TOWN OF NORTH HEMPSTEAD

REQUEST FOR PROPOSALS

FOR

BAMBOO CONSULTING SERVICES

TOWN OF NORTH HEMPSTEAD
DEPARTMENT OF PUBLIC SAFETY

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

Supervisor
Judi Bosworth

Town Board
Viviana L. Russell
Peter J. Zuckerman
Angelo P. Ferrara
Anna M. Kaplan
Lee R. Seeman
Dina M. De Giorgio

Acting Commissioner
Shawn Brown

Issue Date: July 22, 2016
Proposals Due: August 29, 2016

RFP No. TNH146-2016

TOWN OF NORTH HEMPSTEAD

REQUEST FOR PROPOSALS

I. INTRODUCTION

A. General Information

The Town of North Hempstead ("Town") is requesting proposals from qualified persons or firms to provide consulting services in the identification and source of bamboo in connection with the enforcement of Chapter 67 of the Town Code entitled “Bamboo.” A firm may be selected from among responding firms based on a thorough analysis of each firm’s ability to provide the Town with the highest quality services at the most cost-effective fees

The following conditions apply to this RFP:

- There is no express or implied obligation for the Town to reimburse responding firms for any expenses incurred in preparing proposals in response to this request, and the Town will not reimburse such expenses.

- Any inquiries concerning this RFP must be in writing or by email and should be addressed to Georgina Carr at contracts@northhempsteadny.gov. All inquiries must bear the RFP number assigned to this RFP

- To be considered, copies of a proposal must be received by the Procurement Division at 220 Plandome Road, Manhasset, New York 11030 by 11:00 a.m. **August 29, 2016**. The Town reserves the right to reject any or all proposals submitted.

- During the evaluation process, the Town reserves the right, where it may serve the Town's best interest, to request additional information or clarification from a proposer, or to allow corrections on non-material errors or omissions or waive non-material requirements. At the discretion of the Town, firms submitting proposals may be requested to make oral presentations as part of the evaluation process. If conducted, oral presentations will be scheduled with each proposer being considered.

- The Town reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected.

- Submission of a proposal indicates acceptance by the firm of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Town and the firm selected.

- It is anticipated the selection of a firm will be completed on September 13, 2016. Following notification of the selected firm it is expected an agreement will be executed between both parties by October 1, 2016.

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

The Town reserves the right to reject all proposals.

B. Subcontracting

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

II. SCOPE OF SERVICES

A. <u>Statement of Work</u>

The Town is seeking to contract with a person or firm to assist the Town, on an on-call basis as requested by the Commissioner of Public Safety or his designee, with the following activities:

1. Proper identification of bamboo that may exist on public or private property
2. Identification of the species of bamboo
3. Determination of the source of bamboo growth in specific instances in order to determine compliance with or violation of Chapter 67 of the Town Code.

The successful proposer would be required to accompany staff of the Town on inspections in order to complete the above activities and prepare and submit a written report on the successful proposer's findings in a form satisfactory to the Commissioner of Public Safety.

The successful proposer must be a trained horticulturalist with at least five (5) years' experience working as a horticulturalist.

B. <u>Additional Requirements</u>

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

1. The Town reserves the absolute right to terminate the services at any time.

2. The firm shall maintain full and complete books and records of accounts in accordance with accepted accounting practices and such other records as may be prescribed by the Town Comptroller, including a contemporaneous record of work indicating in brief summary, a description of the work performed. Such books and records shall be retained for a period of six (6) years and shall at all times be available for audit and inspection by the Town Comptroller, the Town's auditors or a duly designated Town representative.

3. The firm will promptly provide a response to any requests from the Town's Records Access/FOIL Officer.

4. The firm shall, to the fullest extent provided by law, defend and indemnify and save harmless the Town from claims, suits, action, damages and costs of every nature, kind, name and description resulting from the negligent performance of the services. Such defense and indemnity shall not be limited by reason of enumeration of any insurance coverage provided by the firm. Negligent performance of service shall include, in addition to negligence founded upon tort, negligence based upon the firm's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work. Nothing shall create or give third parties any claim or right of action against the firm or the Town beyond those provided by law.

5. The firm shall procure and maintain during the term of any agreement resulting from this RFP, with a carrier holding an "A" rating from AM Best Company, or its equivalent, and furnish certificates of insurance evidencing its procuring, the following insurance policies:

(a) Commercial general liability insurance covering the liability of the firm, and indemnifying and holding harmless the Town, its agents, employees and representatives from any and all loss and/or damage arising out of the performance of the services with a combined single limit (bodily injury/property damage) of One Million Dollars ($1,000,000). The Town shall be named as additional insured on said policy;

(b) Workers' compensation insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 57(2); and

(c) Disability benefits insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 220(8).

III. FEE STRUCTURE

Each proposal shall include Appendix A: Price Proposal and include the proposer's fees for the required services. Proposals should show a fixed fee for each investigation and report.

