TOWN OF NORTH HEMPSTEAD

REQUEST FOR PROPOSALS

FOR

ENVIRONMENTAL PLANNING SERVICES
FOR
NEW CASSEL COMMUNITY-WIDE
BROWNFIELDS ASSESSMENT PROJECT

IN PARTNERSHIP WITH THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

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Michael A. Levine, AICP

Issue Date: July 29, 2019
Proposals Due: September 6, 2019

RFP No. TNH225-2019
TOWN OF NORTH HEMPSTEAD
REQUEST FOR PROPOSALS

I. INTRODUCTION

A. General Information

The Town of North Hempstead ("Town") in partnership with the United States Environmental Protection Agency ("EPA") is requesting proposals from qualified firms to undertake a community-wide brownfields (hazardous substances and petroleum) assessment, investigation, identification, and remedial planning within two areas of the hamlet of New Cassel.

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, Procurement Coordinator 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. September 6, 2019. 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.

- A Proposal may be withdrawn at any time prior to the Submission deadline. However, a Proposal may not be withdrawn, cancelled or modified for a period of forty-five (45) days following the Submission Deadline, except at the request of the Town, or with the Town’s written consent.

- The contract shall be awarded to the Proposer that best meets the selection criteria, and according to the procurement policies and procedures of the Town, pursuant to General Municipal Law, Section 104-b.

- Note that, since the project is federally funded, Awardees must comply with the provisions of all applicable Federal Regulations i.e. 40 CFR Part 31 and 40 CFR Part 35 Subpart O.
  

- It is anticipated the selection of a firm will be completed on September 25, 2019. Following notification of the selected firm it is expected an agreement will be executed between both parties by October 30, 2019.

- 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

The exact Scope of Services required by the Town (and EPA) shall be set forth in the contractual agreement between the Town and the Awardee. Generally, the Scope of Services shall build upon the 2013 adopted BOA planning study available online at: (https://northhempsteadny.gov/filestorage/16281/17115/17134/17136/FinalStep2BOA_March2013.pdf)

A. STATEMENT OF WORK
The Town is seeking a professional planning or engineering firm to undertake a community-wide brownfields (hazardous substances and petroleum) assessment, investigation, identification, and remedial planning within two areas of the hamlet of New Cassel. The two areas are the New Cassel residential area immediately north of the Long Island Rail Road (bounded roughly to the north by Brush Hollow Road and to the east by the Wantagh State Parkway), and the New Cassel Industrial Area (“NCIA”) immediately south of the LIRR (bounded roughly by Grand Boulevard and Old Country Road to the south, and the Wantagh State Parkway to the east). EPA’s Assessment Grants provide funding to inventory, characterize, assess, and conduct planning and community involvement related to brownfields.

The Town is a municipal corporation under the General Municipal Law and the Town Law of the State of New York (the “State”) serving a jurisdiction of approximately 226,000 residents, located in northwestern Nassau County, New York.

This project is the next step in the logical progression of a long-term community revitalization process that has been taking place since the 1990s. Most recently, the Town has revisited the community vision plan and strategy by designated the areas part of the New York State Department of State Brownfield Opportunity Area (“BOA”) in 2014. This included an update to the 2002 plan “Seeking a Shared Vision for New Cassel” with the updated “Advancing the New Cassel Community Vision.” The BOA study and vision plan update are available online at http://www.northhempsteadny.gov/filestorage/16281/17115/17134/17141/UpdatedNewCasselCommunityVision.pdf

In previous years, extensive clean-ups of sites with potential contamination and sites with now-dilapidated uses were readied for re-development. In some cases, underutilized sites were developed with residential, commercial and/or mixed use development; in other cases, further rehabilitation has yet to occur.

