

Minutes of a Community Development Agency Meeting held by the Town Board of the Town of Riverhead at Town Hall, 200 Howell Avenue, Riverhead, New York, on Tuesday, July 18, 2006 at 7:00 p.m.

**Present:**

Philip Cardinale,	Chairman
Edward Densieski,	Member
Barbara Blass,	Member
John Dunleavy,	Member

**Also Present:**

Andrea Lohneiss,	Director
Barbara Grattan,	Town Clerk
Dawn Thomas, Esq.,	Town Attorney

**Absent:**

George Bartunek,	Member
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CDA meeting opened: 8:35 p.m.

Supervisor Cardinale: "And ask for them to be called by Andrea."

Resolution #6

Andrea Lohneiss: "Okay, Resolution #6 authorizes the Chairman to execute the master developer designation agreement with Riverhead Renaissance, LLC for the redevelopment of a portion of the East Main Street urban renewal area."

Chairman Cardinale: "Okay. Can I have a motion to consider that?"

Member Dunleavy: "Motion authorizes the Chairman to execute the master development designation agreement with the Riverhead Renaissance LLC for the redevelopment of a portion of East Main Street urban renewal area. So moved.

I just want to make a statement about this. This took a lot of time with some members of the town board and the lawyers and the principals that were involved in this. We worked long and diligently.

This is protecting the town because this is not going to cost us any money. The developers have deposited \$75,000 with us. They're going to deposit \$250,000 for all our legal fees as we redevelop Main Street. They have to go through all other legal steps to do anything on Main Street in the parking district or anyplace else and I think that this gives us a start on the redevelopment of Main Street and I think it's a good idea that we pass this. So moved."

Member Blass: "And seconded with one correction, please. Page 17 paragraph B, one, two, three, four, five, the sixth line, that \$100,000 should say 75 because 2.4 was changed to 75 on my copy."

Andrea Lohneiss: "For the non-legal, for the planning- "

Member Blass: "The 2.4 references 2.4, the initial payment."

Member Dunleavy: "The initial payment was \$75,000 not \$100,000."

Andrea Lohneiss: "Yes. Okay."

Member Blass: "With that, I will second the resolution- motion I should say."

Andrea Lohneiss: "Okay, moved and seconded."

The Vote: "Dunleavy, yes."

Andrea Lohneiss: "Mr. Bartunek is absent."

The Vote (Cont'd.): "Blass, yes; Densieski."

Member Densieski: "I received my first copy of this on Friday. John had been involved with dealing with him and he was more privy to it than I was. I received my first copy on Friday. I read it over the weekend and Monday morning I asked Mr. Kent if I could get it electronically so that I could email it to people for comments. He told me that it wasn't going to be out yet and we would discuss it Tuesday. Okay, that was okay with me."

Then 4:00 Monday afternoon, I find this resolution on my desk and I couldn't get advice from anybody. It's a legal document. The town attorney hasn't even had time to read it so I prepared some comments, some of my thoughts on the agreement.

I think we're once again putting the cart before the horse. Here are some of my contract concerns, and I'm not a lawyer, I'm just a layman so I think really we should have our legal team look at this before it's voted on. I can't believe this is being voted on tonight.

On page 6 it says the town and the CDA hereby designate the company which is LLC, it's not a (inaudible), it's an LLC, the company as sole and exclusive master developer. I would need to know a lot more information about sole and exclusive master developer before casting a vote for that. Maybe it's a good thing. On short notice, I can't say for sure. Do you know if it's good?

Page 9, they're going to give us \$75,000 for professional fees yet it's likely to exceed that many times over. Who is to foot the balance? The parking district? The taxpayers? It's not clear.

Page 14, upon the execution of this agreement, the municipal entities shall initiate such measures as may be necessary to construct parking within the EMS URA to support the redevelopment (inaudible), the municipal entities agree to allocate a portion of the spaces located within the parking atrium to be constructed behind the Woolworth building for exclusive use by the company in connection with the project based on the company's agreement to pay proportionate costs of ultimate debt service for said parking atrium.

The town intends subject to reaching mutual satisfactory agreement in LDA to appoint the company as coordinator for parking construction subject to the municipal entity's review first exclusive use. That's not public parking district, that's private. Second, all through this contract, it says proportionate. Who is to determine the cost? The company? Is that a good idea? And the company as coordinator for parking construction. Is that a good idea? It may be but I personally have not had time to find out. I only received it Friday.

I recall Apollo when they came out here as saying that they would build the parking garage and turn it over to the garage. Does anybody else remember that?

Unfortunately I have some more. Page 17, the company's agreement to fund the cost of the GEIS is subject to reimbursement, translated in my opinion means the town will collect assessments from future businesses and give the money back to Apollo. Is that clear? Is that as clear as it needs to be? I'm not quite sure it does.

Page 19, upon the execution of this agreement, the municipal entities shall immediately undertake such steps as may be necessary to secure the most expeditious construction of the proposed parking garage so that such parking is available for use by the master developer and the qualified and eligible sponsor upon the completion. It is currently contemplated that the capital cost of the parking garage will be funded by the municipality, municipality entities and then further down it states the sale of the property by the parking district or other municipal entity for redevelopment. Does that mean money possibly from the housing sale at EPCAL? I don't know. It's not clear.

Page 22, as specified in Article 4.4B above, the company agrees to make an initial payment to the town, the sum of \$100,000 to be applied towards the preparation of the GEIS for the EMSURA and the update of the urban renewal plan. The town's representatives estimate the costs for preparing the GEIS up to and including the adoption of the findings statement by the lead agency and update of the urban renewal plan will be \$300,000. This cost is subject to revision once the GEIS scoping document has been accepted by the lead agency. So who pays the balance? I don't know because it's not clear.

This may be a tremendous agreement but without sufficient time to get more information and competent advice on the agreement, we really don't know.

Remember as of yet we still don't have any information on the project. Who's buying what, who's improving what, what are the metes and bounds, is the agreement voidable? We don't know.

So is it crystal clear— so it's crystal clear to me that this agreement is not crystal clear. Shouldn't it be? And the biggest question of all is do we really want a 90,000 square foot building 60 feet away from our river, in a flood plain where we have all of our festivals and all of our community events?

In closing, this agreement is as clear as mud. Let's not rush but work rapidly to get it air tight and right.

So at this time, I will vote no."

Chairman Cardinale: "This is— want to— this is the first formal and important step that the town board will be taking in regard to the revitalization effort. It's a— it's an important step and I want to say just a few things to make clear what this document does do because

the rest of us have worked very closely to develop it over the period March 7<sup>th</sup> to date.

Each week since March 7<sup>th</sup> there's been a status update for all board members on the work session. John has worked closely with me as the liaison for the board and so has Barbara and so has George. They have chosen to keep themselves well informed.

The final text was the result of a six hour meeting on Friday with attorneys and principals to- because we had promised the public to get this done by May 7<sup>th</sup> and we were well overdue. This text has been around for a good deal of time.

Friday we were successful and I'm pleased that that happened. Ed says he's not an attorney and indeed he isn't. Our attorney is Steve Latham of Twomey, Latham & Shea, the same attorney who represents the city of Glen Cove in their major revitalization effort. He's very, very well versed in this area of law and recommended this to the board.

I think the key thing to say is this. That this agreement if you had read it correctly is conditioned upon two important elements at least. One - is conditioned upon the successful qualified and eligible sponsor hearing of Apollo which will take place I hope in the next 30 or 60 days in which they will have to establish as everyone else must, their capital is sufficient for the project as proposed and their experience is sufficient for the project as proposed.

But even after that is done, after a hearing, public hearing, this is not going to be a non-conditional agreement until within 120 days thereafter the town and Apollo agree to a land disposition agreement concerning the two approximately 40,000 square foot parcels that we would need to convey to them on the north side behind Woolworth and on the south side off the riverfront.

And I say in my comments to Business News today which covered this story, that there are some issues that could derail us at that point and this agreement is subject to us getting through the qualified and eligible sponsor and through that subsequent land disposition agreement and they will both involve public hearings.

So this is a first step, an important step but let's all pull together and know that it's one step at a time to get our town revitalized.

I vote yes and I thank the board for their support tonight and I know that George would be joining us if he were here. So I vote yes."

Andrea Lohneiss: "The resolution is adopted. Just one clarification. On the legal payment-- the initial payment is \$75,000 towards a \$250,000 cap and on the planning documents, the GEIS and the planning documents, the initial payment is \$100,000 to include all costs."

Resolution #7

Andrea Lohneiss: "Resolution 7 authorizes Newmark Knight Frank to prepare a request for proposals for the the newly rezoned light industrial zoning use district, the proposed office complex zoning use district at the CDA property at EPCAL."

Member Blass: "So moved."

Member Densieski: "Second the motion."

Chairman Cardinale: "Moved and seconded. Vote please."

The vote: "Dunleavy, yes; Blass, yes; Densieski."

Member Densieski: "Yeah, I've got to make a comment on this also. The Supervisor is implying that I didn't care enough to get the information. That's simply not true. Last Friday was the first day I ever received any documentation on it and just three or four days imply isn't enough to get the proper information."

As is with this resolution, No. 7, the first time I've ever seen this was on my desk this morning. Now I don't know if other board members had received it prior but it was not at work session on Thursday and I had no idea this was coming. So I guess if I had the information earlier, maybe I could have been a little more diligent.

I'm a little surprised this is coming now because Councilman Bartunek and I had been meeting with Planning and our outside engineer to come up with the proposal for the town for a subdivision map for the industrial core. Yet we seem to be bypassing that effort. So I don't know if the town board is interested in that or not. It's hard to tell because it was never discussed.

But in an effort to get the industrial subdivision going, I will vote yes."

The Vote (Cont'd.): "Cardinale."

Chairman Cardinale: "Yeah. I want to reassure Ed that this does not preclude our efforts to consider a sketch plan for the industrial area and perhaps a block subdivision.

But I'd like to see some movement there because I think we've been waiting for a proposal for the sketch plan for several months.

But what it does do is the firm has offered to prepare— this firm requests for proposals for the light industrial and office park districts at no cost to the town and we're resolving to authorize that firm, Newmark Knight Frank, to develop a request for proposals for both the area included in the light industrial and in the office park district. Once we get it, we'll review it and presumably send it out but I couldn't resist for no charge. It will help us to market the property and I think we should do it. I vote yes."

Andrea Lohneiss: "Resolution 7 is adopted."

Resolution #8

Andrea Lohneiss: "Resolution 8 authorizes execution of agreement with the Suffolk County Department of Economic Development for administration of the Empire Zone Program for 2006."

Member Densieski: "So moved."

Member Dunleavy: "And seconded."

Chairman Cardinale: "Moved and seconded. May we have a vote, please?"

The Vote: "Dunleavy, yes; Blass, yes; Densieski, yes; Cardinale, yes. The resolution is adopted."

Andrea Lohneiss: "That concludes the business of the CDA I believe."

Chairman Cardinale: "Yes, it does. Thank you very much. Let me break for a moment here. We're going to adjourn the CDA meeting."

Meeting adjourned: 8:50 p.m.

