

CDA RESOLUTIONS:

CDA

- Res. #20** Accept and Adopt Findings and Recommendations of Market Study Prepared by RKG Associates and Authorize VHB to Proceed with Environmental Review of Development Plan "A" and Alternate Development Plan as Presented on December 8, 2011
- Res. #21** Authorizes Change Order #7 for Reconstruction of Calverton Rail Spur

TOWN BOARD RESOLUTIONS:

- Res. #912** Authorizes Change Order #7 for Reconstruction of Calverton Rail Spur
- Res. #913** Ambulance District Budget Adjustment
- Res. #914** Amend Town Board Resolution #6-295 2006 East Creek Bulkheading Project
- Res. #915** Calverton Park Community Development Budget Adjustment (Consultants)
- Res. #916** Calverton Park Community Development Budget Adjustment (Security Services)
- Res. #917** Extends Contract with Arthur J. Gallagher & Co., Vericclaim and Perma
- Res. #918** Adoption of Fund Balance Policy
- Res. #919** General Fund Recreation Budget Adjustment
- Res. #920** Highway Department Budget Adjustment
- Res. #921** Meetinghouse Creek Bulkheading Improvement Capital Project Budget Adoption
- Res. #922** Workers Compensation Fund Budget Adjustment
- Res. #923** 2011 Recreation Program Fund Budget Adjustment
- Res. #924** Awards Bid for Heating and Air Conditioning Service and Maintenance Contract

- Res. #925 Authorizes Town Supervisor to Execute Change Order for Miamogue Park Construction Project**
- Res. #926 Ratifies the Reappointment of a Temporary Student Intern I (Thomas Houghton)**
- Res. #927 Appoints Part-Time Homemakers to the Seniors Program (Felicia Foster, Sandra Roberts)**
- Res. #928 Appoints a Justice Court Clerk (Sarah Manarel)**
- Res. #929 Authorizes the Supervisor to Execute an Agreement with Merchant Services Inc.**
- Res. #930 Accepts the Resignation of the Empire Zone Coordinator**
- Res. #931 Appoints Call-In Personnel for the Riverhead Youth Bureau/Recreation Department**
- Res. #932 Appoints Member to the Riverhead Industrial Development Agency (Dawn C. Thomas)**
- Res. #933 Extends Bid Contract for Removal of Household Hazardous Waste**
- Res. #934 Extends Bid Contract with Peconic Propane, Inc.**
- Res. #935 Approves Extension of Security Posted by Birchwood at Wading River LLC in Connection with the Subdivision Entitled "Birchwood at Wading River – Section 3" (Road and Drainage Improvements)**
- Res. #936 Approves Extension of Security Posted by Birchwood at Wading River LLC in Connection with the Subdivision Entitled "Birchwood at Wading River – Section 4" (Road and Drainage Improvements)**
- Res. #937 Accept and Adopt Findings and Recommendations of Market Study Prepared by RKG Associates and Authorize VHB to Proceed with Environmental Review of Development Plan "A" and Alternate Development Plan as Presented on December 8, 2011**
- Res. #938 Authorizes the Supervisor to Execute an Agreement with Riverhead Industrial Development Agency for Administration Services of Suffolk County/Town of Riverhead Empire Zone**
- Res. #939 Authorizes the Supervisor to Execute a License Agreement with Broadcast Music, Inc. (BMI)**
- Res. #940 Authorizes the Supervisor to Execute Stipulation with Local 1000, AFSCME, AFL-CIO, Riverhead Unit of the Suffolk Local #852**

- Res. #941** Authorizes Execution of a Storm Water Maintenance Agreement, Acceptance of the Accompanying Proposed Restrictive Covenant and Acceptance of \$10,000.00 Post-Construction Storm Water Maintenance Security Deposit with Lowes Home Centers, Inc. at 1461 Old Country Road, Riverhead, New York, SCTM No's. 600-101-2-15.6 and 125-1-1 and 2.2
- Res. #942** Authorizes Notice to Bidders for Maintenance and Emergency Services Contract–Riverhead Water District Project No.: RDWD 11-01
- Res. #943** Authorizes Advance Payment to LIPA RE: Permanent Primary Electric Service – Plant 17 of Riverhead Water District
- Res. #944** Appoints Secretary to the Zoning Board of Appeals and Planning Board (Kim Fuentes)
- Res. #945** Authorizes the Supervisor to Execute an Agreement with Intelli-Tec Security Services, LLC
- Res. #946** Authorizes Recreational Deer Hunting with Shotgun on Town Property Located at Sound Avenue in Calverton, SCTM #600-60-1-2 from January 9, 2012 to January 31, 2012
- Res. #947** Pays Bills
- Res. #948** Accepts Final Environmental Impact Statement on the Special Permits of Village at Jamesport
- Res. #949** Approves Stipulation of Agreement

12.20.2011
110912

ADOPTED

TOWN OF RIVERHEAD

Resolution # 912

**AUTHORIZES CHANGE ORDER #7 FOR
RECONSTRUCTION OF CALVERTON RAIL SPUR**

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

WHEREAS, the New York State Department of Transportation (NYS DOT) Calverton Industrial Enterprise Park Freight Rail Access Rehabilitation (PIN #0935.61) Economic Recovery Project in the Town of Riverhead, in Suffolk County, (hereinafter "the Municipality/Sponsor") is eligible for and has been awarded funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs of such program to be borne at the ratio of 100% Federal funds to support, among other things, important infrastructure projects that help attract businesses, improve commerce and revitalize local economies; and

WHEREAS, the New York State Empire State Development Corporation through its Downstate Revitalization Fund awarded \$650,000 towards the Calverton Industrial Enterprise Park Freight Rail Access Rehabilitation Project funds to support, among other things, important infrastructure projects that help attract businesses, improve commerce and revitalize local economies; and

WHEREAS, the Town of Riverhead Board desires to foster the continued development of infrastructure at the Calverton Enterprise Park site to attract businesses, improve commerce, enhance the tax base and the local economy and encourage continued economic development at the site consistent with the comprehensive plans; and

WHEREAS, on February 11, 2010, the Town Board adopted Resolution No. 111 entitled, "Awards Calverton Rail Access Rehabilitation Contract" that awarded the construction bid for the above mentioned project to Railroad Construction Co., Inc.; and

WHEREAS, on April 6, 2010, the Town Board adopted Resolution No. 268 entitled, "Awards Calverton Rail Access Rehabilitation Contract" that authorized Change Order #1 to the construction contract for acquisition of the Long Island Rail Road Mainline switch and adopted Resolution No. 251 entitled, "Authorizes Dunn Engineering Associates, P.C. to Proceed with Calverton Rail Construction Administration", that authorized Dunn Engineering to proceed with construction inspection for the contract; and

New Items on Change Order #7:

Item No. CO-7-01 Remove and Relocate Track Panel (Eastern Fence)

This item has been added to the project in order to remove a track panel that was previously installed under the current contract. Removal of the panel from its current location, transporting to a new location, and reinstalling the track panel at the new location is included in this item. It is necessary to remove this track panel to allow for installation of a new turnout at the current location of the track panel. The removal location was determined by the designer, HDR, Inc. The track panel will be installed at the location of a turnout that is being removed from the project, as described in Item CO-7-02, below.

The contractor provided a cost proposal for \$10,260.00 for this item.

The Town Engineer approved this item, authorized the contractor to proceed, and RCC has completed the work to the satisfaction of the CI.

Item CO-7-02 Remove and Store Turnout (Eastern Fence)

This item has been added to the project in order to remove a turnout that was installed in the project rail spur by others. The installation of the turnout was not authorized by the Town or the Engineer, does not meet project specifications, and was installed in a location not approved by the Town of Riverhead or the Town Engineer. All turnout materials will be stored at a location determined by the Town, and the track panel removed in Item No. CO-7-01 will be installed at the location of the turnout to be removed under that item.

The contractor provided a cost proposal for \$8,350.00 for this item.

The Town Engineer approved this item, authorized the contractor to proceed, and RCC has completed the work to the satisfaction of the CI.

Item CO-7-03 Signing and Striping per MUTCD (2 Crossings, Metro)

This item provides signing and striping on both approaches of two at grade crossings of the project rail spur located adjacent to Metro Biofuels. Pavement markings and signing for other crossings in the project were included under Item 2860.1 Furnish and Install Grade Crossing. No separate item was included in the contract for signing and striping at crossings not included in the original project. Therefore, this new item allows for installation of signing and striping at crossings not installed under the contract.

The contractor provided a cost proposal for \$12,350.00 for this item.

The Town Engineer approved this item, authorized the contractor to proceed, and RCC has completed the work to the satisfaction of the CI.

Item CO-7-04 Meet Existing Crossing (Metro)

This item has been added to the project to allow modification of the rehabilitated track on either side of an existing grade crossing so that the modified track can be connected to the existing grade crossing, which is to be retained as is. The work involves removing asphalt from the existing crossing sufficient to expose rail to allow the connection, modification of the rehabilitated track to accommodate the connection, sawcutting the rail on both approaches to the crossing to be retained, and drilling for and installation of joint bars and track bolts as needed.

The Town of Riverhead Community Development Agency directed that this item be added to the project. The contractor provided a cost proposal for \$9,950.00 for this item. The Town Engineer approved this item, authorized the contractor to proceed and RCC has completed the work to the satisfaction of the CI.

Item CO-7-05 Demolish and Abandon Coal Bin Structure

This item has been added to the contract to allow for demolition below grade and abandonment in place of a concrete structure beneath the rail spur alignment, and backfill and compaction of the subgrade, so that rail can be placed across this location. The original design did not provide for any modification of this structure, and the structure is not necessary for operation of the rail spur. The Town Engineer authorized HDR Inc to inspect this feature, and HDR recommended abandonment in place to the Town.

The contractor provided a cost proposal for \$10,900.80 for this item. The Town Engineer approved this item, authorized the contractor to proceed, and RCC has completed the work to the satisfaction of the CI.

Item CO-7-06 Remove and Replace Structural Steel (Metro Coal Bins)

This item has been added to the contract to allow for the removal and replacement of deteriorated structural steel beams across an existing coal hopper beneath the rail spur alignment. No provision was included in the original contract to remove and replace the steel structure. The existing structure was inspected and analyzed by the designer HDR Inc and it was determined that the steel had deteriorated to the point where it was not suitable for use beneath the rail alignment. The Town Engineer authorized HDR Inc to develop design and specifications for the replacement of the steel, which were provided to the contractor for pricing.

The contractor provided a cost proposal for \$36,054.00 for this item. The Town Engineer approved this item, authorized the contractor to proceed, and RCC has

completed the work to the satisfaction of the CI. The design was provided to NYSDOT Main Office Rail Bureau, and NYSDOT Region 10 and MO personnel inspected the installation during the final walkthrough.

Item CO-7-07 Ballast, Surface and Align Track (Hand Methodology)

This item has been added to the contract to allow for ballasting, surfacing and aligning tracks north of the coal bin locations using hand tools and rubber tire trucks, instead of automated track mounted equipment and ballast cars. No rail access to this area of rehabilitated track was available until after the coal bin issue could be resolved, and in order to maintain the project schedule, the contractor RCC Inc. incurred additional expense due to the need to perform these activities using hand tools and trucks.

The contractor provided a cost proposal for \$17,310.00 for this item.

The Town Engineer approved this item, authorized the contractor to proceed, and RCC has completed the work to the satisfaction of the CI.

Item CO-7-08 Water Truck Rental

This item has been added to the contractor to provide a water truck to bring the moisture content of the subgrade beneath the track placed on new alignment within the range required in the specifications, so as to allow for proper compaction of the subgrade material to meet project specifications during construction the testing firm retained by the Town determined that the moisture content of the subgrade material was too low to allow for proper completion to meet project specifications. Therefore, it was necessary to provide a water truck to bring the moisture content up to project specification.

The contractor provided a cost proposal for \$2,646.00 for this item.

The Town Engineer approved this item, authorized the contractor to proceed, and RCC has completed the work to the satisfaction of the CI.

Quantity Increases to Existing Items:

Item 206.02 Trench and Culvert Excavation (Added by this Revised Memorandum)

The original contract quantity of 45.0 CY has been increased to 60.1 CY, due to field conditions that required the length and width of the trenches for conduit to be increased.

December 1, 2011

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The contract unit cost of \$250.00 per CY was applied. The Town Engineer approved this item, authorized the contractor to proceed, and RCC has completed the work to the satisfaction of the CI.

Item 304.15 Furnish and Place Ballast Walkway (Added by this Revised Memorandum)

The original contract quantity of 30.0 tons has been increased to 35.7 tons due to field conditions that required the location of the signal hut to be adjusted, thus lengthening the walkway.

The contract unit cost of \$217.00 per ton was applied. The Town Engineer approved this item, authorized the contractor to proceed, and RCC has completed the work to the satisfaction of the CI.

Item 02515.C F&I Subballast Backfill (Included in 11/9/11 Memorandum)

The original contract quantity of 300 Tons has been increased to 1150 Tons, due to the need to excavate and stockpile a significant amount of unsuitable subgrade material beneath the rail spur alignment. This unsuitable material was identified by representatives of the testing laboratory retained by the Town of Riverhead for the project.

The contract unit cost of \$59.00 per ton was applied. The Town Engineer approved this item, authorized the contractor to proceed, and RCC has completed the work to the satisfaction of the CI.

Item 02831.A Furnish and Install Fence (Added by this Revised Memorandum)

The original contract quantity of 48 LF has been increased to 61 LF, due to the need to replace fence that was removed to facilitate track rehabilitation.

The contract unit cost of \$110.00 per LF was applied. The Town Engineer approved this item, authorized the contractor to proceed, and RCC has completed the work to the satisfaction of the CI.

Item 02850.5 Grade and Compact Subgrade (8' from Centerline of Track) (Included in 11/9/11 Memorandum)

The original contract quantity of 1000 lf was increased to 2500 lf to allow for the placement and compaction of the additional materials required to replace the unsuitable materials discussed above.

December 1, 2011

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The contract unit cost of \$10.00 per lf was applied. The Town Engineer approved this item, authorized the contractor to proceed, and RCC has completed the work to the satisfaction of the CI.

Item 02850.8 Furnish and Install #1 Relay 115RE Rail (Added by this Revised Memorandum)

The original contract quantity of 46 tons was increased to 48.1 tons due to the need to replace a section of rail with unacceptable end gap detected at final walkthrough.

The contract unit cost of \$1250.00 per ton was applied. The Town Engineer approved this item, authorized the contractor to proceed, and RCC has completed the work to the satisfaction of the CI.

Item 02858.2 Furnish and Install New Rail Anchors (Added by this Revised Memorandum)

The original contract quantity of 10,808 ea was increased to 12,029 ea, due to final decisions made regarding the treatment at the coal bins and at the existing Northern Metro Crossing. As ordered by the engineer, additional anchors were required to fully box ties within 200 feet of these fixed elements.

The contract unit cost of \$6.00 each was applied. The Town Engineer approved this item, authorized the contractor to proceed, and RCC has completed the work to the satisfaction of the CI.

Item 02860.3 Remove Grade Crossing (Metro) (Included in 11/9/11 Memorandum)

The original contract quantity of one grade crossing removal was increased by one crossing removal for a total of two crossings to be removed. This allowed for the removal of one additional crossing not in the original contract.

The contract unit cost of \$2,600.00 each was applied. The Town Engineer approved this item, authorized the contractor to proceed, and RCC has completed the work to the satisfaction of the CI.

Please note that all the above items were approved in advance by the Town, have been installed to the satisfaction of the inspection staff, and appear on invoices submitted to the Town by the contractor for payment. The invoice quantities have been verified by DEA/HDR as conforming with the project record.

December 1, 2011
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If there are any questions regarding the above, please do not hesitate to contact this office.

VC:as
M2011211rev
P30013

12.20.2011
110913

ADOPTED

TOWN OF RIVERHEAD

Resolution # 913

AMBULANCE DISTRICT

BUDGET ADJUSTMENT

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

WHEREAS, a transfer of funds is necessary for Motor Vehicle Maintenance;

NOW THEREFORE BE IT RESOLVED, that the Supervisor be, and is hereby, authorized to establish the following budget adjustment:

		<u>FROM</u>	<u>TO</u>
120.045400.543925	RVAC Contract	7,000	
120.045400.541500	Motor Vehicle Maintenance		7,000

NOW THEREFORE BE IT RESOLVED, that the Town Clerk is hereby authorized to forward a copy of this resolution to the Ambulance District and the Accounting Department.

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

12.20.2011
110914

ADOPTED

TOWN OF RIVERHEAD

Resolution # 914

AMEND TOWN BOARD RESOLUTION #6-295
2006 EAST CREEK BULKHEADING PROJECT

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

WHEREAS, Capital Project #40137, 2006 East Creek Bulkheading Project was originally intended to be funded from the Special Trust Fund.

WHEREAS, A request for funding has been determined to come out of the East Creek fund as an amendment to the original transfer from the Special Trust Fund.

NOW THEREFORE BE IT RESOLVED, that the Riverhead Town Board adopt the following budget amendment to complete the project budget process:

	<u>FROM</u>	<u>TO</u>
406.095031.481122.40137 Transfer from East Creek Fund	156,818.44	
406.072300.523018.40137 Bulkheading Expense		156,818.44

RESOLVED, that the Town Clerk is hereby authorized to forward a copy of this resolution to the Accounting Department and the Recreation Department.

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No
Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

12.20.2011
110915

ADOPTED

TOWN OF RIVERHEAD

Resolution # 915

**CALVERTON PARK
COMMUNITY DEVELOPMENT**

BUDGET ADJUSTMENT

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

WHEREAS a transfer of funds is necessary to cover past costs associated with EPCAL professional Services study along with expenses associated with updating the Reuse Plan for the 2,900 acre Calverton site;

NOW THEREFORE BE IT RESOLVED, that the Supervisor be, and is hereby, authorized to establish the following budget adjustment:

		<u>FROM</u>	<u>TO</u>
914.000000.499999	Fund Balance	71,500	
914.069800.543900	Miscellaneous Consultants		71,500

RESOLVED, that the Town Clerk is hereby authorized to forward a copy of this resolution to the Accounting Department and the Town Attorney.

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

12.20.2011
110916

ADOPTED

TOWN OF RIVERHEAD

Resolution # 916

**CALVERTON PARK
COMMUNITY DEVELOPMENT**

BUDGET ADJUSTMENT

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

WHEREAS Town Board Resolution #854 adopted 11/15/11 authorized a lease agreement for security equipment at EPCAL;

WHEREAS additional funds are required in the Security Services Account and an excess of funds exists in a property tax account for property that has become tax exempt;

NOW THEREFORE BE IT RESOLVED, that the Supervisor be, and is hereby, authorized to establish the following budget adjustment:

		<u>FROM</u>	<u>TO</u>
914.069800.547100	Special Items – Property Taxes	4,500	
914.069800.543975	Security Services		4,500

RESOLVED, that the Town Clerk is hereby authorized to forward a copy of this resolution to the Accounting, Engineering and Community Development Department.

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

12.20.2011
110917

ADOPTED

TOWN OF RIVERHEAD

Resolution # 917

EXTENDS CONTRACT WITH ARTHUR J. GALLAGHER & CO.
VERICLAIM AND PERMA

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

NOW, THEREFORE, BE IT RESOLVED, the insurance program for the calendar year 2012 is awarded to Arthur J. Gallagher & Company of New York and Public Employer Risk Management Association (PERMA) and Vericlain as Third Party Administrators, and be it further

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device, and if needed, a certified copy of same can be obtained from the office of the Town Clerk

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

12.20.2011
110918

ADOPTED

TOWN OF RIVERHEAD

Resolution #918

ADOPTION OF FUND BALANCE POLICY

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

WHEREAS, the Town of Riverhead is required to implement GASB #54 Fund Balance Reporting and Governmental Fund Type Definitions: and

WHEREAS, the Town of Riverhead adopted a Fund Balance Policy in 2006 and wishes to amend that policy,

THEREFORE BE IT FURTHER RESOLVED that the Town of Riverhead's Fund Balance Policy is hereby adopted as follows:

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

Town of Riverhead

Fund Balance Policy

TOWN OF RIVERHEAD

FUND BALANCE POLICY

Adopted: December 6, 2011

The Town of Riverhead (the "Town") believes that sound financial management principles require that sufficient funds be retained by the Town to provide a stable financial base at all times. To retain this stable financial base, the Town needs to maintain a General Fund Balance sufficient to fund all cash requirements of the Town, to secure and maintain investment grade bond ratings, to provide financial reserves for unanticipated/emergency expenditures and/or revenue shortfalls.

Governmental Accounting Standards Board Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions (GASB 54)* changed the terminology and classification of fund balance to reflect spending constraints on resources, rather than availability for appropriation. This approach is intended to provide users more consistent and understandable information about a fund's resources. The statement is intended to improve the usefulness of the fund balance information reported by providing more clarification and structured classification.

Under GASB 54, fund balance is classified as: 1) nonspendable, 2) restricted, or 3) unrestricted. Unrestricted fund balance is further classified as: 1) committed, 2) assigned, or 3) unassigned:

The following individual items shall constitute the Town General Fund Balance:

- **Nonspendable Fund Balance** consists of assets that will never convert to cash due to their form (i.e. inventories and prepaid items), will not convert to cash within the current period (i.e. long term receivables), or funds that legally or contractually must be maintained intact (i.e. principal amount of legal endowments).
- **Restricted Fund Balance** consists of the portion of fund balance that is limited to use for a specific purpose by external parties (i.e. creditors, grantors), or by law through constitutional provisions or enabling legislation.
- **Committed Fund Balance** consists of the portion of fund balance whose use is constrained by limitations imposed by the Town's highest level of decision making authority (Town Board). Formal action must be taken prior to the end of the fiscal year; however, the amount can be determined in the subsequent period. The same formal action must be taken to remove or change the limitations placed on the funds. The Town Board is the decision making authority that can, by adoption of a resolution prior to the end of the fiscal year, commit fund balance.
- **Assigned Fund Balance** consists of the portion of fund balance that reflects the Town's intended use of certain resources for specific purposes. Intent is established the Town's highest level of decision making authority or a body or official that has been given the authority to assign funds.
 - In the General fund, assigned fund balance, represents amounts constrained by a government board, or a body or person(s) with delegated authority from a governing board to assign amounts, for a specific intended purpose. Amounts reported as assigned should not result in a deficit in unassigned fund balance.
 - Assigned fund balance in all other governmental funds represents any positive amount after classifying nonspendable, restricted or committed fund balance.

- **Unassigned Fund Balance** is the residual classification for the General Fund and consists of the excess portion of fund balance that has not been classified in the previous four categories. All funds in this category are considered spendable resources. This category also provides the resources necessary to meet unexpected expenditures and revenue shortfalls. Only the General Fund is able to report a positive unassigned fund balance.
 - If another governmental fund has a fund balance deficit, then it will be reported as a negative amount in the unassigned classification in that fund. This fund deficit would only be shown if the fund's liabilities, together with the amounts classified as nonspendable, restricted, and committed exceed the fund's assets (a residual deficit).

Not all of the Town's funds will necessarily have all of the components of fund balance available to that fund.

No funds should report a negative amount for restricted, committed or assigned fund balance.

Nonspendable and Restricted Fund Balance

It is the responsibility of the Financial Administrator to report Nonspendable Fund Balance appropriately in the Town's Comprehensive Annual Financial Report.

It is the responsibility of the Financial Administrator to report all Restricted Funds appropriately in the Town's Financial Statements. All Restricted Funds must also be reported to the Town Board at the next Board meeting following the recognition of the restriction.

Order of Use of Restricted and Unrestricted Funds

When both restricted and unrestricted funds are available for expenditure, restricted funds should be spent first unless otherwise required by law or agreement.

When committed, assigned and unassigned funds are available for expenditure, committed funds should be spent first, assigned funds second, and unassigned funds last.

Authority to Commit Funds

The Town's Board has the authority to set aside funds for a specific purpose. Any funds set aside as Committed Fund Balance requires the passage of a resolution by a simple majority vote. The passage of a resolution must take place prior to December 31st, of the applicable fiscal year. If the actual amount of the commitment is not known by December 31st, the resolution must state the process or formula necessary to calculate the actual amount as soon as information is available.

Authority to Assign Funds

Upon determination of the amounts of Nonspendable, Restricted and Committed Fund balance, **in all funds except** for the General Fund, the Financial Administrator has the authority to record the remainder of fund balance as Assigned Fund Balance.

Upon passage of a budget resolution, where fund balance is used as a source to balance the budget, the Financial Administrator shall record the amount of Assigned Fund Balance.

Unrestricted Fund Balance

Unrestricted Fund Balance is the residual amount of Fund Balance in the General Fund and consists of committed, assigned and unassigned fund balance. It represents the resources available for future spending. Unrestricted Fund Balance may be accessed in the event of unexpected expenditures, upon approval of a budget amendment resolution by the Town's governing body. In the event of a projected revenue shortfall, it is the responsibility of the Financial Administrator to report the projections to the Town's Board on, at a minimum, an annual basis and shall be recorded in the minutes.

Any budget amendment resolution that will result in the Unrestricted Fund Balance dropping below the minimum level will require a simple majority vote.

Adequate Fund Balance

Year-end surpluses and fund balances are moneys that can provide a cushion or buffer that may be needed from time to time to operate without interruption or reduction in services. They provide a degree of stability and the resources to weather fluctuations in revenues and expenditures without severely impacting real property tax rates. Fund balances and adequate reserves should be managed and reviewed on a regular basis.

In its evaluations of credit ratings, Moody's Investors Service has stated it "...expects [municipalities] to maintain... conservative budgeting and sound fiscal management in order to sustain levels of fund equity." Standard & Poor's Corporation, in its evaluations, has stated that it expected "...that [issuers] will continue to maintain strong financial positions..." that "...are supported by conservative budgeting practices..." Thus, the financial community, and especially the credit rating agencies, attaches considerable importance to adequate fund balances and policies to monitor and manage those fund balances.

Auditors and financial advisors often note that fund balances are not replaceable through the budget process because of the legal requirement to develop balanced budgets for the general fund and the special revenue funds. The Town does face significant pressure on the expenditure side of its budget (and therefor on its reserves) due to health insurance premiums, pension costs, labor negotiations and the tax cap. If surplus is depleted at the end of a fiscal year, it cannot be replaced unless during the ensuing fiscal year expenditures are less than amounts budgeted or non-tax revenues are higher than projected (or both).

The Town of Riverhead, due to revenue streams produced by property taxes and other sources, as well as careful and conservative budgeting of expenditures, has been able to generate operating surpluses in its General Fund over the years.

In recognition of sound fiscal policy and in order to stabilize and possibly enhance the current credit rating of the Town, the Town Board will make all reasonable efforts to maintain a total fund balance including reserves in its General Fund at the end of each fiscal year equal to no less than 15% of its total operating budget. The Town believes that this is a reasonable amount fund balance to achieve at the end of each fiscal year as unanticipated events during the course of a year can have negative effects on non-tax revenues or expenditures, or both.

If an emergency or a need were to occur that necessitated the appropriation of funds that would result in reducing the projected fund balance in the General Fund below 15% of operating expenditures, a resolution of the Town Board would be adopted to approve such appropriation.

Fund balance in the General Fund above 15% may be appropriated for the following purposes:

To reduce the subsequent year's property taxes.

For one-time capital expenditures.

For emergencies caused by natural occurrences such as hurricanes or blizzards.

This policy will remain in effect until the Town of Riverhead, by resolution, amends or revises it.

