October 16, 2015

B. Notification and Contract Dates

Selected firm notified	On or about	October 20, 2015
Contract date	On or before	November 1, 2015

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

V. PROPOSAL REQUIREMENTS

A. General Requirements

1. Inquiries

Written inquiries concerning the RFB and its subject must be made to Maria Gomes, Procurement Coordinator, at contracts@northhempsteadny.gov. Direct responses to all inquiries will be distributed to each potential bidder that has requested such responses. Questions must be received by 12:00 noon on Tuesday October 13, 2015. Answers to questions will be posted by the Town on the Town's website and will be made available to potential bidders who have requested a copy of this RFB.

2. Submission of Proposals

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

- a. The Bid shall include:

i. Title Page

Title page showing the RFB subject; the firm's name; name,

address and telephone number of the contact person; and the date of the bid.

ii. Description of Qualifications

A statement describing the qualifications of the bidder along with copies of any licenses and permits necessary to perform the work described in this RFB.

iv. Completed bid proposal attached as Attachment A

v. Fully completed Bidder'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 bidder accepts and agrees to the form contract contained in Attachment C and acknowledging that these terms and conditions will be supplemented based on the bids received and cannot be viewed by the bidders 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 Bids: Debris Removal at Schumacher House":

Maria Gomes, Procurement Coordinator
Town of North Hempstead
220 Plandome Road
Manhasset, New York 11030

ATTACHMENT A

BID PROPOSAL

Lump sum price for the completion of the services described in this RFB: \$ _____

In words: _____

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

Signature

Name of Bidder

Title of Person Signing

Sworn to and subscribed on

this _____ day of _____,
20____

(Notary Public)

ATTACHMENT B

BIDDER'S QUALIFICATION STATEMENT

INSTRUCTIONS:

The Bidder'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 Bid 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 RFB.
3. That he/she has the capacity to and will abide by all terms and conditions pursuant to this RFB.
4. That he/she agrees to accept payment in accordance with the requirements of the RFB; 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 RFB.
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 Bidder

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 BID THAT FAILS TO INCLUDE COMPLETE DISCLOSURE STATEMENT FORM.

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

(Signature, if Individual)

By: _____
corporation)

(Seal, if

(Signature)

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 Bidder; 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 Bidder) 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 _____.

(Notary Public)

My commissioner expires: _____

NONCOLLUSIVE BID CERTIFICATION

By submission of this proposal, each bidder and each person signing on behalf of any bidder 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 bidder 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 bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- (3) No attempt has been made or will be made by the bidder 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:	_____
_____	_____
Bidder's Signature	Date
_____	_____
Print Name	Title
_____	_____
Legal Name of Individual or Business Name of Company/Partnership/Corporation	Bidder's Federal Tax Identification # (Do Not Use SS#)
_____	_____
Address	Email Address

[MANDATORY ACKNOWLEDGMENT APPEARS ON FOLLOWING PAGE]

-----**(Acknowledgment for Individual)**-----

STATE OF)
)
 ss.:
COUNTY OF)

On _____, 20____ before me personally came_____ to me known, and known to me to be the individual(s) described in, and who executed the foregoing NONCOLLUSIVE BID CERTIFICATION, and duly acknowledged to me that s/he executed the same.

expires:_____
(Notary Public)

My commission

-----**(Acknowledgment for Partnership)**-----

STATE OF)
)
 ss.:
COUNTY OF)

On _____, 20____ before me personally came_____ to me known, who, by me duly sworn, did depose and say that deponent resides at_____; that deponent is a member of the partnership described in and which executed the foregoing NONCOLLUSIVE PROPOSAL CERTIFICATION; deponent is authorized to sign the foregoing NONCOLLUSIVE BID CERTIFICATION.

(Notary Public)

My commission expires:_____

-----**(Acknowledgement for Corporation)**-----

STATE OF)
)
 ss.:
COUNTY OF)

On _____, 20____ before me personally came_____ to me known, who, by me duly sworn, did depose and say that deponent resides at_____; that deponent is the _____ of the corporation described in, and which executed the foregoing NONCOLLUSIVE PROPOSAL CERTIFICATION, that deponent knows the seal of the corporation, that the seal affixed to the NONCOLLUSIVE BID CERTIFICATION, is the corporate seal, that its was affixed by order of the board of _____ the corporation; and that deponent signed deponent's name by like order.

