

## **COMMUNITY DEVELOPMENT AGENCY RESOLUTIONS MAY 4, 2010**

CDA

Res. #10 Authorizes Chairman to Sign NYS DOT Tri-Party Grant Contract

### **RESOLUTION LIST MAY 4, 2010**

Res. #326 Adopts a Local Law Amending Chapter 48 Entitled, "Beaches and Recreation Centers" of the Riverhead Town Code

Res. #327 Authorizes Town Clerk to Post and Publish the Attached Notice to Bidders for the Removal of Liquid Sludge

Res. #328 Adopts a Local Law to Amend Chapter 108 Entitled "Zoning" of the Riverhead Town Code (Industrial C (IC) Zoning Use District – Uses)

Res. #329 Bond Resolution Subject to Permissive Referendum Authorizing the Reconstruction of Roads Throughout and in and for the Town of Riverhead, Suffolk County, New York at a Maximum Estimated Cost of \$1,000,000 and Authorizing the Issuance of \$1,000,000 Bonds of Said Town to Pay the Cost Thereof

Res. #330 Approves Chapter 90 Application of the American Heart Association ("First Annual Healing Heart 5K Run/Walk" at Martha Clara Vineyard)

Res. #331 Appoints a Call-In Chaperone to the Recreation Department (Cathleen Fox)

Res. #332 Appoints a Call-In Registered Nurse to the Recreation Department (Christine Spero)

Res. #333 Requests Ownership Transfer of the New York State Armory Property SCTM #600-108-2-3, From the State of New York- Division of Military Affairs to the Town of Riverhead

Res. #334 Authorizes Supervisor to Execute Agreement with the Riverhead Volunteer Ambulance Corps. Inc.

- Res. #335 Authorizes the Supervisor to Execute 1<sup>st</sup> Rider Amendment to Lease Regarding 755 East Main Street, Riverhead
- Res. #336 Authorizes the Supervisor to Execute an Agreement with Air Mark Air Conditioning Corporation for Heating, Ventilation and Air Conditioning Service and Maintenance
- Res. #337 Authorizes the Supervisor to Execute an Agreement to Obtain Medical Arbitration Services from Rehabilitation Medicine Associates
- Res. #338 Awards Bid for Automobile Parts
- Res. #339 Awards Bid – Howell Avenue Pump Station Reconstruction – Contract No. RDSD085S – Force Main Construction Riverhead Sewer District
- Res. #340 Awards Bid for Truck Parts
- Res. #341 Authorizes the Supervisor to Execute an Agreement with Barist Elevator Company, Inc.
- Res. #342 2009 Calverton Rail Capital Project Budget Adjustment
- Res. #343 Special Trust Park and Rec Fund Budget Adjustment
- Res. #344 Approves Chapter 90 Application of Wading River Shoreham Chamber of Commerce Inc. (Duck Pond Day)
- Res. #345 Approves the Chapter 90 Application of Riverhead Elks Lodge #2044
- Res. #346 Approves Additional Leave for a Police Officer
- Res. #347 General Fund Budget Adjustment for Police K-9 Expenses
- Res. #348 Home Improvement Program Budget Adjustment for Defaulted Loans
- Res. #349 Ratifies the Authorization of the Submission of Main Street Grant Program Application

- Res. #350 Authorizes Supervisor to Sign NYS DOT Tri-Party Grant Contract
- Res. #351 Authorizes Supervisor to Sign a Grant Agreement with the New York State Department of Environmental Conservation (Pump-Out Boat)
- Res. #352 Appoints Temporary Clerks to the Tax Receiver's Office (Juliet Blass and Erika Haas)
- Res. #353 Authorization to Discard Fixed Assets
- Res. #354 Authorization to Publish Advertisement for Janitorial Supplies for the Town of Riverhead
- Res. #355 Authorizes Legal Action Against the Owners, Tenants, Occupants and Mortgagee of the Property Located at 2114 Sound Avenue, Baiting Hollow, New York
- Res. #356 Authorizes Selling of the 2010 Beach Permits by Warren's Tackle Center, Fisherman's Deli and Angelo's Bakery Pizza
- Res. #357 River Road Culvert Capital Project Budget Adoption
- Res. #358 Authorizes the Supervisor to Execute an Agreement with the Riverhead Business Improvement District Management Association Inc.
- Res. #359 Scavenger Waste Budget Transfer for Unanticipated Repairs to Bar Screen
- Res. #360 Establishes Standard Work Day for Elected Officials
- Res. #361 Authorizes Town clerk to Publish and Post Notice of Public Hearing Change of Zone Petition of Aquebogue Mews
- Res. #362 Pays Bills
- Res. #363 Authorization to Publish Advertisement for Operation of the Town of Riverhead Animal Shelter and Adoption Center
- Res. #364 Authorizes the Supervisor to Execute a Security Agreement

- Res. #365 Authorizes the Town Clerk to Publish and Post a Help Wanted Ad for Seasonal Ground Keepers
- Res. #366 Authorizes the Supervisor to Execute a DWI Enforcement Agreement Between the County of Suffolk and The Town of Riverhead (STOP DWI PROGRAM)
- Res. #367 Authorizes Emergency Work at Building Department Building Located at 201 Howell Avenue
- Res. #368 Authorizes the Supervisor to Execute a Grant Extension Agreement with the US Department of Agriculture
- Res. #369 Authorizes the Supervisor to Execute a Covenant and Restriction in Favor of the Suffolk County Department of Health Services
- Res. #370 Approves Chapter 90 Application of Vail Leavitt (12<sup>th</sup> Annual Blues/Musical Festival)
- Res. #371 Terminates a Legal Secretary in the Town Attorney's Office
- Res. #372 Determines Zoning Compliance for Riverhead Fire Department Communication Equipment Upgrades

**TOWN OF RIVERHEAD**  
**Community Development Agency**  
**Resolution #10**

**AUTHORIZES CHAIRMAN TO SIGN NYSDOT TRI-PARTY GRANT CONTRACT**

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

**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, (the "Recovery Act") according to the apportionment of the costs of such program to be borne at the ratio of 100% Federal funds and 0% non-federal 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 Community Development Agency (CDA) Board desires to foster the continued development of infrastructure at the Calverton Enterprise Park site to encourage continued economic development at the site consistent with the comprehensive plans; and

**WHEREAS**, on February 11, 2010, the CDA Board adopted Resolution No. 2 entitled, "Awards Calverton Rail Access Rehabilitation Contract" in the amount of Three Million Four Hundred Ninety Six Thousand Six Hundred Eighty Four & 00/100 (\$3,496,684.00); and

**WHEREAS**, the Town Engineer and NYS DOT have recommended that additional work is required due to the installation of a turnout switch from the mainline off the Long Island Railroad (LIRR) causing the need for additional materials and labor to complete the switch installation for an increase of Three Hundred Ten Thousand Five Hundred Eighty-Four & 50/100 Dollars (\$310,584.50) under the Recovery Act; and

**WHEREAS**, the installation of the switch on LIRR right of way is not eligible for funding under the Recovery Act, however, is an integral part to the Calverton Freight Rail Access Rehabilitation; and

**WHEREAS**, NYSDOT has secured additional non-Recovery Act NYS funding for the installation of the switch on LIRR right of way to cover LIRR force account labor and other costs; and

**WHEREAS**, NYSDOT will reimburse LIRR directly, however, NYSDOT has requested that the Town of Riverhead sign the attached tri-party agreement as well.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town of Riverhead Chairman be and is hereby authorized to sign the attached tri-party agreement with NYSDOT and LIRR subject to review and approval by the Town Attorney; and

**BE IT FURTHER RESOLVED**, that the Town Clerk is hereby directed to forward a copy of this resolution to the Community Development Agency.

**THE VOTE**

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

Walter Yes No

The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION**

**GRANT AGREEMENT**

**THE LONG ISLAND RAILROAD COMPANY**

**TOWN OF RIVERHEAD**

**COMPTROLLER CONTRACT # \_\_\_\_\_**

**PROJECT IDENTIFICATION #0935.61.301**

This Agreement dated this 9<sup>th</sup> day of April, 2010, by and between the People of the State of New York (hereinafter referred to as "STATE") acting by and through the Commissioner of the Department of Transportation (hereinafter referred to as "COMMISSIONER"), with offices at 50 Wolf Road, Albany, New York 12232, the Long Island Railroad Company, (hereinafter referred to as the "GRANTEE"), with offices at Jamaica Station, Jamaica, New York 11435-4380, a public benefit corporation and a subsidiary of the Metropolitan Transportation Authority (hereinafter referred to as the "MTA") with offices at 347 Madison Avenue, New York, NY 10017-3739 and the Town of Riverhead with offices at 200 Howell Avenue, Riverhead, New York 11901, provides funding for the design, construction, reconstruction, improvement or rehabilitation of rail facilities as is more fully described in Appendix I of this Agreement.

**WITNESSETH**

**WHEREAS**, the STATE, GRANTEE and the Town of Riverhead wish to provide for the preservation and improvement of the Project Facilities so as to allow for the safe and efficient movement of rail and vehicular traffic; and,

**WHEREAS**, the Town of Riverhead is the local sponsor of Comptroller's Contract D032417, effective January 8, 2010, CALVERTON INDUSTRIAL ENTERPRISE PARK FREIGHT RAIL ACCESS REHABILITATION, located in the Towns of Brookhaven and Riverhead, County of Suffolk, with funding provided by the American Recovery and Reinvestment Act (ARRA), and

**WHEREAS**, the utility of the Town of Riverhead's project is dependent on its

connection with the contiguous railroad system of the United States, specifically connecting with the Main Line of the Long Island Railroad (LIRR) at Milepost 67.56, and likewise the utility of such connection is dependent on the completion of the Town of Riverhead's project and

**WHEREAS**, ARRA funds are not available for the installation of the connecting switch by LIRR forces, and

**WHEREAS**, Section 14 of the Transportation Law authorizes the COMMISSIONER to enter into contracts for the purpose of maintaining and improving rail transportation service; and,

**WHEREAS**, the total cost for this project is three hundred fifty thousand dollars (\$350,000); and,

**WHEREAS**, by Chapter 54, Section 1, of the Laws of 1994 and Chapter 54, Section 1 of the Laws of 1996, Rail Passenger and Freight Rail Preservation Purpose funds have been appropriated to the Department of Transportation to provide assistance to Railroads for the payment of the STATE's share of a rail project to be undertaken in accordance with the provisions of the aforesaid Section 14 of the Transportation Law; and,

**WHEREAS**, it has been determined to be in the best interest of the public to make three hundred fifty thousand dollars (\$350,000) available to the Long Island Railroad Company, for those capital improvements used in connection herewith.

**NOW THEREFORE**, the parties hereto in consideration of the mutual promises, conditions, terms and obligations herein set forth, agree and covenant as follows:

#### **ARTICLE ONE: DEFINITIONS**

What is intended by the words and expressions defined below, shall be construed to have these meanings except where it is clear from the context that another meaning is intended.

"Agreement" means this document (with appendices).

"STATE" means the People of the State of New York acting by and through the Commissioner of the Department of Transportation.

"COMMISSIONER" means the Commissioner of the New York State Department of Transportation or his designated representative.

"GRANTEE" means the Long Island Railroad Company receiving financial assistance under this Agreement.

"Project or Approved Project" means the design, construction, reconstruction, establishment, improvement, rehabilitation or modernization of rail facilities and other capital improvements conducted pursuant to this Agreement.

"Project Costs" means those costs as defined and contemplated in Section 2.4 for accomplishing the work set forth in Appendix I of this Agreement and computed in accordance with 23 CFR, Part 140, Subpart I, and amendments thereto.

"Project Facilities" means those facilities being constructed on underlying property excluding the underlying property, together with all materials, equipment, facilities or supplies acquired, constructed, reconstructed, established, improved or rehabilitated by or on behalf of the GRANTEE pursuant to the provisions of this Agreement to accomplish the work program set forth in the Work Schedule.

"Work Schedule" means a description of the project as described in Appendix I.

## **ARTICLE TWO: CAPITAL IMPROVEMENTS**

### **Section 2.1. Description of Work**

GRANTEE agrees to complete or cause to be completed the work described in the Work Schedule constituting Appendix I of this Agreement (hereinafter referred to as the "Work Schedule"), which is attached hereto and made a part hereof, in accordance with said Work Schedule as may be modified or amended, and within the time limits

specified in said Work Schedule or any extension thereof.

Any time limits for the accomplishing of work which are set forth in said Work Schedule may be extended or modified by mutual agreement between the parties in writing. No work to be financed by the STATE may begin without written approval from the COMMISSIONER.

#### Section 2.2. Approvals and Compliance

GRANTEE agrees to obtain or cause to be obtained all approvals necessary to progress the work, and also agrees to comply or cause to be complied with all applicable Federal, State and Local Laws, including New York Railroad Law, which in any way impacts work to be accomplished by the project.

#### Section 2.3 Maintenance

GRANTEE agrees to maintain, or arrange to have maintained at no expense to STATE, the Project Facilities, as well as ancillary facilities useful or necessary for providing rail transportation services thereon or therewith, in accordance with usage, for the term of the Agreement as defined in Section 3.17. of this Agreement.

#### Section 2.4. Reimbursement

STATE agrees to reimburse GRANTEE for the STATE's share of eligible Project Costs up to the amount identified in the Work Schedule which GRANTEE incurs for the work performed or facilities provided as described in the attached Work Schedule. Project Costs in excess of STATE funds available for the work shall be the responsibility of GRANTEE. The STATE shall not be obligated to pay nor shall GRANTEE claim reimbursement for the use of facilities or equipment which have been acquired by GRANTEE in whole or in part with funds provided by STATE under this or any other agreement.

Prior to start of construction, GRANTEE shall certify the source and availability of funds for Project Costs which are in excess of STATE funds being made available under this Agreement.

GRANTEE shall submit to STATE fair and reasonable charges less the value of

materials recovered, as evidence by detailed invoices, for the cost of the work performed or facilities provided as described above, in accordance with the procedures acceptable to the COMMISSIONER and the State Comptroller.

STATE shall reimburse GRANTEE in the amount of the approved Project Costs so submitted as to the work performed. In no event shall the cost to STATE of said work exceed the amount specified in the Work Schedule, except as such cost may hereinafter be increased pursuant to a written amendment to this Agreement by the parties hereto. All costs so submitted by GRANTEE shall be subject to approval by COMMISSIONER, and to audit by the COMMISSIONER and the State Comptroller.

Monthly accounting, in accordance with approved certification of such costs incurred by GRANTEE including the last day of the previous month less the value of materials recovered during that month, shall be submitted, provided the amount is \$1,000.00 or more and may be submitted for smaller amounts or lesser time-frames upon special request by the party originating the same and approval of COMMISSIONER. Upon the completion of all said work by GRANTEE pursuant to this Agreement, a final statement of costs shall be submitted to the STATE within one hundred eighty (180) days. Upon receipt of the final statement of costs by the COMMISSIONER, the COMMISSIONER will conduct an audit of the GRANTEE project account records within one hundred eighty (180) days to determine the resources applied or used by GRANTEE in fulfilling the terms of this Agreement. Upon the completion of said audit and concurrence by GRANTEE, the final reimbursement payment will be made to GRANTEE.

In the event that any payments are made by the STATE to the GRANTEE for costs incurred by GRANTEE, which are subsequently determined to be ineligible for reimbursement under this Agreement, STATE may retain an amount equal to any such excess payments from any monies then or which may become due and owing to GRANTEE under the Agreement, or GRANTEE shall repay such amount to STATE within forty-five (45) days from the date GRANTEE receives notice of such determination of ineligibility.

All costs charged to the project shall be properly supported by executed payrolls or abstracts thereof, time, material and accounts payable distribution records, invoices, contracts, vouchers and/or canceled checks evidencing in proper detail the nature and

propriety of the charges. These documents shall be retained and maintained by the GRANTEE, as provided in Section 3.9 herein, so that they will be available for audit by authorized representatives of the COMMISSIONER and State Comptroller.

#### Section 2.5 Electronic Contract Payments

GRANTEE shall provide complete and accurate supporting documentation of eligible expenditures as required by this contract, NYSDOT and the State Comptroller. Following NYSDOT approval of such supporting documentation, payment for invoices submitted by the GRANTEE shall only be rendered electronically unless payment by paper check is expressly authorized by the COMMISSIONER, in the COMMISSIONER's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The GRANTEE shall comply with the State Comptroller's procedures for all Federal and applicable State Aid to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-474-4032. The GRANTEE herein acknowledges that it will not receive payment on any invoices submitted under this Contract agreement if it does not comply with the applicable State Comptroller's electronic payment procedures, except where the COMMISSIONER has expressly authorized payment by paper check as set forth above.

#### Section 2.6 Title to Materials

The materials installed at STATE expense pursuant to this Agreement, excluding the underlying land, shall be the property of the STATE and title thereto shall be vested in the STATE at the time of acquisition and shall remain vested in the STATE for the term of this Agreement. Upon completion of the term of this Agreement as identified in Section 3.17. herein, title shall be vested in the GRANTEE without the need of any execution and delivery of deeds, bill of sale or other title document.

#### Section 2.7 Use and Disposition of Project Facilities

Upon completion and acceptance of the Project Facilities by GRANTEE, GRANTEE shall certify in writing to the COMMISSIONER that the Project Facilities have been completed and accepted in accordance with the WORK SCHEDULE.

GRANTEE shall use or cause to be used and provide or cause to be provided rail service on or in connection with the Project Facilities in a careful and proper manner and comply with and conform to or cause to be complied with and conformed to all applicable Federal, State and Local laws, ordinances and regulations in any way relating to the use, rail service or maintenance thereof.

GRANTEE agrees that, during the period of time during which Title to the Project Facilities paid for by the STATE is held by the STATE or in any event if funding of the STATE's share is from the proceeds of bonds or other obligations issued by the STATE or any of its public benefit corporations, such Project Facilities shall not be sold, rendered unusable, relinquished, or disposed of by GRANTEE without the express written consent of the COMMISSIONER having first been obtained.

#### Section 2.8 Abandonment

GRANTEE shall have the right to abandon part or all or the Project Facilities, or to discontinue or curtail service thereover, provided that:

- a. Said abandonment, discontinuance or curtailment of service has been authorized by the federal Surface Transportation Board or any body having jurisdiction thereof;
- b. At the time of abandonment, discontinuance or curtailment of service, the Project Facilities shall comply with all provisions of said Agreement, and
- c. The GRANTEE has obtained the written permission of the COMMISSIONER prior to abandoning any or all of the Project Facilities.
- d. Should GRANTEE exercise this right to abandon part or all of the Project Facilities or permanently discontinue use thereof, GRANTEE shall reimburse STATE for Project Costs previously reimbursed by STATE under this Agreement based on straight line depreciation of Project Costs reimbursed by STATE calculated over the term of this agreement.

Section 2.9 Manner of Performing Work

GRANTEE agrees to undertake or cause to be undertaken and to proceed expeditiously with the work to be accomplished as described in the Work Schedule, and to complete or cause to be completed said work within the time limits specified in said Work Schedule. GRANTEE shall update said schedule upon written approval of the COMMISSIONER as necessary to assure that it accurately reflects the GRANTEE's timetable for completion.