12.20.2011
110919

ADOPTED

TOWN OF RIVERHEAD

Resolution # 919

GENERAL FUND
RECREATION

BUDGET ADJUSTMENT

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

WHEREAS, Recreation Superintendent is requesting a transfer of funds for the printing of a Recreation Brochure;

NOW THEREFORE BE IT RESOLVED, that the Supervisor be, and is hereby, authorized to establish the following budget adjustment:

		<u>FROM</u>	<u>TO</u>
001.071400.546000	Recreation Center Utilities	3,300.00	
001.071800.542600	Beach Printing	5,345.25	
001.070200.542600	Admin Printing		8,645.25

RESOLVED, that the Town Clerk is hereby authorized to forward a copy of this resolution to the Recreation and the Accounting Department.

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

12.20.2011
110920

ADOPTED

TOWN OF RIVERHEAD

Resolution # 920

HIGHWAY DEPARTMENT

BUDGET ADJUSTMENT

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

WHEREAS repair to the HVAC system is necessary to the Highway Building;
and

WHEREAS a transfer of funds is requested to cover the repair costs;

NOW THEREFORE BE IT RESOLVED, that the Supervisor be, and is hereby,
authorized to establish the following budget adjustment:

		<u>FROM</u>	<u>TO</u>
111.051100.541309	Roads Sweepings Removal	4,033	
111.051400.549000	Miscellaneous		4033

RESOLVED, that the Town Clerk is hereby authorized to forward a copy of this resolution to the Highway Department and the Accounting Department.

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 921

**MEETINGHOUSE CREEK BULKHEADING
IMPROVEMENT CAPITAL PROJECT**

BUDGET ADOPTION

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

WHEREAS, a bid was awarded 8/2/11 to repair damage that occurred to the bulkhead at Meeting House Creek Road.

WHEREAS, An additional transfer of funds in the amount of 20,576.72 is necessary from the General Fund Accounts to the project for the repair to the Meetinghouse Creek Bulkhead.

NOW THEREFORE BE IT RESOLVED, that the Supervisor is hereby authorized to establish the following budget adjustment:

		<u>FROM</u>	<u>TO</u>
001.072012.421049	Facility Rentals, Boat & Misc Rec	7,695.28	
001.072300.524000	Marinas/Docks - Equipment	7,806.44	
001.072300.540000.	Marinas & Docks, Contractual	5,075.00	
406.072300.523018.40148	Bulkheading Expense		20,576.72

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No
Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

12.20.2011
110922

ADOPTED

TOWN OF RIVERHEAD

Resolution # 922

WORKERS' COMPENSATION FUND

BUDGET ADJUSTMENT

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

WHEREAS a transfer of funds between appropriations in necessary for year end; and

NOW THEREFORE BE IT RESOLVED, that the Supervisor be, and is hereby, authorized to establish the following budget adjustment:

		<u>FROM</u>	<u>TO</u>
173.0017100.548210	General Fund Administration	113,000	
173.0017100.548220	Highway Administration	10,000	
173.0017100.548240	Sewer Fund Administration	2,000	
173.0017100.548210	Refuse & Garbage Admin	900	
173.019300.548210	General Fund Judgement's and Claims		113,000
173.019300.548220	Highway Judgement's and Claims		10,000
173.019300.548240	Sewer Fund Judgement's and Claims		2,000
173.019300.548210	Refuse & Garbage Judgement's and Claims		900

RESOLVED, that the Town Clerk is hereby authorized to forward a copy of this resolution to the Highway Department and the Accounting Department.

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No
Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

12.20.2011
110923

ADOPTED

TOWN OF RIVERHEAD

Resolution # 923

2011 RECREATION PROGRAM FUND

BUDGET ADJUSTMENT

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

WHEREAS, Year End budget adjustments are necessary for 2011.

NOW THEREFORE, BE IT RESOLVED, that the Town Board hereby authorizes the attached 2011 Budget adjustment for the Recreation Program Fund:

RESOLVED, that the Town Clerk is hereby authorized to forward a copy of this resolution to the Accounting, and Recreation Department .

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

					From	To
006	000000	499999	Recreation Fund	Fund Balance	6,500	
006	071800	524190	Beaches	Boats - Sailing Program	500	
006	073100	518600	Youth Programs	Seasonal Employees	500	
006	073100	542000	Youth Programs	Supplies	1,700	
006	073100	543405	Youth Programs	Travel Expense	600	
006	073105	542000	Other Youth Programs	Supplies	50	
006	076200	542600	Adult Recreation	Printing	300	
006	076200	544300	Adult Recreation	Plaques and Awards	250	
006	076204	524000	Recreation Instructional Prc	Equipment	200	
006	076205	542104	ADA - Adult Recreation	Supplies	450	
006	076210	545651	Bus Trips Recreation	Bus Rentals Adults	1,500	
006	076230	515662	Volleyball Program	Salaries	400	
006	076230	542000	Volleyball Program	Supplies	350	
006	076250	524000	Softball Programs	Equipment	500	
006	076250	542300	Softball Programs	Supplies	450	
006	076250	543607	Softball Programs	Umpires	800	
006	076260	543900	Recreation Non League Spo	Miscellaneous Consultants	2,500	
006	076260	545110	Recreation Non League Spo	Rents and Leases Building	500	
006	090100	581500	Benefits	NYS Retirement	24,160	
006	070200	512500	Administration	Salaries		3,900
006	070200	549000	Administration	Miscellaneous		6,500
006	071800	518769	Beaches	Sailing Instructors		2,800
006	073105	518600	Other Youth Programs	Seasonal Employees		18,700
006	073105	543601	Other Youth Programs	Playground Program Expense		350
006	076200	543900	Adult Recreation	Miscellaneous Consultants		10
006	076204	518700	Recreation Instructional Prc	Program Instructors		1,350
006	076204	543900	Recreation Instructional Prc	Miscellaneous Consultants		6,000
006	076210	518600	Bus Trips Recreation	Chaperones		850
006	076210	545652	Bus Trips Recreation	Bus Rentals Youth		1,000
006	076250	515501	Softball Programs	P.T. Attendant		100
006	076250	515667	Softball Programs	League Scorekeeper		50
006	090300	582500	Benefits	Social Security		600

TOWN OF RIVERHEAD

Resolution # 924

AWARDS BID FOR HEATING, VENTILATING AND AIR CONDITIONING SERVICE AND MAINTENANCE CONTRACT

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

WHEREAS, the Town Clerk was authorized to publish and post a Notice to Bidders for the Annual Heating, Ventilating and Air Conditioning Service and Maintenance Contract for various Town of Riverhead facilities; and

WHEREAS, three (3) bids were received, opened and read aloud on the 14th day of November at 11:05 am in the Office of the Town Clerk, 200 Howell Avenue, Riverhead, New York.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the bid for the Annual Heating, Ventilating and Air Conditioning Maintenance Contract be and is hereby awarded to Commercial Instrumentation Services, Inc. in the amount of (Nineteen Thousand Three Hundred Fifty Nine & 00/100 (\$19,359.00): and

BE IT FURTHER RESOLVED, that the Town Board be and does hereby authorize the Town Clerk to return any and all bid bonds received in connection with the above; and

BE IT FURTHER RESOLVED, that the Town Board be and does hereby authorize the Town Supervisor to execute an agreement for the Annual Heating, Ventilating and Air Conditioning Service and Maintenance Contract; and

BE IT FURTHER RESOLVED, that the Town Board be and does hereby authorize the Engineering Department to secure a Town of Riverhead purchase order from the Purchasing Department in the amount of \$19,359.00, two equal payments on or about June 1, 2012 and December 1, 2012; and

BE IT FURTHER RESOLVED, that the Town Clerk be and is hereby authorized to forward a copy of this resolution to Engineering Department, Purchasing Department and the Office of Accounting; and

BE IT FURTHER RESOLVED, that all Town Hall departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No
Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 925

**AUTHORIZES TOWN SUPERVISOR TO EXECUTE CHANGE ORDER FOR
MIAMOGUE PARK CONSTRUCTION PROJECT**

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

WHEREAS, on October 4, 2011, the Riverhead Town Board adopted Resolution No. 740 entitled, "Awards Bid for Miamogue Park Construction Project"; and

WHEREAS, the bid was awarded to Brian V. Klug Landscaper, Inc. in the amount of One Hundred Seventy Five Thousand Nine Hundred Seventy One & 20/100 (\$175,971.20); and

WHEREAS, the Engineering Department has recommended that additional work is required for excavation, electrical supplies for lighting, curb forms, concrete, bonding, playground border with wood mulch in the amount of +\$21,786.08 with contract decreases for boardwalk and stairs and railing in the amount of -\$12,981.16 for a total net increase of +\$8,804.92.

NOW, THEREFORE, BE IT RESOLVED, that the Town Supervisor be and is hereby authorized to execute a Change Order No. 1 in the amount of \$8,804.92; and

BE IT FURTHER RESOLVED, that the Town Clerk be and is hereby authorized to forward a certified copy of this resolution to Brian V. Klug Landscaper, Inc., P. O. Box 349, Speonk, NY 11972, Drew Dillingham, P.E., Purchasing Department and the Office of Accounting; and

BE IT FURTHER RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

**MIAMOGUE PARK CONSTRUCTION CONTRACT
TOWN OR RIVERHEAD, SUFFOLK COUNTY, NEW YORK**

CHANGE ORDER NO. 1

Project: Miamogue Park Construction Contract
 Change Order No.: 1
 Date: December 14, 2011
 Contractor: Brian V. Klug Landscaper, Inc.
 P.O. Box 349
 Speonk, New York 11972
 Contract Date: September 21, 2011

The Contract is changed as follows:

NOT VALID UNTIL SIGNED BY THE OWNER, ENGINEER AND CONTRACTOR

The Original Contract Sum was.....	\$175,971.20
Net Change by Previously Authorized Change Orders.....	\$0.00
The Contract Sum Prior to This Change Order was.....	\$175,971.20
The Contract Sum will be increased by this Change Order in the amount of	\$8,804.92
to represent	
an addition for Performance Bond in the amount of.....	+\$5,279.00
an increase for Item No. 2 Unclassified Excavation (430 CY) in the amount of....	+\$6,020.00
a decrease for Item 205 – Timber Boardwalk and Stairs (30 LF) in the amount of..	-\$8,481.16
a decrease for Item 205 – Timber Boardwalk and Stairs (railing) in the amount of..	-\$4,500.00
an addition for Plastic Edging Timbers Around Entire Perimeter of the Safety Area for the Playground with a 9” Layer of Specialized Wood Mulch in the amount of.....	+\$8,590.00
an addition for Miscellaneous Electrical Supplies to Install Lights in the amount of ..	+499.18
an addition for Forms for Belgian Block Curb Construction in the amount of.....	+\$333.90
an addition for Ready Mix Concrete (8 CY) in the amount of.....	+\$1,064.00
The New Contract Sum Including this Change Order will be.....	\$184,776.12

Contractor	Owner
Brian V. Klug Landscaper, Inc.	Town of Riverhead
P.O. Box 349	200 Howell Avenue
Speonk, New York, 11972	Riverhead, New York 11901
By: _____ Authorized Representative Signature	By: _____
Print Name: _____	Print Name: _____
Date: _____	Date: _____

TOWN OF RIVERHEAD

Resolution # 926

RATIFIES THE REAPPOINTMENT OF A TEMPORARY STUDENT INTERN I

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

WHEREAS, the need for a temporary Student Intern exists in the Department of the Town Engineer; and

WHEREAS, a recommendation has been made by the Town Engineer to reappoint Thomas Houghton to the position.

NOW THEREFORE BE IT RESOLVED, that effective for the period of December 29, 2011 through January 14, 2012 this Town Board hereby ratifies the reappointment of Thomas Houghton to the position of temporary Student Intern I at the hourly rate of \$10.50.

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 927

APPOINTS PART-TIME HOMEMAKERS TO THE SENIORS PROGRAM

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

WHEREAS, vacancies exist for part-time Homemakers in the EISEP (Expanded In-home Services for the Elderly Program) which is funded by the New York State Office for the Aging and operated locally by the Riverhead Town Seniors Programs; and

WHEREAS, these positions were duly posted for, job posting #6, interviews were conducted; and

WHEREAS, pursuant to completed background investigations, the recommendation of the Department Head and the Personnel Officer has been received.

NOW, THEREFORE, BE IT RESOLVED, that effective December 20, 2011 Felicia Foster and Sandra Roberts are hereby appointed to the positions of Part-Time Homemaker at the hourly rate of \$12.54.

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 928

APPOINTS A JUSTICE COURT CLERK

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

WHEREAS, a vacancy for a Justice Court Clerk exists in the Riverhead Town Justice Court; and,

WHEREAS, the Suffolk County Department of Civil Service has established a list , List #08-0050-36, for the position of Justice Court Clerk, and a candidate has been identified who had previously served the Town in the capacity of contingent Justice Court Clerk and who also was still immediately reachable on this civil service list; and,

WHEREAS, it is the recommendation of the Town Justices to appoint this candidate, Sarah Manarel, to this position.

NOW, THEREFORE, BE IT RESOLVED, effective January 1, 2012, this Town Board hereby appoints Sarah Manarel to the position of Justice Court Clerk as found in Group 11, Step 4A of the Clerical and Supervisory Schedule in the CSEA contract; and,

RESOLVED, that the Town Clerk is hereby directed to forward a copy of this resolution to Sarah Manarel, the Riverhead Town Justice Court, the Personnel Officer and the Financial Administrator. Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device, and if needed, a certified copy of same can be obtained from the office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

12.20.2011
110929

ADOPTED

TOWN OF RIVERHEAD

Resolution # 929

**AUTHORIZES THE SUPERVISOR TO EXECUTE AN AGREEMENT
WITH MERCHANT SERVICES INC., d/b/a EVO MERCHANT SERVICES AND
SYSTEMS EAST, INC.**

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

WHEREAS, the Town Board of the Town of Riverhead authorized the issuance of a Request for Proposals for Credit Card Processing, Debit Card Payment Processing and Electronic Check Payment Processing for the benefit of the general public, at various Town departments, offices and facilities by Resolution #609 adopted on August 2, 2011; and

WHEREAS, pursuant to the terms of the Request for Proposals, each proposal must comply with the instructions in the Notice to Bidders and required that all proposals be submitted on or before September 1, 2011 at 11:00 a.m., which was thereafter extended to the close of business that day due to weather-related issues; and

WHEREAS, the Town did receive numerous responses to the Request for Proposals from qualified parties; and

WHEREAS, after serious consideration of the responses to the Request for Proposals, the Town Board has determined that it is in the best interests of the Town of Riverhead to award Merchant Services Inc., d/b/a EVO Merchant Services and Systems East, Inc., the contract to provide credit card payment processing, debit card payment processing and electronic check payment processing for the general public, at various Town departments, offices and facilities.

NOW THEREFORE BE IT RESOLVED, that the Town Board awards Merchant Services Inc., d/b/a EVO Merchant Services and Systems East, Inc., an opportunity to enter into an agreement with the Town of Riverhead to provide credit card payment processing, debit card payment processing and electronic check payment processing for the general public, at various Town departments, offices and facilities; and be it further

RESOLVED, that the Supervisor is authorized to execute an agreement with Merchant Services, Inc., d/b/a EVO Merchant Services and Systems East, Inc., in substantially the same form as annexed hereto and subject to review and recommendation for signature approval by the Office of the Town Attorney; and be it further

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No
Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

CONSULTANT/PROFESSIONAL SERVICES AGREEMENT

This Agreement made the **20th of December, 2011**, between the TOWN OF RIVERHEAD, a municipal corporation organized and existing under the laws of New York, with its offices located at 200 Howell Avenue, Riverhead, New York 11901 (hereinafter referred to as the "Town"); Merchant Services, Inc., a corporation doing business as EVO Merchant Services existing under the laws of the State of New York with a principal place of business at 515 Broadhollow Road, Melville, New York, 11747 (hereinafter referred to as "EVO"), and Systems East, Inc., a corporation existing under the laws of the State of New York with a principal place of business at 6 Locust Avenue, Cortland, New York 13045 (hereinafter referred to as "Systems East").

In consideration of the mutual promises herein contained, Town, EVO and Systems East agree as follows:

1. SCOPE OF SERVICES

During the term of this Agreement, EVO and Systems East shall furnish the services set forth in the Merchant Processing Agreement and Merchant Application attached hereto as "Schedule A" (collectively the "Merchant Agreement"), the terms and conditions of which are incorporated by reference and made a part hereof as if fully set forth in their entirety herein. In the event of a conflict between the terms of the Merchant Agreement and the terms of this Agreement regarding the term and termination of the Agreement or pricing, the terms of this Consultant/Professional Services Agreement shall control. However, nothing contained herein shall modify the terms of processing set forth in the Merchant Agreement and the duties, obligations of the parties to comply with the rules and regulations of the various card associations and EVO's processing bank. Services to be performed by EVO and Systems East pursuant to this Agreement are to be rendered as an independent contractor and not as an employee of Town.

The scope of services shall be provided to the following town departments:

- a. Receiver of Taxes
- b. Town Clerk
- c. Recreation Department
- d. Water District
- e. Building Department
- f. Sanitation Department.

All parties agree that additional town departments may be added regarding scope of services upon the same terms and conditions herein upon town board resolution and upon written consent of EVO and Systems East.

2. TERM OF AGREEMENT

This Agreement shall have commenced on December 1, 2011, and terminate on June 1, 2014, unless terminated earlier as addressed herein.

3. PAYMENT

For these services, Town will pay the following fees:

EXCEPT FOR THE RECEIVER OF TAXES, each town department delineated in paragraph 1(b) to (f), above, and any additionally designated town departments hereafter, shall pay a one-time Gateway activation fee of \$25.00. In addition, each town department shall pay a monthly Gateway access fee of \$5.00 during the term of this Agreement.

All parties agree that Town shall pay the Gateway activation fee for each designated town department to Systems East. In addition, all parties agree that Town shall pay the Gateway access fees on a bi-annual basis (in advance) to Systems East. EVO and Systems East shall respectively hold the Town harmless and respectively indemnify Town regarding any dispute, cause of action, claim, or issue regarding actual payment of fees between EVO and Systems East.

In addition, all parties agree that Town shall pay all applicable Gateway activation fees and Gateway access fees actually incurred and recurring as of September 8, 2011.

3.a. ADDITIONAL PAYMENT TERMS

All parties agree that notwithstanding what may be contained in the attached Schedule "A" (merchant agreement), all parties paying town property taxes, fees and other expenses to the Town via credit/debit card transaction and electronic check transaction shall incur transaction costs payable to EVO and Systems East as follows:

Credit/Debit Card fixed rate for VISA/Master Card/Discover: 2.35% plus a .60 cent transaction fee per each transaction.

Electronic Check: \$1.95 per check.

The Town shall not have any liability for any other expenses or costs incurred by EVO and/or Systems East except for expenses expressly provided for in the attached Merchant Agreement. Consultant shall not incur any expenses in Town's behalf except for those items expressly provided for in the Merchant Agreement. Consultant shall not charge the research fee referred to in Section 8(A) of the Merchant Agreement without Town's prior written consent.

4. RIGHTS TO DOCUMENTS OR DATA

All information and data, regardless of form, generated in the performance of, or delivered under this Agreement, as well as any information provided to EVO and Systems East by Town, shall be and remain the sole property of Town. EVO and Systems East shall keep all such information

and data in confidence and not disclose or use it for any purpose other than in performing this Agreement, except with Town's prior written approval. In the event that the legal right in any data and information generated in the performance of this Agreement does not vest in Town by law, EVO and Systems East hereby agree and assign to Town such legal rights in all such data and information. Final payment shall not be due hereunder until after receipt by Town of such complete document and data file, or a certification that there is no such information created by the services performed under this Agreement, and receipt of all information and data which is the property of Town. These obligations shall survive the termination of this Agreement.

5. PUBLICITY

EVO and Systems East shall not, without the prior written consent of Town, in any manner advertise or publish the fact that Town has entered into this Agreement with EVO and Systems East. EVO and Systems East shall not, without the prior written consent of the Town, provide, release or make available for inspection any documents, data, or written material of any kind without the prior written consent of at least three members of the Town board or by resolution of the Town Board.

6. ASSIGNMENT AND SUBCONTRACTING

Performance of any part of this Agreement may not be subcontracted nor assigned without, in each case, the prior written consent of at least three members of the Town Board or by resolution of the Town Board.

7. TERMINATION

This Agreement may be terminated at any time for any reason by any of the parties upon 30 days written notice to the other parties. In the event of such termination, Town shall have no further obligation to EVO and/or Systems East except to make any payments which may have become due under this Agreement. EVO and/or Systems East may terminate this Agreement immediately upon written notice to Town in the event EVO and/or Systems East determine that any potential risk of loss exists.

8. RECORDS

EVO and Systems East shall keep accurate records in the performance of services hereunder. Upon request of the Town, EVO and Systems East shall provide Town with documentation necessary to substantiate any transactions related to this Agreement.

9. CHANGES

The Town, by resolution of the Town Board or written request by at least three members of the Town Board, within the general scope of this Agreement, may, at any time by written notice to EVO and/or Systems East, issue additional instructions, request additional services or request the omission of services covered by this Agreement. In such event, the parties shall mutually agree upon a price for the revised services. In the event that EVO and/or Systems East determines that a change order is required, EVO and/or Systems East shall obtain written approval of the Town, by resolution or written consent of at least three members of the Town Board, and if the change shall require the payment of additional compensation, EVO and/or Systems East must obtain the written approval of three members of the Town Board or resolution of the Town Board for the

additional compensation prior to commencement of work regarding the change order. It is agreed and understood that no oral agreement, conversation, or understanding between the EVO and/or Systems East and the Town, its departments, officers, agents and employees shall effect or modify any of the terms or obligations of this Agreement or schedules annexed hereto and made a part hereof.

10. NOTICES

Any notice shall be considered as having been given: (i) to Town of Riverhead if mailed by certified mail, postage prepaid to Town of Riverhead, Attention: Daniel P. McCormick, Deputy Town Attorney, Town of Riverhead, 200 Howell Avenue, Riverhead, New York; or (ii) to Merchant Services, Inc., d/b/a EVO Merchant Services if mailed by certified mail, postage prepaid to EVO Merchant Services, 515 Broadhollow Road, Melville, New York, 11747, Attn: Peter S. Cohen, Esq; or (iii) to James Buttino, President, Systems East, Inc., if mailed by certified mail, postage pre-paid to James Buttino, President, Systems East, Inc., 6 Locust Avenue, Cortland, New York 13045. Any notice shall be deemed given on the date that it is received by the party to whom it is sent.

11. COMPLIANCE WITH LAWS

EVO and Systems East shall comply with all applicable federal, state and local laws and ordinances and regulations (public, private and/or proprietary) in the performance of its services under this Agreement. EVO and/or Systems East will notify Town immediately if EVO and/or Systems East's work for Town becomes the subject of a government audit or investigation. EVO and/or Systems East will promptly notify Town if EVO and/or Systems East are indicted, suspended or debarred. EVO and Systems East respectively represent that EVO and Systems East have not been convicted of fraud or any other crime arising out of a contract with any local, state or federal agency, or any private entity. In carrying out the work required hereunder, EVO and Systems East agree not to make any communication to or appearance before any person in the executive or legislative branches of the local, state or federal government for the purpose of influencing or attempting to influence any such persons in connection with the award, extension, continuation, renewal, amendment or modification of any contract or agreement. EVO and Systems East may perform professional or technical services that are rendered directly in the preparation, submission or negotiation activities preceding award of a Town agreement/contract or to meet requirements imposed by law as a condition for receiving the award but only to the extent specifically detailed in the statement of work. Professional and technical services are limited to advice and analysis directly applying EVO's and Systems East's professional and technical discipline.

12. INSURANCE, INDEMNITY AND LIABILITY

EVO and Systems East shall carry Comprehensive General Liability Insurance and, if applicable, worker's compensation insurance. EVO and Systems East hereby indemnifies and holds the Town, its departments, officers, agents and employees, harmless against any and all claims, actions (including appeals), judgments or demands against Town, its departments, officers, agents and employees against any and all damages, liabilities or expenses, including counsel fees, arising out of the gross negligence or willful misconduct of both EVO and Systems East regarding the scope of services so provided. In addition, EVO and Systems East agree, that with

respect to any transactions processed pursuant to this Agreement, EVO and Systems East shall indemnify and hold harmless the Town, its officials, officers, directors, employees, successors, and assigns, from and against, any and all damages, losses, liabilities, actions, claims, demands, judgments, penalties, charges and fines, including interest, which may be incurred or imposed as a direct result of any convenience fee(s) or other charges or fees so charged by EVO and/or Systems East or their respective affiliates or third-party vendors, to a cardholder or subscriber to the services so provided. This indemnification/hold harmless provision shall survive termination of the Agreement, including any renewal Agreements, if, or when, such Agreement(s) terminate.

13. CONFLICT OF INTEREST

EVO and Systems East hereby represents and covenants that neither it nor any of its employees or representatives has or shall have, directly or indirectly, any agreement or arrangement with any official, employee or representative of the Town of Riverhead which any such official, employee, representative shall receive either directly or indirectly anything of value whether monetary or otherwise as the result of or in connection with any actual or contemplated application before any department of the Town, or contract with the Town for sale of any product or service. EVO and Systems East further represents and covenants that neither it nor any of its employees or representatives has offered or shall offer any gratuity to the Town, its officers, employees, agents or representatives with a view toward obtaining this Agreement or securing favorable treatment with respect thereto. EVO and Systems East further represents that it will not engage in any activity which presents a conflict of interest in light of its relationship with Town.

14. DISCLOSURE

The Town shall have the right, in its discretion, and upon ten (10) days prior written notice to EVO and/or Systems East, to disclose the terms and conditions of this Agreement (as it may be amended from time to time), including but not limited to amounts paid pursuant hereto, to agencies of the local, state and federal government.

