

TOWN OF OYSTER BAY
NASSAU COUNTY, NEW YORK

REQUEST FOR PROPOSALS

PROPERTY MANAGEMENT CONSULTING



Submission Deadline: February 22, 2019, no later than 4:45 p.m. as set forth herein.

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A. INTRODUCTION

The Town of Oyster Bay (the “Town”) owns and operates buildings and properties in the Town. As more fully detailed in Section C below, the Town seeks proposals from qualified individuals and entities located in and authorized to do business in the State of New York to provide the Town with proposals to manage and maintain the Town’s properties.

B. ANTICIPATED PROPOSALS SCHEDULE

RFP Issue Date:	January 7, 2019
Questions Due:	January 21, 2019
Questions Answered:	On or around February 8, 2019
Proposal Due Date:	February 22, 2019
Oral Presentation, if necessary:	TBD
Award Date:	On or around March 26, 2019

Dates indicated above are subject to change at the sole discretion of the Town.

C. SCOPE OF SERVICES

The Scope of Services (the “Scope”) outlined below has been established for the purpose of achieving and implementing program goals and objectives described in this document. Although the Scope is intended to serve as a reference in the preparation of the proposal, forthcoming proposals may offer additional services which support the goals of this RFP.

The successful proposer must perform at least the following services:

1. Identification and evaluation of all Town-owned properties, including building square footage (if any) and acreage of each parcel;
2. Identify Town owned properties for potential sale or lease;
3. Identify purchasers or lessees of such properties;
4. Supply valuation data for such properties;
5. Negotiation of the purchase or lease of such properties; and
6. Management and inventorying all Town owned properties.

In connection with the sale and lease of Town owned properties, the successful proposer will interface and work with counsel for the Town. The Town expects that the successful proposer will therefore ensure that the Office of the Town Attorney is kept fully apprised of its efforts and progress so as to best evaluate satisfaction of the goals of this RFP.

Award Criteria:

The Award Criteria to be considered by the Town Evaluation Committee shall include all of the criteria required pursuant to Guideline No. 6 as set forth in the Town’s Procurement

Policies and Procedures adopted on March 27, 2018, by Resolution No. 209-2018, which include, among others:

1. Magnitude, scope, and complexity of the services to be rendered;
2. Experience of the firm in assignments of similar size, scope, and complexity;
3. Special knowledge relevant to the project;
4. Size, staffing, resources, and financial capability of the firm vs. the size of the assignment;
5. Past performance with the Town; and
6. Firm's current workload with the Town.

Note that final decision making authority rests solely with the Town Board.

Due to the volume of questions the Town anticipates receiving with regard to this RFP, all questions must be submitted in writing to the authorized contact person listed below.

D. CONTRACT TERM

It is the intent to award a contract(s) for a two (2) year period with the option to renew for three (3) additional one (1) year periods, for a possible maximum total term of five (5) years, subject to the Town's right of early termination as provided in the contract. The decision to renew the contract(s) will be at the sole discretion of the Town.

E. PROPOSAL SUBMISSION INSTRUCTIONS

Each proposal shall be prepared simply and economically avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete, accurate, and reliable presentation. For ease of review, the proposals must follow the outline in the section of this Request for Proposals ("RFP") titled Mandatory Proposal Response Requirements. Each response should be clearly numbered and the full question listed.

The proposals must be signed by an individual who is authorized to bind the proposer to all commitments made in the proposal. The original and five (5) copies of the proposal, together with all attachments, must be submitted to the Town in a sealed envelope **no later than 4:00 p.m. EST on February 22, 2019**. Proposals received after the above date and time will not be considered. The Town is under no obligation to return proposals.

It is each Proposer's responsibility to carefully review all requirements of the RFP, including the scope of work, the specification and terms and conditions. Specific attention is drawn to Paragraph 2 of the draft agreement contained in Appendix B. The terms of that Paragraph provide a timeline of expected completion of tasks during the initial term of the agreement. Proposers are free to propose an alternate timeline, understanding, however, that the Town believes the proposed time line is reasonable. It is further the proposer's responsibility to ask questions, request clarifications, or otherwise advise the Town if any language, specifications or requirements of this RFP appear to be ambiguous, contradictory, or vague.