Section 2.10 Inspection

During the term of this Agreement, the COMMISSIONER shall have the right to enter upon the Project Facilities for the purposes of inspecting and examining the condition of the Project Facilities and any activities conducted pursuant to this Agreement. Such right shall be exercised only at reasonable times and upon prior notice to GRANTEE.

Such inspection shall be conducted as outlined in the "Manual of Construction Supervision and Inspection Procedures for Work by Railroad Force Account" and/or the "Manual of Construction Supervision and Inspection Procedures for Railroad Let Contracts" as prepared by the Rail Division/Operations Bureau of the New York State Department of Transportation and dated January 1984, as amended. It is intended by the parties hereto that by reference to said manuals, it is agreed that the provisions thereof are deemed to be included herein and are accepted as binding upon the parties for purposes establishing construction inspection standards to the same extent and with the same force and effect as if said manuals had been set forth in and made a part of this Agreement.

Section 2.11 Environmental Protection

GRANTEE agrees that all work accomplished under this Agreement will be performed in accordance with all applicable local, State and Federal environmental laws and regulations.

**ARTICLE THREE: GENERAL PROVISIONS**

Section 3.1. Liability and Indemnification

GRANTEE hereby agrees to indemnify and hold harmless the STATE, the Department of Transportation and their respective agents and employees from any and all liability for injury to or death of any person or persons and for loss of, damage to, or destruction of any property or equipment which arises from activities conducted by or on behalf of the GRANTEE pursuant to this Agreement, including all related costs and counsel fees, except when attributable to the fault or negligence of the STATE, the Department of Transportation, its respective agents and employees other than GRANTEE.

GRANTEE agrees to require its contractor(s) to procure and maintain until final acceptance of the Project by the STATE, insurance of the kinds and in the amounts hereinafter provided in insurance companies authorized to do business in the State of New York, covering all companies under this Agreement whether performed by the GRANTEE, its contractor(s) or subcontractor(s). GRANTEE shall furnish to the STATE a certificate(s), in a form satisfactory to the STATE, showing compliance with this Article, which certificate(s), shall provide that the policies shall not be changed or canceled until thirty (30) days written notice has been given to the STATE. The kinds and amounts of insurance required are as follows:

In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, the GRANTEE's Contractor will be required to carry insurance of the following kinds and amounts:

a. Public Liability Insurance

With respect to the operations performed, regular Contractor's Public Liability Insurance is provided for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

b. Protective Public Liability Insurance

With respect to the operations performed, subcontractors provide regular Contractor's Protective Public Liability Insurance for a limit of not less than

\$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

c. Motor Vehicle Liability Insurance

With respect to any motor vehicles which may be used in connection with the work to be performed, the Contractor shall maintain a policy(s) as required by the Motor Vehicle Laws of the State of New York to bear license plates.

d. Railroad Protective Public Liability Insurance

With respect to the operations the Contractor or any of the Contractor's subcontractors perform, Contractor shall provide Railroad Protective Public Liability Insurance (AAR-AASHTO Form) in the name of all railroad companies operating at the location of the Project Facilities providing for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Such insurance shall be furnished with an aggregate of not less than \$6,000,000 for damages as a result of more than one occurrence.

The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a violation of the Agreement.

Section 3.2. Assignment

GRANTEE shall not assign this Agreement or any interest herein without first obtaining COMMISSIONER'S written consent thereto, which consent shall not be unreasonably withheld or delayed.

Section 3.3 Approval of Contracts

GRANTEE shall not execute any contract, subcontract or amendment thereto, or obligate itself in any other manner with any third party relating to or with respect to the Project to be undertaken pursuant to this Agreement without the prior written approval of the COMMISSIONER. This Section 3.3. shall apply only to contracts, subcontracts, amendments and obligations pursuant to which GRANTEE incurs costs or expenses which are to be paid for in whole or in part by the STATE pursuant to this Agreement.

#### Section 3.4. Non-Waiver

No covenant or condition of this Agreement can be waived except by the written consent of the parties hereto. Forbearance or indulgence by STATE in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by GRANTEE as applicable, and until complete performance by the appropriate party of such covenant or condition, STATE shall be entitled to invoke any remedy available to it under this Agreement or by law or in equity despite such forbearance or indulgence.

#### Section 3.5. Entire Agreement

This instrument and the appendices identified herein constitute the entire agreement between STATE and GRANTEE and it shall not be amended, altered or changed except by a written agreement signed by all of the parties hereto.

#### Section 3.6. Force Majeure

The obligations of the parties hereunder shall be subject to force majeure (which shall include strikes, riots, floods, acts of God, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for non-performance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

#### Section 3.7. Successors and Assigns

All the covenants and obligations of the parties hereunder shall bind their successors and assigns, and any document assigning same will incorporate language whereby assignee will specifically accept and assume all such covenants and

obligations.

### Section 3.8. Interpretation

The Article and Section headings utilized in this Agreement are for convenience only. This Agreement shall be construed in accordance with and governed by the Laws of the State of New York. All appendices attached hereto are integral parts of this Agreement and the provisions set forth in the Appendices shall bind the parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement. Nothing expressed or implied herein shall give or be construed to give to any person, firm or corporation other than STATE or GRANTEE any legal or equitable right, remedy or claim under or in respect to this Agreement. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by COMMISSIONER and GRANTEE unless a provision hereof expressly permits any of the parties to effect termination, amendment, supplementation, waiver or modification hereunder, in which such action shall be taken in accordance with the terms of such provision.

### Section 3.9. Records and Documents

GRANTEE shall maintain books, records and supporting documents in connection with the work to be accomplished pursuant to this Agreement. For a period of fifteen (15) years from the date of submission of the final bill by GRANTEE, books, records, bills, vouchers, payrolls, invoices and other documents of every type and description pertaining to the work to be accomplished under this Agreement shall be available to COMMISSIONER or the State Comptroller, or their authorized representatives, for inspection and audit. All costs charged under this Agreement shall be supported by payrolls and time records, material consumption reports, business expense statements, paid invoices and contracts evidencing in detail the nature of the charges for which reimbursement is sought.

### Section 3.10 Termination or Suspension

The STATE shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

(a) If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of GRANTEE, final payment shall be made based on the actual cost incurred by GRANTEE in accordance with the terms of this Agreement and as verified by audit. In determining the value of the work performed by GRANTEE prior to the termination, no consideration will be given to profit which GRANTEE might have made on the uncompleted portion of the work.

(b) If the termination is brought about as a result of unsatisfactory performance on the part of GRANTEE, the value of the work performed by GRANTEE, prior to termination shall be established by the percent of the amount of such work completed by GRANTEE and acceptable to the STATE, of the total amount of work contemplated by this Agreement.

(c) If, for any reason, the commencement, prosecution or timely completion of the Project is rendered improbable, infeasible, impossible or illegal, or if GRANTEE is determined by the STATE to be in default under its agreement, then the STATE may terminate the Project upon fifteen (15) days prior written notice to GRANTEE.

#### Section 3.11. Permits

The GRANTEE will obtain or will cause to be obtained all necessary permits, licenses and other forms of permission necessary to construct the Project Facilities described in the Work Schedule.

#### Section 3.12. Severability

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

#### Section 3.13. Notices

Any request, authorization, direction, notice, consent, waiver or other document provided for or permitted by this Agreement to be made upon, give or furnished to, or filed with one party by the other party, shall be in writing and shall be transmitted either: by deposit in the mails of the United States, postage prepaid, to the COMMISSIONER, or to GRANTEE, at the address here before identified; by facsimile transmission (COMMISSIONER 518-457-3183; GRANTEE 904-366-4042); by personal delivery; by expedited delivery service or by e-mail (COMMISSIONER [rhessinger@dot.state.ny.us](mailto:rhessinger@dot.state.ny.us); GRANTEE [gmgreen@lirr.org](mailto:gmgreen@lirr.org)). Each party may change the address at which it shall receive notification hereunder by notifying the other of such change.

#### Section 3.14. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be original.

#### Section 3.15. Relationship to Parties

The relationship of the GRANTEE to the STATE is that of any independent contractor, and the GRANTEE, in accordance with its status as such contractor, covenants and agrees that it will conduct itself consistent with such status, that is will neither hold itself out as nor claim to be an officer or employee of the STATE by reason hereof, and that it will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including, but not limited to worker's compensation coverage, retirement membership or credit.

#### Section 3.16. Effective Date of Agreement

This Agreement shall take effect at the time at which it is approved by the State Comptroller.

#### Section 3.17. Term of Agreement

The term of this Agreement shall commence on the effective date thereof specified in Section 3.16 and shall extend until ten (10) years from the date of

completion of the work as accepted by STATE.

Section 3.18. Documents Forming Agreement

This Agreement shall consist of this document and the following attachments: Appendix I, Work Schedule and Appendix A, Standard Clauses for all New York State Contracts.

CONTRACT NUMBER \_\_\_\_\_

THE LONG ISLAND RAILROAD COMPANY  
SIGNATURE

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

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally came \_\_\_\_\_ to me known to be the

\_\_\_\_\_ of the Long Island Railroad Company, the entity described in and which executed the foregoing instrument; acknowledged to me that he executed the same, pursuant to authorization by the Long Island Railroad Company.

\_\_\_\_\_  
Notary Public

Dated: \_\_\_\_\_

CONTRACT NUMBER \_\_\_\_\_

**TOWN OF RIVERHEAD  
SIGNATURE**

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

**Title:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally came \_\_\_\_\_ to me known to be the

\_\_\_\_\_ of the Town of Riverhead, the entity described in and which executed the foregoing instrument: acknowledged to me that he executed the same, pursuant to authorization by the Town of Riverhead.

\_\_\_\_\_

**Notary Public**

**Department Certification**

“In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.”

\_\_\_\_\_

**COMMISSIONER'S SIGNATURE**

**Dated:** \_\_\_\_\_

CONTRACT NUMBER \_\_\_\_\_

ATTORNEY GENERAL'S SIGNATURE

COMPTROLLER'S SIGNATURE

\_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**APPENDIX I – WORK SCHEDULE**

The project will consist of the items of work set forth in this Work Schedule, and as more fully described in plans and estimates prepared by or on behalf of the LIRR as may be required. Should contract plans, specifications and estimates be required, they shall be prepared by or on behalf of the LIRR and subject to STATE approval and shall be deemed to be included herein as part of the Work Schedule.

The Project provides three hundred fifty thousand dollars (\$350,000) for the installation of a new Number 10 Switch, supplied by others, along the LIRR Main Line at MP 67.56 in conjunction with Comptroller's Contract D032417.

All work will be completed by LIRR personnel.

**TRACK CONSTRUCTION:**

Removal of existing main track, installation of new switch and spur supplied by others, and surfacing of new switch and spur.	\$64,500.00
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**SIGNAL CONSTRUCTION:**

Installation of necessary items to complete signal communication for new switch.	269,000.00
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**PROJECT MANAGEMENT:**

	<u>\$16,500.00</u>
<b>TOTAL PROJECT COST:</b>	<b>\$350,000.00</b>

Individual work elements may be adjusted within the total Agreement amount with prior written approval of NYSDOT. NYSDOT's financial participation is limited to \$350,000.00 project costs. Any overage will be the responsibility of the GRANTEE.

This Agreement covers eligible costs incurred on or after April 9, 2010.

All work identified in this Work Schedule shall be completed no later than December 31, 2011.

## APPENDIX A: STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing

wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter or three (3) years after final payment, whichever is later. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in

Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Empire State Development Corporation's Division of Minority and Women's Business Development (MWBD) pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES (NON-FEDERAL AID NEW YORK STATE CONTRACTS).** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland; or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992 (NON-FEDERAL AID NEW YORK STATE CONTRACTS).** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROcity AND SANCTIONS PROVISIONS (NON-FEDERAL AID NEW YORK STATE CONTRACTS).** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

**23. CONTRACT TERMINATION PROVISION.** The State reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with the requirements contained in State Finance Laws §139j and §139k was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.

**24. PERSONAL INFORMATION SECURITY.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.

5/4/10

ADOPTED

TOWN OF RIVERHEAD

Resolution # 326

**ADOPTS A LOCAL LAW AMENDING CHAPTER 48 ENTITLED, "BEACHES AND RECREATION CENTERS" OF THE RIVERHEAD TOWN CODE (Seasonal parking permits.)**

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

**WHEREAS**, the Town Clerk was authorized to publish and post a public notice to hear all interested persons to consider a local law amending Chapter 48 entitled, "Beaches and Recreation Centers" of the Riverhead Town Code; and

**WHEREAS**, a public hearing was held on the 20<sup>th</sup> day of April, 2010 at 7:20 o'clock p.m. at Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York, the date, time and place specified in said public notice, and all persons wishing to be heard were heard.

**NOW THEREFORE BE IT RESOLVED**, that a local law amending Chapter 48 entitled "Beaches and Recreation Centers" of the Riverhead Town Code is hereby adopted as specified in the attached notice of adoption; and be it further

**RESOLVED**, that the Town Clerk is hereby authorized to publish the attached notice of adoption once in the News-Review Newspaper, the official newspaper, and to post same on the signboard at Town Hall; and be it further

**RESOLVED**, that a copy of this resolution be forwarded to the Recreation Department and the Town Attorney's Office.

**THE VOTE**

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

Walter Yes No

The Resolution Was  Was Not

Thereupon Duly Declared Adopted

**TOWN OF RIVERHEAD  
NOTICE OF ADOPTION**

**PLEASE TAKE NOTICE**, that the Town Board of the Town of Riverhead adopted a local law amending Chapter 48 entitled "Beaches and Recreation Centers" of the Riverhead Town Code at its regular meeting held on May 4, 2010. **Be it enacted** by the Town Board of the Town of Riverhead as follows:

**Chapter 48  
BEACHES AND RECREATION CENTERS  
ARTICLE II  
Use of Recreation Centers and Public Beaches**

**§ 48-7. Application for permit; fee.**

- A. The Recreation Department is hereby authorized to issue a permit for the use or operation of a motor vehicle on the Sound Beach to qualified residents or taxpayers of the Town of Riverhead, upon showing the following proof of residency:
- (1) Seasonal resident beach parking permit pursuant to § 48-13B(1);
  - (2) A valid tax receipt stub for the current year for any taxable real property within the Town of Riverhead assessed in the name of the applicant;
  - (3) A valid New York State motor vehicle registration license in the name of the applicant and with an address located within the Town of Riverhead. A post office box address is not acceptable proof of residency; or
  - (4) Such other proof of residency as is satisfactory to the Riverhead Recreation Department.

**§ 48-9. Expiration of permit.**

All permits issued pursuant to this article shall expire on ~~December 31~~ Labor Day of the year stated on the permit.

**§ 48-13. Parking and parking permits.**

A. Vehicles entering any public bathing beach or recreation center shall enter only at designated entrances and leave only through designated exits. Parking of all vehicles displaying a seasonal parking permit, obtained as hereinafter provided, shall be permitted in the spaces provided at any public bathing beach or recreation center. The following parking areas are hereby designated as Town of Riverhead parking by permit only areas:

- (1) Parking area at South Jamesport Beach.
- (2) Parking area at Iron Pier Beach.
- (3) Parking area at Reeves Park Beach.
- (4) Parking areas at Wading River Beach.
- (5) Parking area at Roanoke Fishing Point (unprotected beach).
- (6) Parking area at Edwards Avenue Fishing Point (unprotected beach).
- (7) (Reserved)
- (8) Parking area at Wading River Boat Launch.

- (9) (Reserved)
- (10) Parking area at boat launching facility, Peconic Bay Boulevard, South Jamesport.
- (11) Two parking areas at Hulse Landing Beach, Wading River (unprotected beach).
- (12) Parking area at Oakleigh Avenue, Baiting Hollow (unprotected beach).

B. Permits. The Recreation Department is hereby authorized to issue a seasonal parking permit for use at any public bathing beach or recreation center. Seasonal parking permits for parking vehicles in the designated parking areas shall be issued as follows:

(1) Seasonal Resident parking permit.

(a) ~~A An~~ seasonal ~~annual~~ parking permit shall be issued to all persons who are qualified residents of the Town of Riverhead, and it shall run from ~~January 1 Memorial Day~~ through ~~December 31 Labor Day~~. Persons applying for a seasonal resident parking permit will be requested to submit for inspection one of the following as proof of residence:

[1] A validated tax receipt stub for the current year for any taxable real property within the Town of Riverhead assessed in the name of the applicant.

[2] A valid New York State motor vehicle registration license in the name of the applicant and with an address located within the Town of Riverhead.

[3] Such other proof of residence as is satisfactory to the Riverhead Recreation Department.

(b) Upon approval, a seasonal resident parking permit shall be issued and inscribed with the vehicle license registration number. Such permit shall not be transferred to another vehicle.

(c) A seasonal resident parking permit for a motor vehicle shall be permanently affixed and prominently displayed on the vehicle for which it was issued by being affixed on the left-hand side of the front bumper.

(d) There will be a cost of \$10 for a seasonal resident parking permit. The seasonal resident parking permit fee for seniors 60 years of age and older shall be \$5.

(2) Senior citizen/handicapped seasonal resident identification permit (ID permit). The Recreation Department shall issue identification (ID) permits to senior citizens or handicapped residents who do not drive and need someone else to take them to the beach. These cards will grant access to any vehicle as long as the person is a passenger in the car. The card should be left in plain sight when the people leave the vehicle. In order to obtain access to recreation facilities, the senior citizen or handicapped resident must produce picture ID to the attendant. There will be a cost of \$5 of the ID permit.

(3) Nonresident seasonal parking permit.

(a) A nonresident seasonal parking permit shall be issued by the Riverhead Recreation Department to all persons who do not qualify as residents as defined in § 48-13B(1)(a) hereof.

(b) The fee for the issuance of a nonresident seasonal parking permit shall be \$150 annually or \$75 weekly or \$25 daily.

(c) Daily nonresident seasonal parking permits may be issued for the parking

of vehicles at all Town beaches to any person by the attendant on duty at such parking areas.

- (4) South Jamesport Boat Ramp parking permit. The fee for the issuance of a seasonal parking permit shall be \$10 annually.

D. Fishing permits.

- (1) Resident fishing permits for fishing purposes shall be issued by the Riverhead Recreation Department to any vehicle with a valid ~~annual~~ seasonal parking permit and will entitle the vehicle to remain at the parking areas after 10:00 p.m.
- (2) There will be no cost for a resident fishing permit.

- Underscore represents addition(s)
- Overstrike represents deletion(s)

Dated: Riverhead, New York  
May 4, 2010

**BY ORDER OF THE TOWN BOARD  
OF THE TOWN OF RIVERHEAD**

**DIANE M. WILHELM, Town Clerk**

:LCalamita

TOWN OF RIVERHEAD

Resolution # 327

**AUTHORIZES TOWN CLERK TO POST AND PUBLISH THE ATTACHED NOTICE TO BIDDERS FOR THE REMOVAL OF LIQUID SLUDGE**

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

**RESOLVED**, that the Town Board be and does hereby authorize the Town Clerk to post and publish the attached Notice to Bidders in the May 13, 2010, issue of the official Town newspaper for the Removal of Liquid Sludge from the Riverhead Sewer District and Riverhead Scavenger Waste District, Riverhead, New York; and

**BE, IT FURTHER, RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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  Was Not   
Thereupon Duly Declared Adopted

**TOWN OF RIVERHEAD  
NOTICE TO BIDDERS**

Sealed proposals for the Removal of Liquid Sludge will be received by the Town of Riverhead in the Office of the Town Clerk, Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York on May 25, 2010 at which time they will be publicly opened and read aloud at 11:00 am.