As part of this solicitation, which is being made under the EPA’s Brownfields program for revitalization of sites where redevelopment is complicated by real or perceived contamination, steps to achieve desired work plan outcomes shall include:

1. Conducting a brief review of the existing BOA Universe of Known and Potential Brownfield Sites 2014 (derived by inventorying land use, NYSDEC and EPA spills records, and site visits to the area) for any changes to data on record;

2. Revisiting the 10 Strategic Sites identified and assessed for potential environmental issues and potential redevelopment to ascertain which sites have the best potential to reduce adverse environmental impacts and improve quality of life in this disadvantaged minority/low-income community;

3. Reviewing the BOA area-wide planning strategies and making any improvements or modifications (specifically pertaining to sustainable community development, energy efficiency and green building best practices, and climate resiliency);

4. Working with the North Hempstead Community Development Agency (CDA) to make any necessary additions or modifications to the existing Urban Renewal Plan Property Acquisition List to leverage funds (where possible) to advance community vision goals and further improve socio-economic conditions in New Cassel;
5. Engaging the community in the process of prioritizing, planning, acquiring and remediating the brownfield sites and strategies;

6. Where necessary and desirable, replacing or swapping sites on the current Strategic Sites list, guided by current area-wide brownfield planning strategies (open space/recreation enhancement and planning, mixed-use [affordable] residential/commercial development on underutilized vacant or underperforming sites particularly within the Prospect Avenue corridor, identification of possible sites to strengthen industrial district employment opportunities, amalgamation of contiguous sites to strengthen or complete currently discontinuous land use clusters, etc.);

7. Conducting Phase I and Phase II environmental assessments and investigations on selected sites (as described below); and

8. Keeping residents and business owners engaged in the process of clean-up and remedial options throughout the lifetime of the project.

Public participation is always vital to achieving desired results, and this project will be managed by representatives of the Town Planning department, with guidance provided by a steering committee (the “Steering Committee”), comprised of representatives from the Town, civic leadership, and members of the community. The project will have an anticipated timeline of approximately twenty-four (24) months. A map of the area is attached as an exhibit herein (Exhibit A).

B. COMMUNITY OUTREACH & INVOLVEMENT

1) Review of Previous NYS BOA Site Inventories and Area-wide Strategies

The 2013 New York State Brownfield Opportunity Area Nomination Study inventoried sites across the entire residential and industrial area of New Cassel and summarized current environmental conditions. Some 176 potential brownfield sites were identified, many of which through initial investigation may be contaminated from prior uses. This previous study will serve to inform site selection, access agreements, and/or acquisition in conjunction with neighborhood vision plan goals and community input. The output shall be a revised list of potential brownfield sites.

2) Review of Vision Plan Update Goals & Community Engagement

Civic input has always been instrumental to successful implementation of revitalization initiatives in New Cassel. The process of involving the community throughout the project and demonstrating that residents, business owners, and non-profit officials have a say in the decision-making process will be essential and ongoing. In addition to performing the technical environmental analysis, the consultant will assist the Town with education and in preparing/disseminating outreach materials and information, soliciting input, and communicating “next steps” to community members. The Town will then decide where to deploy EPA funds and determine reuse options. Up to five (5) community meetings/presentations may be required over the duration of the project.

3) Site Selection & Negotiation of Access Agreements
Guided by public participation from community members and area-wide strategies, the Steering Committee, consultant, and ToNH staff will prioritize public and private sites from the revisited inventory and identify the parcels for further assessment and investigation. The output shall be a stakeholder/public input summary, site justification, and access agreements (to be executed by the Town of North Hempstead).

C. BROWNFIELD ASSESSMENT ACTIVITIES

1) Phase I ESAs

The consultant/team of qualified environmental professionals (QEP) will perform up to eight (8) Phase 1 ESAs in accordance with ASTM 1527-13 and the EPA’s *All Appropriate Inquiry Rule* to qualify for liability protection under CERCLA on selected sites. Half of the total project cost is allocated to address site contamination by petroleum products; the other half is allocated to address site contamination with hazardous materials.