The Town is under no obligation to respond to any question, inquiry or assertion that is not received in writing to the authorized contact person listed below. Proposers will submit all proposals and direct all responses, questions and any other communications to the following contact person:

Joseph Nocella, Town Attorney
54 Audrey Avenue, Second Floor
Oyster Bay, New York 11771
jnocella@oysterbay-ny.gov

No contact with any other Town personnel other than the authorized contact person is permitted until such time as an award has been made.

F. CONTRACT PROPOSAL EVALUATION CRITERIA

Proposal elements will be reviewed and evaluated for completeness and responsiveness according to predetermined standards and selection criteria. Proposers may be invited for interviews to discuss project requirements and proposal elements in more detail should the evaluation committee request such. The evaluation committee will evaluate each proposal and use of the criteria:

Contract Requirements and Proposed Solution

1. Overall responsiveness of the proposal;
2. Demonstration of a clear understanding of the requirements portion of the RFP;
3. Clear description of the scope of work needed to satisfy the defined RFP requirements; and
4. Acceptability and efficacy of proposed analysis, management and implementation methods and procedures and supporting systems for ongoing project management and implementation support, previous engagements of similar scope and quality, description of recommendations and alternative approaches that the Town might use to improve its management process including rationale for the recommendations or alternative approaches.

Proposer Profile: Organization, Capacity, Staffing, Resumes

Complete substantiation of the organizational structure and capacity to provide and support the proposed services, resumes of the proposed personnel (quality/demonstrated skills of proposed personnel); clear description of potential resource utilization methods and approach.

Related Experience

Prior public sector experience, project management and implementation qualifications and related experiences of the proposer including references, organizational and technical capacity, and outcome/results of services provided to other similar clients of similar size; comprehensive description of why the proposer can perform the tasks defined in the RFP.

Financial Proposal

All financial terms of the proposer's proposal, including, but not limited to, methods by which the successful proposer expects to be compensated.

G. GENERAL INFORMATION

1. **Incurring Cost.** The Town shall not be liable for any costs incurred in the preparation and production of a proposal in response to this RFP or for any work performed prior to the issuance of a contract.

2. **Rejection of Proposals.** This RFP does not commit the Town to award a contract, or to procure, or to contract for services or supplies. The Town reserves the right to award this contract to the proposer(s) that best meet the requirements of the RFP. The Town reserves the right to accept or reject any or all proposals received as a result of this request; to negotiate with all qualified sources, or to cancel in part or in its entirety this RFP if it is in the interests of the Town to do so. The Town may require the Proposer selected to participate in negotiation and to submit any price, technical, or other revisions, or their proposals as may result from negotiations.

3. **Addenda to Request for Proposals.** Amendments to this RFP may be necessary prior to closing date and will be posted on the Town website: <http://oysterbaytown.com/doing-business-with-the-town>.

4. **Contract Negotiations.** The Town intends to enter into contract negotiations with the firm(s) selected by the Town Board, who shall be required to enter into a written contract with the Town in a form approved by legal counsel for the Town.

5. **Disclosure of Proposal Contents.** The Town will withhold proposals submitted under this RFP from disclosure, unless otherwise required by law, including, but not limited to, the Freedom of Information Law ("FOIL"). Proposers should indicate any information they feel is exempted from disclosure under FOIL. In the event that the Town determines that information is required by applicable law to be disclosed, the Town will notify the Proposer in advance of such disclosure to enable the Proposer to take such actions as it deems appropriate. Copies of executed contracts are not exempt from FOIL.

6. **Ownership of Information.** All material submitted in response to this RFP will become the property of the Town.

7. **Examination of Records:** In submitting a proposal, the successful Proposer agrees that the Town shall have access to and the right to examine all pertinent documents, papers and records of the Proposer and/or any sub-proposer as related to any contract and/or subcontract resulting from this RFP until six years after final payment has been made pursuant to any contract awarded as a result of the Town's acceptance of proposal.