Plans and specifications may be examined on or about May 13, 2010 at the Office of the Town Clerk between the hours of 8:30 am and 4:30 pm weekdays, except holidays or can be obtained by visiting the Town of Riverhead website: [www.riverheadli.com](http://www.riverheadli.com) and click on Bid Requests.

Each proposal must be submitted on the form provided and must be in a sealed envelope clearly marked, "Removal of Liquid Sludge" and must be accompanied by a bid surety as stated in the Instructions to Bidders.

Please take further notice that the Town Board reserves the right to reject in whole or in part any or all bids, waive any informality in the bids and accept the bid which is deemed most favorable in the interest of the Town of Riverhead. The Town Board will use its discretion to make judgmental determination as to its best estimate of the lowest bidder.

**BY ORDER OF THE RIVERHEAD TOWN BOARD**  
Diane M. Wilhelm, Town Clerk

Dated: May 17, 2010

5/4/10

ADOPTED

TOWN OF RIVERHEAD

Resolution # 328

ADOPTS A LOCAL LAW TO AMEND CHAPTER 108 ENTITLED, "ZONING" OF THE RIVERHEAD TOWN CODE (Industrial C (IC) Zoning Use District – Uses.)

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

**WHEREAS**, the Town Clerk was authorized to publish and post a public notice to hear all interested persons to consider a local law amending Chapter 108, entitled "Zoning" of the Riverhead Town Code; and

**WHEREAS**, a public hearing was held on the 16th day of March, 2010 at 7:20 o'clock p.m. at the Riley Avenue Elementary School, 374 Riley Avenue, Calverton, New York, the date, time and place specified in said public notice, and all persons wishing to be heard were heard.

**NOW THEREFORE BE IT RESOLVED**, that the local law amending Chapter 108 entitled, "Zoning" of the Riverhead Town Code is hereby adopted as specified in the attached notice of adoption; and be it further

**RESOLVED**, that the Town Clerk is hereby authorized to publish the attached notice of adoption once in the News-Review Newspaper and to post same on the signboard at Town Hall; and be it further

**RESOLVED**, that the Town Clerk is hereby authorized to forward a copy of this resolution to Councilwoman Giglio; the Planning Department, the Building Department and the Office of the Town Attorney.

THE VOTE

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

Walter Yes No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

**TOWN OF RIVERHEAD  
NOTICE OF ADOPTION**

**PLEASE TAKE NOTICE**, that the Town Board of the Town of Riverhead adopted a local law amending Chapter 108 entitled "Zoning" of the Riverhead Town Code at its regular meeting held on May 4, 2010. **Be it enacted** by the Town Board of the Town of Riverhead as follows:

**Chapter 108  
Zoning**

**ARTICLE LI  
Industrial C (IC) Zoning Use District**

**§ 108-278. Uses.**

In the IC Zoning Use District, no building, structure, or premises shall be used or arranged or designed to be used, and no building or structure shall be hereafter erected, reconstructed, or altered, unless otherwise provided in this chapter, except for the following permitted uses or specially permitted uses and their customary accessory uses:

A. Permitted uses:

(12) Manufacturing (indoor).

- Underline represents addition(s)

Dated: Riverhead, New York  
May 4, 2010

LCalamita

**BY ORDER OF THE TOWN BOARD  
OF THE TOWN OF RIVERHEAD**

**DIANE M. WILHELM, Town Clerk**

**Resolution #329**

**BOND RESOLUTION  
(SUBJECT TO PERMISSIVE REFERENDUM)**

At a regular meeting of the Town Board of the Town of Riverhead, Suffolk County, New York, held at the Town Hall, in Riverhead, New York, on the 4th day of May, 2010, at 2:00 o'clock P.M., Prevailing Time.

The meeting was called to order by Supervisor Sean Walter, and upon roll being called, the following were:

PRESENT:

Councilman John Dunleavy

Councilman Jim Wooten

Councilman George Gabrielsen

Councilwoman Jodi Giglio

ABSENT:

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

Resolution #329

BOND RESOLUTION DATED MAY 4, 2010.

A RESOLUTION, SUBJECT TO PERMISSIVE REFERENDUM, AUTHORIZING THE RECONSTRUCTION OF ROADS THROUGHOUT AND IN AND FOR THE TOWN OF RIVERHEAD, SUFFOLK COUNTY, NEW YORK, AT A MAXIMUM ESTIMATED COST OF \$1,000,000, AND AUTHORIZING THE ISSUANCE OF \$1,000,000 BONDS OF SAID TOWN TO PAY THE COST THEREOF.

WHEREAS, all conditions precedent to the financing of the capital project hereinafter described, including compliance with the provisions of the State Environmental Quality Review Act as a Type II Action, have been performed; and

WHEREAS, it is now desired to authorize such capital project and its financing; NOW, THEREFORE,

BE IT RESOLVED, by the affirmative vote of not less than two-thirds of the total voting strength of the Town Board of the Town of Riverhead, Suffolk County, New York, as follows:

Section 1. The reconstruction of roads throughout and in and for the Town of Riverhead, Suffolk County, New York, including flood remediation work and other incidental improvements and expenses in connection therewith, is hereby authorized, at a maximum estimated cost of \$1,000,000.

Section 2. The plan for the financing of the aforesaid maximum estimated cost is by the issuance of \$1,000,000 bonds of said Town hereby authorized to be issued therefor pursuant to the provisions of the Local Finance Law.

Section 3. It is hereby determined that the period of probable usefulness of the aforesaid class of objects or purposes is fifteen years, pursuant to subdivision 20(c) of paragraph a of Section 11.00 of the Local Finance Law. It is hereby further determined that the maximum maturity of the bonds herein authorized **will exceed five years.**

Section 4. The faith and credit of said Town of Riverhead, Suffolk County, New York, are hereby irrevocably pledged for the payment of the principal of and interest on such bonds as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such bonds becoming due and payable in such year. There shall annually be levied on all the

taxable real property in said Town, a tax sufficient to pay the principal of and interest on such bonds as the same become due and payable.

Section 5. Subject to the provisions of the Local Finance Law, the power to authorize the issuance of and to sell bond anticipation notes in anticipation of the issuance and sale of the bonds herein authorized, including renewals of such notes, is hereby delegated to the Supervisor of said Town, the chief fiscal officer. Such notes shall be of such terms, form and contents, and shall be sold in such manner, as may be prescribed by said Supervisor, consistent with the provisions of the Local Finance Law.

Section 6. All other matters except as provided herein relating to the bonds herein authorized including the date, denominations, maturities and interest payment dates, within the limitations prescribed herein and the manner of execution of the same, including the consolidation with other issues, and also the ability to issue bonds with substantially level or declining annual debt service, shall be determined by the Supervisor, the chief fiscal officer of such Town. Such bonds shall contain substantially the recital of validity clause provided for in Section 52.00 of the Local Finance Law, and shall otherwise be in such form and contain such recitals, in addition to those required by Section 51.00 of the Local Finance Law, as the Supervisor shall determine consistent with the provisions of the Local Finance Law.

Section 7. The validity of such bonds and bond anticipation notes may be contested only if:

- 1) Such obligations are authorized for an object or purpose for which said Town is not authorized to expend money, or
- 2) The provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

- 3) Such obligations are authorized in violation of the provisions of the Constitution.

Section 8. This resolution shall constitute a statement of official intent for purposes of Treasury Regulations Section 1.150-2. Other than as specified in this resolution, no monies are, or are reasonably

expected to be, reserved, allocated on a long-term basis, or otherwise set aside with respect to the permanent funding of the class of objects or purposes described herein.

Section 9. Upon this resolution taking effect, the same shall be published in full or summary form in the *News Review*, which is hereby designated as the official newspaper of said Town for such purpose, together with a notice of the Town Clerk in substantially the form provided in Section 81.00 of the Local Finance Law.

Section 10. **THIS RESOLUTION IS ADOPTED SUBJECT TO PERMISSIVE REFERENDUM.**

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

**THE VOTE**

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

Walter Yes No

The Resolution Was  Was Not

Thereupon Duly Declared Adopted

\* \* \* \* \*

NOTICE OF ADOPTION OF RESOLUTION

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Riverhead, Suffolk County, New York, at a meeting held on the 4th day of May, 2010, duly adopted the resolution published herewith **subject to a permissive referendum.**

Dated: Riverhead, New York,  
May 2010.

Diane M. Wilhelm  
Town Clerk

Resolution # \_\_\_\_\_

BOND RESOLUTION DATED MAY 4, 2010.

A RESOLUTION, SUBJECT TO PERMISSIVE REFERENDUM, AUTHORIZING THE RECONSTRUCTION OF ROADS THROUGHOUT AND IN AND FOR THE TOWN OF RIVERHEAD, SUFFOLK COUNTY, NEW YORK, AT A MAXIMUM ESTIMATED COST OF \$1,000,000, AND AUTHORIZING THE ISSUANCE OF \$1,000,000 BONDS OF SAID TOWN TO PAY THE COST THEREOF.

WHEREAS, all conditions precedent to the financing of the capital project hereinafter described, including compliance with the provisions of the State Environmental Quality Review Act as a Type II Action, have been performed; and

WHEREAS, it is now desired to authorize such capital project and its financing; NOW, THEREFORE,

BE IT RESOLVED, by the affirmative vote of not less than two-thirds of the total voting strength of the Town Board of the Town of Riverhead, Suffolk County, New York, as follows:

Section 1. The reconstruction of roads throughout and in and for the Town of Riverhead, Suffolk County, New York, including flood remediation work and other incidental improvements and expenses in connection therewith, is hereby authorized, at a maximum estimated cost of \$1,000,000.

Section 2. The plan for the financing of the aforesaid maximum estimated cost is by the issuance of \$1,000,000 bonds of said Town hereby authorized to be issued therefor pursuant to the provisions of the Local Finance Law.

Section 3. It is hereby determined that the period of probable usefulness of the aforesaid class of objects or purposes is fifteen years, pursuant to subdivision 20(c) of paragraph a of Section 11.00 of the Local Finance Law. It is hereby further determined that the maximum maturity of the bonds herein authorized **will exceed five years.**

Section 4. The faith and credit of said Town of Riverhead, Suffolk County, New York, are hereby irrevocably pledged for the payment of the principal of and interest on such bonds as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such bonds becoming due and payable in such year. There shall annually be levied on all the taxable real property in said Town, a tax sufficient to pay the principal of and interest on such bonds as the same become due and payable.

Section 5. Subject to the provisions of the Local Finance Law, the power to authorize the issuance of and to sell bond anticipation notes in anticipation of the issuance and sale of the bonds herein authorized, including renewals of such notes, is hereby delegated to the Supervisor of said Town, the chief fiscal officer. Such notes shall be of such terms, form and contents, and shall be sold in such manner, as may be prescribed by said Supervisor, consistent with the provisions of the Local Finance Law.

Section 6. All other matters except as provided herein relating to the bonds herein authorized including the date, denominations, maturities and interest payment dates, within the limitations prescribed herein and the manner of execution of the same, including the consolidation with other issues, and also the ability to issue bonds with substantially level or declining annual debt service, shall be determined by the Supervisor, the chief fiscal officer of such Town. Such bonds shall contain substantially the recital of validity clause provided for in Section 52.00 of the Local Finance Law, and shall otherwise be in such form and contain

such recitals, in addition to those required by Section 51.00 of the Local Finance Law, as the Supervisor shall determine consistent with the provisions of the Local Finance Law.

Section 7. The validity of such bonds and bond anticipation notes may be contested only if:

- 1) Such obligations are authorized for an object or purpose for which said Town is not authorized to expend money, or
- 2) The provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

- 3) Such obligations are authorized in violation of the provisions of the Constitution.

Section 8. This resolution shall constitute a statement of official intent for purposes of Treasury Regulations Section 1.150-2. Other than as specified in this resolution, no monies are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside with respect to the permanent funding of the class of objects or purposes described herein.

Section 9. Upon this resolution taking effect, the same shall be published in full or summary form in the *News Review*, which is hereby designated as the official newspaper of said Town for such purpose, together with a notice of the Town Clerk in substantially the form provided in Section 81.00 of the Local Finance Law.

Section 10. **THIS RESOLUTION IS ADOPTED SUBJECT TO PERMISSIVE REFERENDUM.**

limitations prescribed herein and the manner of execution of the same, including the consolidation with other issues, and also the ability to issue bonds with substantially level or declining annual debt service, shall be determined by the Supervisor, the chief fiscal officer of such Town. Such bonds shall contain substantially the recital of validity clause provided for in Section 52.00 of the Local Finance Law, and shall otherwise be in such form and contain such recitals, in addition to those required by Section 51.00 of the Local Finance Law, as the Supervisor shall determine consistent with the provisions of the Local Finance Law.

Section 7. The validity of such bonds and bond anticipation notes may be contested only if:

- 1) Such obligations are authorized for an object or purpose for which said Town is not authorized to expend money, or
- 2) The provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

- 3) Such obligations are authorized in violation of the provisions of the Constitution.

Section 8. This resolution shall constitute a statement of official intent for purposes of Treasury Regulations Section 1.150-2. Other than as specified in this resolution, no monies are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside with respect to the permanent funding of the class of objects or purposes described herein.

Section 9. Upon this resolution taking effect, the same shall be published in full or summary form in the *News Review*, which is hereby designated as the official newspaper of said Town for such purpose, together with a notice of the Town Clerk in substantially the form provided in Section 81.00 of the Local Finance Law.

Section 10. **THIS RESOLUTION IS ADOPTED SUBJECT TO PERMISSIVE  
REFERENDUM.**

TOWN OF RIVERHEAD

Resolution # 330

**APPROVES CHAPTER 90 APPLICATION OF THE  
AMERICAN HEART ASSOCIATION  
("First Annual Healing Heart 5K Run/Walk" at Martha Clara Vineyard)**

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

**WHEREAS**, on April 13, 2010, the American Heart Association submitted a Chapter 90 Application for the purpose of conducting an event entitled "First Annual Healing Heart 5K Run/Walk" to be held at Martha Clara Vineyards, 6025 Sound Avenue, Riverhead, New York, on Sunday, May 16, 2010, between the hours of 7:00 a.m. and 2:00 p.m.; and

**WHEREAS**, the American Heart Association has completed and filed a Short Environmental Assessment Form in accordance with 6 NYCRR 617; and

**WHEREAS**, the Town Board of the Town of Riverhead has declared itself "Lead Agency" in accordance with 6 NYCRR 617.6(b), and

**WHEREAS**, the applicant has requested the application fee be waived due to its not-for-profit status; and

**WHEREAS**, the Town Attorney of the Town of Riverhead has reviewed all documents including the certificate of insurance regarding said application.

**NOW THEREFORE BE IT RESOLVED**, that Town of Riverhead hereby determines the action to be an "Unlisted" action in accordance with 6 NYCRR 617.7(a) and hereby issues a Negative Declaration pursuant to 6 NYCRR 617.7(a)(2), and be it further

**RESOLVED**, that the application of the American Heart Association for the purpose of conducting an event entitled "First Annual Healing Heart 5K Run/Walk" to be held at Martha Clara Vineyards, 6025 Sound Avenue, Riverhead, New York, on Sunday, May 16, 2010, between the hours of 7:00 a.m. and 2:00 p.m., is hereby approved; and be it further

**RESOLVED**, that this approval is subject to the provisions of Riverhead Town Code Chapter 81 - "Noise Control", Chapter 108-56 - "Signs" and any other section of the Riverhead Town Code that may pertain to this event; and be it further

**RESOLVED**, that this approval is subject to receipt of an updated certificate of insurance naming the Town of Riverhead as an additional insured no later than **May 12, 2010**; and be it further

**RESOLVED**, that the Town Board of the Town of Riverhead hereby waives the Chapter 90 Application fee due to the applicant's not-for-profit status; and be it further

**RESOLVED**, that a fire safety inspection by the Town Fire Marshal is required prior to the opening of this event to the public. The Riverhead Fire Marshal shall be contacted at least three days in advance at (631) 727-3200 extension 601, for the purpose of arranging the "pre-opening" inspection appointment; and be it further

**RESOLVED**, that the Town Clerk is hereby authorized to forward a copy of this resolution to the American Heart Association, 125 East Bethpage Road, Suite 100, Bethpage, NY, 11803, Office of the Fire Marshal and Engineering Department.

**THE VOTE**

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

Walter Yes No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 331

APPOINTS A CALL-IN CHAPERONE TO THE RECREATION DEPARTMENT

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

**WHEREAS**, a Call-In Recreation Chaperone is needed by the Riverhead Town Recreation Department for various Recreation Bus Trips

**NOW THEREFORE BE IT RESOLVED**, that effective May 5, 2010, this Town Board hereby appoints Cathleen Fox to the position of Call-In Chaperone, Level 1, to be paid the rate of \$8.50 per hour and

**RESOLVED**, that a copy of this resolution shall be forwarded to Cathleen Fox, Recreation Department, Personnel Department and the Payroll Department.

THE VOTE

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

Walter Yes No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 332

APPOINTS A CALL-IN REGISTERED NURSE TO THE RECREATION DEPARTMENT

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

**WHEREAS**, a Call-In Registered Nurse is needed by the Riverhead Town Recreation Department for the Town of Riverhead Summer Camp Programs

**NOW THEREFORE BE IT RESOLVED**, that effective May 5, 2010, this Town Board hereby appoints Christine Spero to the position of Call-In Registered Nurse, to be paid the rate of \$22.00 per hour to the Recreation Department and

**RESOLVED**, that a copy of this resolution shall be forwarded to Christine Spero, Recreation Department, Personnel Department and the Payroll Department.

THE VOTE

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

Walter Yes No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

## TOWN OF RIVERHEAD

Resolution # 333**REQUESTS OWNERSHIP TRANSFER OF THE NEW YORK STATE ARMORY PROPERTY, SCTM No. 600-108-2-3, FROM THE STATE OF NEW YORK-DIVISION OF MILITARY AFFAIRS TO THE TOWN OF RIVERHEAD**

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Gabrielsen

**WHEREAS**, the Town of Riverhead, in the interests of public safety and the proper administration of municipal services, including police, emergency and court services, desires larger physical space and property to administer such named services, and

**WHEREAS**, the present police station and justice court building is cramped, spatially inefficient, overcrowded at times and suffers from inadequate parking, and

**WHEREAS**, the State of New York-Division of Military Affairs possesses suitable physical space and property located on Rte 58, Town of Riverhead, SCTM No. 600-108-2-3, commonly known as the New York State Armory property, suitable to the Town of Riverhead in its desire for larger physical space and property to administer such named services, and

**WHEREAS**, the Town of Riverhead, if it acquires ownership of the Armory property, shall also consider the property for use as a future Peconic Bay dispatch facility which could serve the dispatch interests of all east end towns and villages.

**WHEREAS**, the Town of Riverhead, if it acquires ownership of the Armory property, shall utilize LEED design and construction guidelines so as to achieve the minimum standard of LEED certification.

**NOW THEREFORE BE IT RESOLVED**, that the town supervisor is authorized and directed to petition the State of New York-Division of Military Affairs, to transfer ownership of the Armory property, SCTM No. 600-108-2-3, from the State of New York-Division of Military Affairs to the Town of Riverhead.

