TOWN OF NORTH HEMPSTEAD

Request for Proposals

Summer Camp Programs

TNH122-2014

THIS REQUEST FOR PROPOSALS
CONTAINS THE FOLLOWING:

Notice to Proposers
Instructions to Proposers
General Conditions
Proposal Specifications (page 21)
Qualifications Statement
(Includes statement, disclosures, non-collusion statement, insurance forms)

Peter Hoda, Commissioner

Department of Administrative Services - Purchasing Division

220 Plandome Road • Manhasset, New York 11030 • (516) 869-2913 (P) • (516) 869-2919 (F)
• Contracts@northhempsteadny.gov •
www.northhempsteadny.gov
(Click on Working Tab, Bids/RFPs)

IMPORTANT NOTE TO POTENTIAL PROPOSERS: Receipt of these proposal documents does not indicate that the Town of North Hempstead has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the review of proposals received and will be based on our evaluation of your submission compared to the specific requirements and qualifications contained in these proposal documents.

NOTICE TO PROPOSERS

SEALED REQUESTS FOR PROPOSALS will be received by the Department of Administrative Services – Purchasing Division of the Town of North Hempstead located on the lower level of Town Hall, 220 Plandome Road, Manhasset, New York 11030, on December 30, 2014, 11AM, or as extended, for:

TNH122-2014-Summer Camp Program at North Hempstead Parks

Proposals may be mailed or delivered to the Purchasing Division, 220 Plandome Road, Manhasset, New York 11030, provided the Proposal is actually received by the Purchasing Division prior to this time.

All Proposals must be sealed and submitted in an envelope with the Identification Label provided in the Proposal Documents affixed to the front of the envelope.

All PROPOSERS MUST complete the required Proposer's Disclosure Statement, Non-Collusion Declaration, and must provide a copy of the required Statement of Financial Conditions, even if a Proposer is currently executing work for the Town.

It is the policy of the Town of North Hempstead to encourage the participation of DBE and M/WBE; by submitting a proposal on this request for proposals, the contractor acknowledges its understanding and support of this policy and pledges to fully cooperate with the Town in meeting the requirements as set forth in the proposal and contract documents.

The Town reserves the absolute right to reject any and all Proposals, and to waive any informalities therein.

A Proposal submitted by a proposer who is not in full compliance with the provisions of the Town of North Hempstead, Town Code at the time of submission will be denied.

The Town will not accept Proposals from, nor award a Contract to, anyone who cannot prove to the satisfaction of the Town that the proposer has sufficient experience and/or is financially able and organized to successfully comply with the requirements set forth herein.

PETER HODA, COMMISIONER

DEPARTMENT OF ADMINISTRATIVE SERVICES

DATED: Manhasset, New York

Date: December 11, 2014

INSTRUCTIONS TO PROPOSERS

ITB-1 PROPOSAL PREPARATION

Prepare your proposal on this form using indelible ink. One copy of the proposal is required, unless otherwise specified herein. The Town shall not be liable for any cost incurred in connection with the preparation of your proposal. A proposer may withdraw a proposal any time prior to the final filing date and time by written notification, signed by an authorized agent, to the contact person listed in the Request for Proposals.

ITB-2 PROPOSAL DOCUMENTS

Failure to fully comply with any of the requirements or instructions contained within the proposal document may constitute sufficient cause for rejection of the Proposal. Such rejections will be subject to the discretion of the Commissioner of Administrative Services.

Requests for Proposals will consist of the following documentary components:

a. Notice to Proposers

b. Instructions to Proposers

c. General Conditions

d. Standard Specifications (as defined in General Conditions)

e. Proposal Form with Schedule 'A'

f. Proposer's Qualifications Statement

g. Addendum to Proposer's Documents

Requests for Proposals Involving a Public Work or Building Services Component Pursuant to Articles 8 and 9 of the New York State Labor Law (as specified in the Proposal Form) **will also include the following documentary component**:

a. New York State Department of Labor Wage Rate Schedule(s).

ITB – 3 EXAMINATION OF PROPOSAL DOCUMENTS AND FAMILIARITY WITH SITE

BEFORE SUBMITTING A PROPOSAL, ALL PROPOSERS ARE ADVISED TO CAREFULLY EXAMINE THE PROPSAL DOCUMENTS; **WHERE THE CONTRACT IS FOR PUBLIC WORK OR INSTALLATION** THE PROPOSER IS ADVISED TO VISIT THE SITE OF THE PROPOSED WORK TO BECOME COGNIZANT OF CONDITIONS AND LIMITATIONS ASSOCIATED WITH FULFILLING REQUIREMENTS OF THE PROPOSAL DOCUMENTS, INCLUDING BUT NOT LIMITED TO PLANS AND SPECIFICTIONS.

Pleas of ignorance or misunderstanding of conditions that exist, or that may hereafter exist, or of conditions or difficulties that may be encountered in the execution of the work under this Contract, as a result of negligence by failing to make the necessary examinations and investigations as may be expected of a reasonably prudent Proposer, will NOT be accepted as grounds for any excuse on the part of a Contractor to fulfill in every respect all of the requirements of the Proposal Documents, nor will such excuses be accepted by the Town as a basis for any claims whatsoever for extra compensation, or for an extension of Contract completion time.

ITB-4 INTERPRETATION OF PROPOSAL DOCUMENTS

If any prospective Proposer is unsure of, or has any reservations about, the precise and true meaning of any written or drawn material contained within any of the Proposal Documents, or finds apparent discrepancies therein, or possible omissions therefrom, s/he shall promptly submit to the Commissioner of Administrative Services, a written request, fully describing the material in question, for an interpretation, explanation or revision thereto. The response to each request for clarification will be made only by an Addendum to the Proposal Documents. Neither the Town nor the Commissioner of Administrative Services may be held responsible or liable for any other explanations or interpretations of these Proposal Documents.