2) Phase II ESAs

The consultant/team (QEP) will perform up to eight (8) Phase 2 ESAs. The consultant will provide EPA-compliant, site-specific QAPPs, sampling and analysis plans, and site-specific health and safety plans (HASPs) for each site. All of the documents will be submitted for EPA review and approval prior to implementation. Phase 2s are dependent upon Phase 1s, so the final budget numbers will depend upon what is discovered and proposed in Phase 1s.

D. SITE REUSE AND CLEANUP PLANNING

Funding is included to support remedial and reuse plans developed by the consultant/team (QEP). Staff will manage these planning activities and the results will be shared with the community through a public meeting/presentation. These plans can be used as leverage for other grant funds or future Brownfield Clean-up grants. The output shall be up to three (3) reuse plans.

E. ADDITIONAL REQUIREMENTS

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

Proposals must provide information pertaining to the following costs:

1. A fee to be charged to the Town for the project as described;

2. The fully burdened billable hourly rates charged for the services of employees of the firm to be charged to the Town in the event that additional related services are necessary.
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 29, 2019
- Last Date to Pose Questions: August 9, 2019
- Due Date for proposal submissions: September 6, 2019

B. Notification and Contract Dates

- Firm shall be selected: On or about September 25, 2019
- Contract date: On or about October 30, 2019

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.

D. The Town anticipates entering into a contract that will terminate upon completion of the services as described herein.

V. PROPOSAL REQUIREMENTS

A. General Requirements

1. Inquiries

Written inquiries concerning the RFP and its subject must be made to Georgina Carr, Procurement Coordinator, at contracts@northhempsteadny.gov. Direct responses to all inquiries will be distributed to each potential proposer that has requested such responses. Ms. Carr shall be the sole point of contact for this RFP.

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.

The Technical Proposal must also contain the following:

1. Qualifications: Provide background information on your firm, including but not limited to:
   a. business overview
   b. age of the business
   c. names, addresses and position of all persons having a financial interest in the company
   d. state of formation (as applicable)
   e. number of employees
   f. summary of relevant accomplishments, particularly those involving services similar to those required for the Project.
   g. reports issued for other municipalities representative of the services requested by this RFP
   h. any other information that will permit the Town to determine capability of Proposer to meet all contractual requirements.

2. Resumes and Organizational Chart: Please provide resumes of the individuals who would comprise your operational team and the principal-in-charge. Describe only the people who would actually work on the Town’s account. Specify the role each would play, as well as what backup coverage would be available in time of conflicting engagements. Illustrate the relationship(s) of the individuals and firms to each other that would comprise your operational team and principal-in-charge on an organizational chart. Include a list of any sub-contractors who may be used to perform the Scope of Services.
3. A copy of the professional license(s) issued by the State Department of Education with respect to performing planning, architectural, landscape architectural and/or engineering services, and proof of licensure to do business in the State. (This includes Certificate of Incorporation for non-profits.)

4. Additional information that you believe pertinent to the Town’s requirements. (Please include your company/team internet links to websites.)

iii. References: Names, titles, addresses and phone numbers of key contacts for five (5) customers, particularly those for whom the Proposer has undertaken projects similar to the Project.

iv. Subconsultants: All subconsultants that are known to be part of the proposer’s team must supply all information required by this proposal as is required of the proposer. All subconsultants introduced to the project after execution of a contract with the Town must also supply this information.

v. Attach to this form a detailed description of the ownership structure that includes:

An ownership diagram that sets forth the precise breakdown of the ownership structure including a percentage ownership breakdown/delineation of each entity in the chain of ownership, up to and including the individual(s) who own the ultimate ownership entity in the chain of ownership. The ownership descriptions must include all individuals, partnerships, LLCs, corporations, trusts, or other forms of ownership (for publically traded corporations, this includes shareholders that directly own 10% of the stock as of the date of the application).

vi. Completed price proposal attached as Attachment A

vii. 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.

viii. 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: **TNH225-2019-Environmental Planning Services For New Cassel Community-Wide Brownfields Assessment Project**":

Georgina Carr, Procurement Coordinator  
Town of North Hempstead  
220 Plandome Road  
Manhasset, New York 11030

Four (4) hard copies and a .pdf of the proposal should be submitted.

