

TOWN OF NORTH HEMPSTEAD
REQUEST FOR PROPOSALS
FOR
DISASTER MANAGEMENT CONSULTANT

TOWN OF NORTH HEMPSTEAD

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

Supervisor
Jonathan S. Kaiman

Town Council
**Dina M. DiGiorgio
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Viviana L. Russell**

TOWN OF NORTH HEMPSTEAD

REQUEST FOR PROPOSALS

I. INTRODUCTION

A. General Information

The Town of North Hempstead ("Town") is requesting proposals for a disaster management consultant. The services to be provided are described in detail below.

The following conditions apply to this Request for Proposals ("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.
- Any inquiries concerning this RFP must be in writing or by email and should be addressed to the Town Clerk, Leslie Gross.
- To be considered, copies of a proposal must be received by the Town Department of Public Safety at 53 Orchard Street, Roslyn Heights, New York 11577 by 3:00 p.m. **August 5, 2013**. 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 August 13, 2013. Following notification of the selected firm it is expected a retainer or agreement will be executed between both parties by September 1, 2013.
- 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 is allowed without the express permission of the Town

II. NATURE OF SERVICES REQUIRED

A. General

The Town is soliciting proposals from professional consulting firms to provide consulting services in support of the Town's disaster recovery efforts and its mitigation planning. The ideal Consultant shall possess demonstrated experience in programmatic disaster recovery and must have intimate knowledge and expertise in the operations of the Federal Emergency Management Agency (FEMA) Public Assistance Program and hazard mitigation planning for municipal and governmental entities.

B. Specific Duties.

The selected firm will be responsible for services including but not limited to the following:

- Provide technical advisory services related to recovery from disasters.
- Develop and implement strategies designed to maximize federal and state assistance.
- Provide expert programmatic and policy advice on federal disaster relief programs.
- Provide support for strategic planning and coordination of all recovery efforts.
- Review contracts and purchasing documentation to ensure cost recovery.
- Represent the Town and attend meetings with FEMA/NYSOEM with Town representatives.
- Damage Site Assessment & Project Worksheet Formulation.
- Identify Potential Improvements & Maximize Public Assistance, including Section 406-Mitigation Funding.
- Meet with Town Officials and Department Heads and Collect/Compile Cost Documentation for PW's. Document permit requirements; Maintain Code Compliance (building, floodplain, etc.)
- Provide assistance and Oversight to Departments that have Difficulty with Claims.
- Interact with the Town's public adjusting firm and insurers.
- Process the Town's Progress Payment Requests.
- Work with Officials to Resolve Disputes with FEMA and/or NYSOEM, including Preparation of Appeals.
- Provide Grant Close-Out Services to ensure funding is retained.

II. TOWN CONTACT

A. Name and Telephone Number of Contact Person

The firm's principal contacts with the Town will be the Director of Emergency Management, and the Grants Coordinator, 220 Plandome Road, Manhasset, NY, (516) 869-6311

III. 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 24, 2013

Due Date for proposal submissions

August 5, 2013

B. Notification and Contract Dates

Select firm notified

On or about August 10, 2013

Contract date

On or before August 13, 2013

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.

IV. PROPOSAL REQUIREMENTS

A. General Requirements

1. Inquiries

Written inquiries concerning the RFP and its subject must be made to Thomas McDonough, Director of Emergency Management. Direct responses to all inquiries will be distributed to each potential proposer.

2. Submission of Proposals

The following material is required to be received by August 5, 2013 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. Statement of qualifications

A signed letter of transmittal stating the proposer's understanding of the work to be done, the commitment to perform the work within the time period, 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 companies or municipalities, and a **statement that the proposal is a firm and irrevocable offer.**

iii. Completed price proposal attached as Attachment A

iv. 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.

v. Statement that the proposer accepts and agreed to the standard agreement terms contained in Attachment C.

- b. The completed proposal should be sent to the following address in a sealed envelope marked "Request for Proposals: Disaster Management Consultant":

Commissioner Andrew DeMartin
Town of North Hempstead
Department of Public Safety
53 Orchard Street
Roslyn Heights, New York 11577

B. Guidance on Completing a Proposal Submission

1. General Requirements

The purpose of the Proposal Submissions 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 Qualifications Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement.

The Qualifications Proposal should address all points outlined in the RFP. The Qualifications Proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the RFP requirements. While additional data may be presented, the information in ensuing items 2 and 3 must be included. They represent the criteria against which the Qualifications Proposal will be evaluated.