ITB-5 ADDENDUM TO PROPOSAL DOCUMENTS

Any Addendum issued during the proposing period shall become an integral part of the Proposal Documents and shall be incorporated in the Proposer's Proposal. All Addendum shall be acknowledged in the Proposal, by entering the title, date and signature of the person signing the Proposal.

ITB-6 MODIFICATIONS TO PROPOSAL DOCUMENTS

Proposals shall not take exception to, or request modifications for, any item described in the Proposal Documents. Oral Proposals will not be considered.

ITB-7 RIGHTS OF TOWN BOARD

The Town Board reserves the right to reject any and all Proposals and to waive any informalities in the Proposals received, and to accept the Proposal most favorable to the interests of the Town, after all Proposals have been analyzed, checked and verified.

ITB-8 TAX EXEMPTION

The Owner is exempt from payment of Sales and Compensating Use Taxes of the State of New York and of cities and counties on all materials and supplies sold to the Town pursuant to the provisions of this Contract. These taxes are not to be included in Proposals.

ITB-9 FORM OF PROPOSAL

EACH PROPOSAL MUST BE MADE ON THE "PROPOSAL FORM" ATTACHED HERETO AND SHALL REMAIN ATTACHED HERETO AS ONE OF THE PROPOSAL DOCUMENTS AND SHALL BE SUBMITTED IN A SEALED ENVELOPE BEARING THE NAME OF THE PROPSER, PROPOSAL NUMBER, AND THE NAME OF THE PROPOSER.

THE TOWN HEREBY RESERVES THE ASBOLUTE RIGHT TO REJECT ANY PROPOSAL THAT IS NOT MADE ON THE "PROPOSAL FORM".

ITB-10 DELIVERY OF PROPOSALS

PROPOSALS MUST BE DELIVERED BY THE TIME AND TO THE PLACE STIPULATED IN THE ADVERTISEMENT. IT IS THE SOLE RESPONSIBILITY OF THE PROPOSER TO SEE THAT HIS PROPOSAL IS RECEIVED IN THE PROPER TIME. ANY PROPOSALS RECEIVED AFTER THE SCHEDULED CLOSING TIME FOR RECEIPT OF PROPOSALS SHALL BE RETURNED TO THE PROPOSER UNOPENED.

ITB-11 CORRECTIONS TO PROPOSALS

Erasures or other corrections in the Proposal must be initialized by the person signing the Proposal.

ITB-12 WITHDRAWAL OF PROPOSALS

Any Proposer may withdraw his/her Proposal, either personally, or by telegraphic or written request, if such a request is received by the Purchasing Division at any time during normal working hours prior to the scheduled closing time for receipt of Proposals. If a Contract is not awarded within 45 calendar days after opening of the Proposals, all Proposals will be considered to have been rejected for cause, unless, at the Town's request the low Proposal agrees to hold his Proposal valid for an additional stipulated length of time.

ITB-13 MULTIPLE PROPOSAL SUBMITTALS

Any person, firm or corporation will not be permitted to make more than one Proposal for the product or service. If a person is a partner, officer or director of more than one firm interested in proposing for the product or services, only one of the firms may submit a Proposal.

ITB-14 NON-COLLUSIVE PROPOSING CERTIFICATION

In accordance with § 103-d of the General Municipal Law, 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 its 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 submit a proposal for the purpose of restricting competition.

ITB-15 QUALIFICATIONS OF PROPOSERS

A PROPOSER'S QUALIFICATIONS STATEMENT IS REQUIRED. The forms attached hereto indicate all the information required. Each Proposer shall be responsible for submitting his current Disclosure Statement with his Proposal. The Town retains the right to investigate, verify the information submitted in the Disclosure Statement, and interview all proposers prior to award of the Contract. THE TOWN HEREBY RESERVES THE ASBOLUTE RIGHT TO REJECT ANY PROPOSAL THAT DOES NOT INLCUDE A DISCLOSURE STATEMENT.

ITB- 16 IDENTIFICATION LABEL

To properly expedite the receipt and processing of proposers submitted, the following “Identification Label” must be affixed to the outer envelope of the sealed proposal. Proposals shall be delivered by U.S. Mail, public carrier (e.g. UPS, FedEx), or by hand. THE TOWN HEREBY RESERVES THE ASBOLUTE RIGHT TO REJECT ANY PRPOPOSAL THAT DOES NOT CONFORM TO THIS SECTION.

SEALED RFP ENCLOSED

Town of North Hempstead

Department of Administrative Services

Purchasing Division

Proposer's Name:

_____

GENERAL CONDITIONS

1. **APPLICABILITY** The terms and conditions set forth in this Section entitled General Conditions are expressly incorporated in and applicable to the resulting procurement contracts let by the Town of North Hempstead where incorporated by reference in its Proposal Documents. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2. **GOVERNING LAW** This procurement, the resulting contract and any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the contract shall be heard in a court of competent jurisdiction in the State of New York.

3. **NO ARBITRATION** Disputes involving this procurement, the resulting contract, including the breach or alleged breach thereof, and any purchase orders issued hereunder may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

4. **ETHICS COMPLIANCE** All Contractors and their employees must comply with the requirements of Section 16A of the Code of the Town of North Hempstead, other New York State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Proposal, Proposer certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving the Town of North Hempstead and/or its employees. Failure to comply with those provisions may result in disqualification from the Proposing process, termination of contract, and/or other civil or criminal proceedings as required by law.

5. **CONFLICT OF TERMS** Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

(A) Contract and other writing(s) setting forth the final agreements, clarifications and terms between the Proposal Documents and Contractor's Proposal. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the Town of North Hempstead. If not, such clarifications shall be considered last in the order of precedence under this paragraph.

(1) General Conditions.