IV. TIME REQUIREMENTS

A. Proposed Calendar

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

RFP issued	July 22, 2016
Due Date for proposal submissions	August 29, 2016

B. Notification and Contract Dates

Selected firm notified	On or about	September 13, 2016
Contract date	On or before	October 1, 2016

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

V. PROPOSAL REQUIREMENTS

A. General Requirements

1. Inquiries

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

2. Submission of Proposals

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

a. The Proposal shall include:

i. Title Page

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

ii. Technical Proposal

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

iv. Completed price proposal attached as Attachment A

v. Fully completed Proposer’s Qualification Statement attached as Attachment B, including the Statement of Understanding, Disclosure Statement, Non-Collusive Proposal Certification,

Insurance Certification and Acknowledgement of Receipt of Addenda. The contract will be executed by the Town and the selected candidate only after an evaluation of each proposal and a selection of a firm.

vi. Statement that the proposer accepts and agrees to the form contract contained in Attachment C and acknowledging that these terms and conditions will be supplemented based on the proposals received and cannot be viewed by the proposers as the exclusive terms that the Town will require in any contract to be entered into.

b. The completed proposal should be sent to the following address in a sealed envelope marked "Request for Proposals: Bamboo Consulting Services":

Georgina Carr, Purchasing Division
Town of North Hempstead
220 Plandome Road
Manhasset, New York 11030

B. Guidance on Completing a Proposal Submission

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

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

VI. SELECTION OF FIRM

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

1. Proposer’s Technical Proposal	30 Points
2. Experience of Proposer	30 Points
3. Fee Structure	40 Points

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

B. Right to Reject Proposals

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

C. Minimum Service

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

ATTACHMENT A

PRICE PROPOSAL

Please provide on a separate page the fee proposal your firm proposes to charge for the Services described in this RFP.

The Town is not establishing any specific fee structure for the required services. Proposals may include a fixed monthly fee for the services, an hourly fee for services performed, fixed fees for certain services or any combination thereof.

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

_____
Signature

_____
Name of Proposer

Sworn to and subscribed on

this _____ day of _____, 20__

_____
Title of Person Signing

_____
(Notary Public)

ATTACHMENT B

BIDDER'S QUALIFICATION STATEMENT

INSTRUCTIONS:

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

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

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

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT ANY BID/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 Bid/Proposal on behalf of the below listed sole proprietorship/company/partnership/corporation.

2. That he/she has read and understands all terms and conditions pursuant to this RFP.

3. That he/she has the capacity to and will abide by all terms and conditions pursuant to this RFP.

4. That he/she agrees to accept payment in accordance with the requirements of the RFP; and

5. That he/she agrees that the proposed submitted to the Town shall be irrevocable and that he/she will, if his/her proposal is accepted, enter into a contract with the Town of North Hempstead pursuant to the terms and conditions set forth in the RFP.

6. That he/she certified that his/her sole proprietorship/company/partnership/corporation will carry all types of insurance specified in the contract.

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

_____
Signature

_____
Name of Bidder

_____
Title of Person Signing

Sworn to and subscribed on

this _____ day of _____, 20__

_____
(Notary Public)

DISCLOSURE FORM

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

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

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

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

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

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

5. **Conflicts of Interest**: disclose any of the following, and describe any procedures your Company/Corporation/Partnership has, or would adopt, to assure the Town that a conflict of interest would not exist in the future):

(a) Any material financial relationships that your Company/Corporation/Partnership or any Company/Corporation/Partnership employee has that may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.

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

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

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

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

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT ANY PROPOSAL THAT FAILS TO INCLUDE COMPLETE DISCLOSURE STATEMENT 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 Bidder/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 Bidder) that he/she is duly authorized to make the foregoing affidavit and that he/she makes it on behalf of ( ) himself/herself: ( ) said partnership; ( ) said corporation.

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

_____ My commission 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 PROPOSAL 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 PROPOSAL CERTIFICATION; deponent is authorized to sign the foregoing NONCOLLUSIVE PROPOSAL 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 PROPOSAL CERTIFICATION, that deponent knows the seal of the corporation, that the seal affixed to the NONCOLLUSIVE PROPOSAL CERTIFICATION, is the corporate seal, that its was affixed by order of the board of _____ the corporation; and that deponent signed deponent's name by like order.

_____ 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 Bidder not being required to secure same.

(c) **Disability Benefits Insurance**: Certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 220 evidencing proof of disability benefits insurance *or* proof of Bidder not being required to secure same.

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

_____

(Name and Address of Bidder)

_____

_____

Name of Bid: _____Bid Number:_____

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

Insurance Carrier (Commercial General Liability): _____

Policy Number(s): _____

(2) Worker's Compensation:

Insurance Carrier: _____ Policy Number(s):_____

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

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

Name, Insurance Affiliation and Address:

_____

Dated_____

ACKNOWLWDGEMENT OF RECIEPT OF ADDENDA FORM

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

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

ADDENDUM NUMBER	DATE OF ADDENDUM	ACKNOWLEDGEMENT

☐ **NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS PROPOSAL.**

ACKNOWLEDGEMENT:

_____

***IMPORTANT NOTICE*:**

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

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

ATTACHMENT C
STANDARD TOWN TERMS AND CONDITIONS

1. Compensation

(a) Claim Forms, Claim Form Review and Approval. Payments shall be made to the 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.