8. **Disclaimer** The Town and its respective officers, directors, agents, members and

employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, the Town does not warrant nor make any representations as to the quality, content, accuracy or completeness of the information, text graphics, links or other facets of this RFP once it has been downloaded or printed from this or any server, and hereby disclaims any liability for technical errors or difficulties of any nature that may arise in connection with the Website on which this RFP is posted, or in connection with any electronic medium utilized by respondents or potential respondents in connection with or otherwise related to the RFP.

9. **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. The Proposer will not be permitted to subcontract any part of the contract or any of the rights and obligations thereunder without the prior written approval of the Town.

10. **Negotiated Changes.** In the event that negotiated changes occur after the awarding of the contract, the same pricing policies called for in the original contract will remain in effect.

11. **Disclaimer.** The Town and its respective officers, directors, agents, members and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, the Town does not warrant nor make any representations as to the quality, content, accuracy or completeness of the information, text, graphics, links or other facet of this RFP once it has been downloaded or printed from this or any server, and hereby disclaims any liability for technical errors or difficulties of any nature that may arise in connection with the Website on which this RFP is posted, or in connection with any other electronic medium utilized by respondents or potential respondents in connection with or otherwise related to the RFP.

12. **Certain Termination Provisions.** The contract shall provide that in the event of any material misrepresentation by the Proposer contained in its proposal, the Town shall have the right to immediately terminate the agreement. It shall also provide that in the event the Proposer or any of its principals are convicted of a misdemeanor or felony during the term of the agreement, that the Town shall also have the right to terminate the agreement.

H. ADDITIONAL DEMONSTRATIVE MATERIALS

Parties are encouraged to provide as much additional material and detail as possible to completely describe and demonstrate the Proposal.

I. AWARD OF CONTRACT

Following review by the RFP Evaluation Committee, the Town Board will consider the

recommendations of the Committee and make the formal award of the Contract. The Town Board's action, however, shall not constitute a binding agreement, as the successful negotiation and execution of the terms of the agreement is required. Attached hereto as Appendix B is a draft contract for the services to be provided under the RFP. The Town does not intend to substantially deviate from the terms of the draft. Consequently, proposers should state in writing any objections that they may have as to the form of contract.

APPENDIX A

TOWN OF OYSTER BAY DISCLOSURE QUESTIONNAIRE

All questions on this questionnaire must be answered by an officer and any stakeholders who hold a majority or greater ownership interest in the proposer. Answers must be typewritten or printed in ink. If you need more space to answer any question, make as many photocopies of the appropriate page(s) as necessary and attach them to the questionnaire.

COMPLETE THIS QUESTIONNAIRE CAREFULLY AND COMPLETELY. FAILURE TO SUBMIT A COMPLETE QUESTIONNAIRE MAY MEAN THAT YOUR BID OR PROPOSAL MAY BE REJECTED AS NON-RESPONSIVE AND IT MAY NOT BE CONSIDERED FOR AWARD

NOTE: All questions require a response, even if response is "none" or "not-applicable." No blanks.

SECTION I: GENERAL INFORMATION

1. Business name (legal name): _____
2. Federal Employer ID No. (FEIN): _____
3. d/b/a – doing business as (if applicable): _____
County filed: _____
4. Website address (if applicable): _____
5. Business e-mail address: _____
6. Principal place of business address: _____
7. Telephone number: _____ 7. Fax number: _____
8. Does the business use, or has it used in the past five (5) years, any other business name, FEIN, or d/b/a other than what is listed in questions 1-3 above? Yes ___ No ___
If yes, please provide details. _____

9. Authorized contact:
Name: _____
Title: _____
Telephone number: _____ Fax number: _____
E-mail: _____

10. How many years has this entity been in business? _____

11. The proposer is a (check one): ___ Sole Proprietorship ___ Partnership ___ Corporation
___ Other (Describe) _____

SECTION II: PRINCIPAL INFORMATION

1. Principal Name _____
Date of birth ____/____/____ % Equity Interest in Company _____
Home address _____
City/state/zip _____
Telephone _____