*Barbara Lutton*  
Town Clerk

7/18/06

Adopted

TOWN OF RIVERHEAD  
COMMUNITY DEVELOPMENT AGENCY

Resolution # 6

**AUTHORIZES THE CHAIRMAN TO EXECUTE THE MASTER  
DEVELOPER DESIGNATION AGREEMENT WITH RIVERHEAD  
RENAISSANCE, LLC FOR THE REDEVELOPMENT OF A  
PORTION OF THE EAST MAIN STREET URBAN RENEWAL AREA**

**COUNCILMAN DUNLEAVY**

\_\_\_\_\_ offered the following resolution, was seconded

by **COUNCILWOMAN BLASS** \_\_\_\_\_:

**WHEREAS**, in furtherance of the objectives of Articles 15 and 15-A of the General Municipal Law of the State of New York (the "Urban Renewal Law"), the Town of Riverhead (the "Town") and the Community Development Agency (the "CDA") have undertaken a program for the acquisition, replanning, rehabilitation, restoration, reconstruction, redevelopment and disposition of blighted areas in the Town, and in connection with this program, the CDA has been engaged in carrying out an urban renewal program, as is more particularly set forth in the Town's East Main Street Urban Renewal Plan adopted October 19, 1993 for its downtown riverfront business district (hereinafter referred to as the "Urban Renewal Plan"); and

**WHEREAS**, the CDA authorized the issuance of a Request for Expressions of Interest (RFIQ) in June, 2005 for a developer to plan, finance, construct, operate and manage a high quality mixed-use development in the downtown Riverhead business district, specifically the area designated as the East Main Street Urban Renewal Area; and

**WHEREAS**, the Town did receive responses in July, 2005 and upon review and presentation did authorize the issuance of a Request for Proposals (RFP) in October, 2005; and

**WHEREAS**, the intent of the Town and the CDA in issuing the RFIQ and RFP was to identify a developer/team which best met the criteria established by the Board which included development and financial capability, experience, and the ability to undertake and complete the project successfully and the adaptability, specificity and phasing of the project, the proposal with the greatest potential for initial economic impact, and support within the community; and

**WHEREAS**, the Town and public heard presentations on February 6, 2006 and evaluated the proposals made; and

**WHEREAS**, Apollo Real Estate Advisors, LP ("Apollo") responded to the RFIQ and RFP, wherein

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it presented to the Town and CDA proposals for redevelopment within the East Main Street Urban Renewal Area; and

**WHEREAS**, on March 7, 2006, by Resolution adopted by the CDA, the CDA Chair was authorized to commence negotiations with Apollo on a proposal for a planned development to revitalize downtown Riverhead; and

**WHEREAS**, the Town, the CDA, the Town of Riverhead Parking District and Apollo have negotiated an Agreement to designate Riverhead Renaissance, LLC, a separate entity that is controlled and managed by Apollo, as Master Developer as more specifically provided in the Master Development Designation Agreement attached hereto, for the redevelopment a portion of the downtown Riverhead business district, specifically the area designated as the East Main Street Urban Renewal Area as contemplated by the RFIQ and the RFP issued by the CDA; **NOW, THEREFORE**,

**BE IT RESOLVED**, that the Community Development Agency hereby authorizes the Chairman to execute the Master Developer Designation Agreement, substantially in the form attached hereto, with Riverhead Renaissance, LLC; and be it further

**RESOLVED**, that the Town Clerk is hereby directed to forward a certified copy of this resolution to Riverhead Renaissance, LLC, c/o Apollo Real Estate Advisors, LP, 60 Columbus Circle, New York, NY 10023, Weber Law Group, LLP, 201 North Service Road, Suite 300, Melville, NY 11747-3126, Twomey, Latham, Shea & Kelley, et al, LLP, P.O. Box 9398, Riverhead, NY 11901, the Town Attorney and the CDA Director.

		Yes	No	Abstain
The Vote:	Member Dunleavy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<del>ABSENT</del>	<del>Member Bartunek</del>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Member Blass	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Member Densieski	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Member Cardinale	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MASTER DEVELOPER DESIGNATION AGREEMENT

Agreement dated as of July \_\_, 2006 ("this Agreement") between the TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY, a public benefit corporation having its principal office at 200 Howell Avenue, Riverhead, New York 11901 (the "CDA"); the TOWN OF RIVERHEAD, a municipal corporation, having its principal office at 200 Howell Avenue, Riverhead, New York 11901 (the "Town"); TOWN OF RIVERHEAD PARKING DISTRICT #1, a body corporate and politic duly organized under the New York State Public Authorities Law, having its principal office at 200 Howell Avenue, Riverhead, New York 11901 (the "Parking District"; the CDA, Town and Parking District are collectively the "Municipal Entities" ); and RIVERHEAD RENAISSANCE LLC, a Limited Liability Company with offices c/o Apollo Real Estate Advisors, LP, 60 Columbus Circle, New York, New York 10023 (the "Company").

RECITALS:

WHEREAS, in furtherance of the objectives of Articles 15 and 15-A of the General Municipal Law of the State of New York, as amended (the "Urban Renewal Law"), the Town and the CDA have undertaken a program for the acquisition, clearance, replanning, reconstruction and neighborhood rehabilitation of slum and blighted areas in the Town, and in connection with this program, the CDA has been engaged in carrying out a neighborhood redevelopment program and urban renewal program, as is more particularly set forth in the Town's 1993 Urban Renewal

Plan for its downtown riverfront business district (hereinafter referred to as the "Urban Renewal Plan"); and

WHEREAS, in 2003 the Riverhead Town Board adopted a Comprehensive Plan for the entire Town of Riverhead (the "Master Plan") and in connection therewith, the Riverhead Town Board, as lead agency for the implementation of the Master Plan, prepared a Final Generic Environmental Impact Statement ("FGEIS") in compliance with the State Environmental Quality Review Act ("SEQRA"), and by resolution adopted by the Riverhead Town Board on November 3, 2003, approved a Statement of Environmental Findings with respect to the Master Plan (the "Findings Statement"); and

WHEREAS, the Urban Renewal Plan provides a mechanism for the redevelopment of a major portion of the Town's downtown riverfront business district consisting of approximately 42 acres, extending along both sides of East Main Street and bordered on the East by the Atlantis Marine World and on the West by Peconic Avenue, which area is known as the East Main Street Urban Renewal Area ("EMSURA"); and

WHEREAS, on or about June 15, 2005, the Town issued a Request for Interest and Qualifications ("RFIQ") for a developer to plan, finance, construct, operate and manage a high quality mixed use development encompassing the entire EMSURA; and

WHEREAS, on October 15, 2005, in reaction to the responses to the RFIQ, the Town issued a Request for Proposals ("RFP") with regard to redevelopment of the EMSURA; and

WHEREAS, Apollo Real Estate Advisors, LP ("Apollo") responded to the RFIQ and RFP, wherein it presented to the Town and CDA proposals for redevelopment of the EMSURA; and

WHEREAS, by Resolution dated and adopted on March 7, 2006, the CDA authorized the CDA Chair to commence negotiations with Apollo on a proposal for a planned development to revitalize downtown Riverhead and to report to the CDA Board; and

WHEREAS, the parties to this Agreement have agreed to designate the Company, which is wholly owned by an entity managed by Apollo, as "Master Developer" for the EMSURA; and

WHEREAS, the Town and the Parking District currently own property within the EMSURA, some of which it intends to convey to the Company as Master Developer, contingent upon a designation of the Company as the Qualified and Eligible Sponsor under Section 507 of the New York State General Municipal Law, to develop in accordance with Urban Renewal Plan and subject to the rules and procedures adopted by the CDA; and

WHEREAS, the Company has acquired title to the land and buildings known as and by the street address 126-138 East Main Street (the "Woolworth Parcel") and intends to explore the acquisition of other properties within the Project Area; and

WHEREAS, the Company's redevelopment of parcels currently owned by the Town and Parking District and to be conveyed or leased to the Company, together with the Woolworth Parcel and, if acquired, other properties, all of which are located within the EMSURA, shall be known collectively as the "Project"; and

WHEREAS, it is Apollo's and the Company's intent to explore the acquisition of additional properties within the EMSURA to be developed in accordance with the Urban Renewal Plan for the EMSURA (the "Potential Projects") and to seek the designation as Qualified and Eligible Sponsor, where appropriate, and it is the intent of the Town and CDA to encourage and facilitate such acquisition by Apollo and the Company for purposes of redeveloping the EMSURA in accordance with the Urban Renewal Plan; and

WHEREAS, the CDA has determined that the Project and any Potential Projects must be developed in accordance with the Urban Renewal Law and the Urban Renewal Plan for the EMSURA including any modifications, amendments or restatements of that Plan; and that the planning and coordination of infrastructure improvements and the preservation of architectural integrity for redevelopment within the EMSURA is of paramount importance to the goals of the Urban Renewal Plan and Master Plan and that all development within the EMSURA must be coordinated in a professional and economically sound manner; and

WHEREAS, the Town has determined that such orderly redevelopment under the Urban Renewal Plan and Master Plan requires a GEIS for the EMSURA, which shall cover all proposed

development projects within the EMSURA, unless specifically excepted from the GEIS by determination of the Lead Agency; and

WHEREAS, the parties hereto are entering into this Agreement to set forth certain understandings and intentions of the Company and the Municipal Entities with respect to: (i) the terms and conditions for the Company to first be designated as "Master Developer" of EMSURA, and then, subject to applicable law and as appropriate, as the "Qualified and Eligible Sponsor" under the Urban Renewal Law and the adopted rules and procedures of the CDA for the Project and the Potential Projects; (ii) the rights and obligations of the parties to be performed prior to the execution of any land disposition agreements ("LDA's") or Development Leases (as defined in Article 7.3) respecting real property currently owned or subsequently acquired by any of the Municipal Entities and which are intended to be conveyed to the Company or its designee(s).

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained and other good and valuable consideration exchanged by and among the parties hereto, the receipt and sufficiency of which hereby expressly are acknowledged, in order to accomplish the foregoing purposes, the parties hereto hereby AGREE as follows:

**TERMS OF AGREEMENT**

**ARTICLE 1**

**APPOINTMENT OF MASTER DEVELOPER AND  
SELECTION OF QUALIFIED AND ELIGIBLE SPONSOR**

1.1 **APPOINTMENT OF MASTER DEVELOPER.** The Town and the CDA hereby designate the Company as the sole and exclusive Master Developer within the EMSURA, subject to and in accordance with the terms and conditions of this Agreement.

1.2 **DESIGNATION OF QUALIFIED AND ELIGIBLE SPONSOR.** Upon execution of this Agreement, it is the intention of the CDA, as the Town's Urban Renewal Agency to conduct such reviews and public hearings and perform such other due diligence as may be required by the adopted rules and procedures of the Urban Renewal Agency so as to designate the Company as the Qualified and Eligible Sponsor, as that term is defined in Section 507 of the General Municipal Law of the State of New York for the Project which the Company proposes to develop within the EMSURA as more fully set forth herein.

1.3 **FUTURE RIGHTS OF MASTER DEVELOPER.** Insofar as the Company is not in default of any of its material obligations (beyond any and all applicable notice and grace periods) as Master Developer and the Qualified and Eligible Sponsor pursuant to this Agreement, or any LDA or Development Lease for specific projects as further described in this Agreement, and so long as there is no material change in the Company's financial ability to complete the proposed project, and further, subject to the CDA's review and due diligence set forth above in

paragraph 1.2, and subject to the subsequent negotiation and execution of a new LDA or Development Lease, as the case may be, the CDA will designate the Company as the Qualified and Eligible Sponsor for any and all Potential Projects involving property within the EMSURA which may be acquired by any of the Municipal Entities during the Term of this Agreement, either on their own initiative or at the request of the Company as provided herein.

## ARTICLE 2

### THE INTENTIONS AND OBLIGATIONS OF THE COMPANY

#### 2.1 ACQUISITION OF PROPERTY BY COMPANY AS MASTER

DEVELOPER. The Company has acquired the Woolworth Parcel. The Company intends to explore the acquisition of other property for the purpose of constructing an approximately 200,000 square foot, multi-story building containing approximately 100 residential units or a flag hotel; a multiplex theater; and a specialty food store. The foregoing components constitute a portion of the Project located on the north side of East Main Street, as depicted on EXHIBIT \_\_\_\_\_, annexed hereto and made a part hereof.

#### 2.2 ACQUISITION OF PROPERTY BY COMPANY AS QUALIFIED AND ELIGIBLE SPONSOR.

a. The Company, as Qualified and Eligible Sponsor, intends to acquire or lease, at the Company's option, property now owned by the Parking District and located north

and west of, and adjacent to the Woolworth Parcel for use in conjunction with the Project referenced in Article 2.1 above.

b. (1) The Company, as Qualified and Eligible Sponsor, intends to acquire or lease, at the Company's option, certain property now owned by the Town located immediately north of the Peconic River, east of Peconic Avenue, and south of existing commercial development on the south side of East Main Street, approximately as is shown on Exhibit \_\_\_\_\_, annexed hereto and made a part hereof, for the purpose of developing an approximately 100,000 square-foot, three-story building containing retail on the first level and approximately 50 residential units on the second and third levels, with sufficient additional parking for the building at the Company's expense, as another component of the Project.