C. 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:

Quality and completeness of the response,

- Demonstrated relevant experience in performing projects of comparable value and scope to the type contemplated by this RFP: 20%  
- Concept, methodology, and approach; quality of the proposal: 25%  
- Price Proposal: Cost effectiveness: 25%  
- Expertise and technical approach of the Proposal, explaining the degree to which the Proposer’s interpretation of the work meets the needs and goals of the Town: 20%  
- Quality of project team’s overall organizational
Strength, references and reputation

MWBE or SDVOB +5%

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.

VII. CONTRACTING REQUIREMENTS

As stated in Section V above, proposers must indicate their agreement with the standard terms and conditions shown in Attachment E attached hereto, including, but not limited to, including, but not limited to, the New York State Supplementary Conditions for Contracts contained in Exhibit E. In addition to these terms and conditions, each proposer must submit with their proposal a signed and notarized Byrd Anti-Lobbying Certification attached here as Attachment C and a signed and notarized Suspension and Debarment Certification attached hereto as Attachment D. These documents will be included in and be a part of the successful proposer’s agreement with the Town. Any proposed contract is subject to the approval of the Town Attorney, the Town Comptroller, the Town Board and the Town Supervisor.
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.

Proposals must provide information pertaining to the following costs:

1. A fee to be charged to the Town for the project as described;

2. The fully burdened billable hourly rates charged for the services of employees of the firm to be charged to the Town in the event that additional related services are necessary.

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

_________________________________   Sworn to and subscribed on
Name of Proposer               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*);
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 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 Sworn to and subscribed on
this _______ day of ___________, 20__

_________________________________
Title of Person Signing (Notary Public)
DISCLOSURE FORM

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

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

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

___________________________________
(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]
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)

 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)

 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___________________

21
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.

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☐ 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 ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM
ATTACHMENT C
BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION

The Offeror/Bidder certifies, by submitting this offer or bid, to the best of his or her knowledge and belief, that:

1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Name of Contractor: ____________________________________________________________

Authorized Representative Name: _________________________________________________

Signature of Authorized Representative: _____________________________________________

Sworn to before this this ______

Day of ________________, 2016

______________________________
Notary Public
ATTACHMENT D
SUSPENSION AND DEBARMENT CERTIFICATION

The Bidder/Offeror certifies to the best of his or her knowledge and belief, that:

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

Name of Contractor: ____________________________________________________________

Authorized Representative Name: _________________________________________________

Signature of Authorized Representative: _____________________________________________

Sworn to before this this ______

Day of ________________ , 2016

______________________________
Notary Public
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.

(d) **Reimbursement of Expenses.** The Town will reimburse the Consultant for any reasonable out-of-pocket expenses actually incurred necessary to complete the Services without markup. All expenses must be approved in advance by the Town. Consultant agrees that any expenses not approved in advance by the Town will not be reimbursed. All claims for expenses shall be accompanied by documentation reasonably necessary to describe the expense and the amount claimed and shall be subject to the same payment requirements contained in subsections (a) through (c) above.

2. **Termination**

(a) **Termination for Convenience.** Notwithstanding any other provision of this Agreement, the Town reserves the absolute right to terminate the services of the Consultant upon thirty (30) days written notice to the Consultant for any or no reason. Termination shall be effective thirty (30) days after the date such written notice is delivered by the Town.

(b) **Termination for Cause.** Notwithstanding any provision of this Agreement, the Town may terminate this agreement for Cause upon written notice to the Consultant. Termination shall be effective immediately upon the Consultant’s receipt of a written notice from the Town terminating this Agreement pursuant to this section. As used in this Agreement, the term Cause shall include (a) a breach of the terms and conditions of this Agreement; (b) the failure to obtain and maintain in full force and effect all approvals,
licenses and permits required for the Required Services to be legally and professionally rendered; and (iii) the termination or impending termination of federal or state funding for the services to be provided under this Agreement.