2. Positions held in submitting business

3. Within the past five years, have you been a principal owner or officer of any business or not-for-profit organization other than the one submitting the questionnaire?
YES ___ NO ___; If Yes, provide details. _____

4. Has any governmental entity awarded any contracts to a business or organization listed in question 3 above in the past five (5) years while you were a principal owner or officer?
YES ___ NO ___; If Yes, provide details. _____

SECTION III: DUE DILIGENCE QUESTIONS - TO BE COMPLETED IF CONTRACT VALUE IS \$25,000.00 OR OVER IN A 12 MONTH PERIOD.

1. Does the business possess all certifications, licenses, permits, approvals, insurance, bonds or other authorizations issued by any local, state, or federal governmental entity in connection with the proposal/project, business services, operations, business, or ability to conduct its activities? Please note this does not include construction related activities such as building permits and certificates of occupancy.
YES ___ NO ___ If no, please provide details _____

2. Does this business have one or more affiliates, and/or is it a subsidiary of, or controlled by, any other business?
YES ___ NO ___ If Yes, provide details. _____

3. Has the proposer ever had a bond or surety cancelled or forfeited, or a contract with any entity terminated? YES ___ NO ___ If Yes, state the name of bonding agency, (if a bond), date, amount of bond and reason for such cancellation or forfeiture; or details regarding the termination.

4. On a separate document attached hereto, list all contracts that business has entered into with any municipality in the past three (3) years. Please list the names, address and contact person for the contracting entities.

5. Has the proposer, during the past five (5) years, been declared bankrupt? YES ___ NO ___ If Yes, state date, court jurisdiction, amount of liabilities and amount of assets _____

6. In the past five years, has this business and/or any of its owners and/or officers and/or any affiliated business, been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency?

YES ___ NO ___ If Yes, provide details for each such investigation. _____

7. In the past 5 years, have any owner and/or officer of any affiliated business been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, where such investigation was related to activities performed at, for, or on behalf of an affiliated business.

YES ___ NO ___ If Yes, provide details for each such investigation. _____

8. In the past 5 years, has this business and/or any of its owners and/or officers and/or any affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies?

YES ___ NO ___ If Yes, provide details for each such investigation. _____

9. In the past 5 years, has any owner and/or officer of an affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies, for matters pertaining to that individual's position at or relationship to an affiliated business.

YES ___ NO ___ If Yes, provide details for each such investigation. _____

10. Has any current or former director, owner or officer or managerial employee of this business had, either before or during such person's employment, or since such employment(if the conduct pertained to events that allegedly occurred during the time of employment):

a) Any felony charge pending? YES ___ NO ___ If Yes, provide details for each such charge.

b) Any misdemeanor charge pending? YES ___ NO ___ If Yes, provide details for each such charge. _____

c) Any violations of administrative, statutory or regulatory provisions pending? YES ___ NO ___ If Yes, provide details for each such charge. _____

d) In the past ten (10) years, you been convicted, after trial or by plea, of any felony and/or any other crime, an element of which relates to truthfulness.? YES ___ NO ___ If Yes, provide details for each such conviction.

e) In the past ten (10) years, been convicted, after trial or by plea, of a misdemeanor? YES ___ NO ___ If Yes, provide details for each such conviction. _____

f) In the past ten (10)years, been found in violation of any administrative, statutory, or regulatory provisions? YES ___ NO ___ If Yes, provide details for each such occurrence.

11. In the past five (5) years, has this business or any of its owners or officers, or any other affiliated business had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held? YES ___ NO ___; If Yes, provide details for each such instance.

12. For the past five (5) tax years, has this business failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges? YES ___ NO ___ If Yes, provide details for each such year. _____

SECTION IV: CONFLICT OF INTEREST

Please disclose any conflicts of interest as outlined below. NOTE: If no conflicts exist, please expressly state "No conflict exists."

1. Any material financial relationships that your firm or any firm employee has that may create a conflict of interest or the appearance of a conflict of interest in being awarded this contract with the Town of Oyster Bay.