(2) Proposal Specifications.

(3) Proposal Documents.

(4) Contractor's Proposal.

6. **DEFINITIONS**

AWARD is the decision of the Town to accept the Proposal of the lowest responsive, responsible Contractor for the procurement included in these Proposal Documents. An award letter will be issued by the Town informing the Contractor that its Proposal was accepted.

PROPOSAL DOCUMENTS Writings by the Town setting forth the scope, terms, conditions and technical specifications for procurement. Such writings typically include, but are not limited to: Invitation for Proposals (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions contained therein or incorporated by reference.

PROPOSAL An offer or proposal submitted by a Proposer to furnish a described product or a solution, perform services or means of achieving a practical end, at a stated price for the stated Contract term.

As required by the Proposal Documents, the Proposal may be subject to modification through the solicitation by the Town of best and final offers during the evaluation process prior to recommendation for award of the Contract.

OFFERER Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) which submits a Proposal in response to a solicitation. The term Proposer shall also include the term "proposer" or "offeror." In the case of negotiated Contracts, "Proposer" shall refer to the "Contractor."

PROPOSAL SPECIFICATION A written description drafted by the Town setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a commodity or construction item, any description of the work to be performed, Products to be provided, the necessary qualifications of the Proposer, the capacity and capability of the Proposer to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work.

CONTRACT The writing(s) which contain the agreement of the Town and the Proposer/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law.

CONTRACT DOCUMENTS consist of the Contract or Purchase Order made between the Town and the Contractor (hereinafter the Agreement), General Conditions, Proposal Specifications, Proposal Documents, including among others the Notice to Proposers, Instructions to Proposers, any Schedule of Proposal Prices, any Addendum to Proposal Documents issued prior to execution of the Contract, Proposer's Qualification Statement, **Contractor's Proposal (including non-collusive proposing statement), cont**ract or purchase order(s) issued, Insurance and Indemnity Certification, Proposal Bond(s) (where required), Performance Bond(s), Materials & Labor Bond(s) (where required), or Maintenance Bond (where required), any New York State Department of Labor Wage Rate Schedule(s) (for public work or building services as defined by Articles 8 and 9 of the New York State Labor Law), any additional Documentation required for contract execution, any supplemental agreements issued during the course of the Contract, and/or Modifications issued after execution of the Contract. A Modification is: (1) a written amendment to the Contract signed by both parties including but not limited to work change orders or changes to purchase orders.

COMMISSIONER Commissioner of the Department of Administrative Services or his/her authorized representative.

COMPTROLLER Comptroller of the Town of North Hempstead.

CONTRACTOR Any successful Proposer(s) to whom a Contract has been awarded by the Town.

DOCUMENTATION The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, which are necessary to enable the Town to properly test, install, operate and enjoy full use of the Product.

MULTIPLE AWARD A determination and award of a Contract in the discretion of the Commissioner to more than one responsive and responsible Proposer who meets the requirements of a specification, where the multiple award is made on the grounds set forth in the Proposal Document in order to satisfy multiple factors and needs of the Town (e.g., complexity of items, various manufacturers, differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, geographic location or other pertinent factors).

PRODUCT A deliverable under any Proposal or Contract which may include commodities, services and/or technology, including software.

PURCHASING DIVISION shall mean the Town of North Hempstead, Department of Administrative Services Purchasing Division.

PURCHASE ORDER The Town's fiscal form or format that is used when making a purchase (*e.g.*, Claim Form, formal written Purchase Order, electronic Purchase Order, or other authorized instrument).

SINGLE SOURCE A procurement where two or more Proposers can supply the required Product, and the Commissioner may award the contract to one Proposer over the other.

SITE The location (street address) where Product will be executed or services delivered.

SOLE SOURCE A procurement where only one Proposer is capable of supplying the required Product.

SUBCONTRACTOR Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

TOWN shall mean the Town of North Hempstead, Nassau County, New York.

TOWN ATTORNEY Town Attorney of the Town of North Hempstead.

TOWN BOARD shall mean the council members

duly elected by the residents of the Town of North

Hempstead, Nassau County, New York.

PROPOSAL SUBMISSION

7. **PROPOSAL OPENING** Proposals may, as applicable, be opened publicly. The Commissioner reserves the right at any time to postpone or cancel a scheduled Proposal opening.

8. **PROPOSAL SUBMISSION** All Proposals are to be packaged, sealed and submitted to the location stated in the Proposal Specifications. Proposers are solely responsible for timely delivery of their Proposals to the location set forth in the Proposal Specifications prior to the stated Proposal opening date/time.

A Proposal return envelope, if provided with the Proposal Specifications, should be used with the Proposal sealed inside. If the Proposal response does not fit into the envelope, the Proposal envelope should be attached to the outside of the sealed box or package with the Proposal inside. If using a commercial delivery company that requires use of their shipping package or envelope, Proposer's sealed Proposal, labeled as detailed below, should be placed within the shipper's sealed envelope to ensure that the is not prematurely opened.

All Proposals must have a label on the outside of the package or shipping container outlining the following information:

"**PROPOSAL ENCLOSED** (bold print, all capitals)

- Proposal Name
- Proposal Number
- Proposal Submission date and time"

In the event that a Proposer fails to provide such information on the return Proposal envelope or shipping material, the Town reserves the right to open the shipping package or envelope to determine the proper Proposal number or Proposal Name, and the date and time of Proposal opening. Proposer shall have no claim against the Town arising from such opening and such opening shall not affect the validity of the Proposal or the procurement.

Notwithstanding the Town's right to open a Proposal to ascertain the foregoing information, Proposer assumes all risk of late delivery associated with the Proposer not being identified, packaged or labeled in accordance with the foregoing requirements.

All Proposals must be signed by a person authorized to commit the Proposer to the terms of the Proposal Documents and the content of the Proposal (offer).

