



TOWN OF NORTH HEMPSTEAD

REQUEST FOR PROPOSALS

FOR

LAND USE AND ZONING COUNSEL

TOWN OF NORTH HEMPSTEAD
OFFICE OF THE TOWN ATTORNEY

**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**

Town Attorney
Elizabeth D. Botwin

**Issue Date: February 26, 2016
Proposals Due: March 21, 2016**

RFP No. TNH135-2016

TOWN OF NORTH HEMPSTEAD

REQUEST FOR PROPOSALS

I. INTRODUCTION

A. General Information

The Town of North Hempstead ("Town") is requesting proposals from qualified firms to provide counsel to the Office of the Town Attorney in land use, zoning and Board of Zoning Appeals matters. 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 Michael Kelly, Senior Deputy Town Attorney, at kellym@northhempsteadny.gov. All inquiries must bear the RFP number assigned to this RFP
- To be considered, copies of a proposal must be received by the Office of the Town Attorney at 220 Plandome Road, Manhasset, New York 11030 by 11:00 a.m. **March 21, 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 or firms will be completed on April 19, 2016. Following notification of the selected firm it is expected an agreement will be executed between both parties by May 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. Statement of Work

The Town requires experienced counsel to provide special counsel to the Town Attorney and the Board of Zoning Appeals (BZA) on complex issues presented by matters pending before the BZA; provide general counsel to the BZA and participate in BZA meetings as counsel at the Town Attorney's option. The Town will also require counsel to provide advice on land use and zoning matters to the Office of the Town Attorney. All services will be upon request.

B. Minimum Qualifications:

1. Firms must be authorized to do business in the State of New York.
2. All attorneys working in conjunction with the Town's matters shall be duly admitted to practice before the Courts of the State of New York and be members in good standing of the New York bar.
3. All attorneys working in conjunction with the Town's matters must individually possess experience in matters handled in the above area for municipalities in New York and supervisory attorneys must possess at least ten (10) years' experience in such matters.

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

1. The firm shall be compensated for all reasonable expenses and disbursements actually incurred, such a motion filing fees, court reporting services, appellate printing, without application of a multiplier. Certain out-of-pocket disbursements such as travel expenses, use of investigators, appraisers or other experts and trial preparation services must be approved by the Town Attorney in advance. The

Town will not reimburse the cost of electronic legal research performed on Westlaw, Lexis, or any other electronic database. The Town will not reimburse expenses it is exempt from paying including, but not limited to, index number fees, the Secretary of State's service of process fee and sales taxes. All out-of-pocket expenses shall be substantiated with proper paid receipts and/or other documentation submitted together with the invoices upon which the expenses appear.

2. The Town will not reimburse expenses unless receipts or other appropriate documentation is provided for same.
3. If the firm believes that an expert should be retained, the firm must secure prior written approval from the Town Attorney. A resume or *curriculum vitae* for the proposed expert shall be submitted at the time of the request for prior approval. The firm shall specifically agree that the proposed expert firm, its subcontractors, agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.
4. The Town reserves the absolute right to terminate the services at any time.
5. If the firm is assigned a litigation matter, the firm must provide regular periodic status reports to the Town Attorney which shall include an initial report and quarterly status reports thereafter. The firm shall prepare such other reports as shall be requested by the Town Attorney. The firm shall provide copies of said reports to the Town's insurance carriers, or their designated representatives, if the Town Attorney so requests. In addition, the firm shall prepare a report to the Town's auditors, within the time frame they set forth, when requested to do so. The firm shall immediately notify the Town Attorney of any motions, court decisions, settlement discussions, notices of appeal or other noteworthy developments.
6. If the firm is assigned a litigation matter, within a reasonable time prior to submission in court, the firm shall provide the Town Attorney with drafts of all documents prepared and to be submitted in court. No documents of any kind or nature shall be submitted in Court by the firm unless such documents are approved by the Town Attorney in advance. The firm shall also provide the Town Attorney with any documents whatsoever served by the opposing parties. The firm shall promptly provide copies of any other documents requested by the Town Attorney.
7. 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.

8. The firm will promptly provide a response to any requests from the Town's Records Access/FOIL Officer.
9. In the event that a dispute arises between the parties relating to fees, Part 137 of the Rules of the Chief Administrator of the Courts will apply.
10. 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.
11. 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) a policy of attorney professional liability insurance having a general aggregate limit of liability of at least \$2,000,000.00.
 - (b) 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;
 - (c) 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
 - (d) 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 hourly rates for the proposed to be rendered to the Town.