(c) **Post-Termination Settlement.** If the consideration to be paid by the Town under this Agreement is a lump sum amount, upon termination, the Town shall pay for the services rendered by the Consultant to the date of termination in proportion of all services to be rendered and in accordance with the terms of this Agreement. If the consideration to be paid by the Town under this Agreement is based on the payment of rates in relation to time expended in providing the services, upon termination, the Town shall pay the Contractor for such time rendered by the Contractor in providing the services in accordance with this Agreement up until the date of termination at such rates described in this Agreement. Any and all work performed by the Consultant up to the point of termination shall become the property of the Town and shall be delivered to the Commissioner.

(d) **Consultant Assistance upon Termination.** In connection with the termination or impending termination of this Agreement the Consultant 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 Town’s responsibilities under this Agreement. The provisions of this subsection shall survive the termination of this Agreement.

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 limits of One Million Dollars ($1,000,000.00) per claim and Two Million Dollars ($2,000,000.00) in the aggregate. 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**

(a) 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.
(b) Through the execution of this agreement, the Consultant and each person signing on behalf of the Consultant certifies, under penalty of law that the Consultant understands and agrees to comply with the terms and conditions of the Authority’s stormwater management program and agrees to implement any corrective actions identified by the Authority or representative of the Authority. Consultant understands that the Authority must comply with the terms and conditions of the New York State Pollutant Discharge Elimination System (“SPDES”) general permit for stormwater discharges from Municipal Separate Storm Sewer System (“MS4’s”) and that it is unlawful for any person to directly or indirectly cause or contribute to a violation of water quality standards. Further, Consultant understands that any non-compliance by the Authority will not diminish, eliminate or lessen Consultant’s own liability.

10. **Standard Practices for Engineering and Architectural Services.**

In performing the services required under this Agreement, the Consultant shall follow and adhere to the following standard Town practices insofar as they are applicable to the work to be performed under this Agreement.

(a) All work shall be in charge of an Engineer, Surveyor or Architect (as appropriate) duly licensed and registered in the State of New York, and experienced in the type of work to be performed for the Town.

(b) A list of all professional personnel to be employed in the work shall be submitted to the Town for approval. If requested, the experience of such persons shall also be submitted. The Town reserves the right to deny approval of any such person, or to require their subsequent replacement with an individual of equal or superior capabilities without giving any reason for such action by the Town.

(c) Any and all reports prepared under this Agreement shall be of 8½” x 11” format with the 11” dimension being the vertical size. Cover and binding shall be as agreed upon by the Town. Oversize exhibits (if required) shall be foldouts or shall be contained within a "Pocket" bound into the report.

(d) Any specifications prepared under this Agreement shall:

(i) Be of 8½” x 11” format.

(ii) Include the Town’s General Conditions clauses (a current copy of which will be provided by the Town) which may be supplemented or modified upon approval by the Town of such supplements or modifications.

(iii) Be printed, and color coded, in accordance with standard Town practice.

(iv) Have a cover with content and format which shall conform to current Town practices.

(e) In addition to hard copies as stated above, the Consultant shall provide electronic
copies of all deliverables.

(f) The word "plans" shall be synonymous with the words “drawings”. Any plans prepared under this Agreement shall:

(i) Have a title sheet conforming to current Town practice.

(ii) Be signed and sealed by the Consultant on the title sheet.

(iii) Be ink on mylar, or be an accurate photographic mylar reproduction of any work originally done in pencil.

(iv) Be of the following size:

a. 8½" x 11", or fold-out multiples thereof, if to be bound into the specifications book, subject to approval by the Commissioner.

b. A minimum of 22" x 36" to a maximum of 36" x 48" to be approved by the Commissioner.