9. **LATE PROPOSALS** For purposes of Proposal openings held and conducted by the Purchasing Division, a Proposal must be received in such place as may be designated in the Proposal Documents or if no place is specified to the Town of North Hempstead, Purchasing Division, 220 Plandome Road, Manhasset, New York 11030, at or before the date and time established in the Proposal Specifications for the Proposal opening.

Any Proposal received at the specified location after the time specified will be considered a late Proposal. A late Proposal shall not be considered for award unless: (i) no timely Proposal meeting the requirements of the Proposal Documents are received or, (ii) in the case of a multiple award, an insufficient number of timely Proposal were received to satisfy the multiple award; and acceptance of the late Proposal is in the best interests of the Town. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Town shall not excuse late Proposal submissions. Similar types of delays, including but not limited to, bad weather or security procedures for parking and building admittance shall not excuse late Proposal submissions. Determinations relative to Proposal timeliness shall be at the sole discretion of the Commissioner.

10. **PROPOSAL CONTENTS** Proposals must be complete and legible. All proposals must be signed. All information required by the Proposal Specifications must be supplied by the Proposer on the forms or in the format specified. No alteration, erasure or addition is to be made to the Proposal Documents. Changes may be ignored by the Commissioner or may be grounds for rejection of the Proposal. Changes, corrections and/or use of white-out in the Proposer's response portion of the Proposal Document must be initialed by an authorized representative of the Proposer. Proposers are cautioned to verify their Proposals before submission, as amendments to Proposals or requests for withdrawal of Proposals received by the Commissioner after the time specified for the Proposal opening/date of submission of RFP, may not be considered.

11. **EXTRANEOUS TERMS** Proposals must conform to the terms set forth in the Proposers Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Proposal non-responsive and may result in rejection of the Proposal.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Proposal or resulting Contract, but shall be deemed included for informational or promotional purposes only.

No extraneous term(s), whether or not deemed "material," shall be incorporated into a Contract or Purchase Order unless the Commissioner expressly accepts each such term(s) in writing. Acceptance and/or processing of the Proposal shall not constitute such written acceptance of Extraneous Term(s).

12. **CONFIDENTIAL/TRADE SECRET MATERIALS** Contractor confidential trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Proposal. Marking the Proposal as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner to be sufficient without specific justification as to why disclosure of particular information in the Proposal would cause substantial injury to the competitive position of the Proposer. Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Proposer will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

13. **RELEASE OF PROPOSAL EVALUATION MATERIALS** Requests concerning the evaluation of Proposal may be submitted under the Freedom of Information Law.

14. **FREEDOM OF INFORMATION LAW** During the evaluation process, the content of each Proposal will be held in confidence and details of any Proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law). The

Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. If the Proposal contains any such trade secret or other confidential or proprietary information, it must be accompanied in the Proposal with a written request to the Commissioner to not disclose such information. Such request must state with particularity the reasons why the information should not be available for disclosure and must be provided at the time of submission of the Proposal. Notations in the header, footer or watermark of the Proposal Document will not be considered sufficient to constitute a request for non-disclosure of trade secret or other confidential or proprietary information. Where a Freedom of Information request is made for trademark or other confidential or proprietary information, the Commissioner reserves the right to determine upon written notice to the Proposer whether such information qualifies for the exemption for disclosure under the law. Notwithstanding the above, where a Proposal tabulation is prepared and Proposals publicly opened, such Proposal tabulation shall be available upon request.

15. **TAXES**

A. Unless otherwise specified in the Proposal Specifications or Contract, the quoted Proposal price includes all taxes applicable to the transaction.

B**.** Purchases made by the Town are exempt from New York State sales and excise taxes. These taxes are not to be included in Proposals. This exemption does not, however, apply to tools, machinery, equipment or other property, sold or leased to the Contractor or a subcontractor, or to materials and supplies of a kind which will not be incorporated into the completed Product, and the Contractor and his subcontractors shall be responsible for and pay any and all applicable taxes including Sales and Compensating Use Taxes, on such leased tools, machinery, equipment or other property or on such unincorporated materials and supplies, and the provisions set forth below will not be applicable to such tools, machinery, equipment, property and unincorporated materials and supplies.

C. New York State Truck Mileage and Unemployment Insurance or Federal Social Security taxes remain the sole responsibility of the Proposer/Contractor, as no person, firm or corporation is exempt from paying them.

D. Pursuant to Revised Tax Law 5-a, Contractor will be required to furnish sales tax certification on its behalf and for its affiliates, and subcontractors for Contracts with a value greater than $100,000 in accordance with provisions of the law.

PROPOSAL EVALUATION

16. PROPOSAL EVALUATION The Commissioner reserves the right to accept or reject any and all Proposals, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the Town will be served. The Commissioner, in his/her sole discretion, may accept or reject illegible, incomplete or vague Proposals and his/her decision shall be final. A conditional or revocable Proposal which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Proposer's conditional or revocable terms in the offer.

17. CONDITIONAL PROPOSAL Unless the Proposal Specifications provides otherwise, a Proposal is not rendered non-responsive if the Proposer specifies that the award will be accepted only on all or a specified group of items or Product included in the specification. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Proposal Documents.

18. CLARIFICATIONS / REVISIONS Prior to award, the Commissioner reserves the right to seek clarifications, request Proposal revisions, or to request any information deemed necessary for proper evaluation of Proposals from all Proposers deemed to be eligible for Contract award. Failure to provide requested information may result in rejection of the Proposal.

19. EQUIVALENT OR IDENTICAL PROPOSALS In the event that two or more Proposers submit substantially equivalent Proposals as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Proposers shall be final.