(Notary Public)

My commission expires:_____

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 RFB:

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 WAS RECEIVED IN CONNECTION WITH THIS PROPOSAL.</u> ACKNOWLEDGEMENT: _____

IMPORTANT NOTICE:

THIS FORM MUST BE COMPLETED AND SUBMITTED BY ALL BIDDERS. 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

ATTACHMENT C
STANDARD TOWN TERMS AND CONDITIONS

1. Compensation

(a) Claim Forms, Claim Form Review and Approval. Payments shall be made to the Contractor in arrears and shall be expressly contingent upon (i) the Contractor 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 Contractor 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 Contractor 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 Contractor 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

(a) 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.

(b) By executing this Agreement, the Contractor and each person signing on behalf of the Contractor certifies, under penalty of law, that the Contractor understands and agrees to comply with the terms and conditions of the Town's stormwater management program and agrees to implement any corrective actions identified by the Town or a representative of the Town. Contractor understands that the Town must comply with the terms and conditions of the New York State Pollutant Discharge Elimination System ("SPDES") general permit for stormwater discharges from Municipal Separate Storm Sewer Systems ("MS4's") and that it is unlawful for any person to directly or indirectly cause or contribute to a violation of water quality standards. Further, Contractor understands that any non-compliance by the Town will not diminish, eliminate or lessen Contractor's own liability.

10. Labor Requirements

(a) Prevailing Wage. Contractor acknowledges that that the Services are subject to the prevailing wage rates of the Labor Law, and that the following shall apply:

- (i) A copy of the applicable prevailing wage rates to be paid or provided are annexed to this Agreement as Schedule A.
- (ii) The wages to be paid by the Contractor to its personnel performing the

Services shall be not less than the prevailing rate of wages and supplements as set forth by law. The Contractor shall keep informed of all changes in prevailing wage rates during the term of this Agreement that apply to the classes of individuals supplied by the Contractor to perform the Services, subject to the provisions of the Labor Law. The Contractor is solely liable for and must paid such required prevailing wage adjustments during the term of this Agreement as required by law.

- (iii) In compliance with Article 8, Section 220 of the Labor Law:
 - a. the Contractor must publicly post on the worksite, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements
 - b. Contractor and sub-Contractors must keep original payroll records or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Such records must be kept at the work site.
 - c. The Contractor and any sub-Contractors must submit certified monthly payroll transcripts to the Town.
 - d. The Contractors or any sub-Contractors must preserve such certified transcripts for a period of three years from the date of completion of the Services.
- (iv) The Contractor agrees that in case of underpayment of wages to any worker on the project under this Agreement by the Contractor or any subcontractor, the Town may withhold from the Contractor out of payments due, an amount sufficient to pay such worker the difference between the wages required to be paid under this Agreement and the wages actually paid such worker for the total number of hours worked including administrative costs incurred and reasonable attorneys fees and that the Town may disburse such amount so withheld by it for and on account of the Contractor to the employee to whom such amount is due. The Contractor further agrees that the amounts to be withheld pursuant to this Section may be in addition to the percentages to be retained by the Town pursuant to other provisions of this Agreement.

(b) Work Day. Eight hours shall constitute a legal day's work. No laborers, workmen or mechanics in the employ of the Contractor, a sub-Contractor or other person doing or contracting to do all or part of the work contemplated by this Agreement shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood, or danger to life or property. "Extraordinary Emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay if the public work is necessary in the judgment of the New York State Commissioner of Labor for the preservation of the work site or for the protection of the life and limb of persons using the work site.

(c) Discrimination. In accordance with the provisions of Section 220-E of the Labor Law, the Contractor agrees as follows:

(i) That in the hiring of employees for the performance of the Services under this Agreement or any subcontract hereunder, no Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the Work to which the employment relates;

(ii) That no Contractor, subcontractor, nor any person on its behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of the Services under this Agreement on account of race, creed, color, or national origin;

(iii) That there be deducted from the amount payable to the Contractor by the Town under this Agreement a penalty of fifty dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

(iv) That this Agreement may be cancelled or terminated by the Town, and all monies due, or to become due, hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this Agreement.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

ATTACHMENT D1 – PREVAILING WAGE SCHEDULE – ARTICLE 8

ATTACHMENT D2 – PREVAILING WAGE SCHEDULE – ARTICLE 9

ATTACHMENT E – ASBESTOS AND LEAD REPORTS