



**TOWN OF NORTH HEMPSTEAD**

**REQUEST FOR PROPOSALS**

**FOR**

**TELEVISION PRODUCTION SERVICES**

**TOWN OF NORTH HEMPSTEAD**  
**Communications Office**

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

*Supervisor*  
**Jennifer DeSena**

*Town Board*  
**Robert J. Troiano  
Peter J. Zuckerman  
Dennis J. Walsh  
Veronica Lurvey  
David A. Adhami  
Mariann Dalimonte**

*Communications Director*  
**Gordon Tepper**

**Issue Date: March 17, 2023  
Proposals Due: April 13, 2023**

**RFP No. TNH101-2023**

# **TOWN OF NORTH HEMPSTEAD**

## **REQUEST FOR PROPOSALS**

### **I. INTRODUCTION**

#### **A. General Information**

The Town of North Hempstead (the "Town") is requesting proposals from qualified firms to provide television production services at the North Hempstead television station operating in the Town's "Yes We Can" Community Center in New Cassel, New York. A firm may be selected from among responding firms based on a thorough analysis of each firm's ability to provide the Town with the highest quality services at the most cost-effective fees.

The following conditions apply to this RFP:

- There is no express or implied obligation for the Town to reimburse responding firms for any expenses incurred in preparing proposals in response to this request, and the Town will not reimburse such expenses.
- Any inquiries concerning this RFP must be in writing or by email and should be addressed to Georgina Carr at [contracts@northhempsteadny.gov](mailto:contracts@northhempsteadny.gov). All inquiries must bear the RFP number assigned to this RFP. This shall be the sole point of contact for this RFP. Written responses to all inquiries will be posted to the Town's website as an addendum to the RFP. It shall be the responsibility of the Proposer(s) to inquire as to any addenda issued.
- To be considered, one (1) original and two (2) copies, and (1) thumb drive containing the same proposal must be delivered in a sealed envelope and received by the Procurement Division at 220 Plandome Road, Manhasset, New York 11030 by 11:00 a.m. April 13, 2023. 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, some or all of the 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.
- Upon submission, all proposals become the property of the Town. The

Town has the right to disclose all or any part of the proposal to public inspection based on its determination of what disclosure will serve the public interest. Proposers are further advised that, except for trade secrets and certain personnel information (both of which the town has reserved the right to disclose), all parts of the proposals must be disclosed to those members of the public making inquiry under the New York State Freedom of Information Law. Should a proposer wish to request an exemption from public access to information contained in its proposal, the proposer must, at the time of submission and on the face of the proposal, specifically identify the information they claim to be exempt from disclosure and explain in detail why the information should be exempt.

- 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.
- The selection of a firm will be set forth in a resolution of the Town Board. The selection of a vendor by the Town Board shall not constitute a binding commitment on behalf of the Town to enter into any contract with the selected vendor, as any binding arrangement must be set forth in definitive documentation signed by both the vendor and the Town (the “agreement”). The agreement shall be executed by vendor and delivered to the Town with necessary insurance certification for approval by the Town Board.
- It is anticipated the selection of a firm will be completed by May 2, 2023. Following notification of the selected firm an agreement will be executed between both parties.
- 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 accept more than one proposal or reject all proposals.

## **B. Subcontracting**

The Proposer will be responsible for the entire contract performance. The Proposer must indicate in the RFP if it intends to use a sub-contractor for any part of the work. If so, the Proposer shall identify each sub-contractor by name, business address and expertise, and must include the name(s) of the principal(s) of the subcontracting entity. A full description of the tasks to be performed by the sub-contractor must be included. No subcontracting shall be permitted without the express permission of the Town.

## **II. SCOPE OF SERVICES**

### **A. Summary**

The Town is seeking a firm to handle studio productions services for North Hempstead TV (NHTV). NHTV is the non-commercial, government channel for the residents of the Town of North Hempstead. NHTV is on Channel 18 or 64 on Cablevision or Channel 46 on Verizon FIOS. In 2012, the Town opened a state-of-the-art, Platinum-LEED Certified community center in Westbury, New York. Included in the building is the home for our TV production studio, where we create the programming for NHTV.