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	February 26, 2016
Due Date for proposal submissions	March 21, 2016

B. Notification and Contract Dates

Selected firm notified	On or about	April 19, 2016
Contract date	On or before	May 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 Michael Kelly, Senior Deputy Town Attorney, at kellym@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, a summary of notable accomplishments and **a statement that the proposal is a firm and irrevocable offer**. Each proposer must identify the firm's experience in the services requested and explain how such experience would benefit the Town and/or would serve the proposer well in providing services for the Town. Each proposer should identify specific matters handled for other clients and their outcomes in order to illustrate how such proposer's services would benefit the Town.

iv. At least three references, including name, address and telephone numbers.

v. Completed price proposal attached as Attachment A

vi. 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.

vii. 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: Prosecution Counsel":

Elizabeth D. Botwin, Town Attorney
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 qualify firm(s) based on an evaluation of the proposals. The qualification will not be based solely on a monetary evaluation. There will also be an evaluation of the proposer’s understanding of the work required and approach with considerable weight being given to experience in the area and track record of the proposer. Proposals will be evaluated based on the following:

- 1. Compliance with RFP Requirements; 15%
- 2. Proposer Experience in the services to be provided; 15%
- 3. Past performance; 15%
- 4. Experience of Proposer Personnel; 15%
- 5. The wherewithal of the Proposer to render the requested services in a timely fashion; 15%
- 6. Fee Structure. 25%

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 showing the hourly rates proposes to charge for the Services described in this RFP.

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

Signature

Name of Proposer

Title of Person Signing

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

(Notary Public)

ATTACHMENT B

PROPOSER'S QUALIFICATION STATEMENT

INSTRUCTIONS:

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

1. Statement of Understanding;
2. Disclosure Form;
3. Noncollusive 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 PROPOSAL THAT FAILS TO INCLUDE COMPLETE AND ACCURATE ORIGINALS OF ALL FOUR FORMS INCLUDING ALL APPROPRIATE ACKNOWLEDGMENT(S) AND BEARING THE SIGNATURE OF A NOTARY PUBLIC.

STATEMENT OF UNDERSTANDING

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

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

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

Signature

Name of 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 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]

INSURANCE CERTIFICATION

TO BE COMPLETED BY AN AUTHORIZED INSURANCE AGENT

INSTRUCTIONS:

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

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

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

(Name and Address of Bidder)

Name of Bid: _____ Bid
Number: _____

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

Insurance Carrier (Commercial General Liability): _____

Policy Number(s): _____

(2) Worker's Compensation:

Insurance Carrier: _____ Policy
Number(s): _____

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

(4) Policy cancellation or non-renewal shall be effective only upon thirty (30) days prior notice by certified mail to:

Town of North Hempstead, Office of the Town Attorney, 220 Plandome Road, P.O.B. 3000, Manhasset, New York 11030

Authorized Insurance Agent's Signature and Title: _____

Name, Insurance Affiliation and Address:

Dated _____

ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM

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

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

ADDENDUM NUMBER	DATE OF ADDENDUM	ACKNOWLEDGEMENT

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

IMPORTANT NOTICE:

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

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

ATTACHMENT C
STANDARD TOWN TERMS AND CONDITIONS

1. Payments shall be made upon submission by Counsel of Town claim forms to the Town COMPTROLLER approved by the Town ATTORNEY setting forth the payment to be made. The Town ATTORNEY will provide forms to Counsel. The Town shall not be liable to Counsel under any circumstances for any charges for late payments. The Town shall not pay or reimburse Counsel for any telephone, postage, telex, computer, paralegal, secretarial, word-processing, e-mail, overnight delivery or other fees or expenses not specified herein

2. Invoices for services performed by Counsel during any calendar year must be submitted to the Town ATTORNEY no later than the 15th day of January of the following calendar year.