15. DISPUTES

If EVO and/or Systems East fails to perform any of its obligations hereunder in accordance with the terms hereof, then after reasonable notice to EVO and/or Systems East not to exceed thirty (30) days, and an opportunity for EVO and/or Systems East to cure such failure (except in case of emergency), the Town may (but shall not be obligated to) cure such failure at the expense of EVO and/or Systems East, and the amount incurred by the Town on demand. Notwithstanding the above, any dispute arising under this Agreement which is not settled by Agreement of the parties may be settled by appropriate legal proceedings in Suffolk County, New York, with each side to bear their own costs, expenses, and legal fees. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under this Agreement, EVO and/or Systems East shall proceed diligently with the performance of this Agreement in accordance with the decision of Town unless the Agreement has been terminated in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

By: Sean M. Walter, Town Supervisor
TOWN OF RIVERHEAD
200 Howell Avenue
Riverhead, New York 11901

By: Jeff Rosenblatt
MERCHANT SERVICES, INC.
d/b/a EVO Merchant Services
515 Broadhollow Road
Melville, New York 11747

By: James Buttino, President
SYSTEMS EAST, INC.
6 Locust Avenue
Cortland, New York 13045



515 Broadhollow Road • Melville, NY 11747-28709
 Phone 1.800.CARDSWIPE • Fax (516) 479-9020
 www.goevo.com

SCHEDULE A

Merchant # _____
 New Location Additional Location

Sales Office/ISO # _____ Location # _____ of _____

MERCHANT APPLICATION

BUSINESS NAMES

Legal Name: Town of Riverhead - Office of the Town Clerk DBA Name: _____
 Legal Address: 200 Howell Ave. DBA Address (no PO Box): _____
 Legal City, State, Zip: Riverhead, NY 11901 DBA City, State, Zip: _____
 Legal Phone #: 631-727-3200 Contact: Diane Wilhelm DBA Phone # (non-mobile is preferred): _____
 Cust. Svc. # (if different): _____ Website Address: www.riverheadli.com
 Fax #: _____ Email Address (required to receive E-statement availability notification): _____

MERCHANT PROFILE

Type of Ownership: Sole Proprietor Partnership Not For Profit Corporation Limited Liability Company
 Type of Goods or Services Sold: Vital Records, Marriage, Death and Dog Licenses, etc SIC Code: _____
 Do you currently process Credit Cards? Yes No
 If yes, submit three current months' processing statements
 Name of current processor: _____
 Has Merchant or any associated principal disclosed below filed bankruptcy or been subject to any involuntary bankruptcy? No Yes
 If yes, date filed: _____
 Processing Profile:
 Retail Card Swiped %
 Restaurant Manual Key Entry with Imprint, Card Present with Signature %
 Lodging Mail/Telephone Order %
 Service eCommerce %
 Mail/Telephone Order 100 %
 eCommerce TOTAL MUST EQUAL 100%
 Federal Tax # (9 digits, no dashes): _____ # of Locations: 1 Years in Business: _____ Years Owned Business: _____
 Bank Name: _____ Routing #: _____ Checking Account #: _____ Bank Phone # (10 digits, no dashes): _____

MEMBER BANK INFORMATION
 HSBC Bank USA, National Association, Merchant Support Group
 P. O. Box 3263, Buffalo, NY 14240 716-841-6360

- IMPORTANT MEMBER BANK RESPONSIBILITIES**
1. A Visa Member is the only entity approved to extend acceptance of Visa products directly to a merchant.
 2. A Visa Member must be a principal (signer) to the Merchant Agreement.
 3. The Visa Member is responsible for educating Merchants on pertinent Visa Operating Regulations with which Merchants must comply.
 4. The Visa Member is responsible for and must provide settlement funds to the Merchant.
 5. The Visa Member is responsible for all funds held in reserve that are derived from the settlement.

- IMPORTANT MERCHANT RESPONSIBILITIES**
1. Merchant must ensure compliance with cardholder data security and storage requirements.
 2. Merchant must maintain fraud and chargebacks below thresholds.
 3. Merchant must review and understand the terms of the Merchant Agreement.
 4. Merchant must comply with Visa Operating Regulations.
- The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the merchant understands these specific responsibilities.

***** Payment Card Industry Data Security Standards ("PCI DSS") and card association rules prohibit storage of track data under any circumstances. If you or your Point of Sale ("POS") system pass, transmit, store or receive full cardholder's data, then the POS software must be Payment Application Data Security Standard ("PA DSS") compliant or you (merchant) must validate PCI DSS compliance (see #1(b) below and questions #3 and #4 must be completed). If you use a payment gateway, they must be PCI DSS compliant.*****

1. Have you ever experienced an Account Data Compromise ("ADC")? Yes No If yes, provide date of compromise: _____
 a) Have you validated PCI DSS compliance? Yes No If yes, go to #1(b); if no, go to #2
 b) Date of compliance, Report on Compliance ("ROC") or Self Assessment Questionnaire ("SAQ"):
 c) What is the name of your Qualified Security Assessor ("QSA")? _____ or SAQ (circle one): A, B, C, or D
 d) Date of last scan: _____ Approved Scanning Vendor's name: _____
2. Are you using a "dial-up" terminal or Touch Tone Capture ("TTC")? Yes No
3. Do you or your Service Provider(s) receive, pass, transmit or store the Full Cardholder Number ("FCN"), electronically? Yes No
 a) If yes, where is card data stored? Merchant's location only Primary Service Provider Other Service Provider: _____
 Merchant's Headquarters/Corp office only Both Merchant and Service Provider(s) All Apply
4. What Primary Service Provider/Software Developer did you purchase your POS application from (i.e., software, gateway)? Systems East
 a) What is the name of the Service Provider/Software Developer's application? _____ Software Version #: _____
 b) Do your transactions process through any other Service Provider (i.e., web hosting companies, gateways, corporate office)? Yes No
 c) If yes, name the other Service Provider: _____

OR OFFICER(S)

(Individual Ownership must be Equal to or Greater than 50%)
 Name: _____ Title: _____ Date of Birth: _____ Social Security #: _____ % Equity Ownership: _____
 Residence Address: _____ City: _____ State: _____ Zip: _____ # yrs: _____ Home Phone #: _____ Driver's Lic. #: _____ ST: _____
 Name: _____ Title: _____ Date of Birth: _____ Social Security #: _____ % Equity Ownership: _____
 Residence Address: _____ City: _____ State: _____ Zip: _____ # yrs: _____ Home Phone #: _____ Driver's Lic. #: _____ ST: _____

SURVEY REPORT

(To Be Completed by Sales Representative)
 Merchant Location: Retail Location with Store Front Office Building Residence Other: _____
 Area Zoned: Commercial Industrial Residential Is Inventory/merchandise amount consistent with type of business? Yes No
 If No, explain: _____
 The Merchant: Owns Leases the Business Premises Landlord Name & Phone #: _____
 Does the Merchant use a Fulfillment House? Yes No If yes, was the Fulfillment House inspected? Yes No
 Further comments by Inspector (required): _____

I hereby verify that this application has been fully completed by merchant applicant and that I have physically inspected the business premises of the merchant at this address and the information stated above is true and correct to the best of my knowledge and belief.
 Verified and Inspected by: _____ Merchant Initials (required) (Signature)
 Representative Print Name Patrick F. Hayes Representative Signature (Signature) Date: 7/22/11
 EVO IS A REGISTERED SERVICEMARK OF MERCHANT SERVICES, INC. 02/10 05

INTERCHANGE PLUS	DISCOUNT RATE				
Visa / MasterCard / Discover Credit Card Discount Rate:	1.85%	%	Visa / MasterCard / Discover Offline Debit Discount Rate:	2.00	%
American Express Discount Rate*:		%	Monthly Minimum:	\$20.00	Monthly
Transaction Fee:	.15	Per Item	EBT Transaction Fee:	0	Per Item
Offline Debit Transaction Fee:		Per Item	Gift Card / Loyalty Card Transaction Fee:	0	Per Item
Debit Transaction Fee (Plus Debit Network Fees):		Per Item	Voice Authorization Fee:	\$ 1.50	Per Call
Visa Authorization/Settlement Network Access/Usage Fee:	\$ 0.03	Per Item	Annual Fee (billed in advance for the following year):	\$79.00	Per Year
MasterCard Authorization/Settlement Network Access/Usage Fee:	\$ 0.02	Per Item	ACH Reject Fee:	\$25.00	Per Item
Discover Authorization/Settlement Network Access/Usage Fee:	\$ 0.02	Per Item	Retrieval Fee:	\$10.00	Per Item
Bank Service Fee:	0	Monthly	Chargeback Fee:	\$25.00	Per Item
AVS Surcharge:	\$ 0.05	Per Item	<input type="checkbox"/> EVO Supply/Replacement Program (optional):	\$ 0.50	Monthly
Batch Fee:	\$ 0.35	Per Batch	<input type="checkbox"/> Each Additional Terminal Quantity: _____	\$ 4.75	Monthly
Split Batch Fee (additional):	\$ 0.10	Per Batch	Gateway Activation Fee:	25.00	One Time
Wireless Activation Fee:	\$25.00	One Time	Gateway Access Fee:	\$ 0.00	Monthly
Wireless Access Fee:	\$17.00	Monthly	eCommerce / Gateway Item Fee:	\$ 0.05	Per Item
Wireless Item Fee:	\$ 0.05	Per Item	MICROS Transaction Fee (if applicable):	\$ 0.05	Per Item

I/We understand and agree to the following: 1) Discount rate as stated above will be charged on "Qualified Rate" transactions. Qualified Rate transactions are defined as electronically authorized and swiped transactions that are batched and closed daily. In addition, sales volume may be charged for Association dues and assessments at a rate of up to 0.11%. 2) All lodging, car rental, small ticket, convenience and Express Services transactions may have a surcharge of up to 0.49% added to the Qualified Rate. 3) Discover transactions may have a surcharge of up to 0.50% added to the Qualified Rate. 4) A "Mid-Qualified" surcharge of up to 1.48% + \$0.20 will be added to the Qualified Rate under the following circumstances: a) Cardholder and card present at merchant's point of sale device, key entered, signature obtained, Address Verification Service ("AVS") with full match of billing zip code, settled within three days of authorization; settle amount must equal authorized amount; b) Card not present, single authorization only, order number required, AVS with full match of billing zip code, settled within two days of authorization, settle amount must equal authorized amount; c) Certain Discover, Visa Rewards & Visa Signature, MasterCard Enhanced Value & MasterCard World Card transactions. 5) A "Non-Qualified" surcharge of up to 1.98% + \$0.20 may be added to the Qualified Rate for transactions that do not meet the requirements stated above and may also apply to transactions on Bus, Corp, Intl, Purch, & Comm Cards; T & E, Mail/Telephone, e-Commerce, certain Discover, Visa Rewards & Visa Signature, MasterCard Enhanced Value & MasterCard World Card. 6) If Interchange/Cost Plus: All transactions will be assessed the current, published interchange rates, dues, and assessments in addition to the basis points as stated above. The published rates for Visa and MasterCard can be viewed at: www.visa.com and www.mastercard.com. 7) Merchants may be charged a Cross Border transaction assessment of up to 1.00%, in addition to the applicable rate, on transactions when the country code of the Card Issuer differs from the country code of the Merchant. 8) On international transactions Merchants may be charged a rate of up to 0.55% for Visa's International Acquirer Fee, Maestro U.S. and MasterCard's Acquirer Program Support Fee and Discover's International Service Fee and International Processing Fee. 9) POS high-speed processing and/or gateway activation may be subject to a one time set up fee of up to \$100.00, depending on provider. 10) ~~An early closure fee of \$250.00 will be paid to MSI if the Merchant Processing Agreement is not terminated in accordance with the Terms and Conditions.~~ 11) Merchant will also be assessed the following fees on Visa transactions: the Visa Misuse of Authorization System Fee, which will be assessed on authorizations that are approved but not settled in a timely manner; the Visa Zero Floor Limit Fee, which will be assessed on settled transactions that do not correspond to a valid authorization within the prior 30 days; and the Visa Zero Dollar Verification Fee, which will be assessed on transactions where Merchant requested an address verification response without an authorization. These fees of up to \$0.10 per transaction will be displayed as separate items on Merchant's monthly statement and may include fees assessed by both the applicable card association and Bank or Global.

* American Express Fees: Retail: \$0.10 transaction fee**; Services, Wholesale and All Other: \$0.15 transaction fee.

** A .30% CNP fee will be charged for any transaction where the Card is not presented at the time of the transaction.

AMERICAN EXPRESS: I represent that I have read and am authorized to sign and submit this application for the above entity which agrees to be bound by the American Express® Card Acceptance Agreement ("Agreement"), which is available at www.goevo.com, and that all information provided herein is true, complete, and accurate. I authorize American Express Travel Related Services Company, Inc. ("AXP") and AXP's agents and Affiliates to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies, and disclose such information to their agent, subcontractors, Affiliates and other parties for any purpose permitted by law. I authorize and direct AXP and AXP agents and Affiliates to inform me directly, or through the entity above, of reports about me that they have requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I also authorize AXP to use the reports from consumer reporting agencies for marketing and administrative purposes. I understand that upon AXP's approval of the application, the entity will be enrolled, either in AXP's OnePoint® program for MSI to perform services for AXP or for AXP's standard Card acceptance program which has different servicing terms. I understand that if the entity does not qualify for the OnePoint program, then the entity may be enrolled in AXP's standard Card acceptance program, and the entity may terminate the Agreement. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, the entity agrees to be bound by the Agreement.

Merchant authorizes any party to the Agreement to present Automated Clearing House credits, Automated Clearing House debits, wire transfers, or depository transfer checks to and from the following account and to and from any other account for which any such parties are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entities in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives written notice of revocation as required by this Agreement.

INVESTIGATIVE CONSUMER REPORT: An investigative or consumer report may be made in connection with application. MERCHANT authorizes ANY PARTY TO THE AGREEMENT or any of their agents to investigate the references provided or any other statements or data obtained from MERCHANT, and from any of the undersigned personal guarantor(s), or from any other person or entity with any financial obligations under this Agreement. You have a right, upon written request to a complete and accurate disclosure of the nature and scope of the investigation requested.

BANK CARD: AVERAGE TICKET SIZE: \$ 50.00 *HIGHEST TICKET SIZE: \$ 3,000.00 MONTHLY VOLUME: \$ 20,000.00

AMEX: AVERAGE TICKET SIZE: _____ *HIGHEST TICKET SIZE: _____ MONTHLY VOLUME: _____

Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement of funds. Also, see paragraphs 4.C, 9 and 13.B of the MERCHANT Processing Agreement regarding suspension and termination of MERCHANT. *Highest ticket for informational purposes only.

IMPORTANT NOTICE: All information contained in this application was completed or supplied by all contracting parties, MSI, GLOBAL, and BANK shall not be responsible for any change in printed terms unless specifically agreed to in writing by an officer of MSI, GLOBAL, and BANK. By signing below on either the original or a facsimile you are agreeing to the provisions stated within the Terms and Conditions of the Merchant Processing Agreement and the Merchant Application on the reverse side, and you are acknowledging that you have carefully read each of those provisions before signing.

FOR ALL CORPORATIONS CORP. RESOLUTION - The indicated officer(s) identified in numbers 1 and/or 2 below have the authorization to execute the MERCHANT Processing Agreement on behalf of the herewithin named corporation. MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY BANK AND A MERCHANT NUMBER IS ISSUED.

As a primary inducement to MSI, Bank and Global to enter into this Agreement, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, personally guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to MSI, Bank and Global under this Agreement or any other agreement currently in effect or in the future entered into between Merchant or its principals and MSI, Bank and Global, as such agreements now exist or are amended from time to time, with or without notice. Guarantor(s) understands further that MSI, Bank and Global may proceed directly against Guarantor(s), without first exhausting their remedies against any other person or entity responsible to it or any security held by MSI, Bank and Global or Merchant. Guarantor(s) waive trial by jury with respect to any litigation arising out of or relating to this personal guaranty. This guaranty will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of MSI, Bank and Global. Guarantor(s) understand that the inducement to MSI, Bank and Global to enter into this agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

If Merchant submits a transaction hereunder, Merchant will be deemed to have accepted the Terms and Conditions of the Merchant Processing Agreement. For Merchants who have elected to accept the American Express Card, the submission of an American Express Card transaction will be deemed to be an acceptance of the American Express Card Acceptance Agreement and the above American Express provisions.

[Signature] 7/22/2011
 #1 From Application—Signature _____ Date _____
 X
 #2 From Application—Signature _____ Date _____
 X
 Accepted by Merchant Services, Inc. d/b/a EVO
 X
 Accepted by HSBC Bank USA, National Association
 X
 Accepted by Global Payments Direct, Inc.

AGREED AND ACCEPTED

X _____
 #1 From Application—Signature _____ Date _____
 X
 #2 From Application—Signature _____ Date _____

EQUIPMENT/ADDITIONAL SERVICES

Equipment: Purchase from MSI Reprogram Merchant's existing equipment

If purchase, choose equipment: Terminal Printer PINPad Software Other: _____

Ship equipment to: Merchant ISO Other: _____ Ship to: Commercial Residential

Choose shipment method: Overnight 2nd Day Ground

Must choose one: Starter Kit Starter Package (includes manual imprinter)

If lease, indicate: LSI Other: _____

TERMINAL TYPE:

<input type="radio"/> NURIT 3020 (repro only, *NOS 7 required)	<input type="radio"/> OMNI VX510 LE	<input type="radio"/> HYPERCOM T7 Plus
<input type="radio"/> NURIT 2085 (repro only, *NOS 7 required)	<input type="radio"/> OMNI VX510 IP	<input type="radio"/> HYPERCOM T4210 (repro only)
<input type="radio"/> NURIT 2085+ (repro only, *NOS 7 required)	<input type="radio"/> OMNI VX510 (repro only)	<input type="radio"/> HYPERCOM T4220 (repro only)
<input type="radio"/> NURIT 8320 (repro only)	<input type="radio"/> OMNI 3740 (repro only)	<input type="radio"/> HYPERCOM T7P (repro only)
<input type="radio"/> <input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> <input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> <input type="radio"/> FRICTION <input type="radio"/> THERMAL
<input type="radio"/> NURIT 8320 Lite (repro only)	<input type="radio"/> OMNI 3750 (repro only)	<input type="radio"/> HYPERCOM T77 (repro only)
<input type="radio"/> NURIT 8400	<input type="radio"/> <input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> <input type="radio"/> FRICTION <input type="radio"/> THERMAL
<input type="radio"/> <input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> INGENICO 5100 (repro only)	<input type="radio"/> EVO Charge
<input type="radio"/> NURIT 8400 Lite	<input type="radio"/> <input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> PC Charge
<input type="radio"/> VERIFONE VX570	<input type="radio"/> INGENICO Aqua	<input type="radio"/> Payware
<input type="radio"/> <input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> DEJAVOO X5 (repro only)	<input type="radio"/> PC Software (repro only): _____
	<input type="radio"/> DEJAVOO X8 IP	<input type="radio"/> Other: _____

WIRELESS TERMINAL TYPE: (NOTE: NEW MSI SIM CARD REQUIRED FOR ALL GPRS REPROGRAMS)

Way MTT 15XX Wireless Combo (repro only) S/N _____ KIT/MTT/SIM# _____

Way 5000 Wireless Combo S/N _____ KIT/MTT/SIM# _____

NURIT 8000 Wireless (GPRS) (repro only) S/N _____

NURIT 8000 Wireless (RAM) (repro only) S/N _____ MAN/ESN# _____

NURIT 8010 Wireless (GPRS) (repro only) S/N _____

NURIT 8020 Wireless (GPRS) S/N _____

DEJAVOO M3 S/N _____

Other: _____

GATEWAY: EVO Authorize.Net EVO PayPal (choose one): PayFlow Pro PayFlow Link

Global Transport Other: _____

Gateway Administrator email address (required): cdrelinger@nercc.org

By signing this application it is agreed that MSI shall not be held responsible for (a) any wireless terminal repairs or (b) providing a replacement wireless terminal due to equipment failure. The terminal manufacturer shall handle all wireless terminal repairs and replacements. I also understand that due to the complexity of these wireless terminals, the manufacturer may not be able to provide a replacement while completing repairs. In addition, I further agree that a wireless terminal is NOT covered by participation in the EVO Supply/Replacement Program. MSI will not be responsible for any problems with the wireless services provided pursuant to this agreement. See Rate Schedule for Wireless Fees. Fees are subject to change.

TERMINAL APPLICATION:

WITH TIPS WITHOUT TIPS LODGING MOTO QPS

Merchant Refund Policy: No Refund Exchange Only In-Store Credit Only

PINPAD TYPE: HYPERCOM PINPad S9 PCI (repro only) HYPERCOM PINPad P1300 HYPERCOM PINPad 1320 (EVO Charge)

INGENICO PINPad 3010 (repro only) VERIFONE PINPad 1000SE

CHECK EQUIPMENT: MAGTEK Reader MAGTEK Imager RDM Imager Other: _____

ACCESSORIES: MAGTEK Mini Swipe Card Reader USB (choose one): Authorize.Net EVO Charge PC Charge Payware

Equipment selection may be subject to availability/processing requirements.

ADDITIONAL SERVICES:

EVO Check Advantage* List Existing Merchant #: _____

Other Check Service: _____ List Existing Merchant #: _____

MasterCard PayPass™/Visa payWave Merchants Capital Access*

Other Card Types: NEW EXISTING LIST EXISTING MERCHANT NUMBERS

<input type="radio"/> AMERICAN EXPRESS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/> ESA	<input type="radio"/> OnePoint (default if none checked)
<input type="radio"/> EBT*	N/A	N/A	Existing FCS #:		
<input type="radio"/> DEBIT	N/A	N/A	Supplied by EVO		
<input type="radio"/> GIFT*	N/A	N/A	Supplied by EVO		
<input type="radio"/> LOYALTY*	N/A	N/A	Supplied by EVO		
<input type="radio"/> VOYAGER*	<input type="radio"/>	N/A	Supplied by EVO		
<input type="radio"/> WRIGHT EXPRESS*	<input type="radio"/>	N/A	Supplied by EVO		

Upon approval of Visa/MasterCard/Discover processing, allow 48-72 hours for new non-bankcard(s) to be added.

Addendum/Application Required

SPECIAL INSTRUCTIONS (requests are subject to management approval, please print clearly):

Request change of ownership. Existing MID number to close: _____

Request to pick up equipment/starter kit at EVO Melville. _____

Other: _____

Merchant elects to receive monthly merchant account statements via U.S. Mail to: _____

Legal Address or DBA Address

Xpress-pay.com

Enrollment Agreement

Thank you for enrolling with Xpress-Pay.com, the Universal eCommerce Solution offered by Systems East, Inc. Your enrollment allows you to collect any type of bill or payment, over the counter or over the Internet, twenty-four hours every day. We will provide and maintain the web site and financial transaction interface; you are responsible for any information which is hosted by the site and under your jurisdiction. Initial training and continuing support are included with your enrollment.

To inform customers of participation, you agree to include a link on your web site and provide a notice on bills. To facilitate Internet payments, a merchant account is required. Visitors may be charged a site fee in accordance with the chart set forth on page two. The complete terms of services and policies may be viewed at www.xpress-pay.com/admin/pdfs/enrollment_policies.pdf.

Merchant legal name	Town of Riverhead - Office of Town Clerk		
Merchant DBA name			
Contact name & telephone (person responsible for account setup)	Name Diane Wilhelm	Telephone number (631) 727-3200	Best time to call 8-5
Contact email			
Complete billing address	2900 Howell Ave. Riverhead, NY 11901		
Systems East representative	Patrick F. Hayes		
ISV (if applicable)			
Gateway and fee billing account information	Federal tax ID#	Bank routing#	Bank account#
Enrollment/renewal pricing	Enrollment fee: \$ 0		Annual renewal fee: \$ 0
Number of swipe readers	0 units at \$100 each (USB device, cable included)		
Electronic check option	<input type="checkbox"/> Also accept electronic checks (eChecks)		
Telephone payments (IVR)	<input type="checkbox"/> Also accept voice payments (add \$150 setup plus \$1.00 per payment)		
Special instructions			

Processing structure

Interface type	<input type="checkbox"/> Standalone <input type="checkbox"/> Shopping cart		
For shopping cart interface software provider technical contact name and telephone	Name	Telephone number	

Xpress-pay.com enrollment profile

Credit/debit card fee structure: Check one and complete all empty boxes in column

#	Option → Component ↓	<input type="checkbox"/> Pass through ①	<input checked="" type="checkbox"/> Split charge ②	<input type="checkbox"/> Split fee ③	<input type="checkbox"/> Absorbed by merchant ④
1	Transaction costs borne by merchant	Downgrades	None (fixed merchant discount rate/fees required)	All merchant fees	All merchant fees plus site fee
2	Transaction costs borne by visitor	Base discount rate, transaction fees, site fee	All (discounts, per transaction fees, and site fee)	Site fee	None
3	Merchant provider credit/debit discount rate	% (base rate)	<i>1.85%</i> 2.0% (fixed rate required)	% (base rate)	2.30 % (base rate)
4	Bank card per-transaction fee	\$ per transaction	\$.15 per transaction	\$ per transaction	\$.15 per transaction
5	Visa Authorization & Network Access fee	\$0.03 per transaction	\$0.03 per transaction	\$0.03 per transaction	\$0.03 per transaction
6	eCommerce gateway per-transaction fee	\$ per transaction	\$.05 per transaction	\$ per transaction	\$ 0.05 per transaction
7	Gateway one-time activation fee	\$25.00	\$25.00	\$25.00	\$0.00
8	Gateway monthly access fee	\$10.00	<i>5.00</i> \$7.50	\$10.00	\$10.00
9	Xpress-Pay account maintenance fee	\$0 per month	\$10.00 per month	\$0 per month	\$0 per month
10	Xpress-pay site fee percentage	0.7%	0.50%	0%	0%
11	Xpress-pay per transaction site fee	\$0.25	\$0.40	\$2.50	\$0.50

eCheck fee structure (if applicable per page one)

12	eCheck per transaction fee	\$0.47	\$0.47	\$0.47	\$0.47
13	Xpress-pay per-transaction fee	\$2.03	\$2.03	\$2.50	\$1.45
14	Gateway monthly access fee	\$5.00 per month	\$5.00 per month	\$5.00 per month	\$5.00 per month

Notes: For option ①, complete lines 3, 4, 6, or for option ②, complete lines 3, 4, 6, 7, and 8, using the information in the merchant account application

Definitions for options ① through ④ are on the following page.

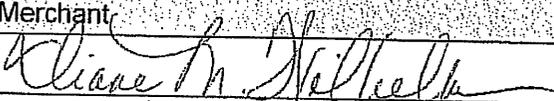
Xpress-pay.com enrollment acceptance

- ① Single charge to visitor, all payment proceeds to merchant; merchant is subsequently billed by the merchant provider for all merchant fees and by Systems East for Xpress-Pay fees.
- ② **Fixed discount rate and per transaction fee required.** Bill proceeds to merchant, site fee (billed as separate charge to visitor) to Systems East. Systems East pays all merchant discounts and transaction fees. Systems East will subsequently bill merchant for all merchant fees excluding merchant discounts and transaction fees. These additional fees may include, but are not necessarily limited to, initial account setup fees or recurring monthly statement fees as stated on page two; chargeback processing fees, PCI compliance fees, early termination fee, annual fees, and one-time or other fees as assessed by the merchant provider. Systems East billings for fixed-fee monthly items will be on a quarterly basis at the beginning of the quarter to which they apply. **Note:** For municipal and insurance sectors only.
- ③ Bill proceeds to merchant, site fee (billed as separate charge to visitor) to Systems East. Merchant is subsequently billed by the merchant provider for all merchant fees. This is the typical rate structure for commercial entities.
- ④ Visitor pays exact amount due to merchant with no site fee, all payment proceeds to merchant. Merchant is subsequently billed by the merchant provider for all merchant fees and by Systems East for the Xpress-pay site fees.

Additional terms and conditions:

- Public awareness is an imperative in the success of this eCommerce endeavor. As a component of your acceptance, you agree to place a prominent "Pay bills online" link including the Xpress-Pay.com logo (as above and in perspective) on the home page of your web site, and to provide notification and a URL (Pay online at www.yourwebsite.com) on printed bills.
- Fees accrued pursuant to this agreement will be automatically deducted from the bank account specified on page two hereof on either a monthly or quarterly basis.
- If the option to accept telephone payments is not selected at the time of execution of this agreement, you may add the option at any later date through a written or emailed notification for the cost set forth herein.