This station provides a unique opportunity for town residents to view commercial-free television programs that are originally produced in North Hempstead.

### **B. Statement of Work**

The Contractor will be responsible for providing a TV Studio Director (the “Director”), who would be responsible for:

1. Filming all programs for NHTV in High Definition, either on-site at the North Hempstead TV studio or at another location. Programs include, but are not limited to:
  - a. “Talk of the Town”, which provides residents with in-depth interviews with local and civic leaders representing North Hempstead;
  - b. “Business Buzz”, which interviews local business and shop owners;
  - c. “Off the Trail” and education series focusing on local nature in North Hempstead including wildlife and their habitat;
  - d. Department of Parks and Recreation and Community Service events including: State of the Town, Spring Festival, Asian-American Festival, Memorial Day Fireworks, BeachFeast, KidStock, Spooky Walk, Winter Wonderland;
  - e. Council Member interviews, including sit down interviews in the studio and off site;
  - f. In-Studio Interviews, with representatives from external offices and programs;
  - g. Public Service Announcements;
  - h. Create ads for upcoming programs to be used on Facebook and YouTube; and
  - i. Other programming, including coverage of Town events and Town Parks and services.
2. Editing video using Adobe Master Suite. The vendor must have its own license.

3. Proficiency in using both Macs and PCs; Greevs Editshare; Ross Xpression; PlayBox; and Airbox software.
4. Maintaining all necessary equipment and software.
5. Maintaining communications with Cablevision and Verizon to ensure that NHTV continues to be aired on their cable outlets.
6. Running and maintaining the NHTV website [www.mynhtv.com](http://www.mynhtv.com)
7. Setting up the airtimes for all programming with Cablevision and Verizon.
8. Working with the Town's Communications Department to identify new opportunities for programming.
9. Maintaining and repairing of equipment using a budget line in the Communications Department budget.
10. Archiving all station programming.
11. Providing access to high quality video to the Town's Communications staff for use on the Town's Facebook, Twitter and YouTube pages. This can be done through an FTP fileshare page.
12. Working in conjunction with students and local schools to provide training on filming, editing and use of equipment.
13. Firms must be available to work on-site at the Town studio or at other Town facilities on an as needed basis.

**C. 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 may be required to provide regular periodic status reports to the Town which may include an initial report and quarterly status reports thereafter. The Firm shall prepare such other reports as shall be requested by the Town. The Firm shall provide copies of said reports to the Town's insurance carriers, or their designated representatives, if the Town so requests. In addition, the Firm may be required to prepare a report to the Town's auditors, within the time frame they set forth, when requested to do so.
3. 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.

4. The firm will promptly provide a response to any requests from the Town's Records Access/FOIL Officer.
5. 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.
6. 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 of North Hempstead and all appointed and elected officials, employees and volunteers shall be named as additional insured on said policy on a primary and non-contributory basis with waiver of subrogation in favor of the additional insured, as evidenced by the certificate of insurance and endorsement pages;
  - (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).
7. The Firm shall be authorized to do business in New York and shall hold any and all licenses issued by the state, the County or the Town that are required to provide the services herein.
8. Firms and/or key staff must have experience of at least seven (7) years in the industry.
9. Firms must possess, in its own name, all of the necessary licenses, certifications, permits, approvals, and authorizations necessary to perform the services being sought.
10. Please provide three (3) references, including name, address, email and telephone numbers, whereby the contractor has provided the same or similar services as those requested herein. Please include at least one municipal reference.

### **III. FEE STRUCTURE**

Each proposal shall include Appendix A: Price Proposal and include the proposer's fees for the required services including implementations costs, if any. The proposal shall include a description of services offered and pricing for each service. The Town is not establishing any specific fee or cost structure for the required services. The proposer may include pricing hourly or as a flat rate. At a minimum, the proposer shall include an annual not to exceed number for the services requested above. The proposer may provide separate pricing for additional projects that may come up from time to time.