(2) Prior to the date of this Agreement, the Company presented a conceptual Preliminary Development Proposal to the CDA that outlines its immediate development plans for the EMSURA. As soon as practicable after the date of execution of this Agreement by the Company and the Municipal Entities, and from time to time as changes are made during the SEQRA review process, the Company will coordinate a presentation or presentations to the CDA to outline any modifications to the previously presented Preliminary Development Proposal as the same may have been previously modified.

**2.3 FUTURE DEVELOPMENT PROPOSALS.** The Company, as Master Developer and Qualified and Eligible Sponsor, as appropriate, intends to acquire or lease additional property within the EMSURA for one or more Potential Projects, with the assistance

and cooperation of the Municipal Entities, to be developed in accordance with the Urban Renewal Plan for the EMSURA, as it presently exists or as it may be amended, modified or restated in the future. Unless otherwise provided herein, the terms of this Agreement shall govern the redevelopment of any such Potential Projects, and it is the intent of the parties that similar cost containment measures as set forth herein shall be applied to future development proposals.

2.4 **PAYMENT OF FEES FOR THE TOWN'S REPRESENTATIVES.** In consideration of this Agreement, the Company has deposited this day with the Town an initial payment of <sup>75,000.00</sup> ~~\$100,000.00~~, which sum is to be utilized by the Town for payment of professional fees to the Town's Representatives for services rendered in connection with the implementation of all matters addressed in this Agreement, excluding the costs associated with the GEIS for the EMSURA which are set forth in Articles 4 and 6.3. The Company's agreement to pay the fees of the Town's Representatives is subject to the terms and conditions set forth in Article 6.4.

2.5 **PAYMENT OF COSTS FOR THE GEIS FOR THE EMSURA.** In addition to the Company's agreement to pay the fees of the Town's Representatives as set forth in Articles 2.4 and 6.4 herein, the Company, as Master Developer and Qualified and Eligible Sponsor, agrees to advance all funds necessary to complete the GEIS for the EMSURA, which GEIS is to be performed by the Town and its Representatives, subject to the provisions of Article 4.4 below.

2.6 **REQUIRED FILINGS.** Within fifteen (15) days after the execution of this Agreement by the Municipal Entities, the Company will file with the CDA a Redeveloper's

Statement of Qualifications and Responsibility, together with all other documents which may be required by the rules and procedures of the CDA and the laws of the State of New York.

**2.7 APPROVALS.**

a. The Company, as Master Developer and as Qualified and Eligible Sponsor, will promptly submit any and all required applications and supporting documentation to the Town Board, Town Planning Board (the "Planning Board") and/or the Town Zoning Board of Appeals ("ZBA"), as appropriate, for any and all land use approvals necessary for the Project or any Potential Projects. The Company shall incorporate changes to its development plans consistent with the terms of this Agreement, any Land Disposition Agreement or Development Lease, and as may be reasonably required by the Town Board, the Planning Board or the ZBA in connection with such land use approvals.

b. The Company may, at any time during the term of this Agreement, admit one or more financial partner(s), co-venturer(s) and/or "co-developer(s)" for the Project or any Potential Project, or of any component therein, provided that the Company shall always retain a majority interest and control in the venture. The Company shall provide the Municipal Entities with information concerning the resources, experience and proposed role of such partner(s), co-venturer(s) or "co-developers" as the Municipal Entities may reasonably request. The CDA and Town reserve the right to require the Company to demonstrate that the inclusion of any financial partner, co-venturer or co-developer will not materially affect the qualifications of the Company as the Qualified and Eligible Sponsor. The admission of any financial partner, co-venturer or co-developer for the Project or any Potential Project shall be subject to CDA timely review and

consent as may be required by all applicable rules, regulations, policies and procedures of the CDA and any other applicable law.

**2.8 DELIVERY OF DOCUMENTS.** Within thirty (30) days of execution of this Agreement by all parties hereto and to the extent available, the Company shall deliver to the Town Representatives copies of any and all development plans, surveys, reports and studies which must be reviewed by the Town Representatives in accordance with the issuance of any approvals for the Company's development projects. The Company shall continue to deliver such documents to the Town's Representatives during the course of this Agreement as such documents become available and/or necessary.

### **ARTICLE 3**

#### **THE INTENTIONS AND OBLIGATIONS OF THE MUNICIPAL ENTITIES**

**3.1 DELIVERY OF DOCUMENTS.** Upon execution of this Agreement and to the extent not already provided to the Company, the Municipal Entities shall provide the Company with copies of any and all Urban Renewal Plans or proposed amendments to the existing Urban Renewal Plan, together with a copy of the 2003 Master Plan and any environmental studies generated in connection with that Plan. The Municipal Entities shall also provide copies of such plans and other information regarding the existing infrastructure within the EMSURA as may be necessary for the Company to design the Project or any Potential Projects, and such other

information, documents, surveys, plans and studies as may be reasonably requested by the Company.

**3.2 DESIGNATION OF COMPANY AS QUALIFIED AND ELIGIBLE**

**SPONSOR.** Upon receipt of the required submissions by the Company, including HUD Form 6004 and the Company's compliance with all rules and regulations of the CDA, the CDA shall, pursuant to its adopted policies and procedures, promptly determine if, and notify the Company whether, it has been designated as the Qualified and Eligible Sponsor for the Project referenced in Article 2 above.

**3.3 LAND DISPOSITION AGREEMENTS ("LDA") OR DEVELOPMENT**

**LEASES.** After the Company's designation as Qualified and Eligible Sponsor, the CDA and the Company shall immediately begin negotiations on one or more Land Disposition Agreements or, if appropriate, Development Leases, which shall set forth the terms and conditions, including purchase price or rent, for any properties to be conveyed by any of the Municipal Entities to the Company for redevelopment within the EMSURA. In the event the parties have not been able to negotiate and execute an LDA or Development Lease within one hundred twenty (120) days of the execution of this Agreement, either party may terminate this agreement upon thirty (30) days' written notice to the other.

**3.4 SELECTION OF REPRESENTATIVES FOR MUNICIPAL ENTITIES.**

Upon the execution of this Agreement by the Municipal Entities and the receipt of the initial \$100,000.00 payment by the Company specified in Article 2.4 above, the Municipal Entities

shall designate and retain one or more qualified consultants, including special counsel, to assist the Municipal Entities and the Company with implementation of the matters addressed in this Agreement (“Town Representatives”).

**3.5 SEORA REVIEW.** Upon the execution of this Agreement and the selection of the Town’s Representatives, the Municipal Entities shall initiate such supplemental environmental reviews as the Town’s Representatives and the Municipal Entities determine are necessary to implement any future redevelopment within the EMSURA, including the Project and Potential Projects to the extent they have been identified and defined.

**3.6 URBAN RENEWAL PLAN.** Upon the execution of this Agreement and the selection of its Representatives, the CDA and other appropriate Municipal Entities shall review the existing Urban Renewal Plan and, if appropriate, amend, update or restate the Urban Renewal Plan so that it is consistent with the recently completed Master Plan, as that Plan applies to the EMSURA, as well as with any zoning amendments which have been enacted by the Town Board, to meet the goals and objectives of the EMSURA. It is the intention of the Municipal Entities that the amendment, updating or restatement of the Urban Renewal Plan shall provide the Municipal Entities with all of the benefits afforded by the Urban Renewal Law including, but not limited to, the authority set forth in General Municipal Law (“GML”) §§503(h) and 507.

**3.7 FINANCING.** The Municipal Entities shall assist the Master Developer and the Qualified and Eligible Sponsor, to the extent feasible and necessary in securing Tax Incentive Financing (“TIF”), Empire Zone designation or other public benefits to promote and facilitate the

redevelopment of the EMSURA. It is expressly understood and agreed that in the event the Master Developer and the Qualified and Eligible Sponsor seek IDA or Empire Zone entitlements, they will limit their application to the Empire Zone real property tax credits and do not intend to seek the abatement of any real property taxes.

3.8 **PARKING.** Upon the execution of this Agreement, the Municipal Entities shall initiate such measures as may be necessary to construct parking within the EMSURA to support the redevelopment of the EMSURA. The Municipal Entities agree to allocate a portion of the spaces located within the parking Atrium to be constructed behind the Woolworth Building for exclusive use by the Company in connection with the Project, based upon the Company's agreement to pay the proportionate cost of ultimate debt service for said parking Atrium. The Town intends, subject to reaching mutually satisfactory agreement in an LDA, to appoint the Company as coordinator for parking construction subject to the Municipal Entities' review and approval of specifications and costs.

3.9 **INFRASTRUCTURE IMPROVEMENTS.** Upon completion of any supplemental environmental studies which are initiated by the Municipal Entities, and consistent with the timing of the Project and any Potential Projects, the Municipal Entities shall initiate such measures as may be necessary to implement improvements to the existing infrastructure within the EMSURA to support the redevelopment of the EMSURA. These improvements may include, but are not limited to, sewer, water, lighting, park and recreation, road and signal improvements. The infrastructure improvements to be implemented by the Municipal Entities

shall not include any infrastructure or site improvements necessitated by, or for the sole benefit of the Project or any Potential Project, or any mitigation measures required solely for the Project or any Potential Project. For those infrastructure improvements and mitigation measures that benefits others as well as the Company, the Company will pay for its proportionate share of costs of such items as shall be determined by the Municipal Entities.

**3.10 COOPERATION ON FUTURE DEVELOPMENTS.** The Municipal Entities shall encourage and facilitate the Company's acquisition of additional properties within the EMSURA, as Master Developer or Qualified and Eligible Sponsor, for development consistent with the Urban Renewal Plan, including any future amendments, modifications or restatements of that Plan, in the manner set forth in Article 7.1.b. below, and pursuant to applicable State law.

#### **ARTICLE 4**

##### **SEQRA REVIEW FOR REDEVELOPMENT OF THE EMSURA**

**4.1 GEIS FOR MASTER PLAN.** In support of the Master Plan, the Town Board, as lead agency pursuant to the State Environmental Quality Review Act ("SEQRA"), caused to be prepared a Draft Generic Environmental Impact Statement ("GEIS"), and Final GEIS dated October 21, 2003, and the required Findings Statement.

**4.2 2004 ZONING AMENDMENTS.** Upon completion of the Master Plan and the Findings Statement for the GEIS, in 2004 the Town Board adopted amendments to the Town's zoning ordinance to implement the objectives of the Master Plan. Among those amendments was

the creation of the "DC-1" zone, which includes all of the property also referred to as the EMSURA.

**4.3 NEED FOR A GEIS FOR THE EMSURA.** Redevelopment of the EMSURA, which contains downtown Riverhead's central business district and the most developed portion of the Peconic River Waterfront, requires careful, coordinated planning to mitigate potential environmental impacts and to properly design necessary improvements to the infrastructure. The specific infrastructure improvements and the potential environmental impacts from the redevelopment of the EMSURA should be further evaluated before individual redevelopment projects within the EMSURA can proceed. Accordingly, the Municipal Entities have determined that the preparation of a GEIS for the EMSURA addressing such issues as traffic, water, sewer, lighting, parking and air quality, among others, should be undertaken to promote the orderly and efficient redevelopment of the EMSURA. The scope of the EMSURA GEIS shall encompass, but not necessarily be limited to, the potential impacts identified as a result of the Project or any Potential Projects.