2. Any family relationship that any employee of your firm has with any public servant that may create a conflict of interest or the appearance of a conflict of interest in being awarded this contract with the Town of Oyster Bay.

3. Any other matter that your firm believes may create a conflict of interest or the appearance of a conflict of interest in being awarded this contract with the Town of Oyster Bay.

APPENDIX B
PROPERTY MANAGEMENT CONSULTING
AGREEMENT

DATED:

PARTIES: TOWN OF OYSTER BAY, a municipal corporation of the State of New York, having its principal office at Town Hall, 54 Audrey Avenue, Oyster Bay, New York 11771, and hereinafter referred to as the “TOWN,” and

[VENDOR CORPORATE NAME] having its principal place of business at [ADDRESS], and hereinafter referred to as the “CONSULTANT.”

WITNESSETH

WHEREAS, it is the general intent and purpose of this Agreement to retain the services of the CONSULTANT in connection with CONSULTANT’s expertise and experience in real property management as detailed below in the Statement of Work; and

WHEREAS, in recognition of the Town’s need for property management services, the TOWN issued a request for proposals (“RFP”) in accordance with the provisions of the Town of Oyster Bay Procurement Policy; and

WHEREAS, following due review of the responses to said RFP, the Town Board of the Town of Oyster Bay (the “TOWN BOARD”) authorized the TOWN to utilize the services of the CONSULTANT,

NOW, THEREFORE, in consideration of the promises and representations contained herein, it is mutually agreed by and between the parties hereto as follows:

STATEMENT OF WORK

1. CONSULTANT agrees to perform to the TOWN’s satisfaction the technical services set forth in the below detailed Service Categories (as more fully defined in the RFP, the terms of which are expressly incorporated herein), with the standard and level of care and skill

customarily provided in the industry for performance of such services, and CONSULTANT further agrees to devote such amount of time as may be reasonably necessary to complete such services and tasks. The Service Category list below details the CONSULTANT's responsibilities and obligations hereunder:

- (a) Identification and evaluation of all Town-owned properties, including building square footage (if any) and acreage of each parcel;
- (b) Identification of Town owned properties for potential sale or lease;
- (c) Identification of purchasers or lessees of such properties;
- (d) Supply valuation data for such properties;
- (e) Negotiation of the purchase or lease of such properties; and
- (f) Management and inventorying of all Town owned properties.

2. Upon receipt of assignments from the TOWN, the CONSULTANT agrees to provide its services on a timely basis without unreasonable or unnecessary delay. In the event that the CONSULTANT anticipates a delay in the delivery of its services, the CONSULTANT shall notify the TOWN of any such anticipated delays. Subject to reasonable change upon mutual assent of the parties, the schedule of work shall be as follows:

- a. The initial identification and evaluation of all Town-owned properties shall be completed by the CONSULTANT within six (6) months of execution of this agreement. The initial evaluation shall include, among other relevant data, the estimated pricing for the sale and/or lease of each parcel.
- b. Thereafter, the Town will conduct its review of the CONSULTANT's initial evaluation within three (3) months of the submission of the initial evaluation to the TOWN.
- c. In coordination with the TOWN, the remaining fifteen (15) months of the term of this agreement shall then be used to market, negotiate, finalize, and close on any potential sale or lease agreement(s).

3. It is expressly understood by the parties that the execution of this Agreement in no way guarantees any minimum number of hours to be assigned to the CONSULTANT or to any of CONSULTANT's employees. In this regard, the TOWN shall assign work to the CONSULTANT strictly on an as-needed basis, as determined by the TOWN.

PROPRIETARY INFORMATION

4. The CONSULTANT expressly warrants and agrees that it will not publish, disseminate, distribute, transmit, or otherwise divulge to any third-party any Town records and electronically stored information (which term shall include all information, including but not limited to business, financial and technical information, and/or data, which may be found in written documents, e-mails memoranda, reports, correspondence, drawings or other media, or in computer software and programs, all of which may be stored on the TOWN's server(s), network(s), hard drive(s), or other equipment), except as may be necessary to carry out its obligations under this Agreement, but only after receiving the written consent of the TOWN. The CONSULTANT acknowledges that the TOWN's records and electronically stored information is the confidential and proprietary property of the TOWN only, and that the unauthorized disclosure of any electronically stored information by the CONSULTANT shall be cause for termination of this Agreement as provided herein.