2. Firm Qualifications and Experience

The proposer should state the size of the firm, the size of its staff, qualifications and the experience of the staff to be employed on this engagement.

3. The proposer should indicate the firm's experience in similar engagements with other companies or municipalities. The project references should include client contact information.

V. 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.

B. It is anticipated that a firm will be selected on August 13, 2013. Following notification of the firm selected, it is expected a contract will be executed between both parties by September 1, 2013.

C. 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

TNH088-2013-Disaster Management
Consulting Services (RFP)
selected.

The Town reserves the right without prejudice to reject any or all proposals.

D. Minimum Service

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

ATTACHMENT A

PRICE PROPOSAL

Provide a description of the costs and fees that will be charged to the Town by you for the proposer's services:

The undersigned further stipulates that the information in this attachment 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

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 ORIGINALS OF ALL FOUR FORMS INCLUDING ALL APPROPRIATE ACKNOWLEDGMENT(S) AND BEARING THE SIGNATURE OF A NOTARY PUBLIC.

STATEMENT OF UNDERSTANDING

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

1. I am duly authorized to submit this Bid/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 bid, including but not limited to the Bid Documents, Bid Specifications, General Conditions, and bid prices hereto.
2. That he/she will furnish any and all items upon which prices are bid at the price set forth for each item bid with a **CASH DISCOUNT OF _____%, IF ANY.**
3. That he/she has the capacity to and will abide by all terms and conditions pursuant to this bid, including but not limited to the Bid Documents, Bid Specifications, General Conditions, and bid prices hereto.
4. That he/she agrees to accept payment in accordance with the requirements of the Bid Documents, Bid Specifications, General Conditions, and bid prices hereto; and
5. That **DELIVERY** to the destination stated in the Bid Documents will be made within 30 days after the receipt of the order.
6. That he/she will, if his/her Bid/Proposal is accepted, enter into a Contract with the Town of North Hempstead pursuant to the terms and conditions set forth in the Bid Documents, Bid Specifications, General Conditions, and bid prices hereto.
7. That he/she certified that his/her sole proprietorship/company/partnership/corporation will carry all types of insurance specified in the contract.
8. Is the response that you are providing compliant with the instructions set forth in this solicitation for bids?
 Yes No

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

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT ANY BID/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: _____

-----**(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 _____.

(Notary Public)

My commissioner expires: _____

NONCOLLUSIVE BIDDING CERTIFICATION

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid 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 bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

I, hereby certify under the penalties of perjury that the foregoing statement is true.

By: _____	_____
Bidder's Signature	Date
_____	_____
Print Name	Title
_____	_____
Legal Name of Individual or Business Name of Company/Partnership/Corporation	Bidder's Federal Tax Identification # (Do Not Use SS#)
_____	_____
Address	Email Address

[MANDATORY ACKNOWLEDGMENT APPEARS ON FOLLOWING PAGE]

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

STATE OF)
 ss.:
COUNTY OF)

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

(Notary Public)

My commission expires: _____

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

(Notary Public)

My commission expires: _____

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

STATE OF)
 ss.:
COUNTY OF)

On _____, 20__ before me personally came _____ to me known, who, by me duly sworn, did depose and say that deponent resides at _____ that deponent is the _____ of the corporation described in, and which executed the foregoing NONCOLLUSIVE BIDDING CERTIFICATION, that deponent knows the seal of the corporation, that the seal affixed to the NONCOLLUSIVE BIDDING 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.

(Notary Public)

My commission expires: _____

INSURANCE CERTIFICATION

TO BE COMPLETED BY AN AUTHORIZED INSURANCE AGENT

INSTRUCTIONS:

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

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

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

(Name and Address of Bidder)

Name of Bid: _____ Bid Number: _____

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

Insurance Carrier (Commercial General Liability):

Policy Number(s):

(2) Worker's Compensation:

Insurance Carrier: _____ Policy Number(s): _____

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

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

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

Authorized Insurance Agent's Signature and Title:

Name, Insurance Affiliation and Address:

Dated _____

ATTACHMENT C

STANDARD CLAUSES OF TOWN CONTRACTS

The following are standard clauses contain in Town of North Hempstead contracts. The Town reserves the right to amend these clauses at any time and to add to or subtract from these clauses.

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

In addition to the Town's termination right contained above, 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.

3. Amendments

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

4. 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).

5. 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.

6. 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).

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.