**4.4 COST OF GEIS.**

a. The cost of preparing the GEIS for the EMSURA shall be apportioned among the developers of projects within the EMSURA, based upon the relative square footage of each such development project. Projects for which applications are not submitted until after the completion of the GEIS, but which are submitted within three (3) years from its completion, shall be assessed their pro rata share of the cost of the GEIS. The Town will not include any

development projects applications that are submitted to the Town or its agencies after the expiration of six (6) months after the initial scope of the GEIS is approved by the Town.

b. The Town shall create a special fund for the cost of preparing the the GEIS for the EMSURA. In consideration of this Agreement, the Company agrees to make an initial deposit of \$100,000.00 into this fund within 10 (ten) days after its designation as Qualified and Eligible Sponsor by the CDA, which sum is to be applied towards the costs of completing the GEIS. This contribution is in addition to the initial payment of ~~\$100,000.00~~<sup>75,000.00</sup> to be made by the Company pursuant to Article 2.4. The Company agrees to make such additional payments as may be necessary to complete the GEIS, up to and including the adoption of a Findings Statement by the Lead Agency, upon submission of appropriate documentation for such costs by the Municipal Entities to the Company. The Company's agreement to fund the cost of the GEIS is subject to reimbursement as provided in Article 4.4 c. below.

c. The Municipal Entities shall assess other proposed projects within the EMSURA for their pro rata share of the GEIS. Reimbursements shall be made to the Company, as appropriate, to the extent the Company has exceeded its pro rata share of the cost of the GEIS.

**4.5 SITE-SPECIFIC ENVIRONMENTAL REVIEWS.** Upon completion of the GEIS, the Municipal Entities and their representatives will determine, on a project-by-project basis, whether the impacts of any particular proposed development have been adequately addressed by the GEIS, or whether project-specific supplemental environmental reviews will be

required. To the extent any proposed development projects within the EMSURA wish to proceed prior to the completion of the GEIS, their potential impacts, and the need for project-specific environmental impact statements will be determined on a project-by-project basis.

## ARTICLE 5

### INFRASTRUCTURE IMPROVEMENTS

5.1 PROPOSED IMPROVEMENTS. The Municipal Entities recognize that the successful residential, commercial, retail and recreational redevelopment of the EMSURA will require improvements to that area's infrastructure. These improvements are likely to include a parking garage; possible expansion of the sewer system, including the collection system; park and recreational space; potential road reconfiguration and signal improvements; enhancements to the water supply and lighting. These infrastructure improvements are in addition to any on-site or off-site infrastructure improvements or mitigation measures which are required for the Project or any Potential Project. The Town will consider using the Company as the coordinator for the construction of infrastructure improvements and parking, other than sewer and water required by the Project, subject to reaching a mutually satisfactory agreement in an LDA and further subject to <sup>the</sup> Municipal Entities' review and approval of specifications and costs.

## 5.2 PARKING.

a. The Municipal Entities contemplate the construction of an approximately 1,100 car parking garage on the north side of Main Street west of East Avenue, on a portion of the land currently owned by the Town of Riverhead Parking District #1 adjacent to the Woolworth Parcel. Upon the execution of this Agreement, the Municipal Entities shall immediately undertake such steps as may be necessary to secure the most expeditious construction of the proposed parking garage so that such parking is available for use by the Master Developer and the Qualified and Eligible Sponsor upon the completion of the Project.

b. It is currently contemplated that the capital cost of the parking garage will be funded by the Municipal Entities with: (i) Public Funding in the form of federal, state and other grants and/or subsidies, without direct cost (other than in connection with TIF programs) to the Municipal Entities or the Company; (ii) the sale of property by the Parking District or other Municipal Entity for redevelopment; and (iii) with respect to public parking facilities, the proceeds of bonds issued by the Municipal Entities.

c. It is the intent of the Parking District that the cost of constructing the parking garage shall ultimately be borne by the owners of property within the Parking District in the form of special assessments and/or user fees. The Company shall have the right to request an allocation of specific portions of the parking garage to the Company for its dedicated use, based upon its agreement to bear a proportionate share of the ultimate debt service. The parties contemplate utilizing "Tax Increment Financing", whether under the New York State Municipal

Redevelopment Law or the New York State Empire Zones Act (or both) ("TIF") as one of the sources of funding to pay the costs of the parking garage. Upon presentation of this Agreement for review by Town Board, appropriate resolutions shall be offered for consideration by the Town Board to establish TIF in the EMSURA. Federal, State and other governmental and public grants and/or subsidies and TIF are collectively referred to herein as the "Public Funding."

**5.3 OTHER INFRASTRUCTURE IMPROVEMENTS.**

a. Upon completion of the GEIS for the EMSURA, the Municipal Entities shall immediately undertake such planning or additional studies as may be necessary to design, finance and construct the additional infrastructure needed to support redevelopment of the EMSURA. The infrastructure improvements to be implemented by the Municipal Entities shall not include any infrastructure or on-site improvements necessitated solely by, or solely for the benefit of, the Project or any Potential Project, or any mitigation measures required solely for the Project or any Potential Project as a result of any SEQRA or planning review. For those infrastructure improvements and mitigation measures that benefit others as well as the Company, the Company will pay for its proportionate share of the costs of such items as shall be determined by the Municipal Entities.

b. The Municipal Entities agree that, if appropriate, additional special purpose or special improvement districts will be created within the EMSURA to facilitate the construction of and payment for these improvements, with the repayment of such costs to be made by the owners of property within the EMSURA on an equitable basis.

It is the intention of the Municipal Entities that infrastructure improvements which are for the benefit of the public as a whole will be paid for by the Municipal Entities. The Company shall bear the expense of any and all infrastructure improvements or mitigation measures, necessitated solely by the Project or any Potential Project.

## ARTICLE 6

### SELECTION OF THE TOWN REPRESENTATIVES AND COMPANY'S PAYMENT OF FEES AND COSTS

**6.1 TOWN REPRESENTATIVES.** The Municipal Entities have selected, or intend to select planning, engineering and environmental consultants in the Town's sole discretion to assist in the implementation of this Agreement, project specific agreements, LDA's, Development Leases, the GEIS for the EMSURA, any updated or restated Urban Renewal Agreements and any work related to these or other studies or agreements for the implementation of the Urban Renewal Plan. The Town has also retained Special Counsel in connection with the negotiation of this Agreement all subsequent agreements between the Company and the Town, CDA, Parking District and IDA, and all matters referenced in this Article. These professionals are, collectively, the Town's Representatives.

**6.2 SCOPE OF WORK.** The Town Representatives' tasks shall include, but shall not be limited to the following:

- a. Assist the Town and CDA in the review and designation of the Master Developer and Qualified and Eligible Sponsors;
- b. Preparation of the GEIS for the EMSURA;
- c. Preparation of updates, amendments or restatement of the Urban Renewal Plan;
- d. Perform project specific review of redevelopment plans;
- e. Develop proposals for rezoning, if necessary, to reconcile redevelopment of EMSURA with Master Plan;
- f. Assist Municipal Entities and the Company in the acquisition of future properties within EMSURA.

**6.3 GEIS FOR THE EMSURA AND UPDATE OF THE URBAN RENEWAL**

**PLAN.**

a. As specified in Article 4.4 b, above, the Company agrees to make an initial payment to the Town in the sum of \$100,000.00, to be applied towards the preparation of the GEIS for the EMSURA and the update of the Urban Renewal Plan. The Town's Representatives estimate the cost of preparing the GEIS, up to and including the adoption of a Findings Statement by the Lead Agency, and update of the Urban Renewal Plan will be \$300,000. This cost is subject to revision once a GEIS scoping document has been accepted by the Lead Agency.

b. The Municipal Entities shall provide revised estimates of the cost of the GEIS and Urban Renewal Plan update within thirty (30) days of the acceptance of the GEIS scoping document. The actual cost of the GEIS and Urban Renewal Plan update shall be determined upon their completion. The Company agrees to reimburse the Municipal Entities for all reasonable and documented costs incurred by the Town's Representatives within thirty (30) days of the submission of monthly invoices to the Company by the Municipal Entities.

c. Notwithstanding the Company's agreement to reimburse the Municipal Entities for the cost of the GEIS and Urban Renewal Plan update as provided herein, the cost of the GEIS and Urban Renewal Plan update shall be equitably apportioned among all development projects which are currently pending or which are proposed for development within the EMSURA within three (3) years of completion of the GEIS. A reasonable allocation shall be made in the sole discretion of the Municipal Entity, and shall take into account such factors as size of the proposed project, need for infrastructure improvements related to the proposed project, and similar factors.

**6.4 PAYMENT OF COSTS OTHER THAN FOR THE URBAN RENEWAL PLAN UPDATE AND GEIS FOR THE EMSURA BY THE COMPANY.**

a. In addition to the payment to be made pursuant to Article 6.3 above, the Company shall remit to the Town, or the CDA if so designated by the Town, the sum of \$75,000.00 as an initial payment for all other reasonable and necessary professional fees and expenses incurred by the Municipal Entities for work to be performed by the Town

Representatives pursuant to the provisions of this Agreement and which are related to the Project. The Company shall reimburse the Town for all such costs and expenses of the Town's Representatives as they are incurred, up to \$250,000 (the "Cap"), *based on monthly invoices.*

✓ b. Professional fees and expenses incurred by the Town's Representatives for Potential Projects of the Company beyond those which comprise the Project, and any and all costs, including legal costs, associated with or incurred by the IDA in connection with the Project, shall not be subject to or included within the limitations set forth in ~~this~~ subparagraph a. above. As such Potential Projects are proposed by the Company, the parties hereto shall agree on any necessary and reasonable adjustment to the Cap as a condition to the review of any Potential Project by the Municipal Entities. Company shall be liable for such further reimbursement to the Town.

**6.5 PROJECT SPECIFIC COSTS.** In addition to the payments to be made pursuant to Articles 6.3 and 6.4 above, the Company agrees to promptly reimburse the Town or CDA for the necessary and reasonable cost to be incurred by the Town or CDA or the Town's Representatives in connection with specific approvals of the Company's projects, such as review of site or engineering plans, which may be required by the Municipal Entities, the Planning Board or Zoning Board of Appeals.

**6.6 OTHER COSTS AND FEES.** As provided in Article 7.1.b. below, the Company also agrees to promptly pay or reimburse the Municipal Entities for all costs, fees and expenses in connection with the acquisition and disposition of any property by the Municipal

Entities to the extent such property acquisition is requested and incorporated by the Company in Potential Projects.

6.7 **TERMINATION BY THE COMPANY.** After the expiration of six (6) months from the date of execution of this Agreement by the Municipal Entities, the Company may decide to discontinue the Project and may terminate this Agreement upon not less than thirty (30) days' written notice to the Municipal Entities,

## **ARTICLE 7**

### **TRANSFER OF PROPERTY**

#### **7.1 PROJECT SPECIFIC AGREEMENT.**

a. The parties acknowledge that upon designation of the Company as a Qualified and Eligible Sponsor and the acceptance of the Company's Preliminary Development Proposal as an Urban Renewal Project by the CDA pursuant to Article 2.2, the CDA or other appropriate Municipal Entity shall begin good faith negotiations of such project-specific agreement(s) for the transfer of such property to the Company or its designee, subject to the provisions of Article 2.7(b) above, by means of an LDA or Development Lease. The purchase price, or rent, as the case may be, to be paid by the Company and all other essential terms and conditions of the disposition and transfer of any property to be conveyed to the Company shall be set forth in detail in the project specific agreement. It is the intent of the parties hereto that

each Project Specific Agreement, Development Lease and LDA will meet the requirements of GML Section 507 (2)(d) and shall be subject to approval by the appropriate Municipal Entity.

b. As provided in Article 2.3 above, the Company intends to make application to the Municipal Entities for conceptual approval for one or more Potential Projects that may include real property not owned by the Company at the time of its application. In the event the appropriate Municipal Entity(ies) approve the conceptual plan and the Company, after using commercially reasonable efforts to acquire such land at fair market value, is unable to do so, then upon request of the Company, the appropriate Municipal Entity shall use its best efforts to acquire such property as may be necessary to complete the Potential Project. The Company shall be responsible for all costs of acquisition incurred by the Municipal Entity, including all legal and other professional fees and costs, and shall pay all such costs when required by the Municipal Entity or by law. Upon acquisition by the Municipal Entity, such property shall become the subject of a Project-Specific Agreement, LDA or Development Lease, and shall be conveyed or leased to the Company or its designee in accordance with such project-specific Agreement, LDA, or Development Lease.