### **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	March 17, 2023
Last Date for Questions	March 29, 2023
Due Date for proposal submissions	April 13, 2023

#### **B. Notification and Contract Dates**

Selected firm notified	On or about	May 2, 2023
Contract date	On or before	May 31, 2023

- 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 (3) year agreement with the option to renew for two additional one (1) year terms on the same terms and conditions including price at the sole discretion of the Town.

### **V. PROPOSAL REQUIREMENTS**

#### **A. General Requirements**

##### **1. Inquiries**

Written inquiries concerning the RFP and its subject must be made to Georgina Carr, at [contracts@northhempsteadny.gov](mailto:contracts@northhempsteadny.gov). Written responses to all inquiries will be posted to the Town's website as an addendum to the RFP. It shall be the responsibility of the Proposer(s) to inquire as to any addenda issued. As a courtesy direct responses to all inquiries will be distributed to each potential proposer that has requested such responses. Proposers should not be contacting any other Town Employees about 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. A brief history and description of the firm submitting the proposal.

iii. 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 candidate's project approach and work plan, a detailed list of previous experience relevant to this project, 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, visual examples of other displays produced by the proposer 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 or requested in Section II above.

iv. Completed price proposal attached as Attachment A

v. Fully completed Proposer's Qualification Statement attached as Attachment B, including the Statement of Understanding, Disclosure Statement, Non-Collusive Proposal Certification, Insurance Certification, Acknowledgement of Receipt of Addenda, Debarment and Suspension Certification, Byrd Anti-Lobbying Amendment Certification, Iran Divestment Act, Procurement Lobbying Certification and Local Business Certification. The contract will be executed by the Town and the selected candidate only after an evaluation of each proposal and a selection of a firm.

vi. Statement that the proposer agrees to the standard terms and conditions for Town agreements shown in Attachment C, or a description of requested changes.

b. The completed proposal should be sent to the following address in a sealed envelope marked **"Request for Proposals TNH101-2023- Television Production Services"**:

Georgina Carr  
Procurement Coordinator  
Town of North Hempstead  
220 Plandome Road



**B. Guidance on Completing a Proposal Submission**

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

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

All compliant Proposals will be reviewed by a committee that will consider candidates based exclusively on the Proposals submitted and any subsequent interviews with candidates and/or additional information submitted by candidates at the request of the evaluation committee.

**VI. SELECTION OF FIRM**

A. The Town will approve a firm based on an evaluation of the proposals by an evaluation committee. 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 criteria and point system:

- |   |           |
|---|-----------|
| 1. Substance of the Proposal                                  | 30 Points |
| • Responsiveness to and understanding of the RFP requirements |           |
| • Clear understanding of the Scope of Work                    |           |
| • Acceptable solutions, management, implementation            |           |
| • Viable recommendations for approach                         |           |
| 2. Relevant Experience of Proposer                            | 30 Points |
| • Organizational Experience                                   |           |
| • Experience of Individuals                                   |           |
| • Experience with Municipalities                              |           |
| • Experience with the subject matter                          |           |
| 3. Technical Proposal/Completed Forms                         | 10 Points |
| 4. Fee Proposal   | 30 Points |
| 5. MWBE or SDVOB (provide NYS Certificate)                    | +5 Points |
| 6. Local Business Certification (Nassau County Business)      | +5 Points |
| 7. *Presentations (if held)                                   | 10 Points |

The Town may also consider any other factors it deems necessary in evaluating each proposal. The Town reserves the right to request additional information, including oral presentations, interviews and/or Best and Final offers from any or all of the proposers. Upon conclusion of the evaluation process, the evaluation committee will then select a proposer to be

recommended to the Town Board for review and award.

**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. Non-Guarantee of Service**

The selection of a Contractor will not guarantee that any services will be requested of that candidate.