20. PROMPT PAYMENT DISCOUNTS While prompt payment discounts will not be considered in determining the low Proposal, the Commissioner may consider any prompt payment discount in resolving Proposals which are otherwise tied. However, any notation indicating that the price is net, (*e.g., net 30 days*), shall be understood to mean only that no prompt payment discount is offered by the

Proposer. The imposition of service, interest, or other charges, except as otherwise permitted by law, may render the Proposal non-responsive and may be cause for its rejection.

21. PERFORMANCE AND RESPONSIBILITY QUALIFICATIONS The Commissioner reserves the right to investigate or inspect at any time whether or not the Product, services, qualifications or facilities offered by the Proposer/Contractor meet the requirements set forth in the Proposal Specifications/Contract or as set forth during Contract negotiations. Contractor shall at all times during the Contract term remain responsible and responsive. If the Commissioner determines that the conditions and terms of the Proposal Documents, Proposal Specifications or Contract are not complied with, or that items, services or Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, the Commissioner may reject such Proposal or terminate the Contract.

22. QUANTITY CHANGES PRIOR TO AWARD The Commissioner reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Proposal Specifications. In the event such right is exercised, the lowest responsible Proposer meeting Proposal Specifications will be advised of the revised quantities and afforded an opportunity to extend or reduce its Proposal price in relation to the changed quantities. Refusal by the low Proposer to so extend or reduce its Proposal price may result in the rejection of its Proposal and the award of such Contract to the lowest responsible Proposer who accepts the revised qualifications.

23. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within forty-five (45) days after opening of Proposals, during which period, Proposals must remain firm and cannot be withdrawn. Any Proposal which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Commissioner, be accepted or rejected.

TERMS & CONDITIONS

24. CONTRACT CREATION / EXECUTION Subject to Award and upon receipt of all required approvals as set forth in the Proposal Specifications, a Contract shall be deemed executed and created with the successful Proposer(s), upon receipt of: (A) a fully executed Contract; or (B) a Purchase Order authorized by the Commissioner.

25. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all transactions by and between the Town and the Contractor under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor.

The Contractor may, however, offer more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Town than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against the Town unless authorized by the Commissioner. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, “shrink wrap” terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding the Town’s subsequent acceptance of Product, or that the Town has subsequently processed such document for approval or payment.

26. SCOPE CHANGES The Commissioner reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the Proposal Specifications, such changes to be within the general scope of the Contract. The Commissioner may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

27. EMERGENCY CONTRACTS In the event that a disaster emergency is declared by the Town, or it determines that an emergency exists requiring the prompt and immediate delivery of Product, the Town reserves the right to obtain such Product from any source,

including but not limited to this Contract(s), as the Town in its sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for Product procured from other sources pursuant to this paragraph.

28. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Town. Unless terminated or cancelled pursuant to the authority vested in the Town, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Award.

All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number. As deemed necessary, the Town may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The Town reserves the right to require any other information from the Contractor which the Town deems necessary in order to complete any Purchase Order placed under the Contract. Should the Town add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within *five business days* of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Town, or fulfill the Purchase Order. Notwithstanding the above, the Town reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

29. EMPLOYEES, SUBCONTRACTORS & AGENTS All employees, sub-contractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Proposal Specifications or the Proposal Documents, whichever is more restrictive, and must comply with all security and administrative requirements of the Town. The Commissioner reserves the right to conduct a security background check or otherwise approve any employee,

sub-contractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with Town's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Commissioner reserves the right to reject and/or bar from the facility for cause any employee, sub-contractor, or agents of the Contractor.

30. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Town. Failure to obtain consent to assignment from the Town shall revoke and annul such Contract. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to the Commissioner and seek written agreement from the Commissioner. The Commissioner reserves the right to reject any proposed assignee in his/her discretion.

31. SUBCONTRACTORS AND SUPPLIERS The Contractor shall advise the Commissioner, in writing, as to the name and address of the proposed sub-contractor and the exact scope of the work the sub-contractor will perform. The Contractor shall not sub-contract with the sub-contractor until the Commissioner has given written approval of the sub-contractor and the work to be performed. All work by sub-contractors shall be performed at no additional cost to the Town except as herein elsewhere stated in the Contract. All sub-contractors shall be required to furnish the Town with proof of insurance in the same manner and the amounts as required by the Contractor. All sub-contractors shall be required to comply with the applicable terms and conditions of the Contract.

The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: they are on the New York State Department of Labor's list of companies with which New York State cannot do business; the Commissioner determines that the company is not qualified; the Commissioner determines that the company is not responsible; the company has previously provided unsatisfactory work or services; the company failed to solicit minority and women's business enterprises (M/WBE) Proposers as required by prior Contracts.

32. PERFORMANCE / PROPOSAL BOND The Commissioner reserves the right to require a Proposer or Contractor to furnish without additional cost, a performance, payment or Proposal bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Town Attorney of the Town of North Hempstead. Failure of the Contractor to furnish said surety within ten days from the date of request shall be sufficient cause to terminate the Contract and cancel a pending Purchase Order(s).

33. SUSPENSION OF WORK The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Town. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction on Town spending, declaration of emergency, contract compliance issues or other such circumstances. Upon issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

34. TERMINATION

A. **By written notice:** This Contract may be terminated at any time by the Town upon sixty (60) days written notice or other specified period without penalty or other early termination charges due. The Town will be responsible for payment of any portion of the Services completed prior to termination of the Contract and satisfactory to the Town's Comptroller. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. Contractor shall use due diligence and provide any outstanding deliverables.

B. **For Violation of the Sections 139-j and 139-k of the State Finance Law**: The Commissioner reserves the absolute right to terminate the Contract in the event it is found that the certification filed by the Proposer in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

C. **For Violation of Revised Tax Law 5a:** The Commissioner reserves the absolute right to terminate the contract in the event it is found that the certification filed by the Contractor in accordance with §5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise its termination right by providing written notification to the Contractor.