**RESOLVED**, that a copy of this resolution shall be forwarded to the Honorable Kenneth P. LaValle, New York State Senator, 325 Middle Country Road, Suite 4, Selden, New York, 11784, and the Honorable Marc S. Alessi, New York State Assemblymen, 6144 Route 25A, Building A, Suite 5, Wading River, New York 11792, New York State Assemblyman Fred Thiele, Jr., P.O. Box 3062, Bridgehampton, New York 11932 and Michael Harrison, Regional Director, Office of the Governor, State Office Building, 250 Veterans Memorial Highway, Suite 2A-18, Hauppauge, New York 11788.

**THE VOTE**

Giglio  Yes  No    Gabrielsen  Yes  No  
Wooten  Yes  No    Dunleavy  Yes  No  
Walter  Yes  No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 334

**AUTHORIZES SUPERVISOR TO EXECUTE AGREEMENT WITH THE RIVERHEAD VOLUNTEER AMBULANCE CORPS, INC.**

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

**WHEREAS**, the Town of Riverhead Ambulance District has entered into agreements with the Riverhead Volunteer Ambulance Corps., Inc. to provide ambulance, emergency medical and related emergency services to the Town’s Ambulance District; and

**WHEREAS**, both parties wish to continue the contractual relationship whereby the Riverhead Volunteer Ambulance Corps, Inc. shall provide ambulance, emergency medical and related emergency services to the Town of Riverhead Ambulance District;

**NOW, THEREFORE, BE IT RESOLVED** that the Town Board hereby authorizes the Supervisor to execute an Agreement between the Town of Riverhead Ambulance District and the Riverhead Volunteer Ambulance Corps. wherein the Riverhead Volunteer Ambulance Corps, Inc. shall provide ambulance, emergency medical and related emergency services to the Town of Riverhead Ambulance District for a term of five years; and be it further

**RESOLVED** that the Town Clerk is hereby directed to forward a copy of this Resolution to the Riverhead Volunteer Ambulance Corps, Inc., P.O. Box 924, Riverhead, New York 11901 and the Accounting Department.

**THE VOTE**

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

Walter Yes No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

AGREEMENT

between

TOWN OF RIVERHEAD AMBULANCE DISTRICT

and

RIVERHEAD VOLUNTEER AMBULANCE CORPS, INC.

AGREEMENT made this 4th day of May 2010, by and between the TOWN OF RIVERHEAD AMBULANCE DISTRICT, a municipal corporation having its principal office and place of business at 200 Howell Avenue, Riverhead, NY 11901 (hereinafter referred to as the "Ambulance District"), and the RIVERHEAD VOLUNTEER AMBULANCE CORPS, INC., a not for profit corporation pursuant to IRC §501(c)(3), with mailing address at PO Box 924, Riverhead, NY 11901 (hereinafter referred to as the "Ambulance Corps").

WITNESSETH:

WHEREAS, in accordance with Article 30 of the Public Health Law of the State of New York, the Ambulance Corps is a volunteer organization providing emergency medical and related emergency services within the Town, having under current registration with New York State, the right and jurisdiction to provide emergency medical service and related emergency services to the area encompassed by the Ambulance District; and

WHEREAS, the Ambulance Corps is authorized by resolution of its Board of Directors to enter an agreement with the Ambulance District for provision of services; and

WHEREAS, the parties hereto are desirous of entering into an agreement for the provision of emergency medical and related emergency services to the Ambulance District pursuant to the terms hereto;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants, conditions and obligations contained herein, it is hereby agreed by and between the parties as follows:

I. TERMS OF AGREEMENT

A. The term of this agreement shall commence April 30, 2010, and shall remain in full force and effect until December 31, 2014.

B. The Ambulance District, at its option, may terminate this Agreement upon ninety (90) days written notice to the Ambulance Corps in the event that 1) the Ambulance Corps violates any provision of this agreement or 2) the Ambulance Corps fails to comply with any and all applicable registration requirements of the State of New York and all applicable federal, state and local laws and regulations. In the event the Ambulance District elects to terminate this agreement pursuant to subsections 1 or 2 above, the Ambulance Corps shall have a reasonable time, not to exceed thirty (30) days, to cure, remedy, or correct the violation to the sole satisfaction of the Ambulance District.

C. Either party, at its option, may for any reason terminate this agreement upon one hundred eighty (180) days written notice to the other party.

D. The parties agree that any property purchased by the Ambulance Corps with contract funds shall be the sole property of the Ambulance Corps. However, the Ambulance Corps agrees that should this contract be terminated for any reason whatsoever, any equipment, supplies, goods, or services purchased with contract funds that retain useful life shall be donated by the Ambulance Corps to the Ambulance District. The Ambulance Corps further agrees that the transfer of said equipment, supplies, goods, or services as set forth above shall take place as soon as is practicable after the termination of the contract and the Ambulance Corps will cause

the immediate execution of any and all documents necessary to effectuate the donation of all of its right, title or interest in said equipment, supplies, goods or services.

E. Should this contract terminate for any reason, the Ambulance District shall assume any existing, valid obligations incurred by the Ambulance Corps in connection with the purchases made under this contract. However, the Ambulance District will not assume responsibility for any delinquent accounts of the Ambulance Corps.

F. The Ambulance Corps agrees that should this contract terminate for any reason whatsoever, the unexpended or unencumbered balance of the funds paid to it pursuant to this contract shall immediately be refunded to the Ambulance District upon termination of the agreement.

## II. PROVISION OF SERVICES

A. The Ambulance Corps will provide emergency medical and related emergency services to all persons located within the boundaries of the Ambulance District; said services shall be provided in a professional manner and in accordance with the usual and customary standards of voluntary ambulance services in the County of Suffolk. Said services will include provision of transportation to the nearest appropriate medical facility, as determined at the sole discretion of the Ambulance Corps.

B. The Ambulance Corps agrees to provide said services as herein before described twenty-four (24) hours per day, seven (7) days per week, fifty-two (52) weeks per year for each and every year covered by this agreement in keeping with the usual and customary standard of care of the voluntary ambulance services.

C. The Ambulance Corps further agrees that it will supply all of the equipment and properly trained personnel necessary to adequately provide said services to the Ambulance

District in keeping with the usual and customary standard of care of the voluntary ambulance services, within the confines of its approved budget.

D. In furtherance of the foregoing, the Ambulance Corps agrees to continue recruiting efforts to obtain additional qualified personnel to provide services to the Ambulance District on behalf of the Ambulance Corps. The Ambulance Corps agrees to provide applications to eligible persons and to process them without prejudice. This means that the Ambulance Corps will not discriminate against any applicant on the basis of age, race, color, national origin, sex, sexual orientation. An eligible person shall be defined as a person who is eighteen (18) years of age or older and who will assist the Ambulance Corps in providing professional ambulance service to the community.

E. In addition to the foregoing, the Ambulance Corps agrees to maintain a formal training program for its personnel, with the understanding that the foregoing training programs are not necessarily directly controlled by the Ambulance Corps and may be subject to availability of programs offered by other organizations.

F. The parties agree that it is a benefit to the Ambulance District to enter into emergency mutual aid agreements with the surrounding communities. The Ambulance District hereby authorizes the Ambulance Corps to enter into such agreements.

G. In addition to the foregoing, the Ambulance Corps and the Ambulance District agree that the Ambulance Corps may, at its sole discretion, enter into agreements to provide, non-emergency ambulance services such as community education activities, mutual aid, stand-bys, and first aid stations for community organizations and other municipal entities, and that funds provided under this contract may be used to finance these activities.

H. The Ambulance Corps agrees that for a management fee of Ten Thousand (\$10,000) Dollars, it shall coordinate the repair and/or maintenance of property owned or leased by the Ambulance District or the Town of Riverhead which is authorized for use by the Ambulance Corps. The management fee is separate from and shall be in addition to the contract amount set forth in section III, paragraph A.

### III. COMPENSATION

A. The Ambulance District agrees to pay the Ambulance Corps the sum of Seven Hundred Thirty Three Thousand and Four Hundred Twenty Two Dollars (\$733,422.00) for the period April 20, 2010 through December 31, 2010 less monies paid to the Ambulance Corp during the 2009 contract holdover period as and for a first quarterly payment of 2010 in the amount of One Hundred Fifty Seven Thousand One Hundred Eighty Eight Dollars and Seventy Five Cents ((\$157, 188.75). The Ambulance Corps agrees that property purchased through use of contract monies shall be used, as best as can be practically determined, solely for the benefit of the Ambulance District. The Ambulance District understands that the Ambulance Corps may, with the prior approval by resolution of the Board of the Ambulance District, enter into agreements with other Ambulance or Fire Districts to provide similar services as those provided to the Riverhead Ambulance District. Under such circumstances, it is understood that the Ambulance Corps may not be able to partition all costs exactly between the different districts it serves, but the Ambulance will do its best to distribute shared supplies, equipment, labor, and other expenses among the funding agencies proportional to their use in each district.

B. For the balance of the contract period, the Ambulance Corps will submit to the Ambulance District, not later than August 14 of each year, a proposed budget representing the Ambulance Corps' anticipated operating and management costs for the subsequent year. In the

event that the parties cannot agree on the compensation amount for the ensuing year, the previous year's contracted amount will constitute the agreed upon figure until such time as an agreed amount can be reached and at that time any necessary adjustments shall be made.

C. The Ambulance District shall pay to the Ambulance Corps the agreed upon contractual amount in quarterly payments on January 15, April 30, July 15 and October 15 for 2010. As stated above in contract provision III (A) labeled "Compensation", the first quarterly payment was made pursuant to the 2009 contract holdover provision in the amount of One Hundred Fifty Seven Thousand One Hundred Eighty Eight Dollars and Seventy Five Cents ((\$157, 188.75). All future payments for 2010 shall be determined by the budget less payment made as and for a first quarterly payment. For each contract year after 2010, the Ambulance District shall pay to the Ambulance Corps the agreed upon contractual amount in quarterly payments on January 15, April 15, July 15 and October 15. Payments may be withheld by the Ambulance District if the quarterly reports, as herein required in paragraph "F", have not been received by the end of the subsequent quarter. The Ambulance District shall make payments within twenty (20) business days of receipt of the delinquent quarterly reports.

D. The Ambulance Corps agrees to maintain Ambulance District funds paid under this agreement in separate accounts or instruments and not to commingle the same with charitable or other funds of the Ambulance Corps.

E. The method of bookkeeping employed by the Ambulance Corps shall be in keeping with generally accepted accounting principles.

F. The Ambulance Corps hereby agrees to provide quarterly written reports of its expenditures and income to the Board of the Ambulance District including any expenditures or utilization of monies from the reserve account as herein provided in paragraph "N". On or before

June 15 of each year, the Ambulance Corps agrees to provide to the Ambulance District certified financial statements with respect to the monies paid to it under this agreement for the previous year. Said financial statements shall be prepared by a Certified Public Accountant in accordance with generally accepted accounting principals. The Ambulance Corps further agrees to provide the Ambulance District with copies of annual financial reports filed with the New York Secretary of State as required by subsection 519 of the Not for Profit Law of the State of New York and the required Internal Revenue Service 990 Report. Said forms shall be filed with the Ambulance District annually within the time allotted by law for filing same with the Secretary of State in accordance with Sub-Section 172-b.

G. It shall be the responsibility of the Ambulance Corps to monitor its budget in such a manner as to preclude the unnecessary overdraft of any budgeted line item. Budget transfers, when necessary, must be authorized by a resolution of the Board of Directors of the Ambulance Corps, a written copy of which will be provided to the Board of the Ambulance District.

H. The Ambulance Corps will provide 60 days written notice to the Ambulance District of any single item purchase, not set forth in the approved budget, which exceeds Ten Thousand Dollars (\$10,000).

I. In purchasing property, equipment, supplies or furnishings, the Ambulance Corp. agrees to make every reasonable effort to obtain the lowest possible price.

J. The Ambulance Corps agrees that the maintenance, repairs, improvement or purchase of any property, either real or personal, owned or to be owned by the Ambulance District or the Town of Riverhead shall be undertaken by the Town of Riverhead or the Ambulance District in accordance with the applicable procurement procedures required by Law. Due to the specialized nature of the facilities and equipment used by the Ambulance Corps and

the use of said facilities and equipment to protect and preserve the health and lives of Town residents, the Town and District agree to give high priority to the maintenance, repair and improvement of the ambulances, first responder vehicles and facilities. The ambulances will be given a priority ranking at the same level as the most critical vehicles in the Town fleet and the first responder vehicles will be treated with the same priority as a critical Police Department vehicle. The Ambulance District and the Town agree to maintain maintenance schedules and documentation as required by New York State or other regulatory agencies for ambulances, first responder vehicles and other emergency services vehicles. The Ambulance District and the Town agree to provide janitorial services to the Ambulance Facilities at an appropriate level for an emergency facility used on a 24 hour per day, 7 days per week basis.

K. For vehicles owned by the Town or the Ambulance District, the Town, the District or the Ambulance Corps can individually make the determination that a vehicle needs maintenance, repair or improvement. If the Ambulance Corps determines that said maintenance, repair or improvement is necessary, it agrees to contact the Ambulance District or the Town of Riverhead as soon as possible to address the condition of any property, either real or personal, that is licensed by the Ambulance District for use by the Ambulance Corps. The Ambulance District or the Town of Riverhead agrees to use due diligence to provide for the expeditious repair or replacement of any property licensed to be used by the Ambulance Corps. If problems identified are not corrected within a reasonable time, and the Ambulance Corps feels that such condition materially affects its ability to perform, the Ambulance Corps will notify the Town Supervisor and the Accounting Department in writing of its concern. If the problem is not corrected within thirty (30) days or three repair attempts, the Ambulance Corps is hereby authorized to correct the problem and bill the District for the cost to do so.

L. The Ambulance District shall be responsible for the payment of the items listed in Exhibit A annexed hereto.

M. The Ambulance Corps agrees that the Board of the Ambulance District may attend, upon request of the Ambulance District, meetings of the Board of Directors of the Ambulance Corps.

N. Any annual budgetary surpluses shall be disclosed to the Ambulance District. These surpluses, if any, shall be placed in a reserve account owned and maintained by the Ambulance Corps. The total balance of said account shall never exceed ten per cent (10%) of the total current annual contract compensation as provided in Article III. Any additional funds in excess of this amount will be used to offset the current year's payments from the Ambulance District.

O. The Ambulance Corps reserves the right to petition the Ambulance District for additional funding, not provided by the approved budget, during the course of the year if the Ambulance Corps has experienced unforeseeable and/or extraordinary expenses in fulfilling its obligations and responsibilities as provided herein.

P. It shall be the District's responsibility to determine in its sole discretion the number of vehicles necessary to adequately serve the Ambulance District and the time and extent to which vehicles shall be replaced. The District agrees to provide a fleet of at least four ambulances, two first responder vehicles and one vehicle for the Chief of the Ambulance Corps. These vehicles will be equipped and maintained to meet applicable regulatory standards. The Ambulance Corps may request from the Ambulance District the replacement of any vehicle with significant operational or safety defects or deficiencies. Routine vehicle replacement will be scheduled so that no vehicle shall be in service that is older than twelve years from its

manufacture date, eight years for first response and chief vehicles. Once a fleet vehicle is permanently removed from service, the District will immediately begin the process of procuring an equivalent vehicle, in an effort to rapidly return the fleet to a number of vehicles adequate to properly serve the Ambulance District.

#### IV. HOLD HARMLESS CLAUSE

The Ambulance Corps, the Ambulance District and the Town each agrees to indemnify and hold the other, its employees and designated representatives harmless from any claims, costs, losses, damages or injuries to persons or property of whatsoever kind or nature arising out of the acts and/or omissions by the respective parties their agents, employees or contractors, or arising out of the performance or nonperformance of any of its duties, components, obligations or operations that are required under or may arise out of this agreement.

#### V. STATUTORY COMPLIANCE

The parties hereto agree to comply with any and all applicable laws, statutes, ordinances, rules and regulations.

#### VI. INSURANCE REQUIREMENTS

A. The Ambulance Corps shall secure workers compensation insurance for the benefit of, and keep insured for the life of this agreement; all employees engaged in work hereunder and required to be insured under provisions of the New York State Worker's Compensation Law. The Ambulance Corps agrees that on or before the execution of this agreement, copies of this policy shall be filed with the Ambulance District and shall remain in full force and effect until the termination of this agreement.

B. The Ambulance Corps shall further comply with New York State Law regarding employee disability benefit insurance. The Ambulance Corps agrees that on or before the

execution of this agreement, copies of this policy shall be filed with the Ambulance District and shall remain in full force and effect until the termination of this agreement.

C. The Ambulance Corps agrees that on or before the execution of this agreement, Certificates of Insurance, in which the Ambulance District and the Town of Riverhead are designated as named insureds and which require thirty (30) days written notification to the Ambulance District and the Town of Riverhead in the event of termination or cancellation, shall be filed with the Ambulance District and the Town of Riverhead and shall remain in force and effect until the termination of this agreement for the following policies of insurance:

1. Comprehensive general liability insurance with combined single limit coverage for bodily injury, property damage and personal injury liability in the sum of one million dollars (\$1,000,000.00) providing protection against liability arising out of or in connection with performance under this agreement.
2. For vehicles owned by the District or Town, the District will provide a comprehensive automobile liability insurance policy with combined single limit coverage for personal injury and property damage in the sum of two million dollars (\$2,000,000.00). If any non-owned vehicle is to be used in performance under this agreement, then in that event the Ambulance Corps shall provide the Ambulance District with non-owned automobile and hired vehicle comprehensive automobile insurance with combined single limit coverage of two million dollars (\$2,000,000.00) of personal injury and property damage. The Ambulance Corps will maintain comprehensive automobile liability insurance policy with combined single limit coverage for personal injury and property damage in the sum of two million dollars (\$2,000,000.00) for any vehicles owned or leased to the Ambulance Corps.

3. Errors and Omissions Insurance with medical coverage and combined single limit coverage of one million dollars (\$1,000,000.00).

D. The Ambulance Corps shall provide for the benefit of the Ambulance Corps and the Ambulance District, a Fidelity Bond insuring against employee dishonesty in the amount of \$250,000 for each officer or employee authorized under the Ambulance Corps's bylaws to sign on accounts and/or to obligate the Ambulance Corps with respect to funds provided from the Ambulance District.

E. The Ambulance Corps agrees to provide the Ambulance District on a quarterly basis with a current list of persons authorized to drive.

F. The Ambulance Corps agrees to provide written notification to the Ambulance District, the Town Supervisor, and the Town Accounting Department, of any property owned by either the Town of Riverhead or the Ambulance District that is damaged or destroyed. Any vehicles owned by the Town of Riverhead or the Ambulance District that are involved in a motor vehicle accident must be inspected by the Town Municipal Garage prior to restoring the vehicle to service.

## VII. CONSTRUCTION

This agreement shall be construed in accordance with the laws of State of New York.

## VIII. ENTIRE AGREEMENT

It is understood that this agreement represents the entire agreement of the parties hereto, all previous understandings are merged herein, and that no modification hereof shall be valid unless written evidence thereof shall be executed by the parties hereto. Nothing contained in this agreement shall be construed to require the Ambulance District or the Ambulance Corps to extend this contract beyond the term of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by their respective representatives the day and year first above written.

TOWN OF RIVERHEAD AMBULANCE DISTRICT

BY: \_\_\_\_\_  
SEAN WALTER, SUPERVISOR

RIVERHEAD VOLUNTEER AMBULANCE  
CORPS, INC.