Acceptance

Approval and acceptance	Merchant
Signature	
Printed name	DIANE M. Wilhelm
Title	Town Clerk
Date	7/22/2011

Instructions to enrollee: Please return to your sales representative

Instructions to sales representative: Please send this agreement to Systems East by:

- Email as a PDF to enrollments@xpress-pay.com, or
- Fax to (607) 753-1047

FINAL TERMS & CONDITIONS – VERSION 09/10 05

MERCHANT PROCESSING AGREEMENT

This document, "Merchant Processing Agreement" (the "Agreement"), accompanies the document "Merchant Application" ("Merchant Application") and includes the Terms and Conditions set forth below (the "Terms and Conditions") together with the terms and conditions of the Merchant Application. The bank ("Bank") identified in this Agreement is a member of Visa USA, Inc. ("Visa") and MasterCard International, Inc. ("MasterCard"), and is HSBC Bank USA, National Association ("HSBC"). Global Payments Direct, Inc. ("Global") is a registered independent sales organization of Visa, a member service provider of MasterCard, a registered acquirer of Discover Financial Services, LLC ("Discover") and has a relationship as a third party processor with HSBC. Merchant Services, Inc. d/b/a EVO ("MSI") is a registered independent sales organization of Visa and a member service provider of MasterCard. This Agreement is between Global, MSI, Bank, and the merchant (or "you") identified in the Merchant Application ("Merchant"). Merchant, Global and MSI agree that the rights and obligations contained in this Agreement do not apply to the Bank with respect to Discover transactions. To the extent Merchant accepts Discover cards, the provisions in this Agreement with respect to Discover apply if Merchant does not have a separate agreement with Discover. In such case, Merchant will also be enabled to accept JCB and Diner's Club cards under the Discover network and such transactions will be processed at the same fee rate as Merchant's Discover transactions are processed. Any references to the Debit Sponsor shall refer to the debit sponsors identified below.

RECITALS

Merchant desires to accept credit cards ("Cards") validly issued by members of Visa, MasterCard, and Discover. Bank, MSI and Global desire to provide credit card processing services to Merchant. Therefore, Merchant, MSI, Bank and Global agree as follows:

TERMS AND CONDITIONS

1. Honoring Cards.

- A. Without Discrimination. You will honor, without discrimination, any Card properly tendered by a Cardholder. "Cardholder" means a person processing a Card and purporting to be the person in whose name the Card is issued. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card.
- B. Cardholder Identification. You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired. (ii) the signature on the sales draft does not correspond with the signature on the Card. (iii) the account number embossed on the Card does not match the account number on the Card's magnetic strip (as printed in electronic form) or the account number listed on a current Electronic Warning Bulletin file. You may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number as a condition for honoring a Card unless permitted under the Laws and Rules (defined in Section 14, below).
- C. Card Recovery. You will use your reasonable, best efforts to recover any Card: (i) on Visa Cards if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by MSI, Global or Bank (or a designee) the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, indent printed account number and or encoded account number do not agree or the Card does not have a MasterCard hologram on the lower right corner of the Card face.
- D. Surcharges. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules. This paragraph does not prohibit you from offering a discount from the standard price to induce a person to pay by cash, check or similar means rather than by using a Card.
- E. Return Policy. You will properly disclose to the Cardholder, at the time of the Card transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.
- F. No Claim Against Cardholder. You will not have any claim against or right to receive payment from a Cardholder unless MSI, Global and Bank refuses to accept the Sales Draft (as defined in Section 3) or revokes a prior acceptance of the Sales Draft after receipt or a chargeback or otherwise. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive any such payments you promptly will remit them to MSI, Global and Bank.
- G. Disputes With Cardholders. All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither MSI, Global nor Bank bear any responsibility for such transactions.

2. Authorization.

- A. Required on all Transactions. You will obtain a prior authorization for the total amount of a transaction via electronic terminal or device before completing any transaction, and you will not process any transaction that has not been authorized. You will follow any instructions received during the authorization process. Upon receipt of authorization you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder.
- B. Effect. Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card.

C. Unreadable Magnetic Stripes. When you present Card transactions for authorization electronically, and if your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the Cardholder's signature on the Imprinted draft before presenting the Sales Draft to MSI, Global and Bank for processing. Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions.

3. Presentment of Sales Drafts.

A. Forms. You will use a Sales Draft ("Sales Draft") or other form approved by MSI, Global and Bank to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually); (iii) the date of the transaction; (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable.

B. Signatures. Sales Draft, must be signed by the Cardholder unless the Card transaction is a valid mail/telephone order Card transaction which fully complies with the requirements set forth in this Agreement. You may not require the Cardholder to sign the Sales Draft before you enter the final transaction amount in the Sales Draft.

C. Reproduction of Information. If the following information embossed on the Card and the Merchant's name is not legibly imprinted on the Sales Draft, you will legibly reproduce on the Sales Draft before submitting it to MSI, Global and Bank: (i) the Cardholder's name; (ii) account number (iii) expiration date and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions you will legibly reproduce the name of the Bank Issuing the Card as it appears on the face of the Card.

D. Delivery and Retention of Sales Drafts. You will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules require).

E. Electronic Transmission. In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions and, at MSI or Global's sole discretion, the deposit of those funds into the Reserve Account. If you provide your own electronic terminal or similar device, such terminals must meet MSI, Global and Bank's requirements for processing transactions, and must be Year 2000 compliant. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to MSI, Global and Bank or their agent in the form MSI, Global and Bank from time to time specifies or as required under the Rules. If MSI, Global or Bank requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 24 hours following the request.

4. Deposit of Sales Drafts and Funds Due Merchant.

A. Deposit of Funds. i. Deposits. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C § 365 as amended from time to time. Subject to this Section, Bank will deposit to the Designated Account (defined in section 6 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargebacks, or fees). You shall not be entitled to credit for any indebtedness that arises out of a transaction not processed in accordance with the terms of this Agreement or the rules and regulations of a card association or network organization. You acknowledge that your obligation to MSI, Global and Bank for all amounts owed under this Agreement arise out of the same transaction as MSI, Global and Bank's obligation to deposit funds to the Designated Account. ii. Provisional Credit. Notwithstanding the previous sentences, under no circumstance will MSI, Global or Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by MSI, Global and Bank. All Sales Drafts and deposits are subject to audit and final checking by MSI, Global and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks and adjustments: (i) in accordance with the Rules; (ii) for any of your obligations to MSI, Global and Bank; and (iii) in any other situation constituting suspected fraud or a breach of this Agreement, whether or not a transaction is charged back by the Card issuer. MSI, Global and Bank may elect to grant conditional credit for individual or groups of any funds evidenced by Sales Drafts. Final credit for those conditional funds will be granted within MSI, Global and Bank's sole discretion. iii. Processing Limits. MSI, Global and Bank may impose a cap on the volume and ticket amount of Sales Drafts that they will process for you, as indicated to you by MSI, Global or Bank. This limit may be changed by MSI, Global or Bank upon written notice to you.

B. Chargebacks. You are fully liable for all transactions returned for whatever reason, otherwise known as "chargebacks". You will pay on demand the value of all chargebacks. Authorization is granted to offset from incoming transactions and to debit the Designated Account, the Reserve Account (defined in Section 7, below) or any other account held at Bank or at any other financial institution the amount of all chargebacks. You will fully cooperate in complying with the Rules regarding chargebacks.

C. Excessive Activity. Your presentation to MSI, Global and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this agreement. "Excessive Activity" means, during any monthly period: (i) the dollar amount of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 10% of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 20% of the average monthly dollar amount of your Card transactions. You authorize, upon the

occurrence of Excessive Activity, MSI, Global and Bank to take any action they deem necessary including but not limited to, suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

D. Credit. i. Credit Memoranda. You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. MSI, Global or Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to MSI, Global and Bank. You will not submit a credit relating to any Sales Draft not originally submitted to MSI, Global and Bank, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods of forgiveness of debt for services which were the subject of a Card transaction. ii. Revocation of Credit. MSI, Global or Bank may refuse to accept any Sales Draft, and MSI, Global and Bank may revoke prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws or the Rules; (b) the Cardholder disputes his liability to MSI, Global and Bank for any reason, including but not limited to a contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered, or those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay MSI, Global and Bank any amount previously credited to you for a Sales Draft not accepted by MSI, Global and Bank or where accepted, is revoked by MSI, Global and Bank.

Column 2

E. Reprocessing. Notwithstanding any authorization or request from a Cardholder, you will not re-enter or reprocess any transaction which has been charged back.

F. Miscellaneous. You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement.

5. Other Types of Transactions.

A. Debit Card Processing Services. You may elect to accept debit cards, and said election should be made by you on the accompanying Merchant Application. If you elect to accept debit cards, the following terms and conditions apply to you. Debit Sponsor shall act as your sponsor with respect to the participation of point-of-sale terminals owned, controlled, and/or operated by you (the "Covered Terminals") in each of the following debit card networks ("Networks"): Accel, AFFN, Alaska Option, Interlink, Maestro, NYCE, Pulse, Shazam, Star, CU24, and Tyme, which Networks may be changed from time-to-time by Debit Sponsor, MSI or Global without notice. You may also have access to other debit networks that do not require a sponsor. MSI and Global will provide you with the ability to access the Networks at the Covered Terminals for the purpose of authorizing debit card transactions from cards issued by the members of the respective Networks. MSI and Global will provide connection to such Networks, terminal applications, settlement, and reporting activities. You will comply with all federal, state, and local laws, rules, regulations and ordinances ("Applicable Laws") and with all by-laws, regulations, rules, and operating guidelines of the Networks ("Network Rules"). You will execute and deliver any application, participation, or membership agreement or other document necessary to enable Debit Sponsor to act as sponsor for you in each Network, and you shall obtain all consents, approvals, authorizations, or orders of any governmental agency or body required for the execution, delivery, and performance of this Agreement. You agree to utilize the debit card services in accordance with this Agreement, its exhibits or attachments, and MSI's and Global's instructions and specifications, and to provide MSI and Global with the necessary data in the proper format to enable MSI and Global to properly furnish the Services. Copies of the relevant agreements or operating regulations shall be made available to you upon request. You will provide prompt written notice to MSI and Global in the event that you are subject to any of the following: i. Conviction for a felony offense or any other crime involving moral turpitude; ii. Restraining order, decree, injunction, or judgment in any proceeding or lawsuit alleging fraud or deceptive practice on your part; iii. Bankruptcy filing or petition; iv. Federal or state tax lien; v. Any material adverse change in your assets, operations, or condition, financial or otherwise; vi. The threat or filing of any litigation against you, the outcome of which reasonably could have a material adverse effect on your continuing operations; vii. Administrative or enforcement proceeding commenced by any state or federal regulatory agency, including any banking or securities agency or entity operating an EBT Network, that reasonably could have a material adverse effect on your continuing operations; or viii. Any disciplinary action taken by any Network against you or any of your principals. MSI or Global may terminate or suspend in its discretion Debit Sponsor's sponsorship of you in any Network or modify the provision of Services to you; i. Immediately upon notice to you of the occurrence of any of the conditions set forth in items (i), (ii), (iii), (v), or (viii) in the immediately preceding paragraph or if Debit Sponsor's authority to participate in such Network or act as your sponsor in such Network is terminated by such Network; ii. Thirty (30) days after written notice by MSI or Global to you of the occurrence of any of the conditions set forth in items (iv), (vi), or (vii) in the immediately preceding paragraph or if Debit Sponsor terminated its membership or participation in such Network; iii. Immediately upon notice to you in the event any financial statement, representation, warranty, statement or certificate furnished is materially false or misleading; or iv. Immediately upon notice to you of the occurrence of any other circumstance with respect to this Section that may reasonably be expected to have

an adverse effect on MSI or Global. The parties hereto acknowledge and agree that MSI or Global shall pay Debit Sponsor any and all fees related to Debit Sponsor's sponsorship of you in the Networks; provided, however, that in the event MSI or Global fails to pay such amounts, Debit Sponsor shall be entitled to recover all such amounts directly from you and you agree to pay all such amounts. You shall not in any way indicate that Debit Sponsor endorses your activities, products, or services. Debit Sponsor and you are and shall remain independent contractors of one another, and neither they, nor their respective individual employees, shall have or hold themselves out as having any power to bind the other to any third party. Nothing contained in this Section shall be construed to create or constitute a partnership, joint venture, employer-employee, or agency relationship between Debit Sponsor and you. You shall indemnify and hold harmless MSI, Global and their affiliates (including parents and subsidiaries), and their respective officers, directors, employees, successors and assigns, from and against any and all direct or contingent losses, costs, claims, demands, and causes of action (including, without limitation, the cost of investigating the claim, the cost of litigation, and reasonable attorney's fees including those of in house counsel, whether or not legal proceedings are instituted) paid or incurred by or on behalf of MSI or Global as a result of your violation of any of the terms of this Section, Network Rules, or Applicable Laws, or otherwise arising from or related to Debit Sponsor's sponsorship of you in any Network. In the event that Debit Sponsor's sponsorship of you in any Network is terminated prior to the termination of this Agreement, MSI and Global may assign Debit Sponsor's rights and obligations hereunder to a third party. All provisions in this Section necessary to enforce the rights and obligations of the parties contained in this Section shall survive the termination of Debit Sponsor's debit sponsorship of you under this Agreement.

B. Mail/Telephone Order. MSI, Global and Bank caution against mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") due to the high incidence of customer disputes. You will obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/telephone order transactions, you will type or print legibly on the signature line the following as applicable: telephone order or "TO" or mail order or "MO". You must promptly notify MSI, Global and Bank if your retail/mail order/telephone order mix changes from the percentages represented to MSI, Global and Bank in the Merchant Application. MSI, Global and Bank may cease accepting, mail/telephone order transactions, or limit its acceptance of such transactions, or increase their fees if this mix changes. i. BANK will release funds to MERCHANT five (5) business days after transaction date. ii. MERCHANT agrees to use and retain proof of a traceable delivery system as means of shipment of product to customer. iii. MERCHANT agrees that transactions will not be processed until products are shipped to cardholder. iv. MERCHANT agrees to a charge of \$0.05 per AVS transaction, if applicable. v. Agreement may be immediately terminated by BANK if MERCHANT fails to comply with any of the terms of the agreement.

C. Recurring Transactions. For recurring transactions, you must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder (ii) notice from MSI, Global or Bank, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction".

D. Multiple Sales Drafts. You will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or transaction record, unless (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction competed in accordance with this Agreement and the Rules.

E. Partial Completion. i. Prior Consent. You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of MSI, Global or Bank. Such consent will be subject to Bank's final approval. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Rules. ii. Acceptance. If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.

F. Future Delivery. You will not present any Sales Draft or other memorandum to Bank for processing "whether by electronic means" which relates to the sale of goods or services for future delivery without MSI, Global or Bank's, prior written authorization. Such consent will be subject to Bank's final approval. If MSI, Global or Bank have given such consent, you represent and warrant to MSI, Global and Bank that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.

G. Electronic Commerce Transactions. You may process electronic commerce ("EC") transactions only if you have so indicated on the Application, and only if you have obtained MSI's and Global's consent. If you submit EC transactions without our consent, we may immediately terminate this Agreement. If you have indicated on the Application that you will be submitting EC transactions, you acknowledge that you have reviewed the Payment Card Industry Data Security Standards (PCI DSS), Visa's Cardholder Information Security Program (CISP) and MasterCard's Site Data Protection

Program (SDP), and to the extent that they apply to you, you agree to comply with, and ensure such transactions comply with, the terms. You understand that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) you have obtained consent to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. All communication costs related to EC transactions are your responsibility. You understand that MSI and Global will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Bank into a depository institution of the United States in U.S. currency. i. Requirements. For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your web site must contain all of the following information: 1) complete description of the goods or services offered, ii) returned merchandise and refund policy, iii) customer service contact, including electronic mail address and/or telephone number, iv) transaction currency (such as U.S. or Canadian dollars); v) export or legal restrictions, if known, and vi) delivery policy. If you store cardholder account numbers, expiration dates, and other personal cardholder data in the database, you must follow PCI DSS, CISP and SDP guidelines on securing such data. ii. If you accept EC transactions, you must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data and data sent over open networks; use and update anti-virus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data; not use vendor-supplied defaults for system passwords and other security parameters; track access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to cardholder information. When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data. Further, you must reference the protection of cardholder information and compliance with the PCI DSS, CISP and SDP Rules in contracts with other service providers. You understand that failure to comply with this Section may result in fines and you agree to indemnify and reimburse MSI, Global and Bank immediately for any fine imposed due to your breach of this Section.

H. American Express, JCB and Diners Club Transactions. Upon your request, MSI, Global and Bank will provide authorization and/or data capture service, for JCB, Diners Club and American Express transactions. By signing this Merchant Agreement, Merchant agrees to abide by the terms and conditions of Diners Club, American Express, and JCB. Merchant understands that the Diners Club Agreement will be sent to the business entity indicated on this application. By accepting the Diners Club Card for goods and/or services, Merchant agrees to be bound by the terms and conditions of the Agreement. MSI, Global and Bank are not responsible for funding such transactions. Initial setup fees may apply.

Column 3

- I. Cash Advances. You will not deposit any transaction for purpose of obtaining or providing a cash advance. You agree that any such deposit shall be grounds for immediate termination.
- J. Prohibited Transactions. You will not accept or deposit any fraudulent transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, deposit telemarketing transactions unless you obtain Bank, MSI or Global's prior written consent. Such consent will be subject to Bank's final approval. If you process any such transactions, you may be immediately terminated and MSI, Global or Bank may hold funds and/or require you to establish a Reserve Account. Further, you may be subject to Visa, MasterCard or Discover reporting requirements.
6. Designated Account.
- A. Establishment and Authority. Merchant will establish and maintain an account at an ACH receiving depository institution approved by Bank, MSI and Global ("Designated Account"). Merchant will maintain sufficient funds in the designated Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Bank, MSI and Global to debit the Designated Account for chargebacks, fees and any other Penalties or amounts owed under this Agreement, and irrevocably authorizes Bank, MSI and Global to debit the Designated Account for any amount owed to Bank, MSI and Global under this Agreement other than the amounts directly attributable to the settlement of transactions. You also authorize MSI, Global and Bank to debit the Merchant Account for any fees due such vendor or agent under this Agreement. This authority will remain in effect for at least 2 years after termination of this Agreement whether or not you have notified MSI, Global and Bank of a change to the Designated Account. Merchant must obtain prior written consent from Bank, MSI or Global to change the Designated Account. If Merchant does not get that consent, MSI, Global or Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion.
- B. Deposit. Bank will deposit all Sales Drafts to the Designated Account subject to Section 4 of this Agreement. The funds represented by Sales Drafts will be deposited 3 business days following MSI and Global's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce transactions, which will be deposited 5 business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Merchant authorizes Bank, MSI and Global to initiate reversal or adjustment entries

and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry. You authorize and appoint Bank, MSI and Global to act as your agent to collect Card transaction amounts from the Card issuing bank. As the collecting agent, Bank, MSI and Global in its sole discretion, may grant you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all chargebacks.

C. **Asserted Errors.** You must promptly examine all statements relating to the Designated Account, and immediately notify MSI, Global and Bank in writing of any errors. Your written notice must include: (i) Merchant name and account number, (ii) the dollar amount of the asserted error, (iii) a description of the asserted error, and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by MSI, Global and Bank within 30 calendar days after you received the periodic statement containing the asserted error. Your failure to notify MSI, Global, and Bank of any error within 30 days constitutes a waiver of any claim relating to that error. You may not make any claim against MSI, Global or Bank for any loss or expense relating to any asserted error for 60 calendar days immediately following our receipt of your written notice. During that 60 day period, MSI, Global and Bank will be entitled to investigate the asserted error.

D. **Indemnity.** You will indemnify and hold MSI, Global and Bank harmless for any action they take against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.

E. **ACH Authorization.** You authorize MSI, Global and Bank to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by you at any institution, all in accordance with this Agreement and the ACH Authorization on the attached Exhibit B, Merchant Authorizations. The ACH Authorization will remain in effect beyond termination of this Agreement. In the event you change the Designated Account, you will execute a new ACH Authorization.

7. Security Interests, Reserve Account, Recoupment and Set-Off.

A. **Security Interests.** i. **Security Agreement.** This Agreement is a security agreement under the Uniform Commercial Code. You grant to MSI, Global and Bank a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Draft; and (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other collateral or security to MSI, Global and Bank to secure your obligations under this Agreement upon MSI, Global or Bank's request. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between you and MSI, Global or Bank. This security interest may be exercised by MSI, Global or Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets. ii. **Perfection.** Upon request of MSI, Global or Bank, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, MSI, Global and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from MSI, Global and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and MSI, Global and Bank are not required to file a motion for relief from a bankruptcy action automatic stay for MSI, Global or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless you agree not to contest or object to any motion for relief from the automatic stay filed by MSI, Global or Bank. You authorize MSI, Global or Bank and appoint MSI, Global or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

B. **Reserve Account.** i. **Establishment.** A non-interest bearing deposit account ("Reserve Account") may be established and maintained at MSI, Global or Bank initially or at any time in the future as requested by MSI, Global or Bank, with sums sufficient to satisfy your current and future obligations as determined by MSI, Global and Bank. You authorize MSI, Global and Bank to debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank, MSI or Global may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests. ii. **Authorizations.** MSI, Global and Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and MSI, Global or Bank. Also, MSI, Global and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to MSI, Global or Bank including, without limitation, rights of set-off and recoupment. In the event you submit a merchant application to MSI through the use of Insta-App, and MSI does not receive a completed written merchant application within 2 business days, you authorize MSI, Global or Bank to hold all of your funds in the Reserve Account until the completed written merchant application and other required documentation is received by MSI. iii. **Funds.** Funds in the Reserve Account will remain in the Reserve Account for 270 calendar days following the later of termination of this Agreement or the last activity in your account, provided, however, that you will remain liable to MSI, Global, and Bank for all liabilities occurring beyond such 270 day period. After the expiration of the 270 day period MSI will provide you with written notification via nationally recognized delivery service advising you that the 270 day period has expired, requesting that you provide MSI with an address where the funds should be delivered, and stating that in the event you fail to respond to this notification within 30 days, MSI will begin deducting a flat fee of \$95 each month from the funds you have remaining in the Reserve Account. In the event you fail to respond to the notification, the \$95 fee will then be deducted

each month from the funds remaining in the Reserve Account. This fee will offset the administrative, clerical, legal, and risk management costs incurred by MSI to monitor the funds that remain in the Reserve Account beyond the 270 day period, and includes all monthly minimums and any other contractual fees that would ordinarily be assessed against your account pursuant to the terms of this Agreement. You agree that prior to the expiration of the 270 days, you will not use funds in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines, or other amounts you owe to MSI, Global, and/or Bank under this Agreement. MSI, Global, and Bank (and not Merchant) shall have control of the Reserve Account. iv. Assurance. In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must establish or maintain a Reserve Account in an amount satisfactory to MSI, Global and Bank.

C. Recoupment and Set Off. MSI, Global and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank, MSI or Global may owe you under this Agreement or any other agreement; and (iii) any funds in the Designated Account or Reserve Account. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to MSI, Global and Bank, you must create or maintain the Reserve Account as required by MSI, Global and Bank, and MSI, Global and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to MSI, Global and Bank, without regard to whether the obligations relate to Sales Drafts Initiated or created before or after the filing of the bankruptcy petition.

D. Remedies Cumulative. The rights and remedies conferred upon MSI, Global and Bank in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of MSI, Global and Bank under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

8. Fees and Other Amounts Owed Bank.

A. Fees and Taxes. You will pay MSI or Global fees for services, forms and equipment in accordance with the rates set forth on the Application. In addition, you will pay MSI a fee for research it performs at your request in an amount equal to \$200 per hour, or \$5 per statement. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day's or month's activity or will be netted out from the funds due you attributable to Sales Drafts presented to MSI, Global and Bank. MSI, Global and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 16.H, below. If you do not have an active account at the time of the request, payment by certified check or money order must be received prior to the release of the requested document copies or research results. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. With respect to Visa, MasterCard and Discover products, you may elect to accept credit cards or debit/prepaid cards or both. You shall so elect on the Merchant Application being completed contemporaneously herewith. You agree to pay and your account(s) will be charged pursuant to Section 6.A of this Agreement for any additional fees incurred as a result of your subsequent acceptance of transactions with any Visa, MasterCard or Discover product that you have elected not to accept.

B. Other Amounts Owed Bank. You will immediately pay MSI, Global and Bank any amount incurred by MSI, Global and Bank attributable to this Agreement including but not limited to chargebacks, fines and penalties imposed by Visa, MasterCard or Discover (including but not limited to fines and penalties related to PCI DSS), non-sufficient fund fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. You authorize MSI, Global and Bank to debit via ACH the Designated Account or any other account you have at Bank or at any other financial institution for any amount you owe MSI, Global or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and MSI, Global or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event MSI, Global or Bank demand sums due or such ACH does not fully reimburse MSI, Global and Bank for the amount owed, you will immediately pay MSI, Global and Bank such amount.

C. Merchant Supply/Replacement Program. Merchant is responsible for purchasing all supplies required to properly process credit card transactions (sales slips, printer rolls, etc.). If merchant elects to participate in MSI's Supply/Replacement Program, merchant

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understands that they are entitled to a maximum of 6 rolls of paper and 2 printer ribbons per month. It is the merchant's responsibility to contact MSI each month to order supplies. MSI will only provide the merchant with supplies for the current month, and merchant's failure to place an order with MSI will constitute a waiver of its right to receive supplies for that month under the Supply/Replacement Program. Quantity of supplies provided is at the discretion of MSI. Enrollment in MSI's Supply/Replacement Program also entitles merchant to free refurbished replacement equipment after MSI has collected 3 monthly payments from the merchant (merchant is responsible for all shipping costs). A separate program is required for each terminal merchant may have. If merchant's terminal type is unavailable, at MSI's discretion, a substitute may be provided. MSI's Supply/Replacement Program does not include labor, parts, or expenses necessary to replace or repair equipment damaged by fire, flood, accident, improper voltages, misuse of equipment, service performed by persons other than MSI representatives, and/or failure to continually maintain a suitable operating environment for the equipment.

MSI may choose to cancel the merchant's Supply/Replacement Program at any time without notice. This program is nontransferable without written consent. Maintenance is not available for any wireless terminals.

9. Application, Indemnification, Limitation of Liability.

A. Application. You represent and warrant to MSI, Global and Bank that all information in the Application is correct and complete. You must notify MSI and Global in writing of any changes to the information in the Application, including but not limited to: any additional location or new business, the identity of principals and/or owners, the form of business organization (i.e., sole proprietorship, partnership, etc.), type of goods and services provided and how sales are completed (i.e. by telephone, mail, or in person at your place of business). The notice must be received by MSI and Global within 10 business days of the change. You will provide updated information to MSI and Global within a reasonable time upon request. You are liable to MSI, Global and Bank (as applicable) for all losses and expenses incurred by MSI, Global and/or Bank arising out of your failure to report changes to it. Bank, MSI and Global may immediately terminate this Agreement upon notification by you of a change to the information in the Application.

B. Indemnification. You will hold harmless and indemnify MSI, Global and Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by MSI, Global or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach by you of this Agreement and those related to any bankruptcy proceeding.

C. Limitation of Liability. Any liability of MSI, Global or Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, shall not exceed in the aggregate the difference between (i) the amount of fees paid by you to MSI, Global and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of MSI, Global and Bank's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one month involved. Neither MSI, Global, Bank nor their agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages. Neither MSI, Global, nor Bank will be responsible or liable for any damages you incur that arise from a terminal that has been downloaded by a third party.

D. Performance. MSI, Global and Bank will perform all services in accordance with this Agreement. MSI, Global and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. MSI, Global and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. No party will be liable to the others for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the, fault or negligence of such party. Neither MSI, Global nor Bank shall be liable for the acts or omissions of any third party.

E. Representations By Salespersons. All salespersons are independent contractors, and are not agents, employees, joint venturers, or partners of MSI, Global or Bank. Any and all representations and/or statements made by a salesperson are made by them in their capacity as an independent contractor, and cannot be imputed to MSI, Global or Bank. MSI, Global and Bank have absolutely no liability or responsibility for any representations and/or statements made to you by any sales representative.