D. **Contractor Assistance Upon Termination**. In connection with the termination or impending termination of the Contract, the Contractor shall, regardless of the reason for termination, take all actions reasonably requested by the Town to assist the Town in transitioning the Contractor's responsibilities under the Contract.

E. **Accounting Upon Termination**. Within thirty (30) days of the termination of the Contract, the Contractor shall provide the Town 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.

F**. 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 (D) and (E) above.

35. SAVINGS/FORCE MAJEURE A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. Contractor shall provide the Commissioner with written notice of any force majeure occurrence as soon as the delay is known.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for

damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the Town, the Commissioner may:

A. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to the Town with respect to Product subjected to allocation; and/or

B. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the Town; or

C. Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

36. CONTRACT BILLINGS

A. Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to the Town in order to receive payment. None of the Contract amount shall be paid by the Town except pursuant to timely filed claim forms containing documentation of the costs claimed following completion of all or a portion of the Product or services performed, all in form and substance satisfactory to the Town.

i. **Claim Forms, Claim Form Review and Approval.** Payments shall be made to the Contractor in arrears and shall be expressly contingent upon: (a) the Contractor submitting a claim form (the “Claim Form”) in a form provided by the Town, that (i) states with reasonable specificity the Product or services provided and the payment requested as consideration for such Product or services; (ii) certifies that the sum sought is just, true and correct; that no part thereof has been paid except as stated, and that the balance is actually due and owing and that taxes from which the Town is exempt are excluded; and (iii) is accompanied by documentation satisfactory to the Town supporting the amount claimed, and review, approval and audit of the Claim Form by the Town.

ii. **Timing of Payment Claims**. The Contractor shall submit claims no more frequently than once a month and no later than three (3) months following the Town’s receipt of the Product or services performed that are the subject of the claim. Any claims submitted in violation of this Section shall not be due and payable by the Town.

iii. **No Duplication of Payments**. Payments for the Product 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.

iv. **Release** The acceptance by the Contractor or any person claiming under the Contractor of any payment made on the final payment claim under this Contract shall operate on and shall be a release to the Town from all claims and liability to the Contractor, its successors, legal representatives and assigns, for any compensation or reimbursement for services rendered or work performed under or by the provisions of this Contract.

B. The Comptroller shall render payment for Town purchases, and such payment shall be made in accordance with ordinary Town procedures and practices.

C. Submission of a Claim Form and payment thereof shall not preclude the Commissioner from reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

D. Contractor shall provide, upon request of the Commissioner or the Comptroller, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner or Comptroller and in a media commercially available from the Contractor.

37. REMEDIES FOR BREACH It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

A. **Cover/Substitute Performance** In the event of Contractor's material breach, the Commissioner may, with or without formally Proposing: (i) Purchase from other sources; or (ii) If the Commissioner is unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product of equal or comparable quality, the Commissioner may acquire acceptable replacement Product of lesser or greater quality.

Such purchases may, in the discretion of the Commissioner, be deducted from the Contract quantity and payments due Contractor.

B. **Withhold Payment** In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

C. **Reimbursement of Costs Incurred** The Contractor agrees to reimburse the Town promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the Town in connection therewith, including reasonable attorney’s fees, shall be paid by the Contractor.

D. **Substitute Equipment** Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the Town may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Town promptly by the Contractor or deducted by the Town from payments due or to become due the Contractor on the same or another transaction.

E. **Deduction/Credit** Sums due as a result of these remedies may be deducted or offset by the Town from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Town the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

38. **INDEPENDENT CONTRACTOR** The Contractor, in accordance with his status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, not claim to be, an officer or employee of the Town by reason hereof, and that it will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including but not limited to, Workmen's Compensation coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit. The Contractor shall not engage, on a full time or part-time or other basis during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of the Contract in the employ of the Federal Highway Administration or the Public Works organization of any State, County or City or Town except regularly retired employees, without the consent of the public employer of such person.

39. <u>COOPERATION WITH THIRD PARTIES</u> The Contractor shall be responsible for fully cooperating with any third-party, including but not limited to other Contractors or Subcontractors of the Town, as necessary to ensure delivery of Product or coordination of performance of services.

40. <u>ADDITIONAL WARRANTIES</u> Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to the Town. Contractor hereby warrants and represents:

A. **Contractor Compliance** Contractor represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Proposal/Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker's compensation and/or disability benefits, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

B. **Survival of Warranties** All warranties contained in this Contract shall survive the termination of this Contract.

41. <u>LEGAL COMPLIANCE</u> Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Proposal and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with the New York State Finance Law.

42. <u>COMPLIANCE WITH SECTIONS 139a AND 139b OF THE NEW YORK STATE FINANCE LAW</u>

The Contractor hereby agrees to the provisions of Sections 139a and 139b of the New York State Finance Law which require that upon the refusal of a person, when called before a grand jury, head of a State department, temporary State commission or other State agency, or 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, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

A. Such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting Proposals to or receiving awards from or entering into any Contracts with the Town or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal; and

B. Any and all Contracts made with the Town or any public department, agency or official thereof, since the effective date of this law, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be canceled or terminated by the Town without incurring any penalty or damages on account of such cancellation or termination, but any moneys owing, by the Town for goods delivered or work done prior to the cancellation or termination shall be paid.

43. <u>EQUAL EMPLOYMENT OPPORTUNITY</u>

In accordance with the provisions of Section 220-E of the Labor Law, the Proposer agrees as follows:

A. The Contractor shall comply with all Federal, State and local statutory and constitutional anti-discrimination provisions.