**7.2 PURCHASE PRICE.** The lease or purchase payments made by the Company to any Municipal Entity for any property sold or leased to the Company pursuant to any Project-Specific Agreement shall be determined by an appraisal of the land and any existing improvements based upon the fair market value of the approved final development plan of the site to be transferred. In making the determination of fair market value, the appraisal shall

assume that all off-site infrastructure improvements have been completed and in place, but shall not include the cost of any project-specific infrastructure improvements or mitigation measures paid for by the Company. The specific appraisal process, as well as the method of calculating the purchase price or lease payments, shall be provided in the LDA or Development Lease for the Project or any Potential Project.

**7.3 DEVELOPMENT LEASES.** The Company intends to request the participation of the Town of Riverhead Industrial Development Agency (“IDA”) in the sale-leaseback of the eligible sites acquired by the Company for redevelopment. In the event that the IDA participates in the process, Company may take advantage of all tax credits and other benefits that accrue for such an arrangement; the Company does not intend to seek the abatement of any special district taxes or real estate taxes. The IDA leases shall contain such terms and conditions as are necessarily required to accommodate the Company’s leasehold financing. Such IDA leases and other leases of real property from any of the Municipal Entities are hereinafter referred to as “Development Leases”.

**7.4 ACQUISITION OF PROPERTY ALREADY OWNED BY THE TOWN.** With *and notwithstanding the provisions of Article 6.6,* respect to property that the Town already owns, the Town will pay all of its own closing costs and fees on the sale of such property to the Company.

## ARTICLE 8

### MISCELLANEOUS

8.1 **NON-BINDING EFFECT.** This Agreement sets forth the parties' mutual understandings as of the date of this Agreement and the Company's rights to the Project or any Potential Projects shall be limited to the rights expressly set forth herein. No property interests or development rights shall arise for the benefit of the Company until approval and full execution of a respective Project Specific Agreement by the appropriate Municipal Entity(ies) in accordance with applicable law and the terms and provisions of this Agreement. Neither this Agreement nor any Project-Specific Agreement shall constitute authority or approval for the construction of the Project or any Potential Projects until any and all municipal reviews required by such Project-Specific Agreement have been completed by the appropriate Municipal Entity(ies) in accordance with applicable law and this Agreement.

8.2 **EXCLUSIVITY.** During the Term of this Agreement, provided the Company is not in material default under any LDA or Development Lease beyond any and all applicable notice and grace periods, and further provided that the Company is qualified under the applicable provisions of the General Municipal Law as a Qualified and Eligible Sponsor, the Municipal Entities will not: (i) designate any person, firm or entity, other than the Company, as a Qualified and Eligible Sponsor or Master Developer for the redevelopment of any projects in the EMSURA (ii) approve any project which is proposed by an owner of property within the

EMSURA, which is inconsistent with the Urban Renewal Plan, as that Plan may be amended, modified or restated, or which fails to comply with the Findings of the GEIS. The Municipal Entities expressly reserve their right to determine that certain projects need not be subject to the GEIS for the EMSURA and therefore may proceed prior to its completion. The Municipal Entities shall utilize the provisions of General Municipal Law (GML) Section 503(h) and/or impose such other limitations not in excess of three (3) years, if available.

8.3 TERM. The Term of this Agreement shall be from the date of execution through three (3) years from the adoption of a new Urban Renewal Plan for the EMSURA, or modifications to the existing Urban Renewal Plan, with the Company having the right to renew the Agreement for two successive three (3) year periods, provided that:

a. The Company is not in default under any LDA or Development Lease beyond any and all applicable notice and grace periods; and

b. The Company is qualified at the time of renewal under the applicable provisions of the General Municipal Law, as a Qualified and Eligible Sponsor.

Notwithstanding the aforesaid, in the event the parties have not been able to negotiate and execute an LDA or Development Lease within one hundred twenty (120) days of the execution of this Agreement, either party may terminate this Agreement upon thirty (30) days' written notice to the other.

8.4 VENUE. Any action or proceeding to enforce any provision of this Agreement shall be commenced in Supreme Court, Suffolk County.

TOWN OF RIVERHEAD COMMUNITY  
DEVELOPMENT AGENCY

By: \_\_\_\_\_

TOWN OF RIVERHEAD

By: \_\_\_\_\_

TOWN OF RIVERHEAD PARKING  
DISTRICT #1

By: \_\_\_\_\_

RIVERHEAD RENAISSANCE LLC

By: \_\_\_\_\_

# Adopted

7/18/06

Town of Riverhead  
Community Development Agency  
Resolution # 7

Authorizes Newmark Knight Frank to Prepare a Request for Proposals for the Newly Rezoned Light Industrial Zoning Use District and Proposed Office Complex Zoning Use District at the CDA Property at EPCAL

COUNCILWOMAN BLASS offered the following resolution, which was

seconded by COUNCILMAN DENSIESKI

**WHEREAS**, the Town Board determined, as the result of an economic analysis of lands available for industrial and office use in Suffolk County, to proceed with the rezoning of approximately 450 acres of lands within the Planned Recreational Park district to a Light Industrial Zoning Use District and approximately 150 acres of lands within the Planned Recreational Park district to a Calverton Office Zoning Use District in order to respond to demands for such uses while increasing the value of the property, stimulating job creation and tax base for the Town of Riverhead; and

**WHEREAS**, on June 6, 2006 the Town Board adopted the Light Industrial Zoning Use District to include lands east of the existing 10,000 foot runway; and

**WHEREAS**, a hearing was held on the Calverton Office Zoning Use District on July 18, 2006; and

**WHEREAS**, on May 24, 2006 the CDA Board authorized the Chairman to execute an agreement with the firm of Newmark Knight Frank; and

**WHEREAS**, the firm has offered to prepare a **Request for Proposals** for the Light Industrial District and the Calverton Office District at no cost to the Town of Riverhead.

**THEREFORE, BE IT RESOLVED**, that the Town Board in its capacity as the CDA Board, representing the ownership of the subject property does hereby authorize the firm Newmark Knight Frank to develop a Request for Proposals for both the area included in the Light Industrial District as well as the area contemplated to be included in the Calverton Office District for review by the CDA within thirty days; and

**BE IT FURTHER RESOLVED**, that the Town Clerk shall provide a certified copy of this resolution to Jack O'Connor, Newmark Knight Frank, 201 North Service Road, Suite 100, Melville, NY 11747 and copies to the Planning Director, Town Attorney and CDA Director.

<b>THE VOTE</b>				<i>absent</i>
Dunleavy	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	Bartunek	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Blass	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	Densieski	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
			Cardinale	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no

**THE RESOLUTION WAS NOT**  
THEREFORE DULY ADOPTED

Adopted

7/18/06

Town of Riverhead

Community Development Agency

Resolution # 8

AUTHORIZES EXECUTION OF AGREEMENT WITH THE SUFFOLK COUNTY DEPARTMENT OF ECONOMIC DEVELOPMENT FOR ADMINISTRATION OF THE EMPIRE ZONE PROGRAM

COUNCILMAN DENSIESKI offered the following resolution, which

was seconded by COUNCILMAN DUNLEAVY.

**WHEREAS**, the Town of Riverhead and the County of Suffolk have entered into an agreement for the purpose of providing financial support to assist the Town of Riverhead in administration of the Empire Zone; and

**WHEREAS**, the term of the agreement was from October 2, 2000 through December 31, 2005; and

**WHEREAS**, the parties desire to extend the prior agreement for the fiscal year 2006.

**THEREFORE, BE IT RESOLVED**, that the Chairman is hereby authorized to execute the attached agreement through December 31, 2006 with the County of Suffolk for funds in the amount of \$29,000 for 2006; and

**BE IT FURTHER RESOLVED**, that the Town Clerk is hereby directed to forward this resolution to Andrea Löhneiss, CDA Director, the Office of Accounting, Dawn Thomas, Town Attorney, and Tracy Stark, EZ Coordinator.

DUNLEAVY  YES \_\_\_ NO    BARTUNEK \_\_\_ YES \_\_\_ NO ABSENT  
 BLASS  YES \_\_\_ NO    DENSIESKI  YES \_\_\_ NO  
 CARDINALE  YES \_\_\_ NO

THIS RESOLUTION  IS \_\_\_ IS NOT DECLARED DULY ADOPTED



TOWN OF RIVERHEAD  
Community Development Agency  
200 HOWELL AVENUE, RIVERHEAD, NEW YORK 11901  
(631) 727-3200, Ext. 287

Fax (631) 727-5772

Andrea Lohneiss, Director, Secretary-Treasurer

Phil Cardinale, Chairperson  
Barbara Blass, Member  
George Bartunek, Member  
Edward Densieski, Member  
Johns Dunleavy, Member

**MEMORANDUM**

**TO:** Dawn Thomas  
**FROM:** Andrea Lohneiss  
**RE:** EZ Contracts – Suffolk County 2006  
**DATE:** June 30, 2006

The attached contracts from Suffolk County for the 2006 contribution to the administration of the Empire Zone program have been located but appear not to yet have been reviewed by your office. I will prepare a CDA resolution for the July 18 meeting in anticipation of your review.

**Sixth Amendment of Agreement**

This is the Sixth Amendment of an Agreement, last dated October 2, 2000, (Agreement) between the County of Suffolk (County), a municipal corporation of the State of New York, having its principal office at the County Center, Riverhead, New York 11901, acting through its duly constituted Department of Economic Development and Workforce Housing (Department) located at H. Lee Dennison Building, 100 Veterans Memorial Highway, P.O. Box 6100, Hauppauge, New York 11788-0099, and Town of Riverhead Community Development Agency (Contractor), a municipal corporation of the State of New York, having its principal place of business at 200 Howell Avenue, Riverhead, New York, 11901

The parties hereto desire to modify the Agreement by extending the term of Agreement to December 31, 2006 to coincide with the County fiscal year, increasing the Total Cost of Agreement to provide funding for the period January 1, 2006 through December 31, 2006 (2006 Budget Period) and amending other provisions to comply with current County standards. Sufficient funding exists in the 2006 Suffolk County Operating Budget.

**Term of Agreement:** Shall be October 2, 2000 through December 31, 2006

**Total Cost of Agreement:** Shall not exceed \$179,000 (of which \$29,000.00 is for the 2006 Budget Period]

**Terms and Conditions:** Shall be as set forth in Exhibit A-6

In Witness Whereof, the parties hereto have executed this Sixth Amendment of Agreement as of the latest date written below.