10. Representations and Warranties. You represent and warrant to MSI, Global and Bank at the time of execution and during the term of this Agreement the following:

A. Information. You are a corporation, limited liability company, partnership or sole proprietorship validly existing and organized in the United States. All information contained on the Application or any other document submitted to MSI, Global or Bank is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of MSI, Global and Bank.

B. Entity Power. Merchant and the person signing this Agreement have the power to execute and perform this Agreement. This Agreement will not violate any law, or conflict with any other agreement to which you are subject.

C. No Litigation or Termination. There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never entered into an agreement with a third party to perform credit or debit card process which has been terminated by that third party.

D. Transactions. All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with MSI, Global and Bank. MSI may choose to cancel the merchant's Supply/Replacement Program at any time without notice. This program is non-transferable without written consent. Maintenance is not available for any wireless terminals.

E. Rule Compliance. You will comply with the Laws and Rules. Without limiting the generality of the foregoing, each sales transaction submitted hereunder and the handling, retention, and storage of information related thereto, will comply with the rules and regulations of Visa, MasterCard, Discover, and any other card association or network organization related to cardholder and transaction information security, including, without limitation Payment Card Industry Data Security Standards (PCI DSS), Visa's Cardholder Information Security Program (CISP) and MasterCard's Site Data Protection Program (SDP), and Payment Application Best Practices.

11. Audit and financial information.

A. **Audit.** You authorize MSI, Global or Bank to audit your records to confirm compliance with this Agreement, as amended from time to time. You will obtain, and will submit a copy of, an audit of your business when requested by MSI, Global or Bank.

B. **Financial Information.** i. Authorizations. You authorize MSI, Global or Bank to make any business or personal credit inquiries they consider necessary to review the acceptance and continuation of this Agreement. You also authorize any person or credit reporting agency to compile information to answer, those credit inquiries and to furnish that information to MSI, Global and Bank. ii. Documents. You will provide MSI, Global or Bank personal and business financial statements and other financial information as requested from time to time. If requested, you will furnish within 120 calendar days after the end of each fiscal year to MSI, Global and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

12. Third Parties.

A. **Services.** You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. MSI, Global and Bank have no responsibility for any transaction until that point in time MSI, Global or Bank receive data about the transaction.

B. **Use of Terminals Provided by Others.** You will notify MSI, Global and Bank immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than MSI, Global and Bank or its authorized designee ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals or payment software provided by others you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to MSI, Global and Bank; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules and this Agreement. Neither MSI, Global nor Bank will be responsible for any losses or additional fees incurred by you as result of any error by a third party agent, or a malfunction of your credit card terminal, including but not limited to Third Party Terminals.

13. Term and Termination.

A. **Term.** This Agreement shall become effective ("Effective Date") only upon acceptance by MSI, Global and Bank, or upon the submission of a transaction by you to MSI, whichever event shall occur first. The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.

B. **Termination.** The Agreement may be terminated by Merchant at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the Initial Term or any Renewal Term. Further, this Agreement may be terminated by MSI, Global or Bank at any time with or without notice and with or without cause.

C. **Action upon Termination.** i. Terminated Merchant File. You acknowledge that Bank is required to report your business name and the name of Merchant's principals to Visa, MasterCard and Discover when Merchant is terminated due to the reasons listed in the Rules. ii. Designated Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement. You authorize MSI, Global and Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, you will pay MSI, Global and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees. iii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by MSI and immediately pay MSI, any amounts you owe them for equipment costs. iv. Early Termination. If you terminate this Agreement before the end of the Initial Term, or before the end of any successive Renewal Term, in violation of the procedure set forth in Section 13(B) above, or if MSI, Global or Bank terminates this Agreement based upon your failure to comply with the terms and conditions contained herein, you will immediately pay MSI or Global, as liquidated damages, a closure fee of \$250. You agree that this fee is not a penalty, but rather is reasonable in light of the financial harm caused by the early termination of this Agreement.

14. Compliance With Laws And Rules.

You agree to comply with all rules and operating regulations issued from time to time by MasterCard, Visa and Discover, and any policies and procedures provided by MSI, Global or Bank. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist MSI, Global and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to MSI, Global and Bank all instruments it may from time to time reasonably deem necessary. Without limiting the generality of the foregoing, you agree to comply with and be bound by the rules and regulations of Visa, MasterCard, Discover, and any other card association or network organization related to cardholder and transaction information security, including without limitation, Payment Card Industry Data Security Standards (PCI DSS), Visa's Cardholder Information Security Program and MasterCard's Site Data Protection Program. You agree to cooperate at your sole expense with any request for an audit or investigation by MSI, Global, Bank, a card association or network organization in connection with cardholder and transaction information security. You may also be assessed a monthly or annual PCI fee, which will appear as a separate item on your monthly statement. This fee is assessed by MSI in connection with MSI's efforts to comply with the PCI DSS and does not ensure your compliance with the PCI DSS or any

law, rule or regulation related to cardholder data security. The payment of such fee shall not relieve you of your responsibility to comply with all rules and regulations related to cardholder data security, including without limitation the PCI DSS. Without limiting the generality of the foregoing, you agree to use information obtained from a cardholder in connection with a card transaction solely for the purpose of processing a transaction with that cardholder or attempting to re-present a chargeback with respect to such transaction. You will

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indemnify and hold MSI, Global and Bank harmless from any fines and penalties issued by Visa, MasterCard, Discover or any card association or network organization and any other fees and costs arising out of or relating to the processing of transactions by MSI, Global and Bank at your location(s) and will reimburse MSI, Global and Bank for any losses incurred by MSI with respect to any such fines, penalties, fees and costs. You also agree that you will comply with all applicable laws, rules and regulations related to the truncation or masking of cardholder numbers and expiration dates on transaction receipts from transactions processed at your location(s), including without limitation the Fair and Accurate Credit Transactions Act and applicable state laws ("Truncation Laws"). As between you, on the one hand, and MSI, Global and Bank, on the other hand, you shall be solely responsible for complying with all Truncation Laws and will indemnify and hold MSI, Global and Bank harmless from any claim, loss or damage resulting from a violation of Truncation Laws as a result of transactions processed at your location(s).

15. Use of Trademarks and Confidentiality.

A. **Use of Trademarks.** Your use of Visa, MasterCard and Discover trademarks must fully comply with the Rules. Your use of Visa, MasterCard, Discover, or other cards' promotional materials will not indicate directly or indirectly that Visa, MasterCard, Discover, or others endorse any goods or services other than their own and you may not refer to Visa, MasterCard, Discover or others in stating eligibility for your products or services.

B. **Merchant is hereby granted a limited non-exclusive, non-transferable license to use Discover brands, emblems, trademarks, and/or logos that identify Discover cards ("Discover Program Marks").** You are prohibited from using the Discover Program Marks other than as expressly authorized in writing. You shall not use the Discover Program Marks other than to display decals, signage, advertising and other forms depicting the Discover Program Marks that are provided to you pursuant to this Agreement or otherwise approved in advance in writing. You may use the Discover Program marks only to promote the services covered by the Discover Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by you must be approved in advance in writing. You shall not use the Discover Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Program Marks. You recognize that you have no ownership rights in the Discover Program Marks and shall not assign to any third party any of the rights to use the Discover Program Marks.

C. **Confidentially.** i. Cardholder Information. You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, or as required by law. You must destroy all material containing Cardholders' account numbers, Card Imprints, Sales Drafts, Credit Vouchers and (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. ii. Prohibitions. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of MSI, Global and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. iii. Disclosure. You authorize MSI, Global and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.

D. **Return to Bank.** All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of MSI, Global and Bank and will be immediately returned to MSI upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by MSI, Global and Bank arising out of the failure to return or destroy such materials following termination.

16. General Provisions.

A. **Entire Agreement.** This Agreement as amended from time to time, including the Rules and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.

B. **Exclusivity.** During the initial and any renewal term of this Agreement, you will not enter into an agreement with any other entity that provides credit card or debit card processing services similar to those provided by MSI, Global and Bank as contemplated by this Agreement without MSI, Global and Bank's written consent.

C. **Construction.** The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This

Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

D. Assignability. This Agreement may be assigned by MSI, Global or Bank but may not be assigned by Merchant directly or by operation of law, without the prior written consent of MSI, Global and Bank. If Merchant nevertheless assigns this Agreement without the consent of MSI, Global and Bank, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.

E. Notices. Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.

MEMBER BANK INFORMATION

HSBC Bank USA, National Association
Merchant Support Group
P. O. Box 3263
Buffalo, NY 14240
716-841-6360

Debit sponsorship provided by either Wells Fargo Bank N.A. or JP Morgan Chase N.A., as applicable.

F. Bankruptcy. You will immediately notify MSI, Global and Bank of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include MSI, Global and Bank on the list and matrix of creditors as filed with the Bankruptcy Court whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to MSI, Global and Bank under applicable Rules or Law.

G. Choice of Law/Attorney's Fees/Venue/Jury Trial Waiver. Should it be necessary for MSI, Global, or Bank to defend or enforce any of its rights under this Agreement in any collection or legal action, you agree to reimburse MSI, Global, and/or Bank, or any agent acting on their behalf, as applicable, for all costs and expenses including reasonable attorney's fees, as a result of such collection or legal action. Without limiting the generality of the foregoing, you agree to reimburse MSI, Global, and/or Bank, or any agent acting on their behalf, as applicable, for all costs and expenses, including reasonable attorney's fees, incurred by MSI, Global, Bank or their agent in any action arising out of, relating to, or in connection with this Agreement, without regard to whether there has been an adjudication on the merits in any such action. You waive trial by jury with respect to any litigation arising out of, relating to, or in connection with this Agreement. MSI, Global, Bank, you, and Guarantor agree that any and all disputes or controversies of any nature whatsoever (whether in contract, tort or otherwise) arising out of, relating to, or in connection with (i) this Agreement, (ii) the relationships which result from this Agreement, or (iii) the validity, scope, interpretation or enforceability of the choice of law and venue provisions of this Agreement, shall be governed by the laws of the State of New York, notwithstanding any conflicts of laws rules, and shall be resolved, on an individual basis without resort to any form of class action and not consolidated with the claims of any other parties. MSI, Global, Bank, you, and Guarantor agree that all actions arising out of, relating to, or in connection with (a) this Agreement, (b) the relationships which result from this Agreement, or (c) the validity, scope, interpretation or enforceability of the choice of law and venue provisions of this Agreement shall only be brought in either the courts of the State of New York sitting in Suffolk County or in the United States District Court for the Eastern District of New York, and hereby irrevocably and unconditionally submit to the personal jurisdiction of those courts in any such action.

H. Amendments. MSI or Global will notify you on your monthly statement of any new or increased fees. Except for any fee increases imposed by Visa, MasterCard, Discover, or the debit network, you may cancel the Agreement without charge if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.

I. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by MSI, Global or Bank to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.

J. Independent Contractors. MSI, Global, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other, except as provided in 6.C and 7.A(ii).

K. Employee Actions. You are responsible for your employees' actions while in your employment.

L. Survival. Sections 4.A, 4.B, 6, 7, 8, 9, 13.C, 15, and 16.G will survive termination of this Agreement.

17. E-statements.

A. Merchant Account Statement. Upon opening a merchant processing account you will automatically have access to your monthly merchant account statement electronically (an "E-statement") by viewing it on line. This Agreement governs the electronic availability of your E-statement. You agree to abide by the terms and conditions stated herein, and to access E-statements, as well as all notices and initial and future disclosures regarding your E-statement, online. You acknowledge that by the third business day of each month, your E-statement will be available online. You will be notified in writing of the website where you can access your E-statement. Your E-statement will be accessible only through a secure Log In

screen which requires the use of a unique User ID and Password. You understand that you will not receive a monthly merchant account statement by U.S. postal mail, and that making your E-statement available online constitutes MSI's compliance with delivery of your monthly merchant account statement. You can print the E-statement or save the file to your computer's hard drive or other disk in order to retain a copy of the E-statement. Your E-statement can be accessed through the E-statement link for three consecutive months from the date the E-statement is first made available. You further agree to receive all initial and periodic account disclosure information in an electronic format. All such disclosures shall be provided in a clear, conspicuous manner that you can print and/or save using the hardware and software specified below. You are also entitled to obtain a paper copy of all disclosures or E-statements upon written request, however such a request does not constitute a withdrawal of consent to receive monthly E-statements. A fee may apply for providing such documentation. You understand that you may withdraw your consent to receive E-statements, or change your email address, upon 30 days written notice to MSI. Please note that a withdrawal of consent does not apply to an E-statement that was furnished before the date on which the withdrawal of consent becomes effective. PC Requirements: Viewing your E-statement on line requires a personal computer with Adobe Acrobat and internet access through a standard web browser. The product version levels must be supported by the respective vendors (i.e., Adobe, Apple, Mozilla, and Microsoft). MSI is not obligated to ensure that your E-statements are accessible through outdated vendor products. In the event you are unable to access any of the information that has been made available by MSI in electronic format, it is your obligation to notify MSI in writing immediately.

B. Reporting Of Errors. You must promptly view all E-statements, and immediately notify MSI in writing of any errors. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the

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asserted error; and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by MSI within 30 calendar days after the E-statement containing the asserted error is first made available. Your failure to notify MSI of any error within 30 days constitutes a waiver of any claim relating to that error. You may not make any claim against MSI for any loss or expense relating to any asserted error for 60 calendar days immediately following MSI's receipt of your written notice. During that 60 day period, MSI will be entitled to investigate the asserted error and we will notify you of the results of our investigation.

C. Miscellaneous. MSI shall not be responsible for: (i) consequential or incidental damages caused by services performed by MSI, its agents, or your Internet Service Provider ("ISP"); (ii) damages arising from unauthorized access to E-statement services; or (iii) any costs associated with updating, modifying or terminating your software or hardware. MSI may change, suspend, or terminate all or any aspect of this service upon written notice to you.

18. Electronic Signatures.

Under the Electronic Signatures in Global and National Commerce Act ("E-Sign"), this Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand signature when: (a) your electronic signature is associated with the Agreement and related documents, (b) you consent and intend to be bound by the Agreement and related documents, and (c) the Agreement is delivered in an electronic record capable of retention by the recipient at the time of receipt (i.e., print or otherwise store the electronic record). This Agreement and all related electronic documents shall be governed by the provisions of E-Sign. By pressing Submit, you agree: (i) that the Agreement and related documents shall be effective by electronic means, (ii) to be bound by the terms and conditions of this Agreement and related documents, (iii) that you have the ability to print or otherwise store the Agreement and related documents, and (iv) to authorize MSI, Global or Bank to conduct an investigation of your credit history with various credit reporting and credit bureau agencies for the sole purpose of determining the approval of the applicant for merchant status or equipment leasing. This information is kept strictly confidential and will not be released.

TOWN OF RIVERHEAD

Resolution # 930

ACCEPTS THE RESIGNATION OF THE EMPIRE ZONE COORDINATOR

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

WHEREAS, Empire Zone Coordinator Tracy Stark-James has been on an approved unpaid leave of absence in accordance with the terms of Resolutions #157 and #629; and

WHEREAS, Ms. Stark-James' leave expired on December 1, 2011 and she has complied with Town policy by submitting a letter to the Town Board indicating her intent to resign from her position at the expiration of said leave.

NOW, THEREFORE, BE IT RESOLVED, that this Town Board hereby accepts the resignation of Tracy Stark-James effective December 1, 2011.

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

12.20.2011
110931

ADOPTED

TOWN OF RIVERHEAD

Resolution # 931

**APPOINTS CALL-IN PERSONNEL FOR THE RIVERHEAD YOUTH
BUREAU/RECREATION DEPARTMENT**

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

WHEREAS, the Town of Riverhead Youth Bureau/Recreation Department needs to appoint staff for the upcoming school recess youth recreation programs

NOW THEREFORE BE IT RESOLVED, that effective December 27, 2011 this Town Board hereby appoints the attached list of call-in recreation personnel

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

RIVERHEAD YOUTH BUREAU/RECREATION DEPARTMENT APPOINTMENTS

12/20/11 TOWN BOARD MEETING

<u>Last</u>	<u>First</u>	<u>Title</u>	<u>Level</u>	<u>Start Date</u>	<u>End Date</u>	<u>Salary</u>
Stephenson	Kyle	Call-In Rec. Leader II	4	12/27/11	4/30/12	\$14.00
Horton	Rosaleigh	Call-In Rec. Aide II	2	12/27/11	4/30/12	\$10.00
Sendlewski	Jason	Call-In Rec. Aide II	2	12/27/11	4/30/12	\$10.00
Strange	Dajuon	Call-In Rec. Aide II	2	12/27/11	4/30/12	\$10.00
VanDeurs	Christian	Call-In Rec. Aide II	2	12/27/11	4/30/12	\$10.00
Flores	Anna	Call-In Rec. Aid II	2	12/27/11	4/30/12	\$10.00

Kelly: Rec staff.school.recess.prgs.

12.20.2011
110932

ADOPTED

TOWN OF RIVERHEAD

Resolution # 932

**APPOINTS MEMBER TO THE
RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY**

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

WHEREAS, the Riverhead Industrial Development Agency (RIDA) was established in 1980 as a public benefit corporation to attract new businesses and to help existing businesses expand their operations and continue to do business within the Town of Riverhead; and

WHEREAS, one vacancy currently exists on the RIDA Board of Directors, which this Town Board desires to fill.

NOW THEREFORE BE IT RESOLVED that the Town Board be and hereby appoints Dawn C. Thomas to the RIDA for the unexpired term ending on December 31, 2012; and be it further

RESOLVED, that the Town Clerk is hereby authorized to forward a copy of this resolution to Dawn C. Thomas, P.O. Box 877, Jamesport, New York 11947; and be it further

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No

Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 933

**EXTENDS BID CONTRACT FOR REMOVAL OF
HOUSEHOLD HAZARDOUS WASTE**

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

WHEREAS, the Sanitation Department has requested the contract with Radiac Research be extended until February 20, 2013 and;

WHEREAS, this will be the first extension and;

WHEREAS, the above named vendor has agreed to extend the contract until February 20, 2013 for the same pricing and;

WHEREAS, the Town Board has reviewed said request.

NOW THEREFORE BE IT RESOLVED, that the contract for REMOVAL OF HOUSEHOLD HAZARDOUS WASTE is extended until February 20, 2013 and;

BE IT FURTHER RESOLVED, that the Town Clerk be and is hereby authorized to forward a certified copy of this resolution to Radiac Research, the Sanitation Department and Purchasing.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 934

EXTENDS BID CONTRACT WITH PECONIC PROPANE, INC.

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

WHEREAS, the Purchasing Department has requested that the contract with Peconic Propane Corporation, originally awarded by Resolution #10-884 adopted 12/7/2010 be extended until March 7, 2012.

WHEREAS, the above named vendor has agreed to extend the contract until March 7, 2012 at the original bid amount, +.35 cents over the Targa @ Watkins Glen price index; and

WHEREAS, the Town Board has reviewed said request.

NOW THEREFORE, BE IT

RESOLVED, that the bid contract for propane fuel be and is hereby extended to March 7, 2012; and be it further

RESOLVED, that the Town Clerk be directed to forward a certified copy of this resolution to Peconic Propane, Inc. P.O. Box 607, Calverton, New York 11933:

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 935

**APPROVES EXTENSION OF SECURITY POSTED BY BIRCHWOOD AT
WADING RIVER LLC IN CONNECTION WITH THE SUBDIVISION ENTITLED
"BIRCHWOOD AT WADING RIVER – SECTION 3"
(ROAD AND DRAINAGE IMPROVEMENTS)**

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

WHEREAS, the Riverhead Town Board, by Resolution #136 adopted on February 18, 2004, did accept a subdivision bond in the amount of \$501,000.00 representing road and drainage improvements to be completed in the subdivision entitled, "Birchwood at Wading River – Section 3"; and

WHEREAS, by letter from Michael Van Buren of Birchwood at Wading River, LLC, it had been requested that an extension be granted for the performance bond representing the road and drainage improvements to be completed within the subdivision; and

WHEREAS, by Riverhead Town Board Resolution #369 dated April 21, 2009, a two-year extension was granted for the security posted representing the road and drainage improvements to be completed within the subdivision to December 1, 2010; and

WHEREAS, by Riverhead Planning Board Resolution #2011-0058 dated October 20, 2011, it is recommended that the performance security be extended for an additional two-year period to December 1, 2012; and

WHEREAS, Water Key Money in the amount of \$72,500.00 and Park and Recreation Fees in the amount of \$87,000.00, have been paid.

NOW THEREFORE BE IT RESOLVED, that the Town Board of the Town of Riverhead hereby approves the extension of time for the performance security posted representing the road and drainage improvements to be completed within the subdivision for an additional two-year period as provided by Riverhead Town Code Chapter 108-97 A. (4); and be it further

RESOLVED, that the Town Board hereby accepts the \$2,000.00 fee associated with such extension approval; and be it further

RESOLVED, that this extension shall extend the performance security posted representing the road and drainage improvements to be completed within the subdivision to December 1, 2012; and be it further

RESOLVED, that the Town Clerk is hereby authorized to forward a copy of this resolution to Birchwood Park, Attn: Michael Van Buren, 135 Pinelawn Road, Suite 230 South, Melville, NY, 11747, International Fidelity Insurance Company, One Newark Center, 20th Floor, Newark, New Jersey, 07102; and be it further

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 936

**APPROVES EXTENSION OF SECURITY POSTED BY BIRCHWOOD AT
WADING RIVER LLC IN CONNECTION WITH THE SUBDIVISION ENTITLED
“BIRCHWOOD AT WADING RIVER – SECTION 4”
(ROAD AND DRAINAGE IMPROVEMENTS)**

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

WHEREAS, the Riverhead Town Board, by Resolution #135 adopted on February 18, 2004, did accept a subdivision bond in the amount of \$272,000.00 representing road and drainage improvements to be completed in the subdivision entitled, “Birchwood at Wading River – Section 4”; and

WHEREAS, by letter from Michael Van Buren of Birchwood at Wading River, LLC, it had been requested that an extension be granted for the performance bond representing the road and drainage improvements to be completed within the subdivision; and

WHEREAS, by Riverhead Town Board Resolution #370 dated April 21, 2009, a two-year extension was granted for the security posted representing the road and drainage improvements to be completed within the subdivision to December 1, 2010; and

WHEREAS, by Riverhead Planning Board Resolution #2011-0059 dated October 20, 2011, it is recommended that the performance security be extended for an additional two-year period to December 1, 2012; and

WHEREAS, Water Key Money in the amount of \$55,000.00 and Park and Recreation Fees in the amount of \$66,000.00, has been paid.

NOW THEREFORE BE IT RESOLVED, that the Town Board of the Town of Riverhead hereby approves the extension of time for the performance security posted representing the road and drainage improvements to be completed within the subdivision for an additional two-year period as provided by Riverhead Town Code Chapter 108-97 A. (4); and be it further

RESOLVED, that the Town Board hereby accepts the \$2,000.00 fee associated with such extension approval; and be it further

RESOLVED, that this extension shall extend the performance security posted representing the road and drainage improvements to be completed within the subdivision to December 1, 2012; and be it further

RESOLVED, that the Town Clerk is hereby authorized to forward a copy of this resolution to Birchwood Park, Attn: Michael Van Buren, 135 Pinelawn Road, Suite 230 South, Melville, NY, 11747, International Fidelity Insurance Company, One Newark Center, 20th Floor, Newark, New Jersey, 07102; and be it further

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 937

**ACCEPT AND ADOPT FINDINGS AND RECOMMENDATIONS OF MARKET STUDY
PREPARED BY RKG ASSOCIATES AND AUTHORIZE VHB TO PROCEED WITH
ENVIRONMENTAL REVIEW OF DEVELOPMENT PLAN "A" AND ALTERNATE
DEVELOPMENT PLAN AS PRESENTED ON DECEMBER 8, 2011**

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

WHEREAS, in 1998, after the Grumman Corporation chose not to renew its lease for the Naval Weapons Industrial Reserve Plant site, known and commonly referred to as "NWIRP" or "EPCAL", consisting of approximately 2,900 acres located in Calverton, Town of Riverhead, New York, the United States Navy conveyed the entire site to the Town of Riverhead Community Development Agency (CDA) for no consideration, conditioned upon the Town's reuse of the property for economic development; and

WHEREAS, in anticipation of the transfer of ownership, the Town and CDA commissioned a firm to undertake a comprehensive study and plan to reuse/develop the site consistent with the goals and mandate of economic development; and

WHEREAS, the Town adopted a land use plan based upon the study and amended the Comprehensive Master Plan of the Town of Riverhead to include new zoning use districts to effectuate this land use, to wit: Planned Industrial Park (PIP) Zoning Use District (this zoning district encompassed the bulk of the former Grumman facilities sometimes referred to as the "Industrial Core") and the balance of the property was rezoned to Planned Recreational Park (PRP) Zoning Use District; and

WHEREAS, since the transfer of title to the Town of Riverhead Community Development Agency in 1998, the Calverton site "EPCAL" has seen limited redevelopment; and

WHEREAS, due to the evolution of market, economic, and site conditions since the adoption and implementation of the original comprehensive reuse plan, the Town and CDA, embarked on a plan to update, develop and implement a reuse plan to bring to fruition economic development to the Town of Riverhead; and

WHEREAS, the CDA, by Resolution #4 adopted on February 1, 2011, acting with and for the benefit of the Town retained the services of VHB Engineering, Surveying and Landscape Architecture, P.C. (VHB) to assist the Town and CDA and provide services related to an updated Comprehensive Reuse Plan, including but not limited to, development of a revised land use plan, associated zoning, updated market assessment, preparation of subdivision plan, and assistance in the administration of the SEQRA process; and

WHEREAS, related to and made part of the services provided by VHB, VHB prepared the requests for proposals related to the update of the 1996 Reuse Plan (also described as market study); and

WHEREAS, the Town Board of the Town of Riverhead authorized the issuance of a Request for Proposals for an Updated Market Study for Reuse and Revitalization of the Former Naval Weapons Industrial Reserve Plant ("NWIRP/EPCAL") by Resolution #246 adopted on April 5, 2011; and

WHEREAS, Town Board awarded RKG Associates, Inc. the contract to prepare, complete and present an updated comprehensive market study for reuse of the former Naval Weapons Industrial Reserve Plant ("NWIRP/EPCAL"); and

WHEREAS, on December 8, 2011, RKG presented, during an open and public session of the Town Board, an updated market study which identified the economic and real estate conditions influencing development on the subject site and recommended uses most compatible and viable with site conditions and market demand; uses with potential growth and sustainability; and uses that could compete within the regional market; and

WHEREAS, on December 8, 2011, VHB presented, during an open and public session of the Town Board, a plan for development (plan "A") and an alternate plan for development (hereinafter referred to as development plan "B") incorporating the recommendations and findings of the market study prepared by RKG; and

NOW THEREFORE BE IT RESOLVED, the Town Board accepts and adopts the findings and recommendations for redevelopment at EPCAL prepared by RKG; and

BE IT FURTHER RESOLVED, the Town Board authorizes VHB to proceed with the requisite environmental review based upon Plan "A" and Alternate Development Plan "B" presented to the Town Board on December 8, 2011; and

RESOLVED, that the Town Clerk is hereby directed to forward a copy of this resolution to RKG Associates, Inc. 634 Central Avenue, Dover, NY 03820; VHB Engineering, Surveying and Landscape Architecture PC, 2150 Joshua's Path, Suite

300, Hauppauge, NY 11788, Christine Kempner, CDA Director for the Town of Riverhead; Rick Hanley, Planning Director; and

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 938

AUTHORIZES THE SUPERVISOR TO EXECUTE AN AGREEMENT WITH RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY FOR ADMINISTRATION SERVICES OF SUFFOLK COUNTY/TOWN OF RIVERHEAD EMPIRE ZONE

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

WHEREAS, the Riverhead Town Board wishes to continue management and monitoring of the Suffolk County/Town of Riverhead Empire Zone; and

WHEREAS, the Riverhead Industrial Development Agency ("RIDA") has personnel and staff that can provide services to complete compliance filings and monitoring of Suffolk County/Town of Riverhead Empire Zone.