B. That in the hiring of employees for the performance under this Contract or any sub-contract hereunder, no Contractor, sub-contractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, national origin, sex, age, disability, marital status, or military status discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates under this Contract;

C. That the Town may deduct from the amount payable to the Contractor under this Contract a penalty of up to 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 the Contract; and

D. That this Contract 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 the Contract.

E. The Contract shall be void unless Section 222 of the Labor Law, Sections 291 through 299 of the Executive Law and the Civil Rights Law are complied with. The Contractor will also comply with all findings and requests of the State Division of Human Rights.

44. <u>INSURANCE</u> The Contractor agrees to procure and maintain (A) Workers Compensation Insurance as required by the Laws of the State of New York, or proof that Contractor is not 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); (B) Disability benefits insurance or proof that the Contractor is not required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law 220 (2); (C) Commercial General Liability Insurance (with completed operations, plus X.C.U. when applicable) with a minimum combined single limit (bodily injury/property damage) of Two Million Dollars ($2,000,000); and (d) Automobile Liability Insurance in the amount specified on the Town of North Hempstead Insurance Certificate.

Said policies identified in subparagraphs (C) and (D) shall contain assurance of the existence of contractual coverage defending, indemnifying, and holding harmless the Town, and its employees, agents, and representatives from any and all loss and/or damage arising out of the performance of this Contract, and shall name the Indemnitees as additional insureds thereunder.

The Contractor's Additional Insurance shall be primary and fully exhausted in all circumstances prior to the Town's own insurance being utilized. Said contractual coverage shall be absolute and not dependent upon any question of the negligence of the Contractor (and its employees, agents, and except, however, that the Contractor shall not be held liable for an occurrence that results solely from the negligence of the Town).

The above insurance is to be with New York State admitted insurance carriers holding an "A" rating from AM Best Company or its equivalent. The Contractor is required to give the Town thirty (30) days advance written notice of termination, expiration or cancellation of any insurance coverage required hereunder.

45. <u>INDEMNIFICATION</u>

A. To the fullest extent permitted by law, the Contractor:

(i) shall be solely responsible for and shall indemnify and hold harmless the: Town and its officers, employees, agents and servants (the "Indemnified Parties") from and against any and all liabilities, all claims, suits, actions, damages and costs, expenses of every name and description (including, without limitation, attorneys' fees and disbursements) and damages ("Losses"), arising out of or in connection with any acts or omissions of the Contractor or any of its officers, directors, employees, servants, agents or independent contractors taken pursuant to or authorized by the performance of this Contract ("Contractor Agents") or from any defective condition of the materials furnished it or supplied or contemplated to be furnished or supplied under this Contract regardless of whether due to negligence, fault, or default, including Losses in connection with any threatened investigation, litigation or other proceeding or preparing a defense to or prosecuting the same, except, however, that the Contractor shall not be held liable when an occurrence results solely 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 own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more Indemnified Parties and the Contractor shall pay and satisfy any judgment, decree, loss or settlement in connection therewith; and

(iii) shall, and shall cause the Contractor 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 Contract.

(B) The obligations of the Contractor pursuant to Section 67(a) hereof shall not be limited by reason of enumeration of any insurance coverage provided under this Contract.

(C) Nothing in this Section or elsewhere in this Contract 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 Contract.

(D) The provisions of this Section shall survive the termination of this Contract.

46. EXECUTORY UNDERSTANDING Notwithstanding any other provision of this procurement or the resulting Contract or Purchase Order, the Town shall have no liability to any Person beyond funds appropriated or otherwise lawfully available for this Contract; and unless (A) all relevant and required Town approvals have been obtained, including, if required, approval by the Town Board, and (B) the Contract or Purchase Order has been executed by an authorized representative of the Town.

Proposal Name: **Summer Camp Programs at North Hempstead Parks**

Proposal Number: **TNH122-2014**

Due Date: **December 30, 2014, 11AM**

PROPOSAL SPECIFICATIONS

Annexed hereto and made a part hereof is the Proposal with a description of the product, service, and/or work sought by the own by this RFP solicitation. As required by the Proposal Documents, the Proposal may be subject to modification through the solicitation by the Town of best and final offers during the evaluation process prior to recommendation for award of the Contract.

Summer Camp Program at North Hempstead Parks (except Manorhaven)

Statement of Purpose

The Town of North Hempstead is distributing this Request for Proposal to evaluate potential Vendors for a Summer Camp Program to be held at North Hempstead Parks, not including Manorhaven. The intent of this proposal is to communicate our requirements and to provide Vendors with sufficient information to enable them to prepare for the RFP.

The term of the program shall be for five (5) summer seasons, commencing with the summer of 2015.

Desired programs include camps and enrichment programs aimed at school age children.

Programs should provide for tiered programming so as to afford both long and short term opportunities for campers.

Proposals must provide priority to North Hempstead residents with regard to admission to the programs.

Proposals must provide details on the Vendor's grant history and scholarship offerings, and must set forth and describe the Vendor's intent, ability and methods for programming to children of low income families.

Proposals must detail the activities to be made available with regard to each program offered.

Proposals must include a description of the training and requirements of its staff members.

Program must provide evidence of successful camp program running at least 8 weeks with a minimum of 100 campers per day within a municipal setting, preferably with at least one full day program of at least 200 campers.

Proposal must include evidence that organization has hired and trained a summer camp staff of American Red Cross certified Lifeguards and Water Safety Instructors who have supervised and instructed a minimum of 100 campers per day.

Proposal must include knowledge and experience with Nassau County Department of Health summer camp licensure.