**ATTACHMENT A**  
**PRICE PROPOSAL**

Each proposal shall include Appendix A: Price Proposal and include the proposer's fees for the required services including implementations costs, if any. The proposal shall include a description of services offered and pricing for each service. The Town is not establishing any specific fee or cost structure for the required services. The proposer include pricing hourly or as a flat rate. Where a defined project is requested, the proposer shall include a not to exceed number for the project.

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.

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Signature

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Name of Proposer

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Title of Person Signing

## **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 Proposal Certification;
4. Certification of Insurance (*to be completed by an authorized insurance agent*);
5. Acknowledgement of Receipt of Addenda Form;
6. Debarment and Suspension Certification;
7. Byrd Anti-Lobbying Amendment Certification;
8. Iran Divestment Act;
9. Procurement Lobbying Certification; and
10. Local Business Certification.
11. Certification of No Boycott of Israel

Please complete **ALL ELEVEN** 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 FORMS .**

## **STATEMENT OF UNDERSTANDING**

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

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

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

---

Signature

---

Name of Bidder

---

Title of Person Signing

## **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. If there is nothing to disclose, please respond N/A:**

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: \_\_\_\_\_

## **NON-COLLUSIVE 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 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



# **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/Excess 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- or higher rated or its equivalent .

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

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

Authorized Insurance Agent's Signature and Title: \_\_\_\_\_

Name, Insurance Affiliation and Address:

\_\_\_\_\_  
Dated \_\_\_\_\_

## **ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM**

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

**Note:** This acknowledgement shall be signed by the person executing the Statement of Understanding.

Insert additional pages, as necessary.

ADDENDUM NUMBER	DATE OF ADDENDUM	ACKNOWLEDGEMENT

☐ **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 ACKNOWLEDGEMENT.**

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

## **DEBARMENT AND SUSPENSION 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, state or local department or agency from participation in this or any similar transaction.

Name of Contractor: \_\_\_\_\_

Authorized Representative Name: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

## **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: \_\_\_\_\_

## **CERTIFICATION - IRAN DIVESTMENT ACT OF 2012**

This form must be signed

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, added new provisions to the State Finance Law (SFL), §165-a and General Municipal Law (GML) §103-g effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b) and GML §103-g, the initial list is expected to be issued no later than 120 days after the Act’s effective date, at which time it will be posted on the OGS website.

By submitting a response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Proposer (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, Proposer is advised that once the list is posted on the OGS website, any Proposer seeking to enter into, renew or extend a Contract or assume the responsibility of a Contract awarded in response to the solicitation, must certify at the time the Contract is bid upon or a proposal submitted, or the contract is renewed, extended or assigned that it is not included on the prohibited entities list.

During the term of the Contract, should Town receive information that a person is in violation of the above-referenced certification, Town will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then Town shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

Town reserves the right to reject any bid, proposal or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**PROCUREMENT LOBBYING CERTIFICATION WITH RESPECT TO  
STATE FINANCE LAW SECTION §§ 139-j AND 139-k**

1. Has a Governmental Entity, as defined in State Finance Law §139-j(1)(a), made a determination of non-responsibility with respect to the Contractor within the previous four years where such finding was due to a violation of State Finance Law §139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility?

No \_\_\_\_

Yes \_\_\_\_

If yes, provide the following details:

Governmental Entity which made the finding:

Date of finding:

Basis of finding:

2. Has a Governmental Entity terminated or withheld a procurement contract with the Contractor because of violations of State Finance Law §139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility?

No \_\_\_\_

Yes \_\_\_\_

If yes, identify the following:

Governmental Entity which terminated the contract:

Date of contract termination or withholding:

Identify the related procurement contract:

Contractor AFFIRMS that he/she understands and agrees to comply with the New York State procedures relative to permissible contacts as required by State Finance Law §§ 139-j and 139-k.

Contractor CERTIFIES that all information provided by Contractor with respect to its compliance with State Finance Law §§139-j and 139-k is complete, true and accurate.