NOW, THEREFORE, BE IT RESOLVED, that the Supervisor is hereby authorized to execute an Agreement with RIDA in substantially the form attached hereto; and be it further

RESOLVED, that the Town Clerk is hereby directed to forward a copy of this resolution to Riverhead Industrial Development Agency, 1 East Main Street, Riverhead, New York 11901; and be it further

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No

Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

AGREEMENT FOR ADMINISTRATION SERVICES
REGARDING SUFFOLK COUNTY/TOWN OF RIVERHEAD EMPIRE ZONE

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2011 between the TOWN OF RIVERHEAD, a municipal corporation organized and existing under the laws of State of New York, with its office located at 200 Howell Avenue, Riverhead, New York 11901 (hereinafter referred to as the "TOWN") and RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, with offices at 1 East Main Street, Suite 4, Riverhead, New York 11901 (hereinafter referred to as "RIDA"); and

WHEREAS, the TOWN pursuant to a Memorandum of Understanding dated May 27, 2009 administers the Suffolk County/Town of Riverhead Empire Zone ("SC/TOR EZ"); and

WHEREAS, ongoing projects within the designated SC/TOR EZ require continued compliance filings and monitoring which require the efforts of trained personnel and staff; and

WHEREAS, the RIDA has such personnel and staff within its employ and is providing to the TOWN the services to complete required compliance filings and monitoring as required by the Empire Zones Program of Empire State Development.

NOW, THEREFORE, BE IT RESOLVED, that RIDA shall provide necessary monitoring and reporting services to the TOWN, as set forth below, for a fee of \$44,000, payable upon execution hereof and an annual fee of \$5,000 payable on the anniversary hereof and each successive anniversary thereafter for nine years, to be paid by funds currently budgeted and available through the TOWN. Payment by TOWN to RIDA shall

be made upon submission by RIDA to TOWN of completed Payment Claim Voucher. At the end of the tenth anniversary hereof this agreement shall terminate.

This Agreement may be terminated at any time by the TOWN upon 30 days written notice to the other party. In the event of such termination, TOWN shall have no further obligation to RIDA except to make any payments which may have become due under this Agreement. The RIDA may request a modification of this agreement in the event that the reporting requirements or servicing of the Zone Certified Businesses requires a substantial increase in effort by the RIDA. If the RIDA and the TOWN are not able to agree on such modification, the RIDA may terminate this Agreement upon six months notice.

RIDA shall keep accurate records of the time spent in the performance of services hereunder. The TOWN shall, until the expiration of seven years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of RIDA involving transactions related to this Agreement. The TOWN will cause at its effort and expense the delivery of all Zone records and documents, including computer files to the RIDA office. The RIDA shall return all records and documents, at the TOWN'S effort and expense at the termination of this agreement.

In addition to the consideration stated above the TOWN shall provide in kind services to facilitate EDZ operations by providing TOWN services by the buildings and grounds department and other departments of the TOWN. These services may benefit the RIDA as well as the EDZ.

The RIDA will service the existing zone businesses as required by Empire State Development including the distribution, collection and submission of Business Annual Reports, maintaining assistance as the government liaison for certified companies and arrange and support necessary Empire Zone Board meetings as required. The RIDA will link the EDZ website to the RIDA website.

Any notice shall be considered as having been given: (i) to Town of Riverhead if mailed by certified mail, postage prepaid to Town of Riverhead, Attention: Town Supervisor, 200 Howell Avenue, Riverhead, New York 11901; or (ii) to RIDA, Attention: Chairperson, 1 East Main Street, Suite 4, Riverhead, New York 11901.

TOWN OF RIVERHEAD

RIVERHEAD INDUSTRIAL
DEVELOPMENT AGENCY

BY: SEAN WALTER,
Town Supervisor

BY: ELIAS KALOGERAS,
Vice Chairman

TOWN OF RIVERHEAD

Resolution # 939

**AUTHORIZES THE SUPERVISOR TO EXECUTE A LICENSE AGREEMENT
WITH BROADCAST MUSIC, INC. (BMI)**

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

WHEREAS, The Town of Riverhead plays pre-recorded music in the form of compact discs, digital video discs, cassettes, and other media in Town facilities and at Town events (e.g. the senior center, teen activities); and

WHEREAS, many of these works are protected by U.S. Copyright Law; and

WHEREAS, a municipality requires permission from the holders of such copyrights to use the works in a public forum; and

WHEREAS, Broadcast Music, Inc. (BMI) represents the holders of copyrights for over 8 million such works; and

WHEREAS, BMI offers a license granting permission to municipalities to play all of the works of copyright holders BMI represents; and

WHEREAS, the Town of Riverhead wishes to execute a license agreement with BMI for the right to play pre-recorded music represented by BMI for the period January 1, 2012 to December 31, 2012 in the amount of \$309.00.

NOW, THEREFORE, BE IT RESOLVED, that the Supervisor is hereby authorized to execute a license agreement with BMI for the right to play pre-recorded music represented by BMI in substantially the form annexed hereto; and be it further

RESOLVED, that the Town Clerk is hereby directed to forward a copy of this resolution to BMI, 10 Music Square East, Nashville, TN 37203; and be it further

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No

Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted



Music License for Local Governmental Entities

1. DEFINITIONS

- (a) **LICENSEE** shall include the named entity and any of its constituent bodies, departments, agencies or leagues.
- (b) **Premises** means buildings, hospitals, airports, zoos, museums, athletic facilities, and recreational facilities, including, but not limited to, community centers, parks, swimming pools, and skating rinks owned and/or operated by LICENSEE and any site which has been engaged by LICENSEE for use by LICENSEE.
- (c) **Recorded Music** means music which is performed at the Premises by means other than by live musicians who are performing at the Premises, including, but not limited to (1) compact disc, audio record or audio tape players (but not including "jukeboxes"); (2) videotape, videodisc or DVD players; (3) music performed as an accompaniment to karaoke; (4) the reception and communication at the premises of radio or television transmissions which originate outside the Premises, and which are not exempt under the Copyright Law; or (5) a music-on-hold telephone system operated by LICENSEE at the Premises.
- (d) **Live Entertainment** means music that is performed at the Premises by musicians, singers and/or other performers.
- (e) **BMI Repertoire** means all copyrighted musical compositions written and/or published by BMI affiliates or members of BMI-affiliated foreign performing rights societies, including compositions written or published during the Term of this Agreement and of which BMI has the right to license non-dramatic public performances.
- (f) **Events and Functions** means any activity conducted, sponsored, or presented by or under the auspices of LICENSEE. Except as set forth in Paragraph 2 (d) below, "Events" and "Functions" shall include, but are not limited to, aerobics and exercise classes, athletic events, dances and other social events, concerts, festivals, arts and crafts fairs, and parades held under the auspices of, or sponsored or promoted by, LICENSEE on the Premises.
- (g) **Special Events** means musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration presented by LICENSEE for which the "Gross Revenue" (as defined in Schedule B) of such Special Event exceeds \$25,000.

2. BMI GRANT

- (a) BMI grants and LICENSEE accepts a non-exclusive license to perform, present or cause the live and/or recorded public performance on the "Premises" and at "Events" and "Functions", and not elsewhere or otherwise, non-dramatic renditions of the separate musical compositions in the "BMI Repertoire". The performances licensed under this Agreement may be by means of "Live Entertainment" or "Recorded Music".
- (b) This license does not authorize (1) the broadcasting, telecasting or transmission or retransmission by wire, Internet, website or otherwise, of renditions of musical compositions in BMI's Repertoire to persons outside of the Premises, other than by means of a music-on-hold telephone system operated by LICENSEE at the Premises; and (2) performances by means of background music (such as *Muzak*) or other services delivered to the Premises. Nothing in this Paragraph shall be deemed to limit LICENSEE's right to transmit renditions of musical compositions in the BMI Repertoire to those who attend Events or Functions on the Premises by means of teleconferencing, videoconferencing or similar technology.
- (c) This license is limited to non-dramatic performances, and does not authorize any dramatic performances. For purposes of this Agreement, a dramatic performance shall include, but not be limited to, the following: (1) performance of a "dramatico-musical work" (as hereinafter defined) in its entirety; (2) performance of one or more musical compositions from a "dramatico-musical work" (as hereinafter defined) accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken; (3) performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action, or visual representation; and (4) performance of a concert version of a "dramatico-musical work" (as hereinafter defined). The term "dramatico-musical work" as used in the Agreement, shall include, but not be limited to, a musical comedy, opera, play with music, revue, or ballet.
- (d) This license does not authorize performances: (1) at any convention, exposition, trade show, conference, congress, industrial show or similar activity presented by LICENSEE or on the Premises unless it is presented or sponsored solely by and under the auspices of LICENSEE, is presented entirely on LICENSEE's Premises, and is not open to the general public; (2) by or at colleges and universities; (3) at any professional sports events or game played on the Premises; (4) at any permanently situated theme or amusement park owned or operated by LICENSEE; (5) by any symphony or community orchestra; and (6) by means of a coin operated jukebox.

3. REVIEW OF STATEMENTS AND / OR ACCOUNTINGS

- (a) BMI shall have the right to require such reasonable data necessary in order to ascertain the Annual License Fee.
- (b) BMI shall have the right, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify the statements made hereunder. BMI shall consider all data and information coming to its attention as a result of any such examination of books and records as completely confidential.
- (c) BMI shall have the right to adjust LICENSEE's Annual License Fee based upon the most recently available revised population figures provided by the U. S. Census Department.

4. ~~LATE PAYMENT AND SERVICE CHARGES~~

~~BMI may impose a late payment charge of one and one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less, from the date payment is due on any payment that is received by BMI more than thirty (30) days after the due date. BMI may impose a \$25.00 service charge for each unpaid check, draft or other means of payment LICENSEE submits to BMI.~~

5. BMI COMMITMENT TO CUSTOMER / INDEMNITY

So long as LICENSEE is not in default or breach of this Agreement, BMI agrees to indemnify, save harmless, and defend LICENSEE and its officers, and employees, from and against any and all claims, demands, or suits that may be made or brought against them with respect to the performance of any musical works which is licensed under this Agreement at the time of performance. LICENSEE agrees to give BMI immediate notice of any such claim, demand, or suit, to deliver to BMI any papers pertaining thereto, and to cooperate with BMI with respect thereto, and BMI shall have full charge of the defense of any such claim, demand, or suit.

6. BREACH OR DEFAULT / WAIVER

Upon any breach or default of the terms and conditions contained herein, BMI shall have the right to cancel this Agreement if such breach or default continues for thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel granted to BMI shall be in addition to any and all other remedies which BMI may have. No waiver by BMI of full performance of this Agreement by LICENSEE in any one or more instances shall be deemed a waiver of the right to require full and complete performance of this Agreement thereafter or of the right to cancel this Agreement with the terms of this Paragraph.

7. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel the Agreement along with the simultaneous cancellation of the Agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

8. ASSIGNMENT

This license is not assignable or transferable by operation of law or otherwise. This license does not authorize LICENSEE to grant to others any right to perform publicly in any manner any of the musical compositions licensed under this Agreement, nor does it authorize any public performances at any of the Premises in any manner except as expressly herein provided.

9. ARBITRATION

All disputes of any kind, nature, or description arising in connection with the terms and conditions of this Agreement, except for matters within the jurisdiction of the BMI Rate Court, shall be submitted to the American Arbitration Association in the City, County, and State of New York, for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties shall, by written notice to the other, have the right to appoint one arbitrator. If, within ten (10) days following the giving of such notice by one party, the other shall not, by written notice, appoint another arbitrator, the first arbitrator shall be the sole arbitrator. If two arbitrators are so

appointed, they shall appoint a third arbitrator. If ten (10) days elapse after the appointment of the second arbitrator and the two arbitrators are unable to agree upon a third arbitrator, then either party may, in writing, request the American Arbitration Association to appoint the third arbitrator. The award made in the arbitration shall be binding and conclusive on the parties and judgment may be, but not need be, entered in any court having jurisdiction. Such award shall include the fixing of the costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

10. NOTICES

Any notice under this Agreement will be in writing and deemed given upon mailing when sent by ordinary first-class U.S. mail to the party intended, at its mailing address stated, or any other address which either party may designate. Any such notice sent to BMI shall be to the attention of the Vice President, Licensing Department at 10 Music Square East, Nashville, TN 37203. Any such notice sent to LICENSEE shall be to the attention of the person signing the Agreement on LICENSEE's behalf or such person as LICENSEE may advise BMI in writing.

11. MISCELLANEOUS

The fact that any provisions are found by a court of competent jurisdiction to be void or unenforceable will not affect the validity or enforceability of any other provisions. This Agreement constitutes the entire understanding between the parties and cannot be waived or added to or modified orally and no waiver, addition and modification shall be valid unless in writing and signed by both parties.

12. FEES

- (a) In consideration of the license granted herein, LICENSEE agrees to pay BMI a license fee which includes the total of the "Base License Fee" and any applicable "Special Events License Fees", all of which shall be calculated in accordance with the Rate Schedule on Page 3. For purposes of this Agreement,
- (i) "Base License Fee" means the annual fee due in accordance with Schedule A of the Rate Schedule and based on LICENSEE's population as established in the most recent published U.S. Census data. It does not include any fees due for Special Events.
 - (ii) "Special Events License Fees" means the amount due in accordance with Schedule B of the Rate Schedule when Special Events are presented by or on behalf of LICENSEE. It does not include any Base License Fee due.
 - (iii) LICENSEES who are legally organized as state municipal and/or county leagues or state associations of municipal and/or county attorneys shall be required to pay only the fee under the Schedule C of the Rate Schedule. Such leagues or associations are not subject to Schedule A or Schedule B of the Rate Schedule. Fees paid by such leagues or associations do not cover performances of the municipality, county, or other local government entity represented by the league or association. Schedule C fees are not applicable to municipal, county or other government entities.

2011 RATE SCHEDULE FOR LOCAL GOVERNMENTS

SCHEDULE A

Check Population Range (✓)	LICENSEE's Population	Base License Fee	Enter Fee Based Upon Population
<input checked="" type="checkbox"/>	1 - 50,000	\$309	\$309
<input type="checkbox"/>	50,001 - 75,000	\$615	
<input type="checkbox"/>	75,001 - 100,000	\$740	
<input type="checkbox"/>	100,001 - 125,000	\$986	
<input type="checkbox"/>	125,001 - 150,000	\$1,233	
<input type="checkbox"/>	150,001 - 200,000	\$1,603	
<input type="checkbox"/>	200,001 - 250,000	\$1,972	
<input type="checkbox"/>	250,001 - 300,000	\$2,344	
<input type="checkbox"/>	300,001 - 350,000	\$2,713	
<input type="checkbox"/>	350,001 - 400,000	\$3,085	
<input type="checkbox"/>	400,001 - 450,000	\$3,454	
<input type="checkbox"/>	450,001 - 500,000	\$3,824	
<input type="checkbox"/>	500,001 - plus	\$5,187 plus \$500 for every 100,000 population increment or portion thereof above 500,000 up to a maximum annual fee of \$61,663	
	If 500,001 or more, enter population _____		
		SCHEDULE A FEE	\$ 309.00

SCHEDULE B

Special Events Fee

(to be reported 90 days after each event*, see Par. 13(d))

The rate for Special Events shall be 1% of Gross Revenue.

- "Special Events" means musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration presented by LICENSEE for which the "Gross Revenue" of such Special Events exceeds \$25,000.00
- "Gross Revenue" means all monies received by LICENSEE or on LICENSEE's behalf from the sale of tickets for each Special Event. If there are no monies from the sale of tickets, "Gross Revenue" shall mean contributions from the sponsors or other payments received by LICENSEE for each Special Event.

SCHEDULE B FEE

*BMI will provide a report form to report your events**

SCHEDULE C

**State Municipal and/or County Leagues or State Associations of Attorneys
(to be completed if you are a State Municipal and/or County Leagues or State Associations of Attorneys)**

The annual license fee for LICENSEES who are legally organized as state municipal and/or county leagues, or state associations of municipal and/or county attorneys shall be \$309.00. No Special Events fee applies to LICENSEES qualifying under this schedule.

SCHEDULE C FEE

\$

13. REPORTING

- (a) Upon the execution of this Agreement, LICENSEE shall submit:
 - (i) a report stating LICENSEE's population based on the most recent published U.S. Census data. The population set forth in the report shall be used to calculate the Base License Fee under this Agreement; and
 - (ii) a report containing the information set forth in Paragraph 13 (d) below for all Special Events that were presented between the effective date of this Agreement and the execution of this Agreement.
- (b) The Base License Fee for the first year of this Agreement and any license fees due for Special Events that were presented between the effective date of this Agreement and the execution of this Agreement shall be payable upon the execution of this Agreement.
- (c) Base License Fees for subsequent years shall be due and payable within 30 days of the renewal date of this Agreement and shall be accompanied by a statement confirming whether any Special Events were presented during the previous calendar year.
- (d) Ninety (90) days after the conclusion of each Special Event, LICENSEE shall submit to BMI payment for such Special Event and a report in printed or computer readable form stating:
 - (i) the date presented;
 - (ii) the name of the attraction(s) appearing;
 - (iii) the "Gross Revenue" of the event (as defined above);
 - (iv) the license fee due for each Special Event.

- (e) If LICENSEE presents, sponsors or promotes a Special Event that is reportable under Rate Schedule B with another person or entity licensed under a BMI License Agreement, LICENSEE shall indicate the name, address, phone number and BMI account number of the other person(s) or entity(ies) and the party responsible for payment for such Special Event. If the other party is not licensed by BMI, LICENSEE shall pay the license fee due hereunder, notwithstanding any agreement to the contrary between LICENSEE and the other party.
- (f) LICENSEE agrees to furnish to BMI, where available, copies of all programs of musical works performed, which are prepared for distribution to the audience or for the use or information of LICENSEE or any department thereof. The programs shall include all encores to the extent possible. LICENSEE shall be under no obligation to furnish programs when they have not been otherwise prepared.

14. RATE ADJUSTMENTS / LICENSE FEE FOR YEAR 2012 AND THEREAFTER

For each calendar year commencing 2012, all dollar figures set forth in Schedules A, B and C (except the \$500 add-on for populations of 500,001 or more) shall be the license fee for the preceding calendar year, adjusted in accordance with any percentage increase in the Consumer Price Index - All Urban Consumers (CPI-U) between the preceding October and the next preceding October, rounded to the nearest dollar. Any additional license fees due resulting from the CPI adjustment shall be payable upon billing by BMI.

15. TERM OF AGREEMENT

This Agreement shall be for an initial Term of one (1) year, commencing January 1, 2012, which shall be considered the effective date of this Agreement, and continuing thereafter for additional terms of one (1) year each. ~~Either party may give notice of termination to the other no later than thirty (30) days prior to the end of the initial or any renewal term. If such notice is given, the Agreement shall terminate on the last day of the Term in which notice is given.~~

AGREEMENT

AGREEMENT, made at New York, N.Y. on (Date will be entered by BMI upon execution) _____ between BROADCAST MUSIC, INC., a State of New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030 (hereinafter "BMI") and the legal or trade name described below and referred to thereafter as "LICENSEE" (the "Agreement"). This Agreement includes all of the terms and conditions set forth herein.

LEGAL NAME Town of Riverhead <small>(Name of Corporation, Partnership, or Individual Owner)</small>		LICENSED PREMISES (All locations are licensed by LICENSEE)	
TRADE NAME Town of Riverhead Town Hall <small>(Doing business under the name of)</small>		<small>(Street Address)</small>	
PLEASE CHECK APPROPRIATE BOX		<small>(City) (State) (Zip)</small>	
<input type="checkbox"/> Individual Ownership	<small>(State of Incorporation, if different from Licensed Premises)</small> <small>(Enter names of partners)</small>	<small>(Telephone Number) (Fax Number)</small>	
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation		<small>(Contact Name) (Title)</small>	
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership		<small>(Email Address) (Web Address)</small>	
<input checked="" type="checkbox"/> Other <u>Municipal Corporation</u>		MAILING ADDRESS <small>(if different from Licensed Premises)</small>	
Federal Tax ID No. _____		200 Howell Ave <small>(Street Address)</small>	
GOVERNMENT ENTITIES <small>(if applicable, please check one)</small>		Riverhead NY 11901 <small>(City) (State) (Zip)</small>	
<input type="checkbox"/> Federal <input type="checkbox"/> State _____ <small>(State)</small>		(631) 727-3200 <small>(Telephone Number) (Fax Number)</small>	
<input type="checkbox"/> Local _____ <small>(Municipality and State)</small>		Dan McCormick Attorney <small>(Contact Name) (Title)</small>	
		mccormick@riverheadli.com <small>(Email Address - if different from above)</small>	
TO BE COMPLETED BY LICENSEE By signing this Agreement you represent that you have the authority to bind LICENSEE and that you have read, understood and agree to all of the terms and conditions herein. (SIGN HERE - PLEASE INCLUDE PAYMENT)		FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.	
Signature <u>Sean M. Walter, Town Supervisor</u>			
Print Name / Title			
Signatory Email Address* <small>(if different from above)</small>			
*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory			
PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO: BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203			
		FOR BMI USE ONLY	
		LGE	
		LI-2010/May	
		EFFECTIVE: January 2010	
		1528101	1528101
		ACCOUNT NO.	COID



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TOWN OF RIVERHEAD

Resolution # 940

**AUTHORIZES THE SUPERVISOR TO EXECUTE STIPULATION
WITH LOCAL 1000, AFSCME, AFL-CIO, RIVERHEAD UNIT
OF THE SUFFOLK LOCAL # 852**

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

WHEREAS, routine maintenance and inspections are required at the signal and crossing gates at the River Road crossing for the EPCAL freight rail spur; and

WHEREAS, the Town of Riverhead has solicited and received proposals for routine maintenance and inspections regarding the River Road crossing; and

WHEREAS, two employees within the Street Lighting Division have indicated they are willing to undergo needed training and education to perform monthly and quarterly inspections and maintenance; and

WHEREAS, the Town Board of the Town of Riverhead has considered the foregoing and desires to use employees to perform monthly and quarterly inspections and maintenance regarding the River Road crossing.

NOW THEREFORE BE IT RESOLVED, that the Town Board be and hereby approves the attached stipulation and authorizes the Supervisor to execute same; and be it further

RESOLVED, that the Town Clerk is hereby directed to forward a copy of this resolution to Personnel Director, CSEA Unit President, the Town Attorney's Office and the Financial Administrator; and

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No
Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

STIPULATION

Made this day of December, 2011, between the Town of Riverhead, 200 Howell Avenue, Riverhead, New York (Town) and Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Riverhead Unit of the Suffolk Local #852 having its principal office at 3 Garet Place, Commack, New York (CSEA), and

NOW, THEREFORE, it is mutually agreed as follows:

1. That two Town Employees within Street Lighting Division will be required to do monthly and quarterly service upon the River Road Crossing signal and crossing gates.
2. That the employees will be required to undergo additional training and education to perform the above tasks in addition to current assignments at the sole cost and expense of the Town of Riverhead.
3. That so long as the Town Employees maintain licensing and/or accreditation and perform the monthly and quarterly service upon the River Road Crossing signal and crossing gates, they shall be entitled to an annual stipend of three thousand (\$3,000.00) dollars.
4. This stipulation shall not, in any way, constitute "past practice" for the Town/CSEA is and shall remain specific to this matter and may not be cited by the CSEA for any reason other than to enforce this Agreement.

Sean M. Walter, Supervisor

Matthew E. Hattorff, for CSEA

Sergio Diaz, Supervisor

12.20.2011
110941

ADOPTED

TOWN OF RIVERHEAD

Resolution # 941

AUTHORIZES EXECUTION OF A STORM WATER MAINTENANCE AGREEMENT, ACCEPTANCE OF THE ACCOMPANYING PROPOSED RESTRICTIVE COVENANT AND ACCEPTANCE OF A \$10,000.00 POST-CONSTRUCTION STORM WATER MAINTENANCE SECURITY DEPOSIT WITH LOWES HOME CENTERS, INC., AT 1461 OLD COUNTRY ROAD, RIVERHEAD, NEW YORK, SCTM NOS. 600-101-2-15.6 AND 600-125-1-LOTS 1 AND 2.2

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

WHEREAS, Lowes Home Centers, Inc., has constructed improvements at real property located at 1461 Old Country Road, Riverhead, SCTM Nos. 600-101-2-15.6 and 600-125-1-Lots 1 and 2.2; and

WHEREAS, the nature of the improvements require a restrictive covenant as a deed restriction on the subject real property, a post-construction storm water maintenance agreement and attendant security deposit in the amount of \$10,000.00 pursuant to Riverhead Town Code sections 110-8 and 110-12 for the purpose of ensuring storm water regulation compliance during the operation of the improved property.

NOW, THEREFORE, BE IT RESOLVED, that the Town Supervisor is authorized to accept the proposed restrictive covenant and execute the proposed storm water maintenance agreement with Lowes Home Centers, Inc., regarding the above-referenced real property; and

BE IT FURTHER RESOLVED, that the Riverhead Town Department of Finance is authorized and directed to accept a \$10,000.00 security deposit to be deposited in an escrow account entitled "Engineering Department: Storm Water Pollution Prevention Plan Review and Inspection"; and

BE IT FURTHER RESOLVED, that the Town Attorney's Office is authorized and directed to facilitate recordation of the proposed restrictive covenant and storm water maintenance agreement in the Suffolk County Clerk's Office upon execution by the Town Supervisor.

BE IT FURTHER RESOLVED, that Town personnel may withdraw monies from said escrow account pursuant to the terms and conditions stated in Riverhead Town Code section 110-12; and

BE IT FURTHER RESOLVED, that the Town Clerk is hereby authorized and directed to forward a copy of this resolution to Tara Visconti, Esq., c/o Buzzell, Blanda & Visconti, LLP, 535 Broadhollow Road, Suite B-4, Melville, New York 11747; Drew Dillingham, P.E., Engineering Department; and the Department of Finance.

BE IT FURTHER RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

DEED COVENANT

**DECLARATION OF RESTRICTIVE COVENANT
REGARDING STORMWATER MAINTENANCE**

This Declaration of Restrictive Covenant regarding Stormwater Maintenance is entered into effective the 7th day of November, 2011 by GARY E. WYATT, on behalf of LOWES HOME CENTERS, INC., 1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697 (the "Owner"), as owner of the real property located at 1461 Old Country Road, Riverhead, New York, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"). The Owner hereby acknowledges and agrees that the Property as depicted in the site plan set forth in Schedule A as attached hereto shall be operated and maintained in accordance with the operation and maintenance plan set forth in Schedule B as attached hereto and made a part hereof.

This restrictive covenant shall run with the land and be binding on the successors and assigns of the owner.

DATED EFFECTIVE the day and year written above.

LOWES HOME CENTERS, INC.