Timeframes

Release of RFP	**December 11, 2014**
Deadline of Proposals	December 30, 2014

Evaluation Methodology

Each response will be reviewed and evaluated based on the criteria and priorities defined by the Town and detailed in this RFP. These criteria include but are not limited to the following:

- The ability of the service to satisfy the programs required
- Proposal completeness, timeliness and compliance with RFP guidelines and format
- The magnitude, scope and complexity of the service to be rendered
- Experience of the Vendor in projects of similar size, scope and complexity
- Special knowledge relative to the services
- Special equipment of facilities relative to the services
- Size, staffing, resources and financial capability of Vendor
- Knowledge and experience with Town facilities and programs involved in the assignment
- Past performance with the Department
- Time constraints and deliverability of services
- Vendor's current workload with the Town
- Program must provide a detailed plan to hire and train staff
- Program must include a detailed safety and emergency action plan
- Knowledge and experience with the Nassau County Department of Health summer camp licensure
- Knowledge and experience with the American Camping Association accreditation process
- Having successfully been awarded American Camping Association accreditation process at 3 separate locations
- Having successfully been granted a license to operate a summer camp by Nassau County Department of Health at a minimum of 2 separate locations, preferably more
- Demonstrate successful performance with at least 3 other municipal entities
- Experience in hiring and training medical personnel that meet Nassau County Department of Health standards
- Program demonstrates experience in developing and implementing a swim curriculum that meets American Red Cross standards

Term

The term of the agreement is for five (5) consecutive summer seasons, with the option to renew for one (1) additional five (5) year term not to exceed a total of ten (10) years total. At the time of renewal, terms must be mutually agreed upon between the Town of North Hempstead and the Vendor.

Pricing

Each proposal must include the following:

- Fees to be charged for each program offered by the vendor. Fees must be shown for each of the five (5) years of the program.
- Proposed fees payable to the Town for the use of its facilities. Fees must be shown for each of the five (5) years of the program.

Company Organization

Vendor must provide a description of how the company is organized, including number of staff dedicated to each of the following:

- Camp programming
- Support Staff
- Counselors
- Administration
- Grant writing and scholarship programs
- Training and operations personnel
- Staff assigned to do out-reach and recruitment to the community
- Number and breakout of staff to be assigned to this specific program

Company Sales

- Please provide your company's total sales for the past five (5) years
- Please provide financial statements for the past two (2) years

Previous Experience

As part of your response, please provide a minimum of three (3) references from municipal hosts of your camps in

which the size and scope was as large or larger than the current proposal. For each reference, please include Contact Name, Agency, Address, City, State, Zip Code, Telephone, Fax and email including dates of said programs.

Company Benefits

Please describe the benefits to the Town should you be selected as the Vendor for implementing this service.

PROPOSER'S STATEMENT

INSTRUCTIONS:

The Proposer's Statement Consists of the Following Documents:

1. Statement of Understanding;
2. Disclosure Form;
3. Non-collusive Proposing 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 Proposal.

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT ANY PROPOSAL THAT FAILS TO INCLUDE COMPLETE AND ACCURATE ORIGNALS 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.
3. That he/she has read and understands all terms and conditions pursuant to this Proposal, including but not limited to the Proposal Documents, Proposal Specifications, General Conditions, and Proposal prices hereto.
4. That he/she will furnish any and all items upon which prices are Proposed at the price set forth for each item Proposed.
5. That he/she has the capacity to and will abide by all terms and conditions pursuant to this Proposal, including but not limited to the Proposal Documents, Proposal Specifications, General Conditions, and Proposal prices hereto.
6. That he/she agrees to accept payment in accordance with the requirements of the Proposal Documents, Proposal Specifications, General Conditions, and Proposal prices hereto; and
7. That **DELIVERY** to the destination stated in the Proposal Documents will be made within 30 days after the receipt of the order.
8. 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 Proposal Documents, Proposal Specifications, General Conditions, and Proposal prices hereto.
9. That he/she certified that his/her sole proprietorship/company/partnership/corporation will carry all types of insurance specified in the contract.
10. Is the response that you are providing compliant with the instructions set forth in this solicitation for Proposals?

    □ Yes □ No

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

_____

Signature

_____ Sworn to and subscribed on

Name of Proposer

this _____ day of _____, 20____

_____ _____

Title of Person Signing (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 federal, state 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. **Survey Forgery (If applicable):** Has your Company/Corporation/Partnership, or any of its employees present or past, or anyone acting on its behalf, ever signed and sealed surveys for which your Company/Corporation/Partnership has not actively participated in the production thereof; or been investigated by the New York Department of State for such activity? If so, describe the circumstances in detail.

6. **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.

7. **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: Proposer'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 STATREMENT FORM.

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

_____

(Signature, if Individual)

By: _____ (Seal, if corporation)

(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 Proposer/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 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 PROPOSALDING CERTIFICATION, and duly acknowledged to me that s/he executed the same.

_____ My commission expires:_____

(Notary Public)

----------(**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 PROPOSALDING CERTIFICATION; deponent is authorized to sign the foregoing NONCOLLUSIVE PROPOSALDING CERTIFICATION.

_____ My commission expires:_____

(Notary Public)

----------(**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 PROPOSALDING CERTIFICATION, that deponent knows the seal of the corporation, that the seal affixed to the NONCOLLUSIVE PROPOSALDING CERTIFICATION, is the corporate seal, that its was affixed by order of the board of _____ of the corporation; and that deponent signed deponent's name by like order.

_____ My commission expires:_____

(Notary Public)

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 Proposer 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 Proposer not being required to secure same.

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

_____

(Name and Address of Proposer)

_____

_____

Name of Proposal: _____ Proposal 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, 220 Plandome Road, P.O.B. 3000, Manhasset, New York 11030

Authorized Insurance Agent's Signature and Title:

_____

Name, Insurance Affiliation and Address:

_____ DATED: _____

ACKNOWLWDGEMENT OF RECIEPT OF ADDENDA FORM

The Proposer hereby acknowledges that he/she has received and that he/she has considered in the preparation of his/her Proposals, all requirements in the following Addenda to this Proposal/Contract:

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

□ **NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS PROPOSAL/CONTRACT.**

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 ACKNOWLEDMENT OF RECIEPT OF ADDENDA FORM.