PAYMENTS

5. [PROPOSER TO PROPOSE COMPENSATION TERMS].

6. CONSULTANT shall, on a monthly basis, submit an invoice, timesheets, and claim form (which shall be provided by the TOWN) prior to the receipt of payment. Timesheets shall detail (1) the names of all personnel who performed work hereunder during the respective billing period, (2) a detailed description of the tasks performed by each individual, (3) the

number of hours spent working by each individual for each task, and (4) the hourly rate being billed for such personnel and task performance. The CONSULTANT will be paid only for hours as documented in the form prescribed herein, which timesheets shall be subject to review and audit by the TOWN prior to the TOWN's issuance of payment. CONSULTANT will provide the aforementioned documentation and records on a monthly basis in Microsoft Excel format so that the TOWN may sort/filter by person and project.

TRANSFER OR ASSIGNMENT

7. The CONSULTANT may not assign, or otherwise transfer, all or any part of its interest in this Agreement or otherwise cause a change in control in the CONSULTANT's ownership without the prior written consent of the TOWN BOARD, which consent shall not be unreasonably withheld. The term "assign" shall mean the transfer or setting over of a right or interest. The term "change in control" shall mean any change in ownership equal to the percentage of votes or membership interests required to exercise decision-making authority.

8. In the event that the TOWN BOARD consents to the assignment or transfer of this Agreement or the change in control in the CONSULTANT's ownership, the assignee, transferee, or new owner shall provide and render services in a fashion substantially similar to the CONSULTANT's operation and in strict conformance with the terms, conditions and requirements of this Agreement. The assignee, transferee, or new owner shall be liable for any obligation owed to the TOWN by the CONSULTANT.

INSURANCE AND WORKERS' COMPENSATION

9. The CONSULTANT agrees to obtain, at its expense, from an insurance company authorized to do business in the State of New York, and to keep in force during the term of this Agreement, a policy of comprehensive general liability on which the CONSULTANT and the TOWN are each named insured, including, but not limited to, for the torts and negligence of the

CONSULTANT's personnel, with a combined single limit of \$2,000,000 per occurrence for bodily injury and property damage and a Professional Liability policy in an amount not less than \$1,000,000.00 insuring the CONSULTANT against, among other things, the CONSULTANT's errors and omissions. On or before the commencement date of this Agreement, the CONSULTANT shall provide the Town Attorney with a certificate and copy of the policy evidencing its procurement of the insurance required under this Paragraph.

10. The CONSULTANT shall comply with all provisions of New York State Workers' Compensation Law and shall furnish a certificate showing evidence of current coverage.

11. All insurance coverage required under this Agreement shall be subject to the approval of the Town Attorney.

12. All policies shall be issued in the name of the CONSULTANT, and the TOWN shall be listed as a named insured. The insurance policies required by this Paragraph shall not be canceled without thirty (30) days prior written notice to the TOWN. If the CONSULTANT fails to maintain such insurance policies and to obtain such policies and furnish certificates evidencing such coverage within thirty (30) days of the receipt of notice by the TOWN regarding this deficiency, the TOWN shall have the right to terminate this Agreement.

13. The CONSULTANT agrees to indemnify, defend and hold the TOWN harmless for and against any personal injury, wrongful death or property damage which occurs during any lapse in insurance coverage or as a result of any failure by the CONSULTANT to abide by any notice or other term or provision of the policy. The indemnity and hold harmless provisions of this Paragraph shall survive and be of full force and effect notwithstanding any lapse in the insurance coverage required under this Paragraph.

TERM

14. The term of this Agreement shall be for the period commencing on March ____, 2019 and shall continue to and until December 31, 2020, with an option for up to three (3) additional one (1) year extensions, if mutually agreeable, upon written consent of the TOWN under the same terms and conditions contained here within, following the TOWN BOARD's adoption of a resolution authorizing such extension.