BY: \_\_\_\_\_  
KEITH F. LEWIN, PRESIDENT

Exhibit A

Radio Base Station and Repeater Radios and Radio Licenses

Vehicle Leases

Building Leases

Riverhead Telephone

Jamesport Telephone

Riverhead Electric

Jamesport Electric

Riverhead Heating Fuel

Jamesport Heating Fuel

Vehicle Fuel

Water

Riverhead building/grounds maintenance

Jamesport building/grounds maintenance

Vehicle maintenance, for vehicles not leased to Ambulance Corps

Risk Retention

Legal Fees

TOWN OF RIVERHEAD

Resolution # 335

**AUTHORIZES THE SUPERVISOR TO EXECUTE 1<sup>ST</sup> RIDER AMENDMENT TO LEASE REGARDING 755 EAST MAIN STREET, RIVERHEAD**

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

**WHEREAS**, the Town of Riverhead, as lessee, and Antonino Militello, as lessor, executed a two-year lease regarding property at 755 East Main Street, Riverhead (SCTM #600-127-7-15) on or about March 25, 2010; and

**WHEREAS**, the Town of Riverhead is leasing the entire space on the first and second floors but not the basement area of the subject building nor the garage area in the rear of the property; and

**WHEREAS**, Antonino Militello represents that he owns and possesses personal property that he is currently storing in the basement area of the building and in the garage area; and

**WHEREAS**, the Town of Riverhead does not have access to the basement area or garage area; and

**WHEREAS**, Antonino Militello wishes to continue to store his personal property in the basement and garage areas of the property; and

**WHEREAS**, Antonino Militello represents that his personal property stored on the premises is neither hazardous nor dangerous; and

**WHEREAS**, the Town of Riverhead does not wish to be liable or responsible for Antonino Militello's personal property stored on premises in the event his personal property is damaged, destroyed or rendered valueless for any reason, including but not limited to theft, fire, flood, or otherwise.

**NOW THEREFORE BE IT RESOLVED**, that the Supervisor is hereby authorized to execute the attached 1<sup>st</sup> Rider Amendment to Lease; and be it further

**RESOLVED**, that a copy of this resolution shall be forwarded to Antonino Militello and the Office of the Town Attorney.

**THE VOTE**

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

Walter Yes No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

**1<sup>st</sup> RIDER AMENDMENT TO LEASE OF PROPERTY AT 755 EAST MAIN STREET, RIVERHEAD, SCTM NO. 600-127-7-15**

Whereas, the Town of Riverhead, as lessee, and Antonino Militello, as lessor, executed a two-year lease regarding property at 755 East Main Street, Riverhead, on or about March 25, 2010, and

Whereas, the Town of Riverhead is leasing the entire space on the first and second floors but not the basement area of the subject building nor the garage area in the rear of the property, and

Whereas, Antonio Militello represents that he owns and possesses personal property that he is currently storing in the basement area of the building and in the garage, and

Whereas, the Town of Riverhead does not have access to the basement area or garage area, and

Whereas, Antonio Militello wishes to continue to store his personal property in the basement and garage areas of the property, and

Whereas, Antonio Militello represents that his personal property stored on the premises is neither hazardous nor dangerous, and

Whereas, the Town of Riverhead does not wish to be liable or responsible for Antonio Militello's personal property stored on premises in the event his personal property is damaged, destroyed or rendered valueless for any reason, including but not limited to theft, fire, flood, or otherwise, and

NOW, THEREFORE, it is hereby agreed as follows:

To the fullest extent permitted by law, Antonio Militello, his successors, assigns, and beneficiaries, hereby agrees to indemnify and hold harmless the Town of Riverhead from and against all claims, damages, losses and expense, including but not limited to attorneys' fees, arising out of or resulting from damage or destruction of personal property of Antonio Militello or anyone else's property stored on site by Antonio Militello. Parties also agree that the storage of personal property on the premises does not create nor constitute a bailment inuring to the benefit of either party. Parties further agree that this indemnification and hold harmless agreement shall be effective and applicable during the entire term of the lease, nunc pro tunc, and during all applicable renewals or extensions.

Dated: April 26, 2010

\_\_\_\_\_  
TOWN OF RIVERHEAD  
By: Sean M. Walter, Town Supervisor

\_\_\_\_\_  
Antonio Militello

TOWN OF RIVERHEAD

Resolution # 336

**AUTHORIZES THE SUPERVISOR TO EXECUTE AN AGREEMENT WITH AIR MARK AIR CONDITIONING CORPORATION FOR HEATING, VENTILATION AND AIR CONDITIONING SERVICE AND MAINTENANCE**

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

**WHEREAS**, the Town of Riverhead owns and/or leases and operates numerous buildings and facilities regarding governmental services it provides to the residents and visitors of the Town of Riverhead at locales delineated in the attached schedule; and

**WHEREAS**, the Town of Riverhead requires heating, ventilation and air conditioning services and maintenance to maintain the safe and efficient operation of the delineated buildings and facilities; and

**WHEREAS**, Air Mark Air Conditioning Corporation is ready, willing and able to continue to provide heating, ventilation and air conditioning services and maintenance at the delineated buildings and facilities.

**NOW THEREFORE BE IT RESOLVED**, that the Supervisor is hereby authorized to execute the attached heating, ventilation and air conditioning services and maintenance agreement with Air Mark Air Conditioning Corporation; and be it further

**RESOLVED**, that the Town Clerk is hereby directed to forward a copy of this resolution to Frederick T. Rurup, Air Mark Air Conditioning Corporation, 1566 Rocky Point Road, Middle Island, New York 11953; and be it further

**RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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  Was Not

Thereupon Duly Declared Adopted

## PROFESSIONAL SERVICES AGREEMENT

This Agreement made the \_\_\_\_\_ of \_\_\_\_\_, 2010 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 AIR MARK INC., a corporation existing under the laws of the State of New York with a principal place of business at 1566 Rocky Point Road, Middle Island, New York 11953 (hereinafter referred to as "Air Mark").

In consideration of the mutual promises herein contained, Town and Air Mark agree as follows:

### 1. SCOPE OF SERVICES

During the term of this Agreement, Air Mark shall provide the following services on equipment at the designated locations as set forth in *Schedule A* attached hereto and made a part hereof. These services are to be rendered by Air Mark as an independent contractor and not as an employee of Town.

### 2. TERM OF AGREEMENT

The Agreement shall commence on January 1, 2010 and terminate on December 31, 2010.

### 3. PAYMENT

For these services, Town will pay Air Mark in the amount of \$21,200.00, payable in two equal installments of \$10,600.00. The first installment of \$10,600.00 is due and payable upon full execution of this agreement by all parties. The second installment of \$10,600.00 is due and payable on August 2, 2010. The Town shall not have any liability for any other expenses or costs incurred by Air Mark except for expenses expressly provided for herein. Air Mark 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 Air Mark, 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 Air Mark by Town, shall be and remain the sole property of Town. Air Mark 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, Air Mark 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

Air Mark 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 Air Mark. Air Mark 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. TERMINATION

This Agreement may be terminated at any time by either party upon 30 days written notice to the other party via certified mail, return receipt requested. In the event of such termination, Town shall have no further obligation to Air Mark except to make any payments which may have become due under this Agreement for services already rendered. Town shall be entitled to receive prorated credit in the form of a refund for payment already made based upon the cancellation date within 30 days of the cancellation date.

#### 8. RECORDS

Air Mark 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 Air Mark involving 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 Air Mark, 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 Air Mark determines that a change order is required, Air Mark 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, Air Mark 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 Air Mark and the Town, its departments,

officers, agents and employees shall affect 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 to: (i) Town of Riverhead if mailed by certified mail, return receipt requested, to Town of Riverhead, Attention: Daniel P. McCormick, Esq., 200 Howell Avenue, Riverhead, New York 11901; or (ii) to Air Mark, Attention: Frederick T. Rurup, 1566 Rocky Point Road, Middle Island, New York 11953 if mailed by certified mail, return receipt requested.

#### 11. COMPLIANCE WITH LAWS

Air Mark shall comply with all applicable federal, state, county and local laws and ordinances and regulations in the performance of its services under this Agreement. In the event Air Mark fails to comply with all applicable federal, state, county and local laws and ordinances, such failure shall be considered a material breach of this Agreement. Air Mark will notify Town immediately if Air Mark's work for Town becomes the subject of a government audit or investigation. Air Mark will promptly notify Town if Air Mark is indicted, suspended or debarred. Air Mark represents that Air Mark has not been convicted of fraud or any other crime arising out of a contract with any local, state or federal agency or anyone else. In carrying out the work required hereunder, Air Mark 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. Air Mark 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 Air Mark's professional and technical discipline.

#### 12. INSURANCE, INDEMNITY AND LIABILITY

Air Mark shall carry Comprehensive General Liability Insurance in an amount equal to Two Million dollars (\$2,000,000.00) per occurrence and Four Million dollars (\$4,000,000.00) in the aggregate. This Agreement is contingent upon Air Mark's production and the Town's receipt of a Certificate of Insurance naming the Town of Riverhead as an additional insured as well as a copy of the declaration page of said insurance in the amounts referenced above. Air Mark, if applicable, shall also proffer proof it carries 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 Air Mark under this Agreement.

#### 13. CONFLICT OF INTEREST

Air Mark 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. Air Mark 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. Air Mark 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, 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 Air Mark fails to perform any of its obligations hereunder in accordance with the terms hereof, then after reasonable notice to Air Mark not to exceed thirty (30) days, and an opportunity for Air Mark 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 Air Mark, 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, Air Mark shall proceed diligently with the performance of this Agreement in accordance with the decision of Town.

16. The Town agrees to notify Air Mark as soon as any unusual operating conditions of the heating, ventilation and air conditioning occurs.

17. Air Mark agrees to give reasonably prompt service on all emergency calls during the terms of this contract without charge for such service. Service rendered beyond the normal working hours (defined as 8:00 a.m. to 4:30 p.m., Monday through Friday inclusive) and the following holidays: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving, and Christmas will be charged at prevailing rates defined as \$45.00 per man-hour of work.

18. The parties agree that charges for material, filters, refrigerant, and parts are not included in this Agreement, but labor needed for their installation is included. Unless material, filters, refrigerant and other parts are required for emergency repairs, it will not be furnished without previous authorization by the Town.

19. Parties agree that the following items are excluded from service and maintenance pursuant to this Agreement: Water supply and drain, and electrical service beyond the subject equipment. (Disconnect switches, circuit breakers also excluded.) Installation of HEPA filters and cleaning of heat exchangers. Moving or relocating the subject equipment.

20. Parties agree that service rendered as a result of abuse, neglect in operation, fire, freezing, flood, corrosion, failure of power supply, blown fuses, open switches or damage to the system or equipment not caused by Air Mark shall be paid for as an extra expense at the prevailing rates delineated in paragraph 17 above. Parties further agree that Air Mark cannot be responsible for failure to render service because of strikes or other emergencies beyond its control.

21. Parties further agree that Air Mark shall not be responsible for damage caused by airborne contaminants that enter the water or air used for heat exchange purposes that cause corrosion, scaling or clogging or damage resulting from the freezing of any pipes wherever located on or about the subject locations, nor damage to the coils and/or condensers from the same activity.

22. This Agreement embraces the full understanding between the parties hereto. Except as stated herein, no warranty or guarantee whether expressed or implied is granted or intended.

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

AIR MARK AIR CONDITIONING CORP.  
1566 ROCKY POINT ROAD  
MIDDLE ISLAND, NEW YORK 11953  
Tel: (631) 654-9000

\_\_\_\_\_  
By: Frederick T. Rurup  
President

\_\_\_\_\_  
Date

TOWN OF RIVERHEAD  
200 HOWELL AVENUE  
RIVERHEAD, NEW YORK 11901  
Tel: (631) 727-3200

\_\_\_\_\_  
By: Sean M. Walter  
Town Supervisor

\_\_\_\_\_  
Date

SCHEDULE A

AIR MARK AIR CONDITIONING CORPORATION

SCHEDULE OF FACILITIES COVERED BY THIS SERVICE AGREEMENT

<u>FACILITY</u>	<u>ADDRESS</u>	<u>ANNUAL AMOUNT</u>
AMBULANCE CORPS	OSBORNE AVENUE	\$850.00
ANIMAL CONTROL	YOUNGS AVENUE	\$925.00
BUILDING DEPARTMENT	201 HOWELL AVENUE	\$995.00
EAST END ARTS COUNCIL	133 EAST MAIN STREET	\$590.00
EAST END COMMUNITY SCHOOL OF THE ARTS	141 EAST MAIN STREET	\$1,200.00
EAST LAWN BUILDING	542 EAST MAIN STREET	\$1,150.00
GEORGE G. YOUNG COMMUNITY CENTER	446 SOUTH JAMESPORT AVE	\$1,520.00
HIGHWAY DEPARTMENT	1177 OSBORNE AVENUE	\$1,455.00
HUMAN RESOURCES	60 SHADE TREE LANE	\$3,850.00
RAILROAD STATION	200 RAILROAD AVENUE	\$990.00
RIVERHEAD TOWN POLICE	210 HOWELL AVENUE	\$3,200.00
RIVERHEAD WATER DISTRICT	1035 PULASKI STREET	\$1,150.00
STREET LIGHTING	YOUNGS AVENUE	\$375.00
RIVERHEAD TOWN HALL <sup>West</sup> <del>EAST</del>	1295 PULASKI ROAD	\$2,950.00
	<b>TOTAL</b>	<b>\$21,200.00</b>

AIR MARK AIR CONDITIONING CORPORATION

LIST OF EQUIPMENT UNDER SERVICE AGREEMENT LOCATED AT:

TOWN OF RIVERHEAD  
AMBULANCE CORPS  
OSBORNE AVENUE  
RIVERHEAD, NY 11901

<u>MAKE</u>	<u>EQUIPMENT</u>	<u>MODEL #</u>	<u>SERIAL #</u>	<u>TONNAGE</u>
RHEEM	UP FLOW FURNACE	RGDC07ECBGS	F48882581	2.5
RESNOR	GAS UNIT HEATER	F100		
HONEYWELL	ELECTRONIC AIR CLEANER	115-1		
AUTO FLOW HUMIDIFIER		4008DP		
			TOTAL	2.5

AIR MARK AIR CONDITIONING CORPORATION

WORK SCHEDULE FOR FACILITY LOCATED AT:

TOWN OF RIVERHEAD  
AMBULANCE CORPS  
OSBORNE AVENUE  
RIVERHEAD, NY 11901

1. WE AGREE TO PERFORM 4 PERIODIC INSPECTIONS CONSISTING OF:
  - A. 1 SPRING SERVICE INSPECTION.
  - B. 1 SUMMER SERVICE INSPECTION.
  - C. 1 FALL SHUT DOWN AND/OR CHANGE OVER TO WINTER OPERATION.
  - D. 1 WINTER SERVICE INSPECTION.
  - E. 4 FILTER CHANGES
  
2. FURNISH WRITTEN REPORTS OF INSPECTIONS & REPAIRS.

AIR MARK AIR CONDITIONING CORPORATION

LIST OF EQUIPMENT UNDER SERVICE AGREEMENT LOCATED AT:

TOWN OF RIVERHEAD  
ANIMAL CONTROL FACILITY  
YOUNGS AVENUE  
RIVERHEAD, NY 11901

<u>MAKE</u>	<u>EQUIPMENT</u>	<u>MODEL #</u>	<u>SERIAL #</u>	
RUUD	PROPANE	UGPH-15EARJR	DH5D307F379G00083	150,000 BTU
RUUD	PROPANE	RGPN-10EAMER	FD5D302F350401950	100,000 BTU
MODINE	HEATER	PD50AE0130	30011010699-9675	

AIR MARK AIR CONDITIONING CORPORATION

WORK SCHEDULE FOR FACILITY LOCATED AT:

TOWN OF RIVERHEAD  
ANIMAL CONTROL FACILITY  
YOUNGS AVENUE  
RIVERHEAD, NY 11901

1. We agree to perform 2 periodic inspections consisting of:
  - A. 1 Fall shutdown and/or change over to Winter operation.
  - B. 1 Winter service inspection
2. Furnish written reports of inspections & repairs.

AIR MARK AIR CONDITIONING CORPORATION

LIST OF EQUIPMENT UNDER SERVICE AGREEMENT LOCATED AT:

TOWN OF RIVERHEAD  
BUILDING DEPARTMENT  
201 HOWELL AVENUE  
RIVERHEAD, NY 11901

<u>MAKE</u>	<u>EQUIPMENT</u>	<u>MODEL #</u>	<u>SERIAL #</u>	<u>TONNAGE</u>
BRYANT	PACKAGE UNIT	580FPV120	4103G20586	10
			TOTAL	10

AIR MARK AIR CONDITIONING CORPORATION

WORK SCHEDULE FOR FACILITY LOCATED AT:

TOWN OF RIVERHEAD  
BUILDING DEPARTMENT  
201 HOWELL AVENUE  
RIVERHEAD, NY 11901

1. WE AGREE TO PERFORM 4 PERIODIC INSPECTIONS CONSISTING OF:
  - A. 1 SPRING SERVICE INSPECTION.
  - B. 1 SUMMER SERVICE INSPECTION.
  - C. 1 FALL SHUT DOWN AND/OR CHANGE OVER TO WINTER OPERATION.
  - D. 1 WINTER SERVICE INSPECTION.
  - E. 4 FILTER CHANGES
  
2. FURNISH WRITTEN REPORTS OF INSPECTIONS & REPAIRS.

AIR MARK AIR CONDITIONING CORPORATION

LIST OF EQUIPMENT UNDER SERVICE AGREEMENT LOCATED AT:

TOWN OF RIVERHEAD  
EAST END ARTS COUNCIL  
133 E. MAIN STREET  
RIVERHEAD, NY 11901-2494

<u>MAKE</u>	<u>EQUIPMENT</u>	<u>MODEL #</u>	<u>SERIAL #</u>	<u>TONNAGE</u>
RUUD	GAS FURNACE	UGDJ-15EARJR	EB5D307F	
RUUD	CONDENSER	UAMA060JAZ	299805914	
			5782M279	5
			805156	
RUUD	EVAPORATOR	RCBA-6089	M1901	
		GH24		
			TOTAL	5

AIR MARK AIR CONDITIONING CORPORATION

WORK SCHEDULE FOR FACILITY LOCATED AT:

TOWN OF RIVERHEAD  
EAST END ARTS COUNCIL  
133 E. MAIN STREET  
RIVERHEAD, NY 11901-2494

1. WE AGREE TO PERFORM 4 PERIODIC INSPECTIONS CONSISTING OF:
  - A. 1 SPRING SERVICE INSPECTION.
  - B. 1 SUMMER SERVICE INSPECTION.
  - C. 1 FALL SHUT DOWN AND/OR CHANGE OVER TO WINTER OPERATION.
  - D. 1 WINTER SERVICE INSPECTION.
  - E. 4 FILTER CHANGES
  
2. FURNISH WRITTEN REPORTS OF INSPECTIONS & REPAIRS.

AIR MARK AIR CONDITIONING CORPORATION

WORK SCHEDULE FOR THE FACILITY LOCATED AT:

TOWN OF RIVERHEAD  
EAST END COMMUNITY SCHOOL OF THE ARTS  
141 EAST MAIN STREET  
RIVERHEAD, NY 11901

1. WE AGREE TO PERFORM 4 SERVICE INSPECTIONS CONSISTING OF:
  - A. 1 SPRING START UP AND SERVICE INSPECTION
  - B. 1 SUMMER SERVICE INSPECTION
  - C. 1 FALL SHUTDOWN AND CHANGE OVER TO WINTER OPERATION INCLUDING MAINTENANCE OF BOILER B-1
  - D. 1 WINTER SERVICE INSPECTION
  - E. 4 FILTER CHANGES
  
2. FURNISH WRITTEN REPORTS OF INSPECTIONS & REPAIRS.

AIR MARK AIR CONDITIONING CORPORATION

LIST OF EQUIPMENT UNDER SERVICE AGREEMENT LOCATED AT:

TOWN OF RIVERHEAD  
GEORGE G. YOUNG COMMUNITY CENTER  
446 SOUTH JAMESPORT AVENUE  
JAMESPORT, NY 11947

<u>MAKE</u>	<u>EQUIPMENT</u>	<u>MODEL #</u>	<u>SERIAL #</u>	<u>TONNAGE</u>
CARRIER	SPLIT SYSTEM	40RR016010 38AC012430	B895810	10
CARRIER	SPLIT SYSTEM	40RR016010 38AC012430	B895813 3804G30058	10
CARRIER	SPLIT SYSTEM	40RR016010 38AC012430	B895809 2503G20068	10
			TOTAL	30

AIR MARK AIR CONDITIONING CORPORATION

WORK SCHEDULE FOR FACILITY LOCATED AT:

TOWN OF RIVERHEAD  
GEORGE G. YOUNG COMMUNITY CENTER  
446 SOUTH JAMESPORT AVENUE  
JAMESPORT, NY 11947

1. WE AGREE TO PERFORM 4 PERIODIC INSPECTIONS CONSISTING OF:
  - A. 1 SPRING SERVICE INSPECTION.
  - B. 1 SUMMER SERVICE INSPECTION.
  - C. 1 FALL SHUT DOWN AND/OR CHANGE OVER TO WINTER OPERATION.
  - D. 1 WINTER SERVICE INSPECTION.
  - E. 4 FILTER CHANGES
  
2. FURNISH WRITTEN REPORTS OF INSPECTIONS & REPAIRS.

AIR MARK AIR CONDITIONING CORPORATION

LIST OF EQUIPMENT UNDER SERVICE AGREEMENT LOCATED AT:

TOWN OF RIVERHEAD  
HIGHWAY DEPARTMENT  
1177 OSBORNE AVENUE  
RIVERHEAD, NY 11901

<u>MAKE</u>	<u>EQUIPMENT</u>	<u>MODEL #</u>	<u>SERIAL #</u>	<u>TONNAGE</u>
TRANE	PACKAGE HEAT/COOL	YC075C3L0AA/G21142528D		7.5
TRANE	ROOFTOP	YCD037C317AB	R36101633D	3.5
TRANE	ROOFTOP	YCD037C317AB	R36101567D	3.5
MODINE	MAKEUP AIR	RMUA400		
BERKO	ELECTRIC HEATER	FF3021A		
BERKO	ELECTRIC HEATER	MUH524T		
6 RESNOR	NATURAL GAS HEATER	F300		
6 RESNOR	NATURAL GAS HEATER	F400		
2 GREENHECK	EXHAUST FANS	SER20F		
2 GREENHECK	EXHAUST FANS	GB215R3		
3 GREENHECK	EXHAUST FANS	G100B		
1 GREENHECK	EXHAUST FAN	G180C		
2 GREENHECK	EXHAUST FANS	GB184R		
3 GREENHECK	EXHAUST FANS	GB254R		
2 GREENHECK	EXHAUST FANS	G80G		
1 GREENHECK	EXHAUST FAN	G120B		
1 GREENHECK	EXHAUST FAN	G170C		
1 GREENHECK	EXHAUST FAN	G85E		
			TOTAL	14.5

AIR MARK AIR CONDITIONING CORPORATION

WORK SCHEDULE FOR FACILITY LOCATED AT:

TOWN OF RIVERHEAD  
HIGHWAY DEPARTMENT  
1177 OSBORNE AVENUE  
RIVERHEAD, NY 11901

1. WE AGREE TO PERFORM 4 PERIODIC INSPECTIONS CONSISTING OF:
  - A. 1 SPRING START UP & SERVICE INSPECTION
  - B. 1 SUMMER SERVICE INSPECTION
  - C. 1 FALL SHUTDOWN AND /OR CHANGE OVER TO WINTER OPERATION
  - D. 1 WINTER SERVICE INSPECTION
  - E. 4 FILTER CHANGES
  
2. FURNISH WRITTEN REPORTS OF INSPECTIONS & REPAIRS.

AIR MARK AIR CONDITIONING CORPORATION

LIST OF EQUIPMENT UNDER SERVICE AGREEMENT LOCATED AT:

TOWN OF RIVERHEAD  
HUMAN RESOURCE CENTER  
60 SHADE TREE LANE  
RIVERHEAD, NY 11901

<u>MAKE</u>	<u>EQUIPMENT</u>	<u>MODEL #</u>	<u>SERIAL #</u>	<u>TONNAGE</u>
TRANE	CONDENSING UNIT	TTA072D300AO	2204RJ3LF	6.0
TRANE	CONDENSING UNIT	TTA150B300DA	2213NS4AD	12.5
TRANE	CONDENSING UNIT	TTA150B300DA	22056BMAD	12.5
TRANE	CONDENSING UNIT	TTA060A300AA	2322HE53F	5.0
YORK	CONDENSING UNIT	L60-10B	CO-013450	5.0
YORK	CONDENSING UNIT	L60-10B	CO-034231	5.0
YORK	CONDENSING UNIT	L60-10B	CO-013449	5.0
TRANE	ROOFTOP UNIT	YCD150D3HAAA	217100934D	12.5
LUXAIRE	FURNACE	F020F12501A	EHAP020517	
JACKSON- CHURCH	FURNACE	DL350HB28LH	758-1510	
WEIL- MCLAIN	BOILER	LGB-11-W		
MASTER VENT	EXHAUST FAN	AFSN150K2	102D736717	
CENTRI- MASTER	EXHAUST FAN	PNU300RG	02WH75084	
			TOTAL	63.5

AIR MARK AIR CONDITIONING CORPORATION

WORK SCHEDULE FOR FACILITY LOCATED AT:

TOWN OF RIVERHEAD  
HUMAN RESOURCE CENTER  
60 SHADE TREE LANE  
RIVERHEAD, NY 11901

1. WE AGREE TO PERFORM 4 PERIODIC INSPECTIONS CONSISTING OF:
  - A. 1 SPRING START UP & SERVICE INSPECTION
  - B. 1 SUMMER SERVICE INSPECTION
  - C. 1 FALL SHUT DOWN AND/OR CHANGE OVER TO  
WINTER OPERATION SERVICE INSPECTION
  - D. 1 WINTER SERVICE INSPECTION
  - E. 4 FILTER CHANGES
  
2. FURNISH WRITTEN REPORTS OF INSPECTIONS & REPAIRS.

AIR MARK AIR CONDITIONING CORPORATION

LIST OF EQUIPMENT UNDER SERVICE AGREEMENT LOCATED AT:

TOWN OF RIVERHEAD  
RAILROAD STATION  
200 RAILROAD AVENUE  
RIVERHEAD, NY 11901

<u>MAKE</u>	<u>EQUIPMENT</u>	<u>MODEL #</u>	<u>SERIAL #</u>	<u>TONNAGE</u>
YORK	AIR HANDLER	K2EU060A06A	NGJS004476	4
BARD	CONDENSER	HAC481-A	126C001443433-1	4
A O SMITH	BOILER	GB100-W-7CON	GB99-2706	
			TOTAL	4

AIR MARK AIR CONDITIONING CORPORATION

WORK SCHEDULE FOR FACILITY LOCATED AT:

TOWN OF RIVERHEAD  
RAILROAD STATION  
200 RAILROAD AVENUE  
RIVERHEAD, NY 11901

1. WE AGREE TO PERFORM 4 PERIODIC INSPECTIONS CONSISTING OF:
  - A. 1 SPRING SERVICE INSPECTION.
  - B. 1 SUMMER SERVICE INSPECTION.
  - C. 1 FALL SHUT DOWN AND/OR CHANGE OVER TO WINTER OPERATION.
  - D. 1 WINTER SERVICE INSPECTION.
  - E. 4 FILTER CHANGES
  
2. FURNISH WRITTEN REPORTS OF INSPECTIONS & REPAIRS.

AIR MARK AIR CONDITIONING CORPORATION

LIST OF EQUIPMENT UNDER SERVICE AGREEMENT LOCATED AT:

TOWN OF RIVERHEAD  
RIVERHEAD POLICE HEADQUARTERS  
210 HOWELL AVENUE  
RIVERHEAD, NY 11901

<u>MAKE</u>	<u>EQUIPMENT</u>	<u>MODEL #</u>	<u>SERIAL #</u>	<u>TONNAGE</u>
TRANE	ROOFTOP UNI	YCD091D3LABE	R36101743D	7.5
TRANE	ROOFTOP UNIT	YCD061C3HABF	R36101717D	5.0
TRANE	ROOFTOP UNIT	YCD121C3LAAA	R36102250D	10.0
TRANE	ROOFTOP UNIT	YCD091D3LABE	R36101799D	7.5
TRANE	ROOFTOP UNIT	YCD121C3LAAA	R38103244D	10.0
RUUD	ROOFTOP UNIT	USKA-A018JK00	5178F349715412	1.5
			TOTAL	41.5

AIR MARK AIR CONDITIONING CORPORATION

WORK SCHEDULE FOR FACILITY LOCATED AT:

TOWN OF RIVERHEAD  
RIVERHEAD POLICE HEADQUARTERS  
210 HOWELL AVENUE  
RIVERHEAD, NY 11901

1. WE AGREE TO PERFORM 4 PERIODIC INSPECTIONS CONSISTING OF:
  - A. 1 SPRING START UP & SERVICE INSPECTION
  - B. 1 SUMMER SERVICE INSPECTION
  - C. 1 FALL SHUT DOWN AND/OR CHANGE OVER TO WINTER OPERATION SERVICE INSPECTION
  - D. 1 WINTER SERVICE INSPECTION
  - E. 4 FILTER CHANGES
  
2. FURNISH WRITTEN REPORTS OF INSPECTIONS & REPAIRS.

AIR MARK AIR CONDITIONING CORPORATION

LIST OF EQUIPMENT UNDER SERVICE AGREEMENT LOCATED AT:

TOWN OF RIVERHEAD  
RIVERHEAD WATER DISTRICT  
1035 PULASKI STREET  
RIVERHEAD, NY 11901

<u>MAKE</u>	<u>EQUIPMENT</u>	<u>MODEL #</u>	<u>SERIAL #</u>	<u>TONNAGE</u>
TRANE	SPLIT SYSTEM	TTB036C100A2	R334YDGBF	3.0
TRANE	SPLIT SYSTEM	TTB030A100A	6111LUE5F	2.5
TRANE	SPLIT SYSTEM	TTB024C100A2	R345WKXBF	2.0
GOODMAN	UNIT HEATER	GSMS080-4	9911644497	
GOODMAN	UNIT HEATER	GSMS080-4	9911644496	
			TOTAL	7.5

AIR MARK AIR CONDITIONING CORPORATION

WORK SCHEDULE FOR FACILITY LOCATED AT:

TOWN OF RIVERHEAD  
RIVERHEAD WATER DISTRICT  
1035 PULASKI STREET  
RIVERHEAD, NY 11901

1. WE AGREE TO PERFORM 4 PERIODIC INSPECTIONS CONSISTING OF:
  - A. 1 SPRING SERVICE INSPECTION.
  - B. 1 SUMMER SERVICE INSPECTION.
  - C. 1 FALL SHUT DOWN AND/OR CHANGE OVER TO WINTER OPERATION.
  - D. 1 WINTER SERVICE INSPECTION.
  - E. 4 FILTER CHANGES
  
2. FURNISH WRITTEN REPORTS OF INSPECTIONS & REPAIRS.

AIR MARK AIR CONDITIONING CORPORATION

LIST OF EQUIPMENT UNDER SERVICE AGREEMENT LOCATED AT:

TOWN OF RIVERHEAD  
STREET LIGHTING  
YOUNGS AVENUE  
RIVERHEAD, NY 11901

<u>MAKE</u>	<u>EQUIPMENT</u>	<u>MODEL #</u>	<u>SERIAL #</u>	<u>TONNAGE</u>
LARGE BUILDING	Demolished February 2008			
SMALL BUILDING				
MODINE	SPACE HEATER	PAE200AG0185	N/A	

AIR MARK AIR CONDITIONING CORPORATION

WORK SCHEDULE FOR FACILITY LOCATED AT:

TOWN OF RIVERHEAD  
STREET LIGHTING  
YOUNGS AVENUE  
RIVERHEAD, NY 11901

1. WE AGREE TO PERFORM 2 PERIODIC INSPECTIONS CONSISTING OF:
  - A. - SPRING SERVICE INSPECTION.
  - B. - SUMMER SERVICE INSPECTION.
  - C. 1 FALL SHUT DOWN AND/OR CHANGE OVER TO WINTER OPERATION.
  - D. 1 WINTER SERVICE INSPECTION.
  - E. - FILTER CHANGES
  
2. FURNISH WRITTEN REPORTS OF INSPECTIONS & REPAIRS.

AIR MARK AIR CONDITIONING CORPORATION

LIST OF EQUIPMENT UNDER SERVICE AGREEMENT LOCATED AT:

TOWN OF RIVERHEAD  
TOWN HALL WEST  
1295 PULASKI STREET  
RIVERHEAD, NY 11901

<u>MAKE</u>	<u>EQUIPMENT</u>	<u>MODEL #</u>	<u>SERIAL #</u>	<u>TONNAGE</u>
LENNOX	PACKAGE	GCS16-060-120-1Y	5698K06414	5.0
LENNOX	PACKAGE	GCS16-024-50-1P	5698K04634	2.0
LENNOX	PACKAGE	GCS16-036-90-2Y	5698K04480	3.0
LENNOX	SPLIT SYSTEM	HS290030-1P C329M-41-1P	5898G67213 5800D34507	2.5
SAMSUNG	SPLIT SYSTEM	UQ24A2RC 1AQ24A2RC1KCV	ABQDP5AY300027K P2FR500113F	2.0
CARRIER	3 FAN COILS			
MODINE	2 FAN COILS			
ICP	HEATER	T9MPD050F12G1	A061758189	
			TOTAL	14.5

AIR MARK AIR CONDITIONING CORPORATION

WORK SCHEDULE FOR FACILITY LOCATED AT:

TOWN OF RIVERHEAD  
TOWN HALL WEST  
1295 PULASKI STREET  
RIVERHEAD, NY 11901

1. WE AGREE TO PERFORM 4 PERIODIC INSPECTIONS CONSISTING OF:
  - A. 1 SPRING SERVICE INSPECTION.
  - B. 1 SUMMER SERVICE INSPECTION.
  - C. 1 FALL SHUT DOWN AND/OR CHANGE OVER TO WINTER OPERATION.
  - D. 1 WINTER SERVICE INSPECTION.
  - E. 4 FILTER CHANGES
  
2. FURNISH WRITTEN REPORTS OF INSPECTIONS & REPAIRS.

5/4/10

ADOPTED

TOWN OF RIVERHEAD

Resolution # 337

**AUTHORIZES THE SUPERVISOR TO EXECUTE AN AGREEMENT TO OBTAIN MEDICAL ARBITRATION SERVICES FROM REHABILITATION MEDICINE ASSOCIATES**

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

**WHEREAS**, the Town of Riverhead is desirous of utilizing professional medical services for the purpose of evaluating illnesses or injuries relating to or affecting an employee's job duties; and

**WHEREAS**, Rehabilitation Medicine Associates' employees, agents and/or subcontractors possess the required education, knowledge, and experience to perform professional medical evaluation.

**NOW THEREFORE BE IT RESOLVED**, that the Supervisor is hereby authorized to execute the attached agreement with Rehabilitation Medicine Associates; and be it further

**RESOLVED**, that the Town Clerk is hereby directed to forward a copy of this resolution to Craig H. Rosenberg, MD, President and Medical Director, Rehabilitation Medicine Associates, P.O. Box 230, Islip, New York 11751; and be it further

**RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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  Was Not   
Thereupon Duly Declared Adopted

**MEDICAL ARBITRATION SERVICES AGREEMENT**

**THIS AGREEMENT (Agreement) is between the Town of Riverhead (hereinafter "Town"), a municipal corporation of the State of New York, having its principal office at 200 Howell Avenue, Riverhead, 11901, and**

**REHABILITATION MEDICINE ASSOCIATES (hereinafter "RMA"), a corporation organized under the laws of the State of New York, having its principal place of business at 301 East Main Street, Bay Shore, New York 11706.**

**The parties hereto desire to make available to the Town the services of RMA to provide medical arbitration services for individuals referred by Town as described in Exhibits A thru C.**

**TERM OF AGREEMENT: Shall be May 1, 2010 through December 31, 2010.**

**TERMS AND CONDITIONS: Shall be as set forth in Exhibits A through C, attached.**

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the latest date written below.**

**REHABILITATION MEDICINE ASSOCIATES**

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

**Craig H. Rosenberg, MD  
President & Medical Director**

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

**TOWN OF RIVERHEAD**

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

**Sean M. Walter, Town Supervisor**

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

**TABLE OF CONTENTS**

**EXHIBIT A      General Terms and Conditions**

**EXHIBIT B      Description of Responsibilities**

**EXHIBIT C      Incorporated by reference**

## EXHIBIT A

### General Terms and Conditions

#### 1. PROVIDER RESPONSIBILITIES

(a) The duties of RMA shall be to provide medical arbitration services for individuals referred by Town as more particularly described in this Exhibit A and Exhibits B through C attached to and made part of this Agreement.

(b) RMA shall perform such professional services as may be necessary to accomplish the work required to be performed under and in accordance with this Agreement. RMA specifically represents and warrants that it has and shall possess, and that its employees, agents and subcontractors have and shall possess, the required education, knowledge, experience and character necessary to qualify them individually for the particular duties they perform. Parties understand and agree that RMA, its employees, agents and subcontractors are not treating physicians and are not providing medical treatment for or to any town employee. Parties agree that RMA may order appropriate diagnostic tests when warranted regarding town employees referred for evaluation. RMA shall provide a written report to the Town for every diagnostic test so ordered which shall serve as the basis for payment.

#### 2. INCONSISTENT PROVISIONS:

The provisions of this Exhibit A shall prevail over inconsistent provisions of any other Exhibit and over any other document not specifically referred to in this Agreement or made part thereof by this Agreement or by subsequent amendment in writing and signed by both parties except to the extent that such provisions of this Exhibit A are specifically referred to and amended or superseded by such Exhibitor Amendments.

#### 3. REPORTS:

RMA shall be responsible for issuing timely reports, both orally and in writing, to Town on the status pending and proposed activities. Such reports shall include those described in the Proposal and as the Town may reasonably require.

#### 4. TERM AND TERMINATION:

(a) Term: This Agreement shall cover the period provided on the first page thereof, unless sooner terminated as provided below.