**Town of Riverhead  
Community Development Agency**

By: \_\_\_\_\_  
Phil Cardinale  
Chairman

Fed. Taxpayer ID #: 11-6001935

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

**Approved as to Legality:**

**Christine Malafi  
Suffolk County Attorney**

By: \_\_\_\_\_ Date  
Samantha N. McEachin  
Assistant County Attorney

**County of Suffolk**

By: \_\_\_\_\_  
Paul Sabatino II  
Chief Deputy County Executive

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

**Approved:  
Department of Economic Development &  
Workforce Housing**

By: \_\_\_\_\_  
Carolyn E. Fahey  
Intergovernmental Relations Coordinator

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

## Exhibit A-6

**Whereas**, the County and Contractor have entered into an Agreement (Law No.04-ED-002) last dated October 2, 2000, for a term from October 2, 2000 through July 31, 2004 for the purpose of providing financial support to assist the Calverton Enterprise Park Economic Development Zone Administrative Board; and

**Whereas**, the County and Contractor have entered into a First Amendment of Agreement (Law No. 04-ED-002A) increasing the Total Cost of the Agreement by an additional \$ \$23,000; and

**Whereas**, the County and Contractor have entered into a Second Amendment of Agreement (Law No. 04-ED-002B) increasing the Total Cost of the Agreement by an additional \$23,000; and

**Whereas**, the County and Contractor have entered into a Third Amendment of Agreement (Law No. 04-ED-002C) increasing the Total Cost of Agreement by \$23,000 for the 2003 Budget Period, adding the Suffolk County Legislative Requirements for Contracts and amending other provisions as necessary; and

**Whereas**, the County and Contractor have entered into a Fourth Amendment of Agreement (Law No. 04-ED-002D) increasing the Total Cost of Agreement by \$29,000 for the 2004 Budget Period, adding the Suffolk County Legislative Requirements for Contracts and amending other provisions as necessary; and

**Whereas**, the County and Contractor have entered into a Fifth Amendment of Agreement (Law No. 04-ED-002E) increasing the Total Cost of Agreement by \$29,000 for the 2005 Budget Period, adding the Suffolk County Legislative Requirements for Contracts and amending other provisions as necessary; and

**Whereas**, the parties hereto desire to modify the Agreement and First, Second, Third, Fourth and Fifth Amendments of Agreement by extending the term of Agreement to December 31, 2006 to coincide with the County fiscal year, increasing the Total Cost of Agreement by \$29,000 for the period January 1, 2006 through December 31, 2006 (2006 Budget Period) and amending other provisions as set forth below;

**Now, Therefore**, in consideration of the covenants, promises and consent herein contained, the parties hereto agree as follows:

### 1. **Total Cost of Agreement:**

The Total Cost of Agreement \$179,000.00 is comprised as follows:

- a. \$23,000.00 for October 2, 2000 through December 31, 2000.
- b. \$23,000.00 for January 1, 2001 through December 31, 2001.
- c. \$23,000.00 for January 1, 2002 through December 31, 2002.
- d. \$23,000.00 for January 1, 2003 through December 31, 2003.
- d. \$29,000.00 for January 1, 2004 through December 31, 2004.
- e. \$29,000.00 for January 1, 2005 through December 31, 2005.
- f. \$29,000.00 for January 1, 2006 through December 31, 2006

### 2. **Funding For Year 2006:**

Contractor agrees that the funding for year 2006 is subject to the amount of funds appropriated and any subsequent modifications thereof by the Suffolk County Legislature, and no liability shall be in-

curred by the County under this Agreement for the 2006 Budget Period beyond the amount of funds appropriated by the Legislature for that period and for the program covered by this Agreement.

**3. Payments Contingent upon State Funding**

Payments under this Agreement are subject to and contingent upon continued funding by the State of New York. If, for any reason, the amount of such funding to the County is reduced or not made available to the County, this Agreement may be terminated in whole or in part, or the amount payable to the Contractor may be reduced, at the discretion of the Department; provided that any such termination or reduction shall not apply to allowable costs incurred by the Contractor prior to such termination or reduction to the extent that such funding is available to the Department for payment of such costs; and provided, further, that the Department shall give the Contractor not less than 30 days' prior written notice of such termination or reduction of funding.

*The Contractor now agrees to the following amended provisions and added provisions which comply with current County standards as follows:*

**4. Indemnification**

The Contractor agrees that it shall protect, indemnify and hold harmless the County and its officers, officials, employees, contractors, agents and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' fees, arising out of the acts or omissions or the negligence of the Contractor in connection with the services described or referred to in this Agreement. The Contractor shall defend the County and its officers, officials, employees, contractors, agents and other persons in any suit, including appeals, or at the County's option, pay reasonable attorney's fees for defense of any such suit arising out of the acts or omissions or negligence of the Contractor, its officers, officials, employees, subcontractors or agents, if any, in connection with the services described or referred to in this Agreement.

**5. Governing Law**

This Agreement shall be governed by and construed in accordance the laws of the State of New York, without regard to conflict of laws. Venues shall be designated in Suffolk County, New York or the United States District Court for the Eastern District of New York.

**6. Force Majeure**

Neither party shall be held responsible for any delay or failure in performance hereunder to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, civil or military authority, act of God, act or omission of carriers, power failure or similar causes beyond its control ("force majeure conditions"). If any force majeure condition occurs, the party delayed or unable to perform shall give immediate notice to the other party.

7. **Addresses for Notices, Claims and Reports**

a. **Notices, Relating to Payments, Reports or Other Submissions.**

Any communication, notice, claim for payment, report, or other submission necessary or required to be made by the parties regarding this Agreement shall be in writing and shall be given to the County or the Contractor or their designated representative at the following addresses or at such other address that may be specified in writing by the parties and must be delivered as follows:

**For the Department:**

*By Registered or Certified Mail in Postpaid Envelope or by  
Nationally Recognized Courier Service*

Suffolk County Department of Economic Development and Workforce Housing  
H. Lee Dennison Bldg.  
100 Veteran's Memorial Highway  
2<sup>nd</sup> Floor  
Hauppauge, NY 11788.  
*Attn. Jim Morgo, Commissioner*

and

**For the Contractor:**

*By Registered or Certified Mail in Postpaid Envelope or by  
Nationally Recognized Courier Service*

At the address set forth on page one of this Agreement, attention of the person who executed this Agreement or such other designee as the parties may agree in writing.

b. **Notices Relating to Insurance**

Any communication, notice or other submission regarding insurance requirements under this Agreement shall be in writing and shall be given to the County or the Contractor or their designated representative at the following addresses or at such other addresses that may be specified in writing by the parties and must be delivered as follows:

**For the Department:**

*By Registered or Certified Mail in Postpaid Envelope or by  
Nationally Recognized Courier Service*

Suffolk County Department of Economic Development and Workforce Housing  
H. Lee Dennison Bldg.  
100 Veteran's Memorial Highway

2<sup>nd</sup> Floor  
Hauppauge, NY 11788.  
*Attn. Jim Morgo, Commissioner*

and

Christine Malafi, County Attorney  
Suffolk County Department of Law  
H. Lee Dennison Building  
100 Veterans Memorial Highway  
Hauppauge, New York 11788

and

**For the Contractor:**

*By Registered or Certified Mail in Postpaid Envelope or by  
Nationally Recognized Courier Service*

At the address set forth on page one of this Agreement, attention of the person who executed this Agreement or such other designee as the parties may agree in writing.

**c. Notices Relating to Indemnification and Termination**

Any communication or notice regarding indemnification or termination shall be in writing and shall be given to the County or the Contractor or their designated representative at the following addresses or at such other addresses that may be specified in writing by the parties and must be delivered as follows:

**For the County:**

*By Registered or Certified Mail in Postpaid Envelope or by  
Nationally Recognized Courier Service*

Suffolk County Department of Economic Development and Workforce Housing  
H. Lee Dennison Bldg.  
100 Veteran's Memorial Highway  
2<sup>nd</sup> Floor  
Hauppauge, NY 11788.  
*Attn. Jim Morgo, Commissioner*

and

Christine Malafi, County Attorney  
Suffolk County Department of Law  
H. Lee Dennison Building  
100 Veterans Memorial Highway

Hauppauge, New York 11788

and

**For the Contractor:**

***By Registered or Certified Mail in Postpaid Envelope or by  
Nationally Recognized Courier Service***

At the address set forth on page one of this Agreement, attention of the person who executed this Agreement or such other designee as the parties may agree in writing.

d. Notices sent under paragraphs a, b, and, c above shall be deemed to have been duly given (i) if mailed by registered or certified mail, upon the seventh business day after the mailing thereof; or (ii) if by nationally recognized overnight courier service, upon the first business day subsequent to the transmittal thereof.

e. Each party shall give prompt written notice to the other party of the appointment of successor(s) to the designated contact person(s) or his or her designated successor(s).

**f. Notices Relating to Litigation**

i. Any notice by either party to the other with respect to the commencement of any lawsuit or legal proceeding against the other, shall be effected pursuant to and governed by the New York State Civil Practice Law and Rules or the Federal Rules of Civil Procedure, as applicable.

ii. In the event the Contractor receives a notice or claim or becomes a party (plaintiff, petitioner, defendant, respondent, third party complainant, third party defendant) to a lawsuit or any legal proceeding related to this Agreement, the Contractor shall immediately forward to the County Attorney, at the addresses set forth in subparagraph b above, copies of all papers filed by or against the Contractor. Notices shall be as provided in paragraph (c) above.

**9. Conflicts of Interest**

a. The Contractor agrees that it will not during the term of this Agreement engage in any activity that is contrary to and/or in conflict with the goals and purposes of the County.

b. The Contractor is charged with the duty to disclose to the County the existence of any such adverse interests, whether existing or potential. This duty shall continue so long as the Contractor is retained on behalf of the County. The determination as to whether or when a con-

flict exists or may potentially exist shall ultimately be made by the County Attorney after full disclosure is obtained.

**10. Contractor's/Vendor's Public Disclosure Statement**

The Contractor represents and warrants that it has filed with the Comptroller of Suffolk County the verified public disclosure statement required by Suffolk County Administrative Code Article V, Section A5-7 and shall file an update of such statement with the said Comptroller on or before the 31st day of January in each year of this Agreement's duration. The Contractor acknowledges that such filing is a material, contractual and statutory duty and that the failure to file such statement shall constitute a material breach of this Agreement, for which the County shall be entitled, upon a determination that such breach has occurred, to damages, in addition to all other legal remedies, of fifteen percent (15%) of the amount of the Agreement.

Required Form: Suffolk County Form SCEX 22; entitled "Contractor's/Vendor's Public Disclosure Statement"

**11. Living Wage Law**

This Agreement is subject to the Living Wage Law of the County of Suffolk. The law requires that, unless specific exemptions apply all employers (as defined) under service contracts and recipients of County financial assistance, (as defined) shall provide payment of a minimum wage to employees as set forth in the Living Wage Law. Such rate shall be adjusted annually pursuant to the terms of the Suffolk County Living Wage Law of the County of Suffolk. Under the provisions of the Living Wage Law, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

The Contractor represents and warrants that it has read and shall comply with the requirements of Suffolk County Code Chapter 347, Suffolk County Local Law No. 12-2001, the Living Wage Law.

Required Form: Suffolk County Living Wage Form LW-38; entitled "Suffolk County Department of Labor - Living Wage Unit Living Wage Certification/Declaration - Subject To Audit"

**12. Use of County Resources to Interfere with Collective Bargaining Activities  
Local Law No. 26-2003**

The Contractor represents and warrants that it has read and is familiar with the requirements of Chapter 466, Article 1 of the Suffolk County Local Laws, "Use of County Resources to Interfere with Collective Bargaining Activities". County Contractors (as defined) shall comply with all requirements of Local Law No. 26-2003 including the following prohibitions:

- a. The Contractor shall not use County funds to assist, promote, or deter union organizing.
- b. No County funds shall be used to reimburse the Contractor for any costs incurred to assist, promote, or deter union organizing.
- c. The County of Suffolk shall not use County funds to assist, promote, or deter union organizing.

d. No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote, or deter union organizing.

If Contractor services are performed on County property the Contractor must adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, nonintimidation agreement and a majority authorization card agreement.

If Contractor services are for the provision of human services and such services are not to be performed on County property, the Contractor must adopt, at the least, a neutrality agreement.

Under the provisions of Local Law No. 26-2003, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

Required Form: Suffolk County Labor Law Form DOL-LO1; entitled "Suffolk County Department of Labor – Labor Mediation Unit Union Organizing Certification/Declaration – Subject to Audit"

**13. Gratuities**

The Contractor represents and warrants that it has not offered or given any gratuity to any official, employee or agent of Suffolk County or New York State or of any political party, with the purpose or intent of securing an agreement or securing favorable treatment with respect to the awarding or amending of an agreement or the making of any determinations with respect to the performance of an agreement, and that the signer of this Agreement has read and is familiar with the provisions of Local Law No. 32-1980 of Suffolk County (Chapter 386 of the Suffolk County Code).

**14. Prohibition Against Contracting with Corporations that Reincorporate Overseas**

The Contractor represents that it is in compliance with Suffolk County Administrative Code Article IV, §§A4-13 and A4-14, found in Suffolk County Local Law No. 20-2004, entitled "A Local Law To Amend Local Law No. 5-1993, To Prohibit The County of Suffolk From Contracting With Corporations That Reincorporate Overseas." Such law provides that no contract for consulting services or goods and services shall be awarded by the County to a business previously incorporated within the U.S.A. that has reincorporated outside the U.S.A.

**15. Child Sexual Abuse Reporting Policy**

The Contractor agrees to comply with Chapter 577, Article IV, of the Suffolk County Code, entitled "Child Sexual Abuse Reporting Policy", as now in effect or amended hereafter or of any other Suffolk County Local Law that may become applicable during the term of this Agreement with regard to child sexual abuse reporting policy.