Gary E. Wyatt
BY: GARY E. WYATT
Senior Vice President

~~North Carolina~~
~~State of New York~~
Wilkes
County of Suffolk ss.:

On the 7th day of November the year 2011 before me, the undersigned, personally appeared Gary E. Wyatt, SVP, personally known to me or proved to me on the basis of satisfactory evidence to the individual whose name is subscribed on the Deed Covenant and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Karen M. Underwood
NOTARY PUBLIC

KAREN M. UNDERWOOD
Notary Public
Wilkes County, NC
My Commission Expires 03/27/2013

Exhibit A

DESCRIPTION OF PROPERTY

DECLARANT: LOWE'S HOME CENTERS, INC., 1461 Old Country Road, (County Road 58), Riverhead, New York
Suffolk County Tax Map #: 0600-101-02-015.6, 0600-125-01-001 & 002.2

All that certain plot, piece or parcel of land situate, lying and being in the Town of Riverhead, County of Suffolk and State of New York being more particularly bounded and described as follows:

BEGINNING at a point on the southerly side of Old Country Road (C.R. 58), said point being 1216.00 feet from the intersection of Pulaski Street and Old Country Road (C.R. 58).

Thence running along the southerly side of Old Country Road (C.R. 58) N 73°56'50" E a distance of 492.95 feet to a point;

Thence running along the westerly side of lands now or formerly LS Family LP I the following five (5) courses and distances:

1. S 16°03'10" E, 71.37 feet;
2. N 73°56'40" E, 97.39 feet;
3. S 33°35'25" E, 89.58 feet;
4. N 56°24'35" E, 23.99 feet;
5. S 33°35'10" E, 1396.63 feet to a point on the easterly side of Pulaski Street;

Thence running along the easterly side of Pulaski Street the following four (4) courses and distances:

1. N 62°26'40" W, 326.17 feet;
2. N 66°11'20" W, 579.53 feet;
3. N 82°21'10" W, 268.66 feet;
4. N 72°34'10" W, 121.54 feet to a point on the easterly side of Pulaski Street;

Thence running along the easterly side of lands now or formerly of Riverhead Pooh LLC N 33°11'20" W, 433.24 feet to a point on the southerly side of lands now or formerly of Riverhead Sewer District;

Thence running along the southerly side of lands now or formerly of Riverhead Sewer District the following two (2) courses and distances:

1. N 59°29'13" E, 52.42 feet to a point;
2. N 33°46'06" E, 32.02 feet to a point;

Thence running along the westerly side of lands now or formerly of Lowe's Home Centers, Inc., N 16°03'10" W, 62.25 to a point on the southerly side of lands now or formerly of Marvin Getlan;

Thence running along the southerly side of lands now or formerly of Marvin Getlan N 73°56'58" E, 20.00 feet to a point on the westerly side of lands now or formerly of Lowe's Home Centers, Inc.;

Thence along the westerly side of lands now or formerly of Lowe's Home Centers, Inc. N 16°03'10" W, 200.00 feet to the place and point of BEGINNING.

Said property containing 761,740.81 square feet or 17.49 acres more or less.

Said premises being the same as that described in Title Report Number 3008-256735 prepared by First American Title Insurance Company, dated June 8, 2010.

STORMWATER CONTROL FACILITY MAINTENANCE AGREEMENT

THIS AGREEMENT, made and dated this ___ day of December 2011, by LOWE'S HOME CENTERS, INC., having an office at 1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697 ("LOWE'S") and the TOWN OF RIVERHEAD, having an address at 200 Howell Avenue, Riverhead, New York 11901.

WITNESSETH:

WHEREAS, Lowe's is the owner of certain real property, lying and being at 1461 Old Country Road, Town of Riverhead, County of Suffolk and State of New York, designated as Suffolk County Tax Map as District 600, Section 101.00, Block 2.00, Lot 15.6 and District 600, Section 125.00, Block 1.00, Lots 1 and 2.2, and more particularly described on Schedule "A" attached hereto.

WHEREAS, the Town of Riverhead ("Town") and Lowe's ("facility owner") want to enter into an Agreement to provide for the long term maintenance and continuation of stormwater control measures approved by the Town for the below named project, and

WHEREAS, the Town and the facility owner desire that the stormwater control measure be built in accordance with the approved project plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the components. Therefore, the Town and the facility owner agree as follows:

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. This agreement binds the Town and the facility owner, its successors and assigns, to the maintenance provisions depicted in the approved project plans prepared by Stantec dated December 17, 2008 and revised September 19, 2011, on file with the Planning Department at the Town of Riverhead, including but not limited to SP-1 and SP-4.

2. The facility owner shall maintain, clean, repair, replace and continue the stormwater control measures depicted in Schedule "B" as necessary to ensure optimum performance of the measure to design specifications. The stormwater control measures shall include, but shall not be limited to, the following: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes, culverts, soil absorption devices and retention ponds.
3. The facility owner shall be responsible for all expenses related to the maintenance of the stormwater control measures and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities.
4. The facility owner shall provide for the periodic inspection of the stormwater control measures, once every two (2) years, to determine the condition and integrity of the measures. Such inspection shall be performed by a Professional Engineer licensed by the State of New York. The inspecting engineer shall prepare and submit to the Town within 30 days of the inspection, a written report of the findings including recommendations for those actions necessary for the continuation of the stormwater control measures.
5. The facility owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the stormwater control measures except in accordance with written approval of the Town or other authority having jurisdiction.
6. The facility owner shall undertake necessary repairs and replacement of the stormwater control measures at the direction of the Town or in accordance with the recommendations of the inspecting engineer, and provide the Town with a copy of the remediation report within 30 days of repairs.

7. The facility owner shall provide to the Town within 30 days of the date of this agreement, a security for the maintenance and continuation of the stormwater control measures in the form of \$10,000.00 to be deposited in Town escrow.
8. If ever the Town determines that the facility owner has failed to construct or maintain the stormwater control measures in accordance with the project plan or has failed to undertake corrective action specified by the Town or by the inspecting engineer, the Town is authorized to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the stormwater control measures and to affix the expense thereof as a lien against the property.
9. This agreement is effective the day and year written above.

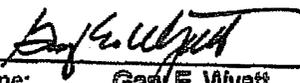
IN WITNESS WHEREOF, the parties hereto have duly executed this Stormwater Control Facility Maintenance Agreement on the date first above written.

Dated: December __, 2011

TOWN OF RIVERHEAD

LOWE'S HOME CENTERS, INC.

By: _____
 Name: Sean Walter
 Title: Supervisor

By: 
 Name: Gary E. Wyatt
 Title: Senior Vice President 

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On the ___ day of _____, 2011, before me personally came SEAN WALTER, to me known, who, being by me duly sworn, did depose and say that he is the SUPERVISOR of the TOWN OF RIVERHEAD the municipal corporation described in and which executed the foregoing instrument, that it was in the scope of authority of his/her position with to sign the present Declaration, and that he signed his name thereto.

Notary Public

Schedule B

STORMWATER CONTROL FACILITY
MAINTENANCE AGREEMENT

The facility owner desires that the stormwater control measures be built in accordance with the approved project plans and thereafter be maintained, cleaned, repaired, and replaced and continued in perpetuity in order to ensure optimum performance of the components. Therefore, facility owner agrees as follows:

1. This document binds the facility owner, its successors and assigns, to the maintenance provisions depicted herein.
2. The facility owner shall maintain, clean, repair, replace and continue the stormwater control measures depicted herein as necessary to ensure optimum performance of the measures to design specifications. The stormwater control measures shall include, but shall not be limited to, the following: drainage ditches, swales, infiltrators, drain inlets, pipes, and culverts.
3. The facility owner shall be responsible for all expenses related to the maintenance of the stormwater control measures and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities.
4. The facility owner shall provide for the periodic inspection of the stormwater control measures, once every two (2) years to determine the condition and integrity of the measures. Such inspection shall be performed by a Professional Engineer licensed by the State of New York. The inspecting engineer shall prepare and submit to the facility owner within 30 days of the inspection, a written report of the findings including recommendations for those actions necessary for the continuation of the stormwater control measures.
5. The facility owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the stormwater control measures except in accordance with written approval of the Town of Riverhead or any other agency having jurisdiction.
6. The facility owner shall undertake necessary repairs and replacement of the stormwater control measures in accordance with the recommendations of the inspecting engineer.
7. This agreement shall be recorded in the Office of the County Clerk, County of Suffolk, New York, together with the deed for the common property.
8. This agreement is effective at such a time when the site has achieved permanent stabilization and approved by the Town of Riverhead.

Revised December 6, 2011

**Appendix F- Lowe's of Riverhead, NY
Post Construction Stormwater BMP Operation and Maintenance Plan**

1. Local Jurisdiction, Stormwater Authority, or MS4 is: Town of Riverhead
2. There is not an active SPDES Post Construction Permit for this facility
3. If there is/will be a Post Construction SPDES permit for this facility indicate whether or not renewal or re-permitting is required and the frequency.
4. Immediate receiving water or MS4 for facility is Ground Water
5. Immediate receiving water is not on the list of 303(d) Impaired Waterways.
6. If discharge is to 303(d) Impaired Waterway indicate whether TMDL has been developed and attach to this plan if applicable.
7. Name and Contact information for Design Engineer:

Name	Justin Baker P.E., CPSWQ
Company	Stantec Consulting Services, Inc.
Address	135 Engineers Road, Suite 200
Telephone	(631) 580-2645
Email	Justin.Baker@stantec.com
8. Applicable Plans and Reports for this facility: Sitework Construction Drawings and Erosion and Sediment Control Plans
9. Applicable Maintenance Agreements for this facility: *See also Restrictive Deed Covenant Regarding Stormwater Maintenance*

Non-Structural BMPs	(1) Description of the Practice	(2) Performance and Management Requirements	(3) Inspection Frequency	(4) Inspection Personnel Qualification Requirement	(5) Inspection Action Required	(6) Submittal Requirements and Records Retention
Permanent Seeding	Used to control runoff and erosion on disturbed areas by establishing perennial vegetative cover from seed. See landscape plan for locations	If erosion occurs, surface should be repaired, reseeded, and mulched. Maintenance activities that should be carried out after vegetation is established are mowing, litter removal, spot vegetation repair. Perennial vegetative cover from seeding has been shown to remove between 50 and 100 percent of total suspended solids (TSS) from	Frequent inspections should be continued until vegetation is established.	Must be thoroughly experienced in stormwater system maintenance and inspections. Must provide labor, tools, equipment and insurance and all other items needed to provide these services.	Erosion, Vegetation Management	Inspections to include an assessment of the current condition, recommended service (routine, specific or non-routine) and suggested adjustments in frequency of inspection. Minimum records include date inspection or service was performed, detailed description of work, before and after photographic documentation.

Revised December 6, 2011

		stormwater runoff, with an average removal of 90 percent (USEPA, 1993)				
Permanent Planting	Controls erosion by physically protecting bare soils from raindrop impact, overland flow, and wind. Plant root systems bind soil particles while the surface vegetation reduces the velocity of overland flow allowing suspended particles to be filtered out. See landscape plan for locations.	Perennial vegetative cover from seeding has been shown to remove between 50 and 100 percent of total suspended solids (TSS) from stormwater runoff, with an average removal of 90 percent (USEPA, 1993)	Spring and Fall inspections for dead or dying vegetation.	Must be thoroughly experienced in stormwater system maintenance and inspections. Must provide labor, tools, equipment and insurance and all other items needed to provide these services.	Vegetation Management, Replanting and disposal of dead vegetation	Inspections to include an assessment of the current condition, recommended service (routine, specific or non-routine) and suggested adjustments in frequency of inspection. Minimum records include date inspection or service was performed, detailed description of work, before and after photographic documentation.
Mulching	A temporary erosion control practice in which materials such as straw, hay, wood chips, wood fibers, or gravel are placed on exposed or recently planted soil surfaces. See landscape plan for locations	Soil loss reduction for different mulches ranges from 53 to 99 percent. Water velocity reductions range from 24 to 78 percent. Mulches must be anchored (such as organic binders) to resist wind and water displacement. Mulch binders should be applied at rates	Frequently and after wind and rain storms. Routine inspections should occur in Spring.	Must be thoroughly experienced in stormwater system maintenance and inspections. Must provide labor, tools, equipment and insurance and all other items needed to provide these services.	Erosion, loosened or removed material, re-mulch at least every spring.	Inspections to include an assessment of the current condition, recommended service (routine, specific or non-routine) and suggested adjustments in frequency of inspection. Minimum records include date inspection or service was performed, detailed description of work, before and after

Revised December 6, 2011

		recommended by the manufacturers. Oil based binders are not permitted to be applied on Lowe's projects. Mulch should be reapplied in spring.				photographic documentation.
Sidewalks, Parking Lot, Drive Aisles	Provides convenient travel path for pedestrians and automobiles, and controls erosion.	Sweep any sediment buildup on these paved areas and dispose of any refuse to provide for safe pedestrian and vehicle travel and to prevent sediment from entering underground stormwater retention system	Daily inspections should be conducted to monitor buildup of sediment or refuse	Must provide labor, tools, equipment and all other items needed to provide these services.	Sediment accumulation and debris	Submittal Requirements and Records Retention not required
Structural BMPs	(1) Description of the Practice	(2) Performance and Management Requirements	(3) Inspection Frequency	(4) Inspection Personnel Qualification Requirement	(5) Inspection Action Required	(6) Submittal Requirements and Records Retention
Storm Drainage System (includes underground leaching galleys, catch basins with outlet pipe snouts and sumps, and recharge basin)	Underground and above ground storm system to capture, retain, and infiltrate water into ground. Snouts in catch basin outlet pipes prevents floatables from potential to get caught in piping or flowing downstream to leaching galleys and recharge	Remove any sediment accumulation and build up of trash and debris. Repair damage to pipe. Inspect for depressions and evidence of sinkholes outside pipe, near inlets and surrounding area. Catch basins should be cleaned of any floatables, and sumps should be cleaned of sediment.	Inspections should be conducted once every two (2) years.	Must be by Professional Engineer experienced in stormwater system operation and maintenance . Must provide labor, tools, equipment and insurance and all other items needed to provide the inspection services.	Sediment accumulation and debris.	Inspections to include an assessment of the current condition, recommended service (routine, specific or non-routine) and suggested adjustments in frequency of inspection. Minimum records include date inspection and maintenance was performed, detailed description of work, before

Revised December 6, 2011

	basin. Sumps in catch basins provide controlled area to collect settled sediment	Recharge basin floor should be cleaned of sediment buildup and any other debris				and after photographic documentation. Inspection Reports to be submitted to the Town Engineer within 30 days of the inspection. A copy of the remediation report must be provided to the Town Engineer within 30 days of the completion of work.
Outlet Protection using Riprap (Riprap Apron with filter fabric or washed stone)	A permanent, erosion-resistant layer made of stones. It is intended to protect soil from erosion in areas of concentrated flow and to dissipate velocity. See grading plan for locations and dimensions.	Riprap can prevent erosion from the protected area. If damaged, repairs should be made promptly to prevent a progressive failure (head cutting). Control of weed and brush growth may be needed in some areas.	Once every two (2) years.	Must be a Professional Engineer experienced in stormwater system operation and maintenance. Must provide labor, tools, equipment and insurance and all other items needed to provide these services.	Structural erosion, level of sediment deposition, damage, pipe perforation, debris, vegetation.	Inspections to include an assessment of the current condition, recommended service (routine, specific or non-routine) and suggested adjustments in frequency of inspection. Minimum records include date inspection and maintenance was performed, detailed description of work, before and after photographic documentation. Inspection Reports to be submitted to the Town Engineer within 30 days of the inspection. A copy of the remediation report must be

Revised December 6, 2011

						provided to the Towne Engineer within 30 days of the completion of work.
<p>(1) Describe BMP practice in narrative form by type and provide number of items/locations.</p> <p>(2) Provide performance and design criteria such as specifications, expected life span and general nature of maintenance requirements. Identify the responsible party for providing inspections.</p> <p>(3) List inspection frequency needed such as after each storm, weekly, monthly, quarterly, semi-annual, annual, or long term. Distinguish between required and desired inspections.</p> <p>(4) List required qualifications of inspection personnel</p> <p>(5) Describe specific inspection action required such as excess sediment, structural/mechanical, erosion, vegetation management, soil testing for fertility, etc...</p> <p>(6) Indicate if and when inspection reports are to be submitted to local jurisdiction and if time period, if any, records are to be retained.</p>						

TOWN OF RIVERHEAD

Resolution # 942

AUTHORIZES NOTICE TO BIDDERS FOR MAINTENANCE AND EMERGENCY SERVICES CONTRACT – RIVERHEAD WATER DISTRICT
PROJECT NO.: RDWD 11-01

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

WHEREAS, plans and specifications have been prepared by H2M, consulting engineers to the Riverhead Water District, regarding four maintenance and emergency services contracts for the Riverhead Water District.

NOW THEREFORE BE IT RESOLVED, that the Town Clerk be and is hereby authorized to publish and post the attached Notice to Bidders in the December 29, 2011 edition of The News Review with regard to receiving bids for maintenance and emergency services contracts for the Riverhead Water District, and be it further

RESOLVED, that the Town Clerk shall publicly open and read aloud the submitted bids on the date as advertised in the Notice to Bidders, and be it further

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

The Town Board of Riverhead will receive bids for MAINTENANCE AND EMERGENCY SERVICES CONTRACTS for the Riverhead Water District at the Town Clerk's office, Town Hall, 200 Howell Avenue, Riverhead, New York 11901, by 4:00 PM Tuesday January 17, 2012. Opening time, 11:00 AM on Thursday January 19, 2012, at which time and place all bids will be publicly opened and read aloud for:

PROJECT NO.: RDWD 11-01

CONTRACT C - CONTROL MAINTENANCE AND EMERGENCY SERVICES

CONTRACT D - DISTRIBUTION SYSTEM MAINTENANCE AND EMERGENCY SERVICES

CONTRACT E - ELECTRICAL MAINTENANCE AND EMERGENCY SERVICES

CONTRACT M - MECHANICAL MAINTENANCE AND EMERGENCY SERVICES

Plans and specifications may be examined and obtained on or after December 29, 2011 at the Office of the Town Clerk between the hours of 8:30 am and 4:30 pm weekdays, except holidays or by visiting the Town of Riverhead website: www.riverheadli.com and click on "Bid Requests".

Each proposal must be accompanied by a bid bond in the amount of five percent (5%) of the total bid, or a certified check made payable to the TOWN OF RIVERHEAD as assurance that the bid is made in good faith.

The right is reserved to reject any or all bids, to waive any informalities, and to accept the lowest responsible bid.

BY ORDER OF THE TOWN BOARD
TOWN OF RIVERHEAD
SUFFOLK COUNTY, NEW YORK

ACTING AS THE GOVERNING BODY
OF THE RIVERHEAD WATER DISTRICT

DIANE WILHELM, TOWN CLERK

DATED: DECEMBER 29, 2011

TOWN OF RIVERHEAD

Resolution # 943

AUTHORIZES ADVANCE PAYMENT TO LIPA RE: PERMANENT PRIMARY ELECTRIC SERVICE – PLANT 17 OF RIVERHEAD WATER DISTRICT

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

WHEREAS, by resolution 893 adopted December 6, 2011 the Riverhead Town Board, as the governing body of the Riverhead Water District, approved the installation of the permanent primary electric service at Plant 17 of the Riverhead Water District, and

WHEREAS, it is necessary to pay LIPA the agreed cost of the installation services in advance of the actual construction, and

WHEREAS, the amount previously allocated to the well construction contract be reduced as set forth in the attached letter dated December 15, 2011 of Dennis Kelleher, P.E. of H2M consulting engineers to the Riverhead Water District.

NOW THEREFORE BE IT RESOLVED, that the Town Supervisor be and hereby is authorized to pay in advance the cost of the installation of the permanent primary electric service at Plant 17 of the Riverhead Water District, and be it further

RESOLVED, that the Town Supervisor shall adjust the purchase order previously issued to Layne Christiansen to reflect the actual cost of construction as set forth in the attached letter of H2M.

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted



architects + engineers

575 Broad Hollow Road t 631.756.8000
Melville, NY 11747 f 631.694.4122

December 15, 2011

Supervisor Sean M. Walter
Town of Riverhead
200 Howell Avenue
Riverhead, New York 11901

Re: **Riverhead Water District
Construction of Supply Well No. 17
LIPA Service Work
H2M Project No.: RDWD 10-03**

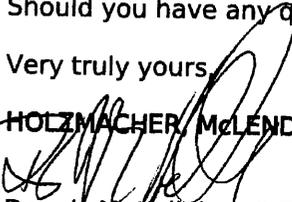
Dear Supervisor Walter:

As a follow up to my letter of November 29, 2011 to Supt. Gary Pendzick, LIPA is requesting payment for the installation of a new primary service at Plant No. 17 at a cost of \$47,987.30.

A review of the total project costs has determined that there is sufficient funds available in the project's Town Board authorization and bond approval amount. However, the Town needs to reduce the existing purchase order amount for the well construction contract (Layne Christensen) from \$299,650 down to \$250,000. The well work has been completed and the final contract cost will be less than \$250,000. The reduction in purchase order amount can be allocated to the LIPA costs.

Should you have any questions or comments, please contact this office.

Very truly yours,


~~HOLZMACHER, McLENDON & MURRELL, P.C.~~

Dennis M. Kelleher, P.E.
Sr. Vice President

DMK:sj

cc: Supt. Gary Pendzick
William Rothaar, Financial Administrator
Richard Ehlers, Esq.

x:\rdwd (riverhead water district) - 10810\rdwd1003 - plant no 17\correspondence\11.12.15 - walter - lipa service work - well no. 17.doc

TOWN OF RIVERHEAD

Resolution # 944

**APPOINTS SECRETARY TO THE ZONING BOARD OF APPEALS
AND PLANNING BOARD**

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

WHEREAS, a vacancy exists for a Secretary to the Zoning Board of Appeals and Planning Board; and,

WHEREAS, the Zoning Board of Appeals and Planning Board requires support staff/secretarial services to effectively meet the responsibilities of such Boards; and

WHEREAS, Kim Fuentes, Account Clerk Typist in the Planning Department, has offered to be the Secretary to the Zoning Board of Appeals and Planning Board; and,

WHEREAS, it is appropriate to compensate Ms. Fuentes for her work done outside of the Planning Department.

NOW, THEREFORE, BE IT RESOLVED, that effective January 1, 2012, this Town Board hereby appoints Kim Fuentes to the position of Secretary to the Zoning Board of Appeals and Secretary to the Planning Board, compensating her for her work done outside of the Planning Department with a yearly stipend of \$3,000.00.

RESOLVED, that the Town Clerk is hereby authorized to forward a copy of this resolution to Kim Fuentes, the Planning Department, the Financial Administrator and the Personnel Director; and be it further

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device, and if needed, a certified copy of same can be obtained from the office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No
Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 945

**AUTHORIZES THE SUPERVISOR TO EXECUTE AN AGREEMENT
WITH INTELLI-TEC SECURITY SERVICES, LLC,**

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

WHEREAS, the Town Board of the Town of Riverhead authorized publication of a Notice To Bidders regarding the Fire and Security Alarm Contract 2012 for various Town facilities; and

WHEREAS, three (3) bids were received, opened and read aloud on the 14th day of November, 2011, at 11:10 a.m., in the Office of the Town Clerk, 200 Howell Avenue, Riverhead, New York; and

WHEREAS, after due consideration, the Town Board has determined that Intelli-Tec Security Services, LLC, is the lowest responsible bidder.

NOW THEREFORE BE IT RESOLVED, that the Town Board awards Intelli-Tec Security Services, LLC, an opportunity to enter into an agreement with the Town of Riverhead to provide fire and security alarm services at various Town facilities; and be it further

RESOLVED, that the Supervisor is authorized to execute an agreement with Intelli-Tec Security Services, LLC, in substantially the same form as annexed hereto and subject to review and recommendation for signature approval by the Office of the Town Attorney; and be it further

RESOLVED, that the Town Board authorizes the Town Clerk to return any and all bid bonds received in connection with this matter; and be it further

RESOLVED, that the Town Board does hereby authorize the Engineering Department to secure a Town of Riverhead Purchase Order from the Purchasing Department in the amount of \$13,345.00; and be it further

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

CONSULTANT/PROFESSIONAL SERVICES AGREEMENT

This Agreement made the 20th of December, 2011, between the TOWN OF RIVERHEAD, a municipal corporation organized and existing under the laws of New York, with its office located at 200 Howell Avenue, Riverhead, New York 11901 (hereinafter referred to as the "Town") and INTELLI-TEC Security Services, LLC, a business entity existing under the laws of the State of New York with a principal place of business at 2000 Shames Drive, Westbury, NY 11590 (hereinafter referred to as "Consultant").

In consideration of the mutual promises herein contained, Town of Riverhead and Consultant agree as follows:

1. SCOPE OF SERVICES

During the term of this Agreement, Consultant shall furnish the services and at the locations delineated in the Notice To Bidders, Specifications, Contractual Terms and other attendant documentation comprising the award criteria as addressed in the bid documents and which served as the basis for the response received from Consultant on or about November 9, 2011, and read aloud on November 14, 2011. Said documents are hereby incorporated by reference as a schedule herein as if recited in their entirety. In the event of a conflict between the terms of this Professional Services Agreement and the Bid documents, the terms of this Professional Services Agreement shall control.

2. TERM OF AGREEMENT

The Agreement shall commence on January 1, 2012, and terminate on December 31, 2012, unless terminated sooner. This Agreement may be terminated at any time and for any reason by either party upon ten (10) days written notice, via certified mail, return receipt requested. Consultant shall be entitled to payment for services rendered to the date of notice of termination which shall be deemed to be the date the notice of termination is placed within a mailbox under the care and custody of the US Postal Service. Notice shall be provided to the signatories of this Agreement at the addresses so designated in paragraph 9 of this Agreement. In addition, Town shall be entitled to a pro-rated refund for monies paid before services are rendered.

3. PAYMENT

For these services, Town will pay Consultant in the amount of \$13, 345.00 (thirteen thousand three hundred forty-five) in two equal installments on or about June 1, 2012, and December 1, 2012, for services rendered. The Town shall not have any liability for any other expenses or costs incurred by Consultant except for expenses expressly provided herein. Consultant shall not incur any expenses in Town's behalf except for those items expressly provided for herein. Invoices for services and reimbursable expenses shall contain the following statement signed by Consultant, or if this Agreement is with a firm, an officer or authorized representative of the firm: "I hereby certify, to the best of my knowledge and belief, that this invoice is correct, and that all items invoiced are based upon actual costs incurred or services rendered consistent with the terms of the professional services agreement." Each invoice for reimbursable expenses shall be supported by: (a) an itemized description of expenses claimed; (b) pertinent information

relative to the expenses; and (c) attached receipts. Invoices shall reference this Agreement or otherwise be identified in such a manner as Town may reasonably require.

4. RIGHTS TO DOCUMENTS OR DATA

All information and data, regardless of form, generated in the performance of, or delivered under this Agreement, as well as any information provided to Consultant by Town, shall be and remain the sole property of Town. Consultant shall keep all such information and data in confidence and not disclose or use it for any purpose other than in performing this Agreement, except with Town's prior written approval. In the event that the legal right in any data and information generated in the performance of this Agreement does not vest in Town by law, Consultant hereby agrees and assigns to Town such legal rights in all such data and information. Final payment shall not be due hereunder until after receipt by Town of such complete document and data file, or a certification that there is no such information created by the services performed under this Agreement, and receipt of all information and data which is the property of Town. These obligations shall survive the termination of this Agreement.