(b) Termination for Cause: This Agreement may be terminated in whole or in part in writing by either party in the event of failure by the other party to fulfill its obligations under this Agreement; provided that no such termination shall be effective unless RMA is given five (5) calendar days written notice of intent to terminate, delivered personally or by certified mail, return receipt requested, and an opportunity for consultation with the other party prior to termination. Prior to issuance of a written termination notice ("Termination Notice") by the Town, RMA shall be given an additional five (5) days to cure any material failure to fulfill its obligations under this Agreement. In the event that Contractor has not cured any material failure to the satisfaction of the Town by the end of the combined ten (10) day period, the Town may issue a Termination Notice.

(c) Upon receipt of a termination notice pursuant to the foregoing paragraph, the parties shall promptly discontinue all services affected unless otherwise directed by the notice of termination.

(d) Termination for Convenience:

(i) Town shall have the right to postpone, delay, suspend or terminate the services for which RMA is herein engaged at any time and for any reason deemed to be in Town's interest, provided that no such termination shall be effective unless RMA is given sixty (60) calendar days' written notice of Town's intent to terminate and furthermore Town issues a Termination Notice. In such event of termination, for Town's convenience, Town shall pay RMA for the services rendered through the date when notice of termination was received by RMA with an equitable adjustment of the fee. In the event of delay, postponement or suspension, RMA agrees that it shall only be entitled to a reasonable extension of time to complete the project and not to monetary compensation.

(ii) RMA shall have the right to postpone, delay, suspend or terminate the services for which RMA is herein engaged at any time and for any reason deemed to be in RMA's interest, provided that no such termination shall be effective unless Town is given sixty (60) days\* written notice of RMA's intent to terminate and furthermore, RMA issues a Termination Notice. In such event of termination, for RMA's convenience, Town shall pay RMA for the services rendered through date when notice of termination was received by Town with an equitable adjustment of the fee. In the event of delay, postponement or suspension, RMA agrees that it shall only be entitled to a reasonable extension of time to complete the project and not to monetary compensation.

#### 5. PAYMENT AND COMPENSATION:

(a) RMA shall prepare and present a claim form provided by the Town and approved for payment by the Town for services rendered by RMA. Payment of the claim shall be made within thirty (30) days unless said claim is rejected in writing. If the Town disputes the claim, the Town shall have ten (10) business days to reject said claim. If no such written rejection of the claim form is issued by the Town within ten (10) business days of receipt of the claim form, said claim form shall be deemed approved.

(b) RMA agrees that it shall be entitled to no more than the total cost of the Agreement as set forth on page one of this Agreement and as set forth in any amendments to this Agreement, for the completion of work, labor and services contemplated in this Agreement and amendments, and in full re-imbusement of all travel and other expenses of every nature and kind whatsoever, if reasonable, proper and warranted. RMA shall be entitled to additional compensation for other services provided the parties have amended this Agreement as regards the scope of such services and the cost of such services.

(c) Charges payable to RMA under this Agreement are exclusive of federal, state and local taxes. Town shall be exempt from payment of such taxes as a municipality.

## Rate Sheet

**Medical Examination (Initial & Follow-Up):** **\$565.00 per hour**

**Functional Capacity Exams:**

Screening: **\$275.00**

Two Hour Assessment: **\$400.00**

Four Hour Assessment: **\$675.00**

**Related Diagnostics Services: Prevailing Hospital Charge or such other rates as may be negotiated, with the exception of the following tests, which shall be paid at the following rates:**

Radiographic Myleogram (Including Radiologists Interpretation): Cervical	<b>\$345.00</b>
Lumbar Complete	<b>\$460.00 \$650.00</b>
Electomyteogram and Nerve Conduction Studies (All inclusive comprehensive service):	<b>\$525.00/Extremity</b>
Stress Testing (Including Cardiologist's Interpretation):	<b>\$285.00</b>
Electrocardiogram (Including Cardiologist's Interpretation):	<b>\$195.00</b>
CTScan	<b>\$485.00</b>
Discogram MRI	<b>TBD \$825.00</b>
Laboratory Cardiac Profile Testing:	<b>\$85.00</b>
Laboratory Liver Function Testing:	<b>\$135.00</b>
Electroencephalogram:	<b>\$175.00</b>
Echocardiogram (Including Cardiologist's Interpretation):	<b>\$265.00</b>
Other Specialist Examinations:	<b>\$325.00/Per Hour</b>

6. (a) Medical Examinations will be charges and paid at the full rate if cancelled less than 2 business days prior to scheduled examination, excluding weekends and holidays, unless the cancellation is related to a medical issue concerning the examinee subject to documentation, in which case there will be no charge for the cancellation. If "block" Medical Examination periods are scheduled and not cancelled within 6 business days prior to the scheduled examinations date, they will be charges and paid at the full rate.

(b) The charges payable to RMA under this Agreement are exclusive of federal, state and local taxes.

(c) The acceptance by RMA of full payment of all billings made on the invoice shall operate as and shall be a release to Town from all claims and liability to RMA, its successors, legal representatives and assigns, for anything done or furnished under and by the provisions of this Agreement.

7. RATES FOR ADDITIONAL SERVICES

(a) Rates for additional services not set forth herein will be negotiated with the Town.

(b) Town shall provide time and fee estimates for any optional service requested by the Town before commencing any activity. The parties will agree in writing as to such fees.

8. CONTACT PERSONS:

(a) Any communication, notice, claim for payment, report or other submissions necessary or required to be made by the parties regarding this Agreement shall be deemed to have been duly made upon receipt by Town or RMA or their designated representative at the following address or at such other address mat may be specified in writing by the parties:

For Town of Riverhead:

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

For RMA:

Craig H. Rosenberg, M.D.  
President & Medical Director PO  
Box 230 Islip, NY 11751

**(b) Termination/Litigation**

**For the Town:**

**Dawn Thomas, Town Attorney**

**Riverhead Town Attorney's Office**

**200 Howell Avenue Riverhead, New  
York 11901 631-727-3200x605**

**For the Contractor:**

**Rehabilitation Medicine Associates**

**P.O. Box 230**

**Islip, New York 11751  
631-968-3100**

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

**(d) Any communication or notice regarding litigation shall be deemed to have been duly made upon receipt at the addresses specified above or at such other addresses that may be specified in writing by either party.**

**9. INDEMNIFICATION FOR PERSONAL INJURY, TANGIBLE PROPERTY DAMAGE OR WRONGFUL DEATH:**

**(a) RMA shall indemnify and hold Town harmless from and against all claims, costs, judgments, liens, encumbrances and expenses, including reasonable attorneys' fees, for personal injury, tangible property damage or wrongful death arising out of the negligence or intentionally wrongful acts or omissions of RMA, its agents, employees or subcontractors in connection with the services described or referred to in this Agreement and applicable Amendments.**

**(b) Town shall indemnify and hold harmless RMA, from and against all claims, costs, judgments, liens, encumbrances and expenses, including reasonable attorneys' fees, for personal injury, tangible property damage or wrongful death arising out of the acts or omissions or negligence of Town, its officers, agents or employees in connection with the services described or referred to in this Agreement and applicable Amendments.**

**10. INSURANCE:**

**(a) RMA agrees to procure and pay the entire premium for and maintain throughout the term of this Agreement, and applicable Amendments, insurance in the amounts and types specified by the Town. Unless otherwise specified by the Town and agreed to by RMA, in writing, such insurance will be as follows:**

- (i) **Commercial General Liability Insurance.** RMA shall maintain a primary General Liability policy naming Town as an additional insured, having minimum limits of \$2,000,000.00 (Two Million) combined single limit for bodily injury and property damage per occurrence and aggregate.
- (ii) **Professional Liability Insurance.** In addition, RMA must maintain Professional Liability in an amount equal to \$1,300,000.00 (One Million Three Hundred Thousand) per each occurrence and \$3,000,000.00 (Three Million) in the aggregate.
- (iii) **Automobile Liability Insurance,** (if any vehicles are used in the performance of this Agreement) in an amount of \$300,000.00 combined single limit for bodily injury and property damage per occurrence.
- (iv) **Workmen's Compensation and Employer's Liability Insurance.** Shall comply with all applicable New York State laws and regulations and Disability Benefits Insurance if required by law and shall have furnished to the Town prior to its execution of this Agreement the documentation required by the State of New York Workers Compensation Board of coverage or exemption from coverage pursuant to Section 57 and 220 of the Workers Compensation Law. In accordance with General Municipal Law Section 108, this Agreement shall be void and of no effect unless RMA shall provide and maintain coverage during the term of this Agreement for the benefit of such employees as are required to be covered by the provisions of the Workers Compensation Law.

(b) All said policies shall be for periods of not less than one year and shall contain a provision whereby the same cannot be canceled unless Town is given at least thirty (30) days prior written notice of such cancellation. RMA shall procure such insurance and pay for renewals of the same, as required. Insurance as specified herein must be maintained at all times during the life of this Agreement. Prior to the commencement of this Agreement, a Certificate of Insurance, acceptable to Town evidencing such coverages shall be furnished to Town.

(c) Insurance coverage shall be provided by an Insurance Company licensed as an "admitted Carrier" by the New York State Insurance Department and rated by "bests" at "A-" or better, or as otherwise deemed acceptable to Town.

(d) RMA shall furnish to the Town certificates of insurance evidencing compliance with the aforesaid insurance requirements. In the case of commercial general liability insurance and automobile liability insurance, said certificates shall name the Town of Riverhead as an additional insured. All such certificates or other evidence of insurance shall provide for the Town of Riverhead to be a certificate holder. RMA shall notify Town in writing thirty (30) days prior to any written notice of cancellation, non-renewal or material change (with the exception of professional liability insurance that is non-cancelable). Such certificates, policies, and notices shall be mailed to the Town at the address set forth in paragraph 8, entitled "Contact Persons", subparagraph b.

Subcontractors shall adhere to the above.

## 11. GRATUITIES:

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

**12. INDEPENDENT CONTRACTOR:**

It is expressly agreed that RMA's status hereunder is that of an independent contractor. Neither RMA nor any person hired by RMA shall be considered employees of the Town for any purpose.

**13. CONFLICT OF INTEREST**

Neither RMA nor its employees may simultaneously represent other private clients in actions or proceedings against the Town, its agencies or Town employees in their official capacity, without the prior approval of the Town. The representation of any individual in a dispute concerning the legal relationship between the individual and the Town or its agencies would also create a conflict that may require disqualification. RMA is charged with the duty to disclose to the Town the existence of any material adverse interests. The duty shall continue so long as RMA is retained on behalf of the Town or its employees. The determination as to when a conflict exists shall ultimately be made by the Riverhead Town Attorney's Office after full disclosure is obtained.

**14. NO DEFAULT**

To the best of its knowledge, RMA warrants that it is not in arrears to the Town upon debt or contract and is not in default as surety, contractor or otherwise on any obligation to the Town.

**15. NO ASSIGNMENT:**

RMA shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or any of its right, title or interest therein, or its power to execute this Agreement, or assign all or any portion of the monies that may be due or become due to RMA under the terms of this Agreement, to any other person or corporation, without the prior consent of the Town.

**16. SEVERABILITY:**

It is expressly agreed that if any term or provision of this Agreement, or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and every other term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

**17. ENTIRE AGREEMENT:**

**It is expressly agreed that this instrument represents the entire Agreement of the parties and that all previous understandings are merged in this Agreement**

**18. NO ORAL CHANGES:**

**No modification of this Agreement shall be valid unless written in the form of an Addendum or Amendment signed by both parties.**

**End of Text for Exhibit A.**

## **EXHIBIT B**

### **Description of Responsibilities**

#### **1. RESPONSIBILITIES OF RMA:**

- (a) Independent medical examinations conducted by RMA will be used to help Town and the Union resolve disputed cases of illnesses or injuries relating to or affecting an employee's job duties. It will be RMA's responsibility to:**
  - (b) Determine whether a physical illness or injury suffered by the employee was incurred in the performance of his/her duties.**
  - (c) Determine whether a current illness or injury is a recurrence or aggravation of prior injury, which occurred in the performance of the employee's duties.**
  - (d) Determine whether an employee who incurred a totally disabling illness or injury as a result of the performance of the employee's duties has sufficiently recovered and is able to perform either temporary limited duty assignments or full duty.**
  - (e) Upon determination that the employee is able to return to work, a facsimile of the physical condition and restrictions report will be sent to Town and Union.**
  - (f) In a prompt and timely fashion submit documentation to Town and Union, suitable in format for use in the medical arbitration process.**
  - (g) Make appointment times available for medical examinations, which will satisfy Town's and/or employee's needs under the medical arbitration process.**
  - (h) Identify to Town and Union a single individual within RMA who will be authorized and responsible to communicate patient specific, therefore confidential, information.**
  - (i) Deny any requests for information from unauthorized individuals and communicate only with the designated individuals.**
  - (j) Assist Town and Union by providing any and all reasonable services related to the provision of medical arbitration services.**

#### **2. RESPONSIBILITIES OF TOWN:**

- (a) Convey information to employees referred to RMA for medical examination, which will facilitate the appointment scheduling process.**
- (b) Communicate with RMA about each employee being referred, to RMA for medical examination services, prior to initial patient contact.**
- (c) Provide RMA with all required clinical and related documentation for each referred patient, prior to the medical examination.**

- (d) Provide RMA with a copy of a signed patient consent for release of medical information, subject to applicable laws regarding confidentiality of patient information, prior to the medical examination.**
- (e) Designate an individual who will be Town's contact person and sole communicant regarding all referred cases.**
- (i) Provide clear guidelines at all times regarding the desired format for documentation to be provided to Town.**
- (g) Supply any special forms required for completion as a part of the medical examination and billing process.**

**End of Text for Exhibit B.**

**Exhibit C**

**Incorporated by reference:**

**Agreements between Town of Riverhead and Police  
Benevolent Association and Superior Officers  
Association.**

5/4/10

ADOPTED

TOWN OF RIVERHEAD

Resolution #338

**AWARDS BID FOR AUTOMOBILE PARTS**

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

**WHEREAS**, the Town Clerk was authorized to publish and post a notice for sealed bids for AUTOMOBILE PARTS for the Town of Riverhead and;

**WHEREAS**, bids were received and opened at 11:05 am on April 22, 2010, at Town Hall, 200 Howell Avenue, Riverhead, New York, the date, time and place given in the Notice to Bidders.

**NOW THEREFORE BE IT RESOLVED**, that the bid for AUTOMOTIVE PARTS for the Town of Riverhead be and hereby is, awarded to BEJAY AUTO PARTS, INC.

**BE IT FURTHER, RESOLVED**, that the Town Clerk be and is hereby is authorized to forward a copy of this resolution to the BEJAY AUTO PARTS, INC. and the Purchasing Department.

**THE VOTE**

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

Walter Yes No

The Resolution Was  Was Not

Thereupon Duly Declared Adopted

5/4/10

ADOPTED

TOWN OF RIVERHEAD  
Resolution # 339

**AWARDS BID – HOWELL AVENUE PUMP STATION RECONSTRUCTION –**  
**CONTRACT NO. RDSD0805S – FORCE MAIN CONSTRUCTION**  
**RIVERHEAD SEWER DISTRICT**

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

**WHEREAS**, this Town Board did authorize the advertisement for bids for project known as Howell Avenue Pump Station Reconstruction – Contract No. RDSD0805S – Force Main Construction of the Riverhead Sewer District, and

**WHEREAS**, all bids received were opened and read aloud on the date and time advertised in the notice, and

**WHEREAS**, H2M Group, consulting engineers to the Riverhead Sewer District, by attached letter dated April 16, 2010 did recommend that the bid be awarded to Bove Industries at the total bid price of \$579,477.50 being the lowest responsible bidder.

**NOW, THEREFORE, BE IT RESOLVED**, that the bid for project known as Howell Avenue Pump Station Reconstruction – Contract No. RDSD0805S – Force Main Construction of the Riverhead Sewer District, be and is hereby awarded to:

Bove Industries  
East Setauket, New York  
In the bid amount of \$579,477.50

and be it further

**RESOLVED**, that the Town Clerk forward certified copy of this resolution to the above named contractor, and be it further

**RESOLVED**, that the Town Clerk is hereby authorized to return to all unsuccessful bidders their respective bid security, and be it further

**RESOLVED**, that the Town Supervisor be and is hereby authorized to execute a contract with Bove Industries for this project, and be it further

**RESOLVED**, that upon completion of fully executed contracts and the filing of said contract with the Town Clerk, the Town Clerk is hereby authorized to release to the successful bidder the bidder's bid security.

**RESOLVED**, that a copy of this resolution shall be forwarded to the Sewer Department and Purchasing Department.

**THE VOTE**

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

Walter Yes No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted



Engineers | Architects | Scientists | Planners | Surveyors

175 Pinelawn Road | Suite 308  
Melville, New York 11747  
v 631.756.8000 f 631.393.6322  
www.h2m.com

Holzmacher, McLendon & Murrell, P.C. | H2M Associates, Inc.  
H2M Labs, Inc. | H2M Architects & Engineers, Inc.

April 16, 2010

Supervisor Sean Walter & Town Board  
Town of Riverhead  
200 Howell Avenue  
Riverhead, NY 11901

**Re: Town of Riverhead / Riverhead Sewer District  
Howell Ave. Pump Station Reconstruction  
Bid Recommendation  
Contract No. RDSD0805S – Force Main Construction  
Our File No.: RDSD0805**

Dear Supervisor & Town Board:

On April 8, 2010, six (6) bids were received for the referenced construction contract. The bid results follow:

BIDDER		TOTAL BID AMOUNT *
1	Bove Industries	\$579,468.00 (\$579,477.50)
2	Bancker Construction Corp.	\$633,216.25
3	G&M Earth Moving, Inc.	\$633,333.00
4	Darr Construction Equipment Corp.	\$654,089.00
5	Bi-County Construction	\$655,880.00
6	ADJO Contracting Corp.	\$675,998.50 (\$675,723.50)

\* Includes Cash Allowances Totaling \$25,000

The Total Bid Amount written in the proposal from Bove Industries is \$579,468.00. As noted on the attached tabulation, the sum of the bid items totals \$579,477.50 which is \$9.50 higher than the bid that was submitted. Due to the small amount of the difference and the difference to the second bidder, we recommend that the Town accept this informality.

H2M's construction cost opinion as presented in the Map and Plan dated April 2008 was \$510,000 with a mid-2009 construction period. To reduce impacts to traffic, directional drilling was specified as the method of installation for the pipe in East Main Street. The cost opinion prepared prior to bid was \$625,000. Consequently, the contract bid is within budget.



CELEBRATING 75 YEARS





Supervisor Sean Walter & Town Board  
Howell Ave. Pump Station Reconstruction  
Contract No. RDSD 0805S – Force Main Construction  
Page 2 of 2  
April 16, 2010

The construction bids for each of the contracts for the project are summarized in the following table:

CONTRACT	COST OPINION	BID AMOUNT
0805G – General Construction	\$1,512,000	\$1,349,000.00
0805E – Electrical Construction	\$677,000	\$537,845.00
0805S – Force Main Construction	\$510,000	\$579,477.50
TOTAL	\$2,699,000	\$2,466,322.50

We have investigated the qualifications of the lowest bidder and find them qualified to perform the work. We have reviewed the bid submitted by Bove Industries. Based on the information provided by the bidder and our investigations, we find this contractor to be qualified in performing projects of similar size and complexity. The contractor has also worked on several recent projects designed by H2M.