(v) CADD generated drawings shall be plotted on mylar reproducibles and the CADD files shall be additionally provided to the Town on disc in a format acceptable to the Town.

(g) All reports, plans and specifications submitted to the Town for final acceptance shall be accompanied by all necessary applications, certificates or approvals from Town, County, State, Federal or other municipal departments having jurisdiction over any phase of the work. Submission to such agencies shall be made by the Consultant in the name of the Town.

(h) In addition to the insurance requirements stated in Section 8 above, Consultant shall provide:

(i) Professional Errors and omissions insurance in the minimum of ONE MILLION ($1,000,000.00) DOLLARS. The Town shall be named additional insured in such policy.

(ii) Excess Liability in the form of umbrella form of FOUR MILLION ($4,000,000.00) DOLLARS. The Town shall be named additional insured in such policy.

(iii) Valuable Papers insurance in the minimum amount of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS.

(i) Ownership of Documents. All completed original tracings and the original master specification sheets shall constitute the property of the Town but may, during the course of the performance of the work required by this Agreement, remain in custody of the Consultant unless otherwise directed by the Commissioner. In the event of any revisions
in specifications or original drawings, the Consultant shall submit two (2) revised copies to the Commissioner.

(j) Any patentable result arising out of this Agreement as well as information, designs, specifications, know how, data and findings arising out of the work of this project shall constitute the exclusive property of the Town.

(k) The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished by the Consultant under this contract. The Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. Neither the Town’s review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this Agreement, and the Consultant shall be and remain liable to the Town in accordance with applicable law for all damages to the Town caused by the Consultant’s negligent performance or breach of contract of any of the services furnished under this Agreement. The rights and remedies of the Town provided for under this Agreement are in addition to any other rights and remedies provided by law.

(l) The Consultant shall defend all actions or claims alleging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by the Consultant. Consultant shall hold harmless the Town from all loss or damage resulting from any action or claim alleging infringement or any copyright or patent providing further that the Town, within fifteen (15) days after receipt of any notice of infringement, shall have forwarded the same to the Consultant, in writing, by certified mail. All work done by the Consultant for the Town shall be deemed a "Work for Hire" and all patents, copyrights, and intellectual property rights shall belong to the Town and the Consultant shall, from time to time, execute any documents that are reasonably requested by the Town to vest all such rights in the Town to the drawings, plans, specifications, concepts, models and other work or materials created by Consultant in furtherance of the Project.

11. **Provisions Relating to State and Federal Funding.**

(a) **Equal Opportunity Employment.** During the performance of this Agreement, the Consultant agrees as follows:

(i) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and
applicants for employment, notices to be provided setting forth the provisions of
this nondiscrimination clause.

(ii) The Consultant will, in all solicitations or advertisements for employees
placed by or on behalf of the contractor, state that all qualified applicants will
receive considerations for employment without regard to race, color, religion, sex,
sexual orientation, gender identity, or national origin.

(iii) The Consultant will send to each labor union or representative of workers
with which he has a collective bargaining agreement or other contract or
understanding, a notice to be provided advising the said labor union or workers'
representatives of the Consultant's commitments under this section, and shall post
copies of the notice in conspicuous places available to employees and applicants
for employment.

(iv) The Consultant will comply with all provisions of Executive Order 11246 of
September 24, 1965, and of the rules, regulations, and relevant orders of the
Secretary of Labor.

(v) The Consultant will furnish all information and reports required by Executive
Order 11246 of September 24, 1965, and by rules, regulations, and orders of the
Secretary of Labor, or pursuant thereto, and will permit access to his books,
records, and accounts by the administering agency and the Secretary of Labor for
purposes of investigation to ascertain compliance with such rules, regulations, and
orders.

(vi) In the event of the Consultant's noncompliance with the nondiscrimination
clauses of this contract or with any of the said rules, regulations, or orders, this
contract may be canceled, terminated, or suspended in whole or in part and the
contractor may be declared ineligible for further Government contracts or
federally assisted construction contracts in accordance with procedures authorized
in Executive Order 11246 of September 24, 1965, and such other sanctions may
be imposed and remedies invoked as provided in Executive Order 11246 of
September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or
as otherwise provided by law.