**16. Non Responsible Bidder**

The Contractor represents and warrants that it has read and is familiar with the provisions of Suffolk County Code Chapter 143, Article II, §§143-5 through 143-9. Upon signing this Agreement the

Contractor certifies that he, she, it, or they have not been convicted of a criminal offense within the last ten (10) years. The term "conviction" shall mean a finding of guilty after a trial or a plea of guilty to an offense covered under the provision of Section 143-5 of the Suffolk County Code under "Nonresponsible Bidder."

**17. Use of Funds in Prosecution of Civil Actions Prohibited**

Pursuant to the Suffolk County Code Section §590-3, the Contractor represents that it shall not use any of the moneys received under this Agreement, either directly or indirectly, in connection with the prosecution of any civil action against the County of Suffolk or any of its programs, funded by the County, in part or in whole, in any jurisdiction or any judicial or administrative forum.

**18. Certification as to Relationships**

Pursuant to the Suffolk County Code Chapter 143, Article II, and Suffolk County Code §143-6(B) specifically, the parties to this Agreement hereby certify that, other than the funds provided in this Agreement and other valid Agreements with the County, there is no known relationship within the third degree of consanguinity, life partner, or business, commercial, economic, or financial relationship between the parties, the signatories to this Agreement, and any partners, members, directors, or shareholders of five percent (5%) (or more) of any party to this Agreement.

**19. Suffolk County Local Laws**

Suffolk County Local Laws, Rules and Regulations can be found on the Suffolk County web site at [www.co.suffolk](http://www.co.suffolk.ny.us)<<http://www.co.suffolk.ny.us>>. Click on "Laws of Suffolk County" under "Suffolk County Links".

- End of Text -

## **Suffolk County Legislative Requirements Exhibit for Contracts**

This exhibit is attached to and is made part of the contract executed with the County.

### **I Suffolk County Living Wage Requirements**

"Suffolk County Living Wage Requirements Exhibit (2 pages).

Suffolk County Department of Labor - Living Wage Unit  
Certification/Declaration – Subject to Audit  
Form LW-38 (consists of 1 page)

### **II Contractor's/Vendor's Public Disclosure Statement Form SCEX 22; rev. 3/30/04 (form consists of three pages; requires signature & notarization)**

**Note:** The Contractor's/Vendor's Public Disclosure Statement Form SCEX 22; rev. 3/30/04,

### **III Union Organizing Certification/Declaration - Subject to Audit; rev. 6/05 Form LO1 (consists of 2 pages)**

**Suffolk County Living Wage Requirements Exhibit**  
**As Last Revised by the Suffolk County Department of Labor on 5/12/04**

**Suffolk County Living Wage Requirements Exhibit**  
**As Last Revised by the Suffolk County Department of Labor on 5/12/04**

Pursuant to Section 6 of Chapter 347 of the Suffolk County Local Law No. 12-2001, "A Local Law to Implement Living Wage Policy for the County of Suffolk" (the "Living Wage Law"), all RFPs, County contracts and financial assistance agreements subject to the law shall contain the following two paragraphs or substantially equivalent language:

This Agreement is subject to the Living Wage Law of the County of Suffolk. The law requires that, unless specific exemptions apply all employers (as defined) under service contracts and recipients of County financial assistance, (as defined) shall provide payment of a minimum wage to employees as set forth in the Living Wage Law. Such rate shall be adjusted annually pursuant to the terms of the Suffolk County Living Wage Law of the County of Suffolk.

Under the provisions of the Living Wage Law, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

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Suffolk County Local Law No. 18-2002, "A Local Law to Implement Living Wage Policy for the County of Suffolk" provided for certain amendments to the Living Wage Law.

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**Forms for Completion and/or Signature (as applicable)**

- **Suffolk County Department of Labor – Living Wage Unit  
Notice of Application for County Assistance (Contract)  
Form LW-1 (consists of 1 page)**
- **Suffolk County Department of Labor - Living Wage Unit-  
Certification/Declaration – Subject to Audit  
Form LW-38 (consists of 1 page) (Replaces LW2, LW3 and LW33)**
- **Suffolk County Department of Labor – Living Wage Unit  
Request for General Living Wage Exemption  
Form LW-4 (consists of 1 page)**
- **Suffolk County Department of Labor – Living Wage Unit  
Request for Specific Living Wage Exemption  
Form LW-5 (consists of 2 pages)**

**SUFFOLK COUNTY DEPARTMENT OF LABOR - LIVING WAGE UNIT**

**NOTICE OF APPLICATION FOR COUNTY COMPENSATION (Contract)**

Living Wage Law, Suffolk County Code, Chapter 347 (2001)

**To Be Completed By Applicant/ Employer/Contractor**

- 1) NAME: \_\_\_\_\_
- 2) VENDOR #: \_\_\_\_\_ (If known)
- 3) CONTRACT ID #: \_\_\_\_\_ (If known)
- 4) CONTACT: \_\_\_\_\_
- 5) TELEPHONE #: \_\_\_\_\_
- 6) ADDRESS: \_\_\_\_\_  
\_\_\_\_\_
- 7) TERM OF CONTRACT (DATES): \_\_\_\_\_
- 8) PROJECT NAME: (IF DIFFERENT FROM #1) \_\_\_\_\_
- 9) AMOUNT: \_\_\_\_\_
- 10) AWARDING AGENCY: \_\_\_\_\_
- 11) BRIEF DESCRIPTION OF PROJECT OR SERVICE:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 12) **PROJECTED EMPLOYMENT NEEDS:** (attach a statement listing, by job classification, the total workforce dedicated to performing this contract or service, including calculation of estimated net increase or decrease in jobs as a result of funding).
- 13) **PROJECTED WAGE LEVELS:** (attach a statement listing projected wage levels, compensated days off and medical benefits for total workforce dedicated to fulfilling the terms of this contract, broken down annually for each year of the term of the contract).

SUFFOLK COUNTY DEPARTMENT OF LABOR – LIVING WAGE UNIT

LIVING WAGE CERTIFICATION/DECLARATION – SUBJECT TO AUDIT

If either of the following definitions of 'compensation' (*Living Wage Law Chapter 347 – 2*) applies to the contractor's/recipient's business or transaction with Suffolk County, the contractor/recipient must complete Sections 1, 3, 4 below; and Form LW-1 (Notice of Application for County Compensation). If the following definitions do not apply, the contractor/recipient must complete Sections 2, 3 and 4 below. Completed forms must be submitted to the awarding agency.

"Any grant, loan, tax incentive or abatement, bond financing subsidy or other form of compensation of more than \$50,000 which is realized by or provided to an employer of at least ten (10) employees by or through the authority or approval of the County of Suffolk," or

"Any service contract or subcontract let to a contractor with ten (10) or more employees by the County of Suffolk for the furnishing of services to or for the County of Suffolk (except contracts where services are incidental to the delivery of products, equipment or commodities) which involve an expenditure equal to or greater than \$10,000. For the purposes of this definition, the amount of expenditure for more than one contract for the same service shall be aggregated. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not 'compensation' for the purposes of this definition."

**Section I**

The *Living Wage Law* applies to this contract. I/we hereby agree to comply with all the provisions of Suffolk County Local Law No. 12-2001, the Suffolk County *Living Wage Law* (the Law) and, as such, will provide to all full, part-time or temporary employed persons who perform work or render services on or for a project, matter, contract or subcontract where this company has received compensation, from the County of Suffolk as defined in the Law (compensation) a wage rate of no less than \$9.64 (\$8.50 for child care providers) per hour worked with health benefits, as described in the Law, or otherwise \$10.98 (\$9.75 for child care providers) per hour or the rates as may be adjusted annually in accordance with the Law. (Chapter 347-3 B)

Check if Applicable

I/we further agree that any tenant or leaseholder of this company that employs at least ten (10) persons and occupies property or uses equipment or property that is improved or developed as a result of compensation or any contractor or subcontractor of this company that employs at least ten (10) persons in producing or providing goods or services to this company that are used in the project or matter for which this company has received compensation shall comply with all the provisions of the Law, including those specified above. (Chapter 347-2)

I/we further agree to permit access to work sites and relevant payroll records by authorized County representatives for the purpose of monitoring compliance with regulations under this Chapter of the Suffolk County Code, investigating employee complaints of noncompliance and evaluating the operation and effects of this Chapter, including the production for inspection & copying of payroll records for any or all employees for the term of the contract or for five (5) years, whichever period of compliance is longer. All payroll and benefit records required by the County will be maintained for inspection for a similar period of time. (Chapter 347-7 D)

The County Department of Labor shall review the records of any Covered Employer at least once every three years to verify compliance with the provisions of the Law. (Chapter 347-4 C)

**Section II**

The *Living Wage Law* does not apply to this contract for the following reason(s): \_\_\_\_\_

Check if Applicable

**Section III**

Contractor Name: Town of Riverhead Community Development Agency Federal Employer ID#: 11-6001935

Contractor Address: 200 Howell Avenue Amount of Assistance: \$29,000

Riverhead, NY 11901 Vendor #: \_\_\_\_\_

Contractor Phone #: 63 1-727-3200

Description of project or service: To assist the Calverton Enterprise Park Economic Development Zone Administrative Board

**Section IV**

declare under penalty of perjury under the Laws of the State of New York that the undersigned is authorized to provide this certification, and that the above is true and correct.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title of Authorized Representative

**SUFFOLK COUNTY ADMINISTRATIVE CODE SECTION A5-7**

**§ A5-7. Contractors and vendors required to submit full disclosure statement. [Derived from L.L. No. 14-1976, as amended 2-27-1979 by L.L. No. 6-1979]**

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

**CONTRACT** - Any written agreement between Suffolk County and a contractor or vendor to do or perform any kind of labor, service, purchase, construction or public work, unless the contract is for a federally or state-aided, in whole or in part, program required to be bid pursuant to § 103 of the New York General Municipal Law. [Amended 6-29-1993 by L.L. No. 28-1993<sup>1</sup>]

**NOTE: L.L. No. 28-1993 also provided as follows:**

**Section 1. Legislative Intent.**

This Legislature hereby finds and determines that Suffolk County's comprehensive Contractor/Vendor Public Disclosure Statement Law currently applies to a broad array of contracts that exceed one thousand dollars (\$1,000.) in value, subject to exemptions for contractors doing business with the County Department of Social Services; hospitals; educational, medical, and governmental entities; and not-for-profit corporations.

This Legislature further finds and determines that these exemptions prevent full disclosure of important information that may be useful to elected county officials in determining whether or not specific types of contracts are in the public interest, especially in light of recent trends towards privatization and use of outside consultants on an increased basis by municipalities.

Therefore, the purpose of this law is to eliminate many of the exemptions from completing and filing verified public disclosure statements with the County Comptroller available to certain contractors providing social services or health services contracts.

**CONTRACTOR or VENDOR [Amended 12-18-1990 by L.L. No. 41-1990<sup>2</sup>; 6-29-1993 by L.L. No. 28-1993<sup>3</sup>]** -

Any proprietorship, partnership or closely held corporation which has a contract with Suffolk County in excess of one thousand dollars (\$1,000.) or which has three (3) or more contracts with Suffolk County, any three (3) of which, when combined, exceed one thousand dollars (\$1,000.), except:

(1) Hospitals.

(2) Educational or governmental entities.

<sup>1</sup> Editor's Note: This local law was adopted by the legislature after disapproval by the Executive on 5-26-1993.

<sup>2</sup> Editor's Note: This local law was adopted by the Legislature after disapproval by the Executive on 12-13-1990. See the note at § A4-12.

<sup>3</sup> Editor's Note: This local law was adopted by the Legislature after disapproval by the Executive on 5-26-1993. See note above.

(3) Not-for-profit corporations.

(4) Contracts providing for foster care, family day-care providers or child protective consulting services.

FULL DISCLOSURE CLAUSE - A proviso to be included as a material part of a contract imposing upon the contractor or vendor a material, contractual and statutory duty to file a verified public disclosure statement.