3. Counsel shall also be compensated for all reasonable expenses and disbursements actually incurred without application of a multiplier, including, but not limited to out-of-pocket disbursements for travel, messengers, investigators, trial preparation services and other legitimate expenses, upon approval by the Town ATTORNEY. The Town will not reimburse the cost of electronic legal research performed on Westlaw, Lexis, or any other electronic database. The Town will not reimburse expenses it is exempt from paying including, but not limited to, index number fees, the Secretary of State's service of process fee and sales taxes. All out-of-pocket expenses shall be substantiated with proper paid receipts and/or other documentation submitted together with the invoices upon which the expenses appear.

4. The Town will not reimburse expenses unless receipts or other appropriate documentation is provided for same.

5. Furthermore, there shall be no compensation for services rendered or for expenses incurred in addition to those specified above in the absence of prior written consent from the Town ATTORNEY.

6. If Counsel believes that an expert should be retained, Counsel must secure prior written approval from the Town ATTORNEY. A resume or curriculum vitae for the proposed expert shall be submitted at the time of the request for prior approval.

7. The Town reserves the absolute right to terminate this Agreement at any time by service of a written notice sent by certified mail to Counsel at the address set forth above. The Town shall be responsible for payment of any portion of the Services completed prior to termination and upon proof satisfactory to the Town ATTORNEY.

8. If Counsel is assigned a litigation matter, Counsel shall provide regular periodic status reports to the Town ATTORNEY which shall include an initial report within thirty (30) days after receipt of the file evaluating the likelihood of success on the merits and potential liability; quarterly status reports thereafter; a summary of EBT testimony, and implications thereof; a pretrial report after a Note of Issue is filed and recommendations for settlement, if any. Counsel shall prepare such other reports as shall be requested by the Town ATTORNEY. Counsel shall provide copies of said reports to the Town's insurance carriers, or their designated representatives, if the Town ATTORNEY so requests. In addition, Counsel shall prepare a

report to the Town's auditors, within the time frame they set forth, when requested to do so. Counsel shall immediately notify the Town ATTORNEY of any motions, court decisions, settlement discussions, notices of appeal or other noteworthy developments.

9. If Counsel is assigned a litigation matter, within a reasonable time prior to submission in Court, Counsel shall provide the Town ATTORNEY with drafts of all pleadings, bills of particulars, briefs, memoranda of law, motion papers and any other documents prepared and to be submitted in Court. No documents of any kind or nature shall be submitted in Court by Counsel unless such documents are approved by the Town ATTORNEY in advance. Counsel shall also provide Town ATTORNEY with any documents whatsoever served by the opposing parties. Counsel shall promptly provide copies of any other documents requested by the Town ATTORNEY.

10. Counsel 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.

11. Certain documents within Counsel's possession may be subject to release under the Freedom of Information Law ("FOIL"). Counsel will promptly provide a response to any requests from the Town's Records Access/FOIL Officer. In the event a FOIL request is sent to Counsel, Counsel shall immediately notify the Town's Records Access/FOIL Officer.

12. In the event that a dispute arises between the parties relating to fees, Part 137 of the Rules of the Chief Administrator of the Courts will apply.

13. Counsel agrees that they are, and at all times shall be deemed to be, an independent contractor of the Town and Counsel shall not, at any time or for any purpose, be deemed an employee of the Town. No agent, servant or employee of Counsel shall, at any time or under any circumstances, be deemed to be an employee of the Town.

14. Counsel shall be responsible for all its subcontractors, agents, or employees in connection with their services under this Agreement, and specifically agrees that Counsel, and its subcontractor, agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

15. It is expressly understood that Counsel 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 under this Agreement. Such defense and indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided. Negligent performance of service within the meaning of this provision shall include, in addition to negligence founded upon tort, negligence based upon the Counsel's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work. Nothing in this provision or in this Agreement shall create or give third parties any claim or right of action against the Counsel or the Town beyond those provided by law.

16. Counsel agrees to procure and maintain during the term of this Agreement, 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) a policy of attorney professional liability insurance having a general aggregate limit of liability of at least \$2,000,000.00.

(b) Commercial general liability insurance covering the liability of Counsel, 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;

(c) 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

(d) 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).

17. This Agreement may not be assigned, transferred or in any way disposed of by Counsel without first having obtained written approval thereof from the Town.

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

19. It is understood that the Agreement represents the entire Agreement of the Parties, and all previous understandings are merged herein.

20. Counsel warrants that they are not in arrears to the Town upon debt or contract, and it is not a defaulter as surety, contractor or otherwise upon any obligation to the Town.