5. PUBLICITY

Consultant shall not, without the prior written consent of Town, in any manner advertise or publish the fact that Town has entered into this Agreement with Consultant. Consultant shall not, without the prior written consent of the Town, provide, release or make available for inspection any documents, data, written material of any kind without the prior written consent of at least three members of the Town board or by resolution of the Town Board.

6. ASSIGNMENT AND SUBCONTRACTING

Performance of any part of this Agreement may not be subcontracted nor assigned without, in each case, the prior written consent of at least three members of the Town Board or by resolution of the Town Board.

7. RECORDS

Consultant shall keep accurate records of the time spent in the performance of services hereunder. The Town shall, until the expiration of seven years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of Consultant involving transactions related to this Agreement.

8. CHANGES

The Town, by resolution of the Town Board or written request by at least three members of the Town Board, within the general scope of this Agreement, may, at any time by written notice to Consultant, issue additional instructions, require additional services or direct the omission of services covered by this Agreement. In such event, there will be made an equitable adjustment in price and time of performance, but any claim for such an adjustment must be made within 15 days of the receipt of such written notice. In the event that the Consultant determines that a change order is required, Consultant shall obtain written approval of the Town, by resolution or written consent of at least three members of the Town Board, and if the change shall require the payment of additional compensation, Consultant must obtain the written approval of three members of the Town Board or resolution of the Town Board for the additional compensation

prior to commencement of work regarding the change order. It is agreed and understood that no oral agreement, conversation, or understanding between the Consultant and the Town, its departments, officers, agents and employees shall effect or modify any of the terms or obligations of this Agreement or schedules annexed hereto and made a part hereof.

9. NOTICES

Any notice shall be considered as having been given: (i) to the Town of Riverhead if mailed by certified mail, postage prepaid to Town of Riverhead, Attention: Daniel P. McCormick, 200 Howell Avenue, Riverhead, New York 11901; or (ii) to Consultant if mailed by certified mail, postage prepaid to Paul Thompson, c/o INTELLI-TEC Security Services, LLC, 2000 Shames Drive, Westbury, New York 11590.

10. COMPLIANCE WITH LAWS

Consultant shall comply with all applicable federal, state and local laws and ordinances and regulations in the performance of its services under this Agreement. Consultant will notify Town immediately if Consultant's work for Town becomes the subject of a government audit or investigation. Consultant will promptly notify Town if Consultant is indicted, suspended or debarred. Consultant represents that Consultant has not been convicted of fraud or any other felony arising out of a contract with any local, state or federal agency. In carrying out the work required hereunder, Consultant agrees not to make any communication to or appearance before any person in the executive or legislative branches of the local, state or federal government for the purpose of influencing or attempting to influence any such persons in connection with the award, extension, continuation, renewal, amendment or modification of any contract or agreement. Consultant may perform professional or technical services that are rendered directly in the preparation, submission or negotiation activities preceding award of a Town agreement/contract or to meet requirements imposed by law as a condition for receiving the award but only to the extent specifically detailed in the statement of work. Professional and technical services are limited to advice and analysis directly applying Consultant's professional and technical discipline.

11. INSURANCE, INDEMNITY AND LIABILITY

Consultant shall carry Comprehensive General Liability Insurance in the amount of two million dollars (\$2,000,000.00) per occurrence and four million dollars (\$4,000,000.00) in the aggregate and, if applicable, worker's compensation insurance. Consultant hereby indemnifies and holds the Town, its departments, officers, agents and employees, harmless against any and all claims, actions or demands against Town, its departments, officers, agents and employees and against any and all damages, liabilities or expenses, including counsel fees, arising out of the acts or omissions of Consultant under this Agreement.

12. CONFLICT OF INTEREST

Consultant hereby represents and covenants that neither it nor any of its employees or representatives has or shall have, directly or indirectly, any agreement or arrangement with any official, employee or representative of the Town of Riverhead which any such official,

employee, representative shall receive either directly or indirectly anything of value whether monetary or otherwise as the result of or in connection with any actual or contemplated application before any department of the Town, contract with the Town for sale of any product or service. Consultant further represents and covenants that neither it nor any of its employees or representatives has offered or shall offer any gratuity to the Town, its officers, employees, agents or representatives with a view toward obtaining this Agreement or securing favorable treatment with respect thereto. Consultant further represents that it will not engage in any activity which presents a conflict of interest in light of its relationship with Town.

13. DISCLOSURE

The Town shall have the right, in its discretion, to disclose the terms and conditions of this Agreement (as it may be amended from time to time), including but not limited to amounts paid pursuant hereto, to agencies of the local, state and federal government.

14. DISPUTES

If Consultant fails to perform any of its obligations hereunder in accordance with the terms hereof, then after reasonable notice to Consultant not to exceed thirty (30) days, and an opportunity for Consultant to cure such failure (except in case of emergency), the Town may (but shall not be obligated to) cure such failure at the expense of the Consultant, and the amount incurred by the Town on demand. Notwithstanding the above, any dispute arising under this Agreement which is not settled by Agreement of the parties may be settled by appropriate legal proceedings. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under this Agreement, Consultant shall proceed diligently with the performance of this Agreement in accordance with the decision of Town.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

By: Sean M. Walter, Town Supervisor
TOWN OF RIVERHEAD
200 Howell Avenue
Riverhead, New York 11901

By: Jeff Housner, Vice-President
INTELLI-TEC Security Services, LLC
2000 Shames Drive
Westbury, New York 11950

TOWN OF RIVERHEAD

Resolution # 946

**AUTHORIZES RECREATIONAL DEER HUNTING WITH SHOTGUN ON
TOWN PROPERTY LOCATED AT SOUND AVENUE IN CALVERTON, SCTM NO.
600-60-1-2
FROM
JANUARY 9, 2012 TO JANUARY 31, 2012**

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

WHEREAS, residents and real property owners of the Town of Riverhead have requested permission to engage in recreational deer hunting with shotgun on Town property located at Sound Avenue in Calverton, SCTM No. 600-60-1-2, from January 9, 2012, to January 31, 2012, weekdays only, sunrise to sunset; and

WHEREAS, the Town Board of the Town of Riverhead wishes to provide recreational deer hunting with shotgun opportunities for Town of Riverhead residents and Town of Riverhead real property owners; and

WHEREAS, deer hunting in New York State is a regulated activity by New York State and is subject to the laws, rules and regulations of New York State as enforced in whole or in part by the New York State Department of Environmental Conservation; and

WHEREAS, residents and real property owners of the Town of Riverhead who wish to engage in hunting activity in New York State are bound by applicable laws, rules and regulations of New York State.

NOW THEREFORE BE IT RESOLVED, that the Town Board of the Town of Riverhead authorizes the Hunting Committee to conduct a lottery to establish a list of those hunters who are residents or real property owners of the Town of Riverhead who shall be permitted to hunt with shotgun for deer in Town property located at Sound Avenue in Calverton, SCTM No. 600-60-1-2, from January 9, 2012, to January 31, 2012, weekday only, sunrise to sunset; and be it further

RESOLVED, that all designated hunters must possess a valid New York State deer hunting license, big game tag, landowner's endorsement and Town permit/license as well as all other attendant required documentation and shall abide by the laws, rules and regulations of New York State regarding deer hunting as well as the directives of

the Hunting Committee and/or Town officials, failure of which to abide by shall subject the hunter to immediate revocation of the non-transferable hunting privilege; and be it further

RESOLVED, that designated hunters shall only hunt in areas designated on the attached map as per the directives of the Hunting Committee and/or Town officials; and be it further

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

REVOCABLE TOWN PERMIT

REVOCABLE LICENSE AGREEMENT

This Town Permit and Revocable License Agreement ("hereinafter License"), made as of the _____ day of _____, 2011, by and between the Town of Riverhead, ("Licensor") with offices at 200 Howell Avenue, Riverhead, New York 11901, and _____ ("Licensee"), residing at _____, New York _____.

WITNESSETH

WHEREAS, Town of Riverhead residents (defined as a person who has lived in the Town of Riverhead for more than thirty (30) days immediately prior to date of application in a fixed, permanent and principal residence) and Town of Riverhead real property owners are eligible to apply for this revocable Permit and License;

WHEREAS, _____, represents that he/she is a Town of Riverhead resident and/or a Town of Riverhead real property owner who wishes to utilize Town of Riverhead property at Sound Avenue, Calverton, SCTM No. 600-60-1-2, and more fully delineated on the attached map for the express and sole purpose of shot gun hunting for deer only; and

WHEREAS, the Town of Riverhead wishes to grant the Licensee a revocable, non-transferable permit and license to utilize the afore-mentioned property more fully

delineated on the attached map, for shot gun hunting for deer only;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, Licensor and Licensee, for themselves and their successors, hereby agree as follows:

1. **Licensing.** Upon the terms and conditions hereinafter set forth, Licensor hereby licenses to Licensee the revocable, non-transferable right to use the Licensed Premises depicted on the map and known as Town property at Sound Avenue, Calverton, SCTM No. 600-60-1-2, annexed hereto and made a part hereof solely for shot gun hunting for deer only.

2. **Term of the Permit/License.** The term of this Permit and License (the "term") shall commence on January 09, 2012, and shall end on January 31, 2012; weekdays only; hunting hours: sunrise to sunset, subject to registration requirements delineated by the Town Hunting Committee and Town Clerk's Office, including but not limited to a three-day hunting privilege.

3. **Licensee Representations.** Licensee represents that Licensee possesses a valid and current New York State Deer Hunting License and big game tag which shall be confirmed by the Town Clerk's Office prior to hunting. Licensee further represents that Licensee is fully aware of and shall abide by all New York State laws, rules and regulations regarding deer hunting. Licensee further represents and agrees to abide by the directives of the Town Hunting Committee, Town of Riverhead officials and employees, law enforcement personnel and all governmental agencies having jurisdiction of shot gun hunting activity. Licensee further acknowledges that a failure to abide by the terms and conditions contained herein shall be grounds for immediate revocation of this hunting

license and permit. Licensee further acknowledges that any misrepresentation shall be grounds for immediate revocation of this hunting license and permit.

4. **Condition of the Licensed Premises.** Licensee is familiar with the Licensed Premises, has examined same, and, except as explicitly hereinafter provided, Licensee agrees to accept the licensed premises in its "as is" condition without reliance upon any representations or warranties of or made by Licensor.

5. **Indemnification.** Licensee agrees to indemnify and hold the Town of Riverhead and their respective officers, employees, agents, representatives and officials harmless from any and all loss, including death or physical injury to persons, or liability associated with Licensee's use of the property and related activities described herein, including liability for damages to property which may arise from, or be attributable or incident to the use by Licensee excepting liability solely caused by the gross negligence of the Town or its employees, agents or representatives. Without limiting the generality of the foregoing, Licensee agrees with respect to any suit or claim by the Town, whether under this indemnification provision or otherwise, Licensee, hereby expressly waives any defense which might preclude or limit either enforcement of this indemnification clause or any reasonable attorneys fees incurred by the Town of Riverhead securing compliance with the provision of this indemnification agreement.

Licensee shall also indemnify and hold the Licensor harmless from and against any and all claims, actions, liabilities, losses (including, without limitation, consequential and special damages), costs and expenses (including, without limitation, court costs and reasonable attorney fees and expenses, including appeals), arising from or in

connection with the use of the licensed premises. The indemnification and hold harmless provisions of this Permit and License shall survive termination of same and/or the end of the term.

6. **Assignment.** Notwithstanding anything to the contrary contained in the License and Permit, Licensee shall not assign this License and Permit, the use of the Licensed Premises, in whole or in part, or permit Licensee's interest to be vested in any other party other than Licensee by operation of law or otherwise without the express written consent of the Licensors.

7. **Notices.** Any notices to be given under this Permit and License shall be in writing and shall be sent by registered or certified mail, return receipt requested. If such notice is directed to Licensors, it shall be addressed to the attention of the Riverhead Town Supervisor and the Office of the Riverhead Town Attorney at 200 Howell Avenue, Riverhead, New York. If such notice is directed to the Licensee, it shall be forwarded to the Licensee's address first above written.

8. **Miscellaneous.** Merger: All prior understandings and agreements between the parties with respect to the subject matter hereof are merged within this agreement, which alone, fully and completely sets forth the understanding of the parties with respect to the subject matter hereof. This license may not be changed or terminated orally, or in any manner, other than in writing signed by the party against whom enforcement is sought.

IN WITNESS WHEREOF, Licensors and Licensee do hereby execute this License as of the date and year first above written.

TOWN OF RIVERHEAD

By: Sean M. Walter
Riverhead Town Supervisor

By:

Print name

Address

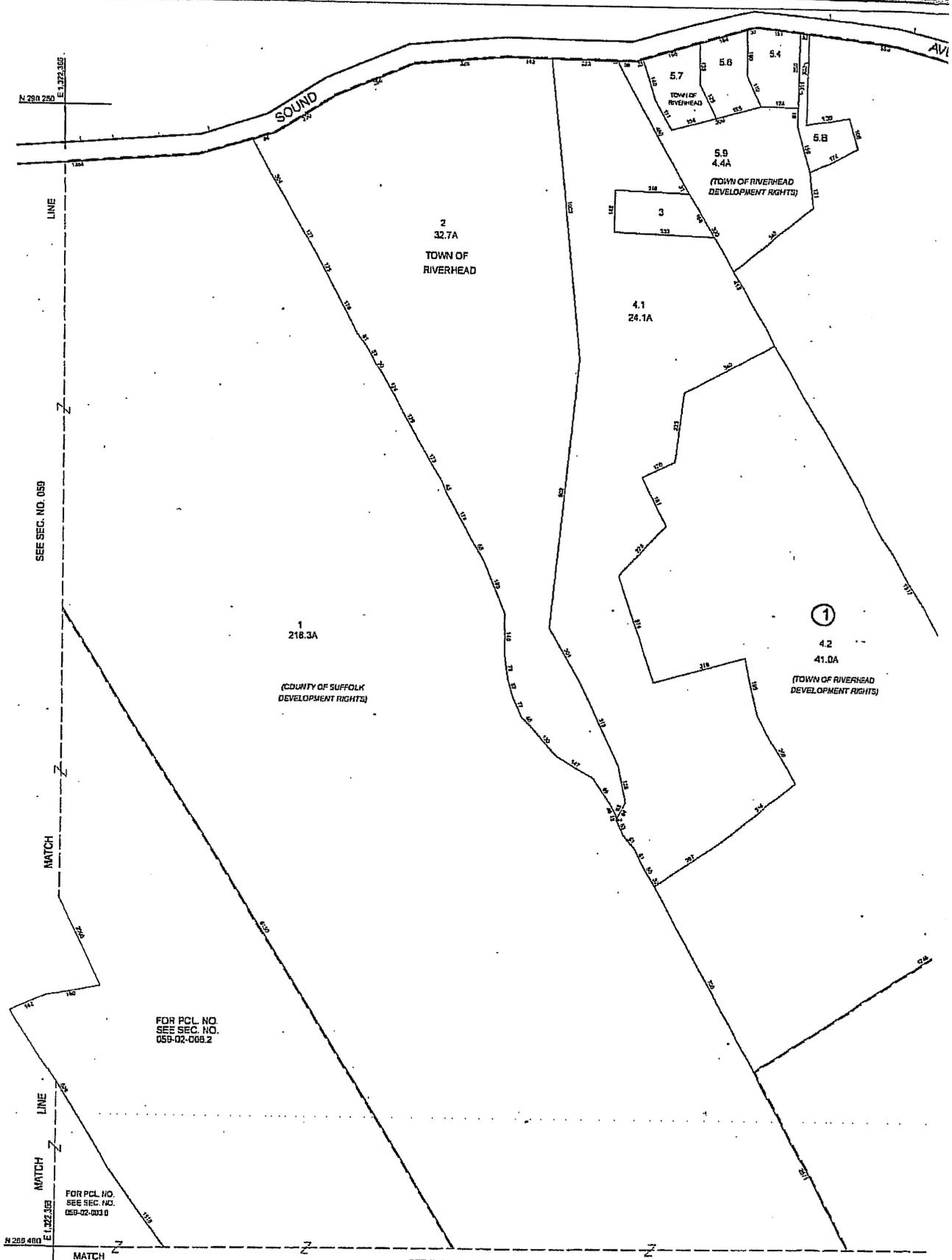
Home Phone

Cell Phone

(revised 12-20-2011)

600-60-1-2
CATTURTON

Revisions
08-08-98
04-13-99
11-26-99
07-30-01
03-19-03
07-30-03
08-14-03
05-21-04
11-23-05
01-17-07
06-06-07



L G M	Property or A/R Line	Subdivision Lot No.	100	Block Line	(2)	General District Line	SD1	Hydrom District Line	H	UNLESS SHOWN OTHERWISE ALL PROPERTIES ARE WITHIN THE FOLLOWING DISTRICTS: SCHOOL: 17 SEWER: FIRE: 44 HYDRANT:
	Deceased Owner	Subdivision Block/lot No.	(21)	Deed No.		Fire District Line	F	Police District Line	P	
	Subdivision Lot Line	Deed Dimension	41			Water District Line	W	Historical District Line	HCT	

12.20.2011
110947

ADOPTED

TOWN OF RIVERHEAD

Resolution # 947

PAYS BILLS

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

ABSTRACT #11-45 December 08, 2011 (TBM 12/20/11)				
FUND NAME			12/08/11 CHECKRUN	GRAND TOTALS
GENERAL FUND	1		4,549,842.26	4,549,842.26
RECREATION PROGRAM FUND	6		11,568.15	11,568.15
ECONOMIC DEVELOPMENT ZONE FUND	30		11,344.01	11,344.01
HIGHWAY FUND	111		397,867.34	397,867.34
WATER DISTRICT	112		300,278.16	300,278.16
RIVERHEAD SEWER DISTRICT	114		151,323.10	151,323.10
REFUSE & GARBAGE COLLECTION DI	115		25,831.71	25,831.71
STREET LIGHTING DISTRICT	116		30,029.13	30,029.13
PUBLIC PARKING DISTRICT	117		779.44	779.44
AMBULANCE DISTRICT	120		223,315.72	223,315.72
EAST CREEK DOCKING FACILITY FU	122		61,795.88	61,795.88
CALVERTON SEWER DISTRICT	124		3,124.78	3,124.78
RIVERHEAD SCAVANGER WASTE DIST	128		75,154.04	75,154.04
WORKERS' COMPENSATION FUND	173		102,011.08	102,011.08
RISK RETENTION FUND	175		2,668.75	2,668.75
CDBG CONSORTIUM ACOUNT	181		326.93	326.93
GENERAL FUND DEBT SERVICE	384		25,651.75	25,651.75
TOWN HALL CAPITAL PROJECTS	406		87,159.14	87,159.14
WATER DISTRICT CAPITAL PROJECT	412		327,032.98	327,032.98
TRUST & AGENCY	735		33,103.02	33,103.02
CALVERTON PARK - C.D.A.	914		432.65	432.65
	735			
TOTAL ALL FUNDS	914		6,420,640.02	6,420,640.02

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 947

PAYS BILLS

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

ABSTRACT #11-46 December 13, 2011 (TBM 12/20/11)				
FUND NAME			12/13/11 CHECKRUN	GRAND TOTALS
GENERAL FUND	1		49.95	49.95
HIGHWAY FUND	111		1,291.80	1,291.80
WATER DISTRICT	112		163.21	163.21
CALVERTON SEWER DISTRICT	124		310.11	310.11
MAIN STREET REHAB PROGRAM	177		195,000.00	195,000.00
TOWN HALL CAPITAL PROJECTS	406		13,666,818.55	13,666,818.55
WATER DISTRICT CAPITAL PROJECT	412		3,929,982.01	3,929,982.01
LOCAL ST & HIGHWAY CAP PROJECT	451		169.00	169.00
TRUST & AGENCY	735		753.55	753.55
SPECIAL TRUST	736		20,139.66	20,139.66
TOTAL ALL FUNDS			17,814,677.84	17,814,677.84

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

12.20.2011
110947

ADOPTED

TOWN OF RIVERHEAD

Resolution # 947

PAYS BILLS

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

FUND NAME			12/15/11 CHECKRUN	GRAND TOTALS
ABSTRACT #11-47 December 15, 2011 (TBM 12/20/11)				
GENERAL FUND	1		1,278,254.47	1,278,254.47
POLICE ATHLETIC LEAGUE	4		2,675.34	2,675.34
RECREATION PROGRAM FUND	6		16,438.21	16,438.21
CHILD CARE CENTER BUILDING FUN	9		262.84	262.84
ECONOMIC DEVELOPMENT ZONE FUND	30		51.53	51.53
MULTI YEAR OPERATING GRANT FUN	99		126.64	126.64
HIGHWAY FUND	111		143,664.70	143,664.70
WATER DISTRICT	112		141,766.04	141,766.04
RIVERHEAD SEWER DISTRICT	114		81,372.72	81,372.72
REFUSE & GARBAGE COLLECTION DI	115		363,413.50	363,413.50
STREET LIGHTING DISTRICT	116		69,259.98	69,259.98
PUBLIC PARKING DISTRICT	117		2,741.74	2,741.74
AMBULANCE DISTRICT	120		10,098.00	10,098.00
EAST CREEK DOCKING FACILITY FU	122		595.54	595.54
CALVERTON SEWER DISTRICT	124		8,512.81	8,512.81
RIVERHEAD SCAVANGER WASTE DIST	128		34,670.04	34,670.04
UNEMPLOYMENT INSURANCE	175		1,600.00	1,600.00
CDBG CONSORTIUM ACOUNT	181		717.40	717.40
PUBLIC PARKING DEBT SERVICE	381		26,170.32	26,170.32
COMMUNITY DEVELOPMENT AGENCY C	405		505,952.75	505,952.75
TOWN HALL CAPITAL PROJECTS	406		177,525.33	177,525.33
WATER DISTRICT CAPITAL PROJECT	412		8,083.19	8,083.19
RIVERHEAD SEWER CAPITAL PROJEC	414		397.03	397.03
CALVERTON SEWER CAPITAL PROJEC	424		1,424.31	1,424.31
SCAVENGER WASTE CAPITAL PROJEC	428		11,176.00	11,176.00
TRUST & AGENCY	735		1,340,028.41	1,340,028.41
SPECIAL TRUST	736		15,000.00	15,000.00
CALVERTON PARK - C.D.A.	914		95,375.07	95,375.07
TOTAL ALL FUNDS			4,337,353.91	4,337,353.91

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 948

**ACCEPTS FINAL ENVIRONMENTAL IMPACT STATEMENT ON THE
SPECIAL PERMITS OF VILLAGE AT JAMESPORT**

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

WHEREAS, the Riverhead Town Board is in receipt of special permit petitions from Jul-Bet Enterprises, LLC pursuant to Section 108-282B.(1)&(4) and Article XXVIA of the Riverhead Town Code to construct a commercial facility in ten buildings with aggregate footprint of 42,000sq.ft. and including professional office and bistro uses necessitating special permission on a 9.712ac. parcel zoned Rural Corridor (RLC); such property more particularly known as SCTM 0600-68-1-35, and

WHEREAS, the Town Board classified the action as Unlisted and declared themselves lead agency for State Environmental Quality Review by resolution #773 of 8/7/07 and by resolution #178 of 3/4/08 called for the preparation of an Environmental Impact Statement, and

WHEREAS, subsequent to public scoping the lead agency Town Board, by resolution #887 of 9/15/09, accepted the Draft Environmental Impact Statement Proposed Mixed Use Development "Village at Jamesport", by VHB Engineering, Surveying and Landscape Architecture, PC dated July 2009 and revised September 2009 as adequate in scope and content; filing and noticing the completed document for review and comment as prescribed by 6 NYCRR Part 617.12 and also conducting a public hearing for the purpose on 10/21/09, and

WHEREAS, the Riverhead Town Planning Department considered commentary made at the hearing and that submitted in writing by the public and by involved agencies; particularly the State Department of Transportation and the Office of Parks Recreation and Historic Preservation, and transmitted a summary to the applicant by letters of 1/7/10 and 2/18/11 for their response in the form of a Final Environmental Impact Statement, and

WHEREAS, the applicant has submitted a Final Environmental Impact Statement Proposed Mixed-Use Development "Village at Jamesport", by VHB Engineering, Surveying and Landscape Architecture, PC dated July 2011, which the Planning Department has reviewed and found to be responsive to the public and agency commentary sufficient for the purpose of preparation of agency findings, now

THEREFORE BE IT

RESOLVED, that the Riverhead Town Board hereby determines the Final Environmental Impact Statement Proposed Mixed-Use Development “Village at Jamesport”, by VHB Engineering, Surveying and Landscape Architecture, PC dated July 2011 submitted in support of the special permits of Village at Jamesport to be adequate for agency decision making and findings requirements and accepts the document for that purpose, and

BE IT FURTHER

RESOLVED, that the Planning Department be directed to publish and file the requisite notice of completion and copies of the FEIS pursuant to Part 617.12 and to post the document on the Town’s website, and

BE IT FURTHER

RESOLVED, that the Town Clerk be authorized to forward a certified copy of this resolution to Charles R. Cuddy, Esq. as agent to the applicant, and

BE IT FURTHER

RESOLVED, all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

12.20.2011
110949

ADOPTED

TOWN OF RIVERHEAD

Resolution # 949

APPROVES STIPULATION OF AGREEMENT

Councilman Wooten offered the following resolution,

which was seconded by Councilman Dunleavy

RESOLVED, that this Town Board hereby approves the attached Stipulation of Agreement with the Civil Service Employees Association regarding the Public Safety Dispatchers' work year; and

BE IT FURTHER, RESOLVED, that the Town Clerk be and is hereby directed to forward a copy of this resolution to CSEA President Matthew Hattorff, Lamb & Barnosky, LLP, the Personnel Officer, and the Office of Accounting.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No
Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

Previous to the Vote for Adopt was a motion by Councilman Wooten, seconded by Councilman Dunleavy to take resolution #949 **OFF THE FLOOR**

THE VOTE:

YES – 5 Giglio, yes, Gabrielsen, yes; Wooten, yes; Dunleavy, yes; Walter, yes
NO – 0

DRAFT FOR CLIENT REVIEW

STIPULATION OF AGREEMENT, made and entered into this ____ day of December 2011, by and between the negotiating committees for the Town of Riverhead (“the Town”) and the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Riverhead Unit of the Suffolk Local #852 (“the CSEA”).

WHEREAS, the Town and the CSEA are parties to a collective bargaining agreement covering the period 2008-2010, as amended by a Stipulation of Agreement covering the period 2011-2014; and

WHEREAS, the parties engaged in negotiations in good faith in an effort to arrive at an agreement regarding the work year for Public Safety Dispatchers; and

WHEREAS, the parties have arrived at a tentative agreement regarding this issue and have agreed to reopen their Agreement for the sole limited purpose of implementing their agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereby stipulate and agree as follows:

1. The provisions of this Stipulation are subject to ratification by the CSEA’s membership and ratification and approval by the Town Board.
2. The signatories below agree to recommend the stipulation for ratification/approval.
3. A copy of this original document has been provided to representatives of the Town and the CSEA.
4. The parties’ collective bargaining agreement shall be reopened for the sole and limited purposes set forth herein. All other provisions of the Agreement shall continue in full force and effect.

DRAFT FOR CLIENT REVIEW

5. Article III(1)(e) (Public Safety Dispatchers' Work Year). Effective January 1, 2012, "255" shall be changed to "238."

6. Article XVI(5) (Wages). Effective January 1, 2012, in the last sentence of the fourth paragraph, "1/250" shall be changed to "1/238."

FOR THE TOWN

FOR THE CSEA