VERIFIED PUBLIC DISCLOSURE STATEMENT - A declaration, the contents of which are acknowledged before a notary public, containing information required under this section.

- B. A full disclosure clause is to be included in all future contracts between Suffolk County and a contractor or vendor. Such full disclosure clause shall constitute a material part of the contract.
- C. Notice of the full disclosure clause shall be included and made a part of the specifications, if any, which are submitted to interested potential bidders.
- D. Each contractor or vendor shall file a verified public disclosure statement with the Comptroller of Suffolk County as soon as practicable prior to being awarded the contract. An updated disclosure statement shall be filed by the contractor or vendor with the Comptroller by the 31st day of January in each year of the contract's duration. It shall be the duty of the Comptroller to accept and file such statements.
- E. No contract shall be awarded to any contractor or vendor, as defined in this section, unless prior to such award a verified public disclosure statement is filed with the Comptroller as provided in this section. Any verified public disclosure statement containing fraudulent information shall constitute, for all purposes, a failure to file such statement in the first instance.
- F. The verified public disclosure statement required by this section shall include:
  - (1) A complete list of the names and addresses of those individual shareholders holding more than five-percent interest in the firm.
  - (2) The table of organization for the company shall include the names and addresses of all individuals serving on the board of directors or comparable body, the names and addresses of all partners and the names and addresses of all corporate officers. The contractor or vendor shall conspicuously identify any such person in this table of organization who is an officer or an employee of Suffolk County.

- (3) A complete financial statement listing all assets and liabilities as well as a profit-and-loss statement, certified by a certified public accountant. Such statement shall be the most current available and in no event shall have been prepared more than six (6) months prior to the date of the filing of the bid. No financial statement or profit-and-loss statement shall be required from any contractor or vendor having fifty percent (50%) or more of their gross revenues from sources other than the County of Suffolk.
- G. A separate folio for each company shall be maintained alphabetically for public inspection by the Comptroller.
- H. Remedies. The failure to file a verified public disclosure statement as required under this section shall constitute a material breach of contract. Suffolk County may resort, use or employ any remedies contained in Article 2 of the Uniform Commercial Code of the State of New York. In addition to all legal remedies, Suffolk County shall be entitled, upon a determination that a breach has occurred, to damages equal to fifteen percent (15%) of the amount of the contract.
- I. Under no circumstances shall the county be precluded from invoking any remedy contained in the preceding section by reason of its failure to invoke promptly its remedies.

**Suffolk County Form SCEX 22**  
**Contractor's/Vendor's Public Disclosure Statement**

Pursuant to Section A5-7 of the Suffolk County Administrative Code, this Public Disclosure Statement must be completed by all contractors/vendors that have a contract with Suffolk County. In the event contractor/vendor is exempt from completing paragraphs numbered 1 through 11 below, so indicate at paragraph number 12 below setting forth the reason for such exemption. Notwithstanding such exempt status, you must execute this form below before a notary public.

- 1. Contractor's/Vendor's Name Town of Riverhad Community Development Agency  
Address: 200 Howell Avenue  
City and State Riverhead, NY Zip Code 11901
  
- 2. Contracting Department's Name Economic Development/Workforce Housing  
Address: H. Lee Dennison Building - 100 Veterans Memorial Highway, Hauppauge, NY  
11788

3. Payee Identification or Social Security No. 11-6001935

4. Type of Business Corporation  Partnership  Sole Proprietorship  Other

5.a Is contractor/vendor entering into or has contractor/vendor entered into a contract with Suffolk County in excess of \$1,000?  Yes  No.

5.b Has contractor/vendor entered into three or more contracts, including the one for which you are now completing this form, with Suffolk County, any three of which, when combined, exceed \$1,000?  Yes  No.

6. Table of Organization. List names and addresses of all principals; that is, all individuals serving on the Board of Directors or comparable body, names and addresses of all partners, and names and addresses of all corporate officers. Conspicuously identify any person in this table of organization who is also an officer or an employee of Suffolk County. (Attach additional sheet if necessary.)

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7. List all names and addresses of those individual shareholders holding more than five percent (5%) interest in the contractor/vendor. Conspicuously identify any shareholder who is also an officer or an employee of Suffolk County. (Attach additional sheet if necessary).

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8. Does contractor/vendor derive 50% or more of its total revenues from its contractual or vendor relationship with Suffolk County?  Yes  No.

9. If you answered yes to 8 above, you must submit with this disclosure statement, a complete financial statement listing all assets and liabilities as well as a profit and loss statement. These statements must be certified by a Certified Public Accountant. (Strike this out if not applicable.)

10. The undersigned shall include this Contractor's/Vendor's Public Disclosure Statement with the contract. (Describe general nature of the contract.) To assist the Calverton Enterprise Park Economic Development Zone Administrative Board

11. Remedies. The failure to file a verified public disclosure statement as required under local law shall constitute a material breach of contract. Suffolk County may resort, use or employ any remedies contained in Article II of the Uniform Commercial Code of the State of New York. In addition to all legal remedies, Suffolk County shall be entitled, upon a determination that a breach has occurred, to damages equal to fifteen percent (15%) of the amount of the contract.

12. If you are one of the entities listed below at a) through c) or you qualify under d) below, you are exempt from completing paragraphs numbered 1 through 11 herein:

- a) Hospital
- b) Educational or governmental entities
- c) Not-for-profit corporations
- d) Contracts providing for foster care, family day-care providers or child protective services

Please check to the left side of the appropriate exemption.

13. Verification. This section must be signed by an officer or principal of the contractor/vendor authorized to sign for the company for the purpose of executing contracts. The undersigned being sworn, affirms under the penalties of perjury, that he/she has read and understood the foregoing statements and that they are, to his/her own knowledge, true.

Dated: \_\_\_\_\_ Signed: \_\_\_\_\_  
Printed Name of Signer: \_\_\_\_\_  
Title of Signer: \_\_\_\_\_  
Name of Contractor/Vendor: Town of Riverhead

UNIFORM CERTIFICATE OF ACKNOWLEDGMENT  
(Within New York State)

STATE OF NEW YORK)  
COUNTY OF \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2005 before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
(Signature and office of individual taking acknowledgment)

UNIFORM CERTIFICATE OF ACKNOWLEDGMENT

(Without New York State)

STATE OF                    )  
                                  ) ss.:  
COUNTY OF                ).:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2005 before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual(s) made such appearance before the undersigned in

\_\_\_\_\_  
(Insert the city or other political subdivision and the state or country or other place the acknowledgement was taken)

\_\_\_\_\_  
(Signature and office of individual taking acknowledgment)

SUFFOLK COUNTY DEPARTMENT OF LABOR – LABOR MEDIATION UNIT  
UNION ORGANIZING CERTIFICATION/DECLARATION – SUBJECT TO AUDIT

If, the following definition of "County Contractor" (Union Organizing Law Chapter 466-2) applies to the contractor's/beneficiary's business or transaction with Suffolk County, the contractor/beneficiary must complete Sections I, III, and IV below. If the following definitions do not apply, the contractor/beneficiary must complete Sections II, III and IV below. Completed forms must be submitted to the awarding agency.

**County Contractor:** "Any employer that receives more than \$50,000 in County funds for supplying goods or services pursuant to a written contract with the County of Suffolk or any of its agencies; pursuant to a Suffolk County grant; pursuant to a Suffolk County program; pursuant to a Suffolk County reimbursement for services provided in any calendar year; or pursuant to a subcontract with any of the above."

**Section I** The Union Organizing Law applies to this contract. I/we hereby agree to comply with all the provisions of Suffolk County Local Law No. 26-2003, the Suffolk County Union Organizing Law (the law) and, as such shall not use County funds to assist, promote, or deter union organizing (Chapter 466-3 A), nor seek reimbursement from the County for costs incurred to assist, promote, or deter union organizing. (Chapter 466-3 B)

Check if Applicable I/we further agree to take all action necessary to ensure that County funds are not used to assist, promote, or deter union organizing. (Chapter 466-3 H)

I/we further agree that if any expenditures or costs incurred to assist, promote, or deter union organizing are made, I/we shall maintain records sufficient to show that no County funds were used for those expenditures and, as applicable, that no reimbursement from County funds has been sought for such costs. I/we agree that such records shall be made available to the pertinent County agency or authority, the County Comptroller, or the County Department of Law upon request. (Chapter 466-3 I)

I/we further affirm to the following:

- I/we will not express to employees any false or misleading information that is intended to influence the determination of employee preferences regarding union representation;
- I/we will not coerce or intimidate employees, explicitly or implicitly, in selecting or not selecting a bargaining representative;
- I/we will not require an employee, individually or in a group, to attend a meeting or an event that is intended to influence his or her decision in selecting or not selecting a bargaining representative;
- I/we understand my/our obligation to limit disruptions caused by prerecognition labor disputes through the adoption of nonconfrontational procedures for the resolution of prerecognition labor disputes with employees engaged in the production of goods or the rendering of services for the County; and
- I/we have or will adopt any or all of the above-referenced procedures, or their functional equivalent, to ensure the efficient, timely, and quality provision of goods and services to the County. I/we shall include a list of said procedures in such certification.

I/we further agree that every County contract for the provision of services, when such services will be performed on County property, shall include a requirement that I/we adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, no intimidation agreement, and a majority authorization card agreement.

I/we further agree that every County contract for the provision of human services, when such services are not to be performed on County property, shall include a requirement that I/we adopt, at the least, a neutrality agreement.

I/we understand that the efficient, timely, and nondisruptive provision of goods and services is a paramount financial interest of the County of Suffolk and as such, the County expects the potential County contractor to protect the County's financial interest by adopting nonconfrontational procedures for the orderly resolution of labor disputes, including, but not limited to, neutrality agreements, majority authorization card agreements, binding arbitration agreements, fair communication agreements, nonintimidation agreements, and reasonable access agreements.

**Section II** The Union Organizing Law does not apply to this contract for the following reason(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check if  
Applicable

**Section III**

Contractor Name: Town of Riverhead Federal Employer ID#: 11-6001935

Contractor Address: 200 Howell Avenue Amount of Assistance: \$29,000

Riverhead, NY 11901 Vendor #: \_\_\_\_\_

Contractor Phone #: 631-727-3200

Description of project or service: To assist the Calverton Enterprise Park Economic Development Zone Administrative Board

**Section IV**

I declare under penalty of perjury under the Laws of the State of New York that the undersigned is authorized to provide this certification, and that the above is true and correct.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title of Authorized Representative

**Suffolk County Living Wage Requirements Exhibit**  
**As Last Revised by the Suffolk County Department of Labor on 5/12/04**

Note: Pursuant to Section 7 of Local Law No. 18-2002, "A Local Law to Implement Living Wage Policy for County of Suffolk", all covered employers subject to the provisions of the Living Wage Law shall submit a completed and sworn (under penalty of perjury) Certification/Declaration – Subject to Audit Form LW-38, signed by an authorized representative, as part of an executed contract with the County of Suffolk. The complete Certification/Declaration – Subject to Audit Form LW-38 shall be made a part of any executed contract or project agreement and made available to the public upon request.

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- To certify Living Wage compliance: Return Forms LW-1 and LW-38.  
or
  - To certify non-applicability of Living Wage law: Return Form LW-38.  
or
  - To request and document a general living wage exemption: Return Forms LW-1, LW-38 and LW-4.  
or
  - To request and document a specific living wage exemption: Return Forms LW-1, LW-38 and LW-5.
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- In the event that there is a change in circumstances, it is the Contractor's responsibility to submit to the County additional Living Wage forms which either replace or supplement prior submissions of Living Wage forms.
- Living Wage Law Information Fact Sheet, text of the Local Law, Frequently Asked Questions, Forms, and Rules and Regulations can be found on the Suffolk County web site at [www.co.suffolk.ny.us](http://www.co.suffolk.ny.us)

Click: Department Directory  
Labor  
Living Wage Law Info

- Suffolk County Department of Labor Living Wage Unit Tel. (631) 853-3808

**End of Text for Suffolk County Living Wage Requirements Exhibit**  
**As Last Revised by the Suffolk County Department of Labor on 5/12/04**