Name of Contractor: \_\_\_\_\_

Authorized Representative Name: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

## **LOCAL BUSINESS PREFERENCE CERTIFICATION FORM**

### **ALL INFORMATION MUST BE PROVIDED**

A 5% Preference for Local Businesses (hereinafter, "Preference") may be available for this procurement. To qualify, an Offeror **MUST** complete and submit this Preference Certification Form **WITH ITS OFFER, BID OR PROPOSAL**.

If a Proposal is received without this Preference Certification Form and any required documentation attached, completed, signed and certified, or if this Preference Certification Form is received without the required information, the preference shall not be applied.

### **LOCAL BUSINESS PREFERENCE**

To qualify for the local business preference, the business must:

1. be physically located within the geographical boundaries of the County of Nassau (the "County"); and
2. such presence must have existed for at least a year, established by ownership or lease of premises that includes an operational office for conducting business or selling and/or manufacturing supplies, materials or equipment; and
3. the business must employ a minimum of two (2) full time employees in the County.

In the case of a two-party joint venture both entities must meet the pertinent test for a Local Business set forth above. In the case of joint venture with more than two parties at least a majority of the entities must meet the pertinent test for a Local Business set forth above.

### **CERTIFICATION**

The Preference Certification Form must include a physical location - NOT a post office box or other postal address.

**PREFERENCE CERTIFICATION FORM MUST BE COMPLETED BY PRINCIPAL OFFEROR.** This Preference Certification Form must be completed for the Principal Offeror, or one of the Principal Offerors if the Offeror is a joint venture or partnership, or by an individual authorized to sign for the Offeror. Subcontractors of the Offeror shall not be used to qualify a Proposal for a preference and should not complete or submit the Form.

The total percentage of all preferences awarded shall not exceed ten percent (10%).

**ADDITIONAL DOCUMENTATION.** If requested, a business shall provide, within three (3) working days of receipt of the request, documentation to substantiate the information provided on the Preference Certification Form. The Director of Procurement shall determine the sufficiency of such documentation.

**NO PREFERENCES SHALL BE APPLIED IF THE PROCUREMENT IS SUBJECT TO GENERAL MUNICIPAL LAW 103, IF FEDERAL FUNDS ARE USED OR IF OTHERWISE INAPPLICABLE TO THIS PROCUREMENT.**

**TOWN OF NORTH HEMPSTEAD**  
**LOCAL BUSINESS CERTIFICATION**

I certify my company meets the following qualifications to be eligible for the local business preference:

1. the business is physically located within the geographical boundaries of the County of Nassau (the “County”); and
2. the business has been physically located in the County for at least a year, established by ownership or lease of premises that includes an operational office for conducting business or selling and/or manufacturing supplies, materials or equipment,
3. the business employs a minimum of two (2) full time employees in the County.

Name of Contractor: \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Nassau County Address, if different: \_\_\_\_\_

Authorized Representative Name: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_



**TOWN OF NORTH HEMPSTEAD**  
**CERTIFICATION OF NO BOYCOTT OF ISRAEL**

Pursuant to Town of North Hempstead Code §24-65, the Town shall not enter into a contract with an individual or company identified by the New York State Office of General Services or the Office of the New York State Comptroller as engaging in boycott of Israel.

By signing below, the Contractor agrees and certifies that they are not an individual or company identified by the New York State Office of General Services or the Office of the New York State Comptroller as engaging in boycott of Israel. If any time after signing this certification the Contractor is identified by the New York State Office of General Services or the Office of the New York State Comptroller as engaging in boycott of Israel, the Contractor must notify the Town in writing.

Name of Contractor: \_\_\_\_\_

Authorized Representative Name: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

## **ATTACHMENT C**

### **STANDARD TOWN TERMS AND CONDITIONS**

#### **1. Compensation**

(a) Claim Forms, Claim Form Review and Approval. Payments shall be made to the Consultant in arrears and shall be expressly contingent upon (i) the Contractor 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. Drawdowns 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 Contractor 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 Contractor 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 Contractor and any funding source including the Town.