INDEMNIFICATION

15. The CONSULTANT hereby agrees to defend, indemnify and hold harmless the TOWN and its agents, representatives, successors and assigns (the "Indemnified Parties") from any and all demands, claims, actions, causes of action, proceedings, liabilities, fines, penalties, damages, losses, judgments and expenses, (including, without limitation, reasonable attorney's fees) of whatsoever kind and nature, imposed upon, incurred by, or asserted against any of the Indemnified Parties directly or indirectly arising out of or resulting from: (i) the CONSULTANT's performance under this agreement and/or (ii) the CONSULTANT's failure to comply with or perform any of the terms, covenants or conditions of this Agreement.

MODIFICATION

16. The express terms of this Agreement control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. This Agreement may be modified only by a writing duly executed by the TOWN and the CONSULTANT, and no modification of this Agreement shall be effective until the modification has been agreed to in writing and duly executed by the Town Supervisor or his duly designated representative after approval and authorization by the TOWN BOARD.

INDEPENDENT CONTRACTOR

17. The CONSULTANT agrees that it is, and shall at all times be deemed to be, an independent contractor, and it shall not, in any manner whatsoever, by its actions or deeds, commit the TOWN to any obligation irrespective of the nature thereof, and it shall not, at any time or for any purpose, be deemed an employee of the TOWN. It is further understood and agreed that no agent, servant, or employee of the CONSULTANT shall, at any time or under any circumstances, be deemed to be an agent, servant, or employee of the TOWN.

**LIMITATIONS ON ACTIONS AND SPECIAL PROCEEDINGS
AGAINST THE TOWN.**

18. 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 CONSULTANT shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing pursuant to the provisions of Paragraph 21 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 complaint or necessary moving papers of the CONSULTANT shall allege that the above-described actions and inactions preceded the CONSULTANT'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, and (ii) the time specified in any other provision of this Agreement.

TERMINATION OF AGREEMENT

19. The TOWN has the right to terminate this Agreement for either cause or at will. A termination at will may be for any reason or no reason at the sole election of the TOWN.

20. The TOWN shall be permitted to immediately terminate for cause if any one of the following events (“Events of Default”) occurs:

- (a) The TOWN reasonably determines that the CONSULTANT has failed to fulfill any of its material obligations with sufficient diligence to ensure proper services within the term of this Agreement, including any authorized extension;
- (b) The CONSULTANT fails to maintain the insurance policies described in Paragraphs 10 and 11, or fails to furnish certificates and endorsement pages evidencing such policies within thirty (30) days of the receipt of notice from the TOWN sent in accordance with Paragraph 22.
- (c) The CONSULTANT does not comply with all laws, ordinances, rules, or provisions governing this Agreement, or is otherwise in violation of any provisions of this Agreement;
- (d) The CONSULTANT engages in any illegal conduct or otherwise violates any law, rule, regulation, or judicial order applicable to the CONSULTANT, this Agreement, or the CONSULTANT’s delivery of services;
- (e) The CONSULTANT assigns, or otherwise transfers, all or any of its interest in this Agreement, or otherwise causes a change in control in the

CONSULTANT's ownership, without the prior written consent of the TOWN as described in Paragraphs 8 and 9;

- (f) The CONSULTANT is in material default of any of the terms and conditions of this Agreement;
- (g) Distributes records or electronically stored information to third-parties without having first received authorization as provided in Paragraph 5.
- (h) The CONSULTANT made a material misrepresentation in its proposal; or
- (i) The CONSULTANT or any of its principals are convicted of a misdemeanor or felony during the term of this Agreement.

