

ADDENDUM NO. 2

NAME: Request for Proposals for Wireless Redundancy System - RFP No. TNH 114-2014

DATE: January 12, 2015

TO: All Prospective Proposers

This amendment is being issued in response to questions asked of the Town in regard to the RFP:

1. Q. Will you please clarify the type of information and documentation needed to satisfy Section II (B), since the steps in Section II (B) would be conducted during the site survey in order to generate that specific data?

A. The Town expects to see the methodology that the proposing vendor would employ in complying with Section II(B) of the RFP.

2. Q. Regarding Section V. (A.) (2.) (a.)(vi.) Statement that the proposer accepts and agrees to the form contract contained in Attachment C., it appears that the Attachment was not included in the RFP.

A. Please see the standard Town terms and conditions attached to this amendment. 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.

The "ADDENDUM NO. 2 RECEIPT ACKNOWLEDGEMENT FORM" on the last page of this Addendum No. 2 must be signed and dated in the spaces provided and submitted with your Proposal. All Proposers must submit this form with its Proposal regardless of the content contained in each Addendum.

ADDENDUM NO.2 RECEIPT ACKNOWLEDGEMENT FORM

REQUEST FOR PROPOSALS FOR WIRELESS REDUNDANCY SYSTEM – RFP No. TNH114-2014

By signing this Acknowledgement and submitting same with its Proposal submission, the undersigned Proposer acknowledges receipt of this Addendum No. 2. Proposer further acknowledges that it has read and reviewed the information contained herein, understands same, and that its questions, if any presented, have been answered satisfactorily. Proposer agrees that it shall incorporate/consider the information contained in this Addendum No. 2 in preparing and providing its proposal price. In addition, this Addendum No.1 Receipt Acknowledgement Form must be signed and dated and attached to the proposal submittal.

Signature: _____

Company Name: _____

Proposer Acknowledgement Date: _____

Print & Sign Company Principal Name & Title: _____

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.