#### **2. Termination**

(a) The Town reserves the absolute right to terminate the Agreement at any time by service of a written notice sent by certified mail to the address set forth above. The Town will be responsible for payment of any portion of the Services completed prior to termination and satisfactory to the Town’s Comptroller.

(b) Contractor Assistance Upon Termination. In connection with the termination or impending termination of this Agreement, the Contractor shall, regardless of the reason for termination, take all actions reasonably requested by the Town (including those set forth in other provisions of this Agreement) to assist the Town in transitioning the Contractor’s responsibilities under this Agreement. The provisions of this Section shall survive the termination of this Agreement.

(c) Accounting Upon Termination. Within thirty (30) days of the termination of this Agreement, the Contractor shall provide the Supervisor with a complete accounting up to the date of termination of all monies received from the Town, and shall immediately refund to the Town any unexpended balance remaining as of the time of termination.

(d) Reimbursement Upon Termination. Payment to the Contractor following termination shall not exceed authorized expenditures made prior to termination, and may be suspended

by the Town pending the Contractor's reasonable compliance with the terms and provisions of (b) and (d) above.

**3. Contractor as Professional Representative**

The Contractor shall serve as the Town's professional representative in the execution of the Services and shall give consultation and advice to the Town during the performance of the Services. The Contractor represents to the Town that it is adequately staffed, skilled and experienced to perform the services required by this Agreement and further, that is duly licensed and qualified under the laws of the State of New York to perform these services.

**4. Control of Services**

The Contractor's services shall at all times be subject to the direction and control of the Head of the Issuing Department of the Town of North Hempstead (the "Department Head"). The Department Head's decision shall be final and binding upon the Contractor on all matters arising out of, in connection with or relating to this Agreement. To prevent all disputes and litigation, the Department Head shall, in all cases, determine the amount, quality, acceptability and fitness of the work being performed under the provisions of this Agreement and shall determine every question which may arise relative to the Contractor's performance of the Agreement. The decision of the Department Head shall be final, conclusive and binding upon the Contractor. This paragraph shall not operate as a waiver of the Contractor's right to litigate or to perform work under protest while reserving the right to litigate with respect thereto.

**5. 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.

**6. Staffing**

The Contractor agrees that it will hire only competent qualified persons to effectuate the Services under this Agreement.

**7. Amendments**

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

**8. 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).

**9. 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 9(a) hereof shall not be limited by reason of enumeration of any insurance coverage provided under this Agreement.

(c) Nothing in this Section 9 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.

## **10. 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 of North Hempstead and all appointed and elected officials, employees and volunteers shall be named as additional insured on said policy on a primary and non-contributory basis with waiver of subrogation in favor of the additional insured;

(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).

At the time of execution of the Agreement, the Contractor shall furnish the Town with certificates of insurance evidencing the required coverage and endorsement pages naming the Town as additional insured. 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).

## **11. 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.

## **12. Procurement Lobbying**

To the extent this contract is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this contract the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the Town may terminate this contract by providing written notification to the Contractor in accordance with the terms of this contract.

**13. Claims or Actions**

In the event that any claim is made or any action brought on any aspect other than the design concept of a construction contract in any way relating to the plans and specifications drawn by the Contractor, the Contractor will diligently render to the Town any and all assistance, which the Town may require of the Contractor. If any specific services are required under this Section, the Town shall reimburse the Contractor in accordance with the Contract Documents. None of the above shall be deemed in any way a waiver of the Contractor's responsibility for the information provided by his (its) plans, specifications and work.

**14. Non-Liability of Appropriating Agency**

The Contractor's compensation shall be paid by the Town out of such monies appropriated by the Town for the purposes herein provided. Members of any board, any other officer or agent duly authorized to act for and on behalf of the Town shall not, by virtue of such Town or action, be personally liable in any manner whatsoever to the Contractor.

**15. Covenant Against Contingent Fees**

The Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Town shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or brokerage.

**16. 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.

**17. 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.

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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.