(vii) The Consultant will include the portion of the sentence immediately
preceding paragraph (1) and the provisions of paragraphs (a) through (f) in every
subcontract or purchase order unless exempted by rules, regulations, or orders of
the Secretary of Labor issued pursuant to section 204 of Executive Order 11246
of September 24, 1965, so that such provisions will be binding upon each
subcontractor or vendor. The Consultant will take such action with respect to any
subcontract or purchase order as the administering agency may direct as a means
of enforcing such provisions, including sanctions for noncompliance: Provided,
however, That in the event a contractor becomes involved in, or is threatened
with, litigation with a subcontractor or vendor as a result of such direction by the
administering agency the Consultant may request the United States to enter into
such litigation to protect the interests of the United States.
(b) Contract Workhours and Safety Standards Act Requirements. If this Agreement is a construction contract valued at $100,000.00 or more, the following provisions shall apply:

(i) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(ii) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (a) above, the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Consultant and subcontractor shall be liable to the Town for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) above, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) above.

(iii) Withholding for Unpaid Wages and Liquidated Damages. The Town shall withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

(iv) Subcontractors. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

(c) Clean Air Act and Federal Water Pollution Control Act Requirements. If this contract is valued in excess of $150,000.00, the Consultant agrees as follows:

(i) That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities.
(ii) Contractor shall comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder.

(iii) As a condition for the award of this contract, Consultant or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities.

(iv) Consultant shall include or cause to be included in any construction contract or subcontract which exceeds $100,000 the aforementioned criteria and requirements.

(d) Debarment and Suspension. The Consultant certifies that the suspension and debarment certification attached to this Agreement is true and complete in all respects as of the date this Agreement is executed by the Contractor.

(e) Byrd Anti-Lobbying Amendment Certification. The Consultant certifies that the lobbying certification attached to this Agreement is true and complete in all respects as of the date this Agreement is executed by the Contractor.

(f) Minority and Women-Owned Business Enterprise Requirements. In accordance with Section 7(H) of the Town’s Procurement Policy, the Contractor shall take all necessary affirmative steps to assure that minority businesses, women’s business enterprises and labor surplus area firms are used whenever possible in subcontracting the services described in this Agreement. The term “Affirmative Steps” includes:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists. Contractor shall, prior to soliciting subcontractors, conduct research to locate minority businesses, women’s business enterprises and businesses with labor surplus areas that have the potential to provide the materials, supplies or services that are the subject of the solicitation and research labor surplus areas in which the materials, supplies or services may be provided.

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources. The businesses found by the procuring department shall be contacted and provided copies of the bid or other solicitation released by the procuring department.

(iii) Dividing total requirements, when economically and technically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises. An example of this would be dividing a total construction contract into electrical, HVAC, plumbing and general construction work.
(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises. The procuring department could accomplish this by taking into account the distance of particular businesses from the Contractor and the business’ resources.

(v) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce

The Contractor, prior to entering into an agreement with a subcontractor, shall obtain the approval of the Town. The Contractor’s request for approval shall contain documentation adequate to demonstrate the Contractor’s compliance with the terms of this Section.

11. **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.

Upon termination or completion of this Agreement, the Consultant shall surrender, within fifteen (15) days to the Commissioner, all data, reports, maps, surveys, material specifications, contacts, budgets, salary schedules, time records, plans, tracings, sketches, charts, photographs and exhibits prepared, developed or kept in connection with or as a part of this project. This section does not apply to any records or documents pertaining to the operation of the Consultant's business. The Consultant may retain in its possession copies of those records or documents, which it considers necessary for proof of performance.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.
EXHIBIT ‘A’

Proposed Brownfeld Opportunity Area
New Cassel, Town of North Hempstead