Except for the events contained in subparagraphs (c), (d), (h), or (i), upon the occurrence of any of these Events of Default, the TOWN, without prejudice or waiver of any of its rights or interests under this Agreement, shall give the CONSULTANT written notice of the Event of Default. The CONSULTANT shall have ten (10) days from the date of such notice to cure the Event of Default except if such default is not otherwise susceptible to cure within ten (10) days so long as the CONSULTANT commences to cure the default within ten (10) days and thereafter diligently pursues the same to completion within a reasonable period of time (the "Cure Period"). If the CONSULTANT fails to cure the Event of Default within the Cure Period, the TOWN shall have the right to declare the CONSULTANT in default and to terminate this Agreement and assume possession and control of all materials, equipment, and operations under this Agreement. Under no circumstances shall the CONSULTANT have any claim for recovery of any of the materials, equipment, and operations that may be assumed by the TOWN. The CONSULTANT shall not be entitled an opportunity to cure any unauthorized disclosure of electronically stored information.

NOTICES

21. Any notices hereunder shall be in writing and shall be given upon delivery by: (i) hand delivery, (ii) delivery by a reputable, recognized national overnight courier service, or (iii) the United States Postal Service when sent by Priority Mail Express, in each instance, addressed to each party at its address set forth above. Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of delivery or the date that delivery is refused as evidenced by the records of the courier or delivery service or the United States Postal Service, as applicable. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication. By giving at least five (5) business days prior notice thereof, any party may from time to time at any time change its mailing address hereunder.

If to the TOWN:

James Altadonna, Jr., Town Clerk
TOWN OF OYSTER BAY
54 Audrey Avenue
Oyster Bay, N.Y. 11771
Phone: (516) 624-6150
Fax: (516) 624-6196

With a copy to:

Joseph Nocella, Town Attorney
TOWN OF OYSTER BAY
54 Audrey Avenue
Oyster Bay, N.Y. 11771
Phone: (516) 624-6133
Fax: (516) 624-6396

MISCELLANEOUS

22. This Agreement is the complete and exclusive agreement between the parties, notwithstanding any representations or statements to the contrary heretofore made. The parties

acknowledge their mutual drafting of this Agreement. If any construction is made of the Agreement it shall not be construed against either party as drafter.

23. This Agreement is subject to the reasonable rules and regulation set by the TOWN as may be amended from time to time.

24. If any term or provision of this Agreement or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

25. Wherever herein the singular number is used, the same shall include the plural and the masculine gender shall include the feminine gender.

26. The terms, covenants and conditions herein contained shall be binding only upon and inure to the benefit of the respective parties and their authorized successors and assigns, if any.

27. The article, section and margin headings herein are intended solely for the convenience of any individual in locating subject matter, and such headings are not to be used in determining the intent of the parties to this Agreement, the interpretation of this Agreement, or for any other substantive purpose other than as set forth in this Paragraph.

28. This Agreement contains the entire understanding and agreement by and between the parties, and all prior and contemporaneous understandings, agreements and negotiations are herein merged. This Agreement shall not be modified or terminated (except as expressly provided in this Agreement), nor shall any provision waived except by a writing that is signed by the CONSULTANT and the TOWN.

29. This Agreement shall be subject to and conditioned upon, and shall not be binding on the TOWN until, the approval and authorization of the TOWN BOARD. This Agreement shall be executed on behalf of the TOWN by the Town of Oyster Bay Supervisor, or his designee, only after having received approval and authorization to so execute from the TOWN BOARD.

30. Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the New York State Supreme Court, County of Nassau, and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State, without regard to the conflict of laws provisions thereof.

31. Each and every provision of law required to be inserted in this Agreement shall be and is inserted herein. Every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall, forthwith upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

32. 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, and, if any portion of the funds for this Agreement are from the State and/or federal governments, then beyond funds available to the Town from the State and/or federal governments.

33. The execution of this Agreement by the Town has been authorized by Town Board Resolution No. ____-2019, adopted by the TOWN BOARD on _____, 2019.

DRAFT

IN WITNESS WHEREOF, CONSULTANT and TOWN have respectively executed and delivered this Agreement as of the date first written above.

TOWN OF OYSTER BAY

By:
Town of Oyster Bay Supervisor/Designee

[CONSULTANT]

By:
Title:

APPROVED AS TO FORM:

Deputy Town Attorney