Therefore, we recommend that the contract be awarded to Bove Industries for FIVE HUNDRED SEVENTY NINE THOUSAND FOUR HUNDRED SEVENTY SEVEN DOLLARS AND FIFTY CENTS (\$579,477.50). They can be reached as follows: Mr. Louis J. Bove, President, Bove Industries, 16 Hulse Road, East Setauket, New York 11733, (631) – 331-8500, (631) – 331-8523 (fax).

Upon approval of this bid recommendation, H2M will forward four (4) counterparts of the conformed bid documents to Mr. Richard A. Ehlers, Esq. for contract execution. Please call me should any questions arise.

Very truly yours,  
**HOLZMACHER, McLENDON & MURRELL, P.C.**

Frank M. Russo, P.E.  
Vice President

FMR:sch

cc: Superintendent Michael P. Reichel (w/encl.)  
Richard A. Ehlers, Esq. (w/encl.)

CLIENT NAME: Riverhead Sewer District  
 PROJECT TITLE: HOWELL AVENUE PUMP STATION RECONSTRUCTION AND FORCE MAIN REPLACEMENT - FORCE MAIN CONSTRUCTION  
 PROJECT NO. RSD8 08-665

BID DATE: April 8, 2010 at 11:00 a.m.

5% BB or CC

LINE NO.	DESCRIPTION	BIDDER: G & L Earth Moving Inc. Holbrook, NY 11741			BIDDER: Bove Industries East Stroudsburg, NY 17833			BIDDER: Bancroft Construction Corp. Islanda, NY 11748			BIDDER: BUCARNOY Construction Medford, NY 11763			BIDDER: Barr Construction Equip. Corp. Bayport, NY 11705			BIDDER: Adco Contracting Corp. Bohemia, NY 11716		
		UNIT PRICE	QUANTITY	TOTAL PRICE	UNIT PRICE	QUANTITY	TOTAL PRICE	UNIT PRICE	QUANTITY	TOTAL PRICE	UNIT PRICE	QUANTITY	TOTAL PRICE	UNIT PRICE	QUANTITY	TOTAL PRICE	UNIT PRICE	QUANTITY	TOTAL PRICE
5	Remove and Install 18-inch Diameter PVC DR. B Percepsin	156.00	1	\$156.00	136.00	1	\$136.00	118.00	1	\$118.00	168.00	1	\$168.00	146.00	1	\$146.00	146.00	1	\$146.00
6	18-inch Diameter HDPE DR17 Force Main by Directional Drilling	380.00	1	\$380.00	7,900.00	1	\$7,900.00	3,000.00	1	\$3,000.00	5,000.00	1	\$5,000.00	480.00	1	\$480.00	480.00	1	\$480.00
7	Directional Drill Sealing/Recovery Pits	275.00	2	\$550.00	550.00	2	\$1,100.00	230.00	2	\$460.00	540.00	2	\$1,080.00	120.00	2	\$240.00	154.00	2	\$308.00
10	Storm Drain Inlet Protection	3,450.00	1	\$3,450.00	10,350.00	1	\$10,350.00	8,000.00	1	\$8,000.00	24,000.00	1	\$24,000.00	6,000.00	1	\$6,000.00	179,170.00	1	\$179,170.00
11A	Wye Cleanout	5,000.00	4	\$20,000.00	10,000.00	4	\$40,000.00	7,000.00	4	\$28,000.00	21,000.00	4	\$84,000.00	7,000.00	4	\$28,000.00	16,500.00	4	\$66,000.00
12	6-Foot Diameter Precast Doghouse Manhole (0-10 ft deep)	10,100.00	1	\$10,100.00	10,100.00	1	\$10,100.00	22,000.00	1	\$22,000.00	22,000.00	1	\$22,000.00	23,000.00	1	\$23,000.00	23,000.00	1	\$23,000.00
13	4-Foot Diameter Precast Concrete Drain Manhole (0-10 ft deep)	2,400.00	2	\$4,800.00	16,000.00	2	\$32,000.00	12,000.00	2	\$24,000.00	12,000.00	2	\$24,000.00	12,000.00	2	\$24,000.00	12,000.00	2	\$24,000.00
14	Sewer Manhole Frame and Cover	770.00	2	\$1,540.00	1,200.00	2	\$2,400.00	1,500.00	2	\$3,000.00	1,500.00	2	\$3,000.00	980.00	2	\$1,960.00	660.00	2	\$1,320.00
15	Drain Manhole Frame and Cover	770.00	2	\$1,540.00	1,200.00	2	\$2,400.00	1,500.00	2	\$3,000.00	1,500.00	2	\$3,000.00	980.00	2	\$1,960.00	660.00	2	\$1,320.00
16	Cleanout Frame and Cover	770.00	2	\$1,540.00	1,200.00	2	\$2,400.00	1,500.00	2	\$3,000.00	1,500.00	2	\$3,000.00	980.00	2	\$1,960.00	660.00	2	\$1,320.00
17	4-Foot Diameter Precast Concrete Air Roller Manhole (0-10 ft deep)	5,800.00	1	\$5,800.00	17,000.00	1	\$17,000.00	7,000.00	1	\$7,000.00	7,000.00	1	\$7,000.00	5,000.00	1	\$5,000.00	7,160.00	1	\$7,160.00
18	Air Roller Manhole Frame and Cover	770.00	1	\$770.00	1,200.00	1	\$1,200.00	1,500.00	1	\$1,500.00	1,500.00	1	\$1,500.00	900.00	1	\$900.00	660.00	1	\$660.00
27	Gravel Berrow	520.00	10	\$5,200.00	710.00	10	\$7,100.00	650.00	10	\$6,500.00	850.00	10	\$8,500.00	510.00	10	\$5,100.00	410.00	10	\$4,100.00
28	4-inch Topsoil and Sealing	65.00	40	\$2,600.00	12.00	40	\$480.00	5.00	40	\$200.00	11.00	40	\$440.00	11.00	40	\$440.00	26.00	40	\$1,040.00
29	Complete Water Services Relocation	1,000.00	3	\$3,000.00	330.00	3	\$990.00	600.00	3	\$1,800.00	600.00	3	\$1,800.00	900.00	3	\$2,700.00	875.00	3	\$2,625.00
30	Recycled Concrete Aggregate Base (7'x10' Road)	6.00	1000	\$6,000.00	56,000.00	10	\$560,000.00	3.25	1000	\$3,250.00	45.00	1000	\$4,500.00	10.00	1000	\$10,000.00	32.30	1000	\$3,230.00
31A	Type 3 Asphalt (7'x10' Road)	91.00	75	\$6,825.00	91.00	75	\$6,825.00	53.25	75	\$3,993.75	45.00	75	\$3,375.00	40.50	75	\$3,037.50	27.25	75	\$2,043.75
31B	Type 4 Asphalt (7'x10' Road)	48.00	1000	\$4,800.00	48.00	1000	\$4,800.00	29.00	1000	\$2,900.00	26.00	1000	\$2,600.00	16.60	1000	\$1,660.00	16.60	1000	\$1,660.00
32A	Type 5F Asphalt (NYS DOT Road)	42.00	75	\$3,150.00	53.150.00	10	\$531,500.00	18.50	1000	\$18,500.00	18.50	1000	\$18,500.00	18.50	1000	\$18,500.00	39.10	1000	\$39,100.00
33	Temporary Bituminous Pavement	9.00	1075	\$9,675.00	1.00	1075	\$1,075.00	5.00	1075	\$5,375.00	4.00	1075	\$4,300.00	4.00	1075	\$4,300.00	4.00	1075	\$4,300.00
34	Maintenance of Traffic (NYS DOT Road)	28,000.00	1	\$28,000.00	85,000.00	1	\$85,000.00	27,000.00	1	\$27,000.00	27,000.00	1	\$27,000.00	3,000.00	1	\$3,000.00	3,000.00	1	\$3,000.00
35	Removal and Disposal of Existing Pavement and Siltbank	4,290.00	1	\$4,290.00	11,707.50	1	\$11,707.50	5,000.00	1	\$5,000.00	5,000.00	1	\$5,000.00	1,100.00	1	\$1,100.00	1,100.00	1	\$1,100.00
36	Removal and Disposal of Existing Curb and Installation of New Curb	96.00	50	\$4,800.00	50.19	50	\$4,809.00	40.00	50	\$2,000.00	37.00	50	\$1,850.00	41.00	50	\$2,050.00	41.00	50	\$2,050.00
42	Pavement Striping	1.65	1200	\$1,980.00	1.00	1200	\$1,200.00	2.00	1200	\$2,400.00	0.75	1200	\$900.00	1.00	1200	\$1,200.00	2.25	1200	\$2,700.00
43	Stop Line Striping	22.00	25	\$550.00	12.00	25	\$300.00	3.00	25	\$75.00	3.00	25	\$75.00	22.00	25	\$550.00	22.00	25	\$550.00
44	Temporary Support Telephone Pole	900.00	1	\$900.00	200.50	1	\$200.50	1,000.00	1	\$1,000.00	1,000.00	1	\$1,000.00	1,000.00	1	\$1,000.00	2,100.00	1	\$2,100.00
47	Overtime Cash Allowance	55,000.00	1	\$55,000.00	55,000.00	1	\$55,000.00	55,000.00	1	\$55,000.00	55,000.00	1	\$55,000.00	55,000.00	1	\$55,000.00	55,000.00	1	\$55,000.00
48	Testing Laboratory Cash Allowance	10,000.00	1	\$10,000.00	10,000.00	1	\$10,000.00	10,000.00	1	\$10,000.00	10,000.00	1	\$10,000.00	10,000.00	1	\$10,000.00	10,000.00	1	\$10,000.00
49	Contingency Cash Allowance	10,000.00	1	\$10,000.00	10,000.00	1	\$10,000.00	10,000.00	1	\$10,000.00	10,000.00	1	\$10,000.00	10,000.00	1	\$10,000.00	10,000.00	1	\$10,000.00
50	Preparation of Record Drawings (lump sum)	3,000.00	1	\$3,000.00	3,000.00	1	\$3,000.00	3,000.00	1	\$3,000.00	3,000.00	1	\$3,000.00	3,000.00	1	\$3,000.00	3,000.00	1	\$3,000.00
51	Pursh and Restore Test Pit	500.00	4	\$2,000.00	550.00	4	\$2,200.00	150.00	4	\$600.00	900.00	4	\$3,600.00	800.00	4	\$3,200.00	800.00	4	\$3,200.00
54	11-1/4' dia. C.L.D.L. Bend and Concrete Bleeding	900.00	1	\$900.00	500.00	1	\$500.00	1,000.00	1	\$1,000.00	1,000.00	1	\$1,000.00	1,000.00	1	\$1,000.00	1,000.00	1	\$1,000.00
55	45' dia. C.L.D.L. Bend, Wye, and Concrete Bleeding	2,840.00	1	\$2,840.00	9,500.00	1	\$9,500.00	3,000.00	1	\$3,000.00	2,700.00	1	\$2,700.00	2,700.00	1	\$2,700.00	2,700.00	1	\$2,700.00
58	Epoxy Coating to Interior of One Doghouse Manhole	1,300.00	1	\$1,300.00	1,000.00	1	\$1,000.00	1,000.00	1	\$1,000.00	1,000.00	1	\$1,000.00	1,000.00	1	\$1,000.00	1,000.00	1	\$1,000.00
59	Activated Carbon Manhole Inert at Doghouse Manhole	1,600.00	1	\$1,600.00	750.00	1	\$750.00	5,000.00	1	\$5,000.00	5,000.00	1	\$5,000.00	5,000.00	1	\$5,000.00	5,000.00	1	\$5,000.00
60	12-Foot Long Spot Liners Installed in 8-inch Diameter City Sewer Pipe	2,700.00	2	\$5,400.00	5,952.00	2	\$11,904.00	5,000.00	2	\$10,000.00	5,000.00	2	\$10,000.00	5,000.00	2	\$10,000.00	5,000.00	2	\$10,000.00
61	Transition Cauting, Down CLD and HDPE Forces Main Pipe	330.00	1	\$330.00	750.00	1	\$750.00	3,000.00	1	\$3,000.00	3,000.00	1	\$3,000.00	3,000.00	1	\$3,000.00	3,000.00	1	\$3,000.00
62	Manhole Solid Sheet	594.00	1	\$594.00	450.00	1	\$450.00	900.00	1	\$900.00	900.00	1	\$900.00	900.00	1	\$900.00	900.00	1	\$900.00
63	10-inch Aluminum Expansion Plug	550.00	1	\$550.00	4,000.00	1	\$4,000.00	900.00	1	\$900.00	900.00	1	\$900.00	900.00	1	\$900.00	900.00	1	\$900.00
64	12-1/2' dia. C.L.D.L. Bend and Concrete Bleeding	891.00	1	\$891.00	750.00	1	\$750.00	1,000.00	1	\$1,000.00	1,000.00	1	\$1,000.00	1,000.00	1	\$1,000.00	1,000.00	1	\$1,000.00
65	Portland Cement Concrete for NYSDOT Pavement Repairs	71.50	40	\$2,860.00	1.00	40	\$40.00	375.00	40	\$15,000.00	130.00	40	\$5,200.00	146.00	40	\$5,840.00	150.00	40	\$6,000.00
66	Portland Cement Concrete Siltbank Curb Ramp (NYS DOT)	550.00	1	\$550.00	1,200.00	1	\$1,200.00	650.00	1	\$650.00	2,000.00	1	\$2,000.00	3,000.00	1	\$3,000.00	3,000.00	1	\$3,000.00
67	Portland Cement Concrete Siltbank (NYS DOT)	55.00	15	\$825.00	90.00	15	\$1,350.00	100.00	15	\$1,500.00	175.00	15	\$2,625.00	185.00	15	\$2,775.00	201.00	15	\$3,015.00
68	PVC Pipe Joint Retainers	110.00	34	\$3,740.00	250.00	34	\$8,500.00	200.00	34	\$6,800.00	200.00	34	\$6,800.00	270.00	34	\$37,800.00	275.00	34	\$39,300.00
69	Temporary Removal of Traffic Signs and Retractions	55.00	3	\$165.00	1,100.00	3	\$3,300.00	200.00	3	\$600.00	200.00	3	\$600.00	350.00	3	\$1,050.00	350.00	3	\$1,050.00
SUM				\$633,333.00			\$579,477.50			\$633,333.25			\$655,800.00			\$654,089.40			\$675,724.50
ADDITIONAL ACKNOWLEDGED (VENDOR) No. 1																			
Yes																			
Bid Total \$579,477.50																			
Yes																			
Bid Total \$675,724.50																			

5/4/10

ADOPTED

TOWN OF RIVERHEAD

Resolution #340

**AWARDS BID FOR TRUCK PARTS**

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

**WHEREAS**, the Town Clerk was authorized to publish and post a notice for sealed bids for TRUCK PARTS for the Town of Riverhead and;

**WHEREAS**, bids were received and opened at 11:05 am on April 22, 2010, at Town Hall, 200 Howell Avenue, Riverhead, New York, the date, time and place given in the Notice to Bidders.

**NOW THEREFORE BE IT RESOLVED**, that the bid for TRUCK PARTS for the Town of Riverhead be and hereby is, awarded to:

Items 1 – 12 and 14 – 18: Long Island Truck Parts, Inc.

Item 13: F&F Brake Service Corp

**BE IT FURTHER, RESOLVED**, that the Town Clerk be and is hereby is authorized to forward a copy of this resolution to LONG ISLAND TRUCK PARTS, INC., F & F BRAKE SERVICE CORP and the PURCHASING DEPARTMENT.

**THE VOTE**

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

Walter Yes No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 341

**AUTHORIZES THE SUPERVISOR TO EXECUTE AN AGREEMENT WITH BARIST ELEVATOR COMPANY, INC.**

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

**WHEREAS**, The Town of Riverhead operates an elevator at the Jamesport Community Center in Jamesport, a town facility.

**WHEREAS**, The Town of Riverhead requires elevator maintenance and service regarding the elevator at the Jamesport Community Center.

**WHEREAS**, Barist Elevator Company, Inc., is ready willing and able to provide elevator service and maintenance at the Jamesport Community Center.

**NOW THEREFORE BE IT RESOLVED**, that the Supervisor is authorized to execute an agreement with Barist Elevator Company, Inc., regarding elevator service and maintenance at the Jamesport Community Center in Jamesport, a town facility.

**RESOLVED**, that a copy of this resolution be forwarded to BARIST ELEVATOR COMPANY, INC., 113F Brook Avenue, Deer Park, NY 11729 and Engineering.

**THE VOTE**

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

Walter Yes No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

## SERVICE AGREEMENT

This Agreement made the \_\_\_\_\_ day \_\_\_\_\_ 2010 between the TOWN OF RIVERHEAD (hereinafter "Town"), a municipal corporation organized and existing under the laws of New York, with its office located at 200 Howell Avenue, Riverhead, New York, 11901, and BARIST ELEVATOR COMPANY, INC. (hereinafter "Barist"), a corporation existing under the laws of the State of New York with a principal place of business at 113F Brook Avenue, Deer Park, NY 11729.

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

### I. SCOPE OF SERVICES

During the terms of this agreement, Barist shall provide elevator maintenance service at the Jamesport Community Center located at Jamesport Avenue, Jamesport, NY 11947, regarding one (1) hydraulic passenger elevator.

### 2. TERM OF AGREEMENT

The agreement shall commence on January 1, 2010 and terminate on December 31, 2010.

### 3. PAYMENT

For these services Town will pay Barist a fee of \$325.55 (three hundred twenty five dollars and fifty five cents) per month or \$3,906.60 (three thousand nine hundred six dollars and sixty cents) for the term. Payments will be made on a monthly basis upon receipt of an accurate, proper and timely invoice.

### 4. PUBLICITY

Barist 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 Barist. Barist shall not, without the prior written consent of Town, provide, release or make available for inspection any document, 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.

### 5. 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.

### 6. TERMINATION

This agreement may be terminated at any time by either party upon thirty days written notice to the other party. In the event of such termination, Town shall have no further obligation to Barist except to make any payments which may have become due under this agreement.

### 7. RECORDS

Barist 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 Barist involving transactions related to mis 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 Barist, 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 fifteen days of the receipt of such written notice. In the event that Barist determines that a change order is required, Barist shall obtain written approval of 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, Barist 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 Barist and 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 Town of Riverhead if mailed by certified mail, postage prepaid to Town of Riverhead, Attention: Daniel P. McCormick, Deputy Town Attorney, 200 Howell Avenue, Riverhead, NY 11901; or (ii) to Barist if mailed by certified mail, postage prepaid to Barist Elevator Company, Inc., Attention: Steven Dalvano, 113F Brook Avenue Deer Park, NY 11729.

#### **10. COMPLIANCE WITH LAWS**

Barist shall comply with all applicable federal, state and local laws and ordinances and regulations in the performance of its services under this agreement. Barist will notify Town immediately if Barist's work for Town becomes the subject of a government audit or investigation. Barist represents that it 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, Barist 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. Barist 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 Barist's professional or technical discipline.

#### **11. INSURANCE. INDEMNITY AND LIABILITY**

Barist shall carry Comprehensive General Liability Insurance in the amount of one million dollars per occurrence and two million dollars in the aggregate and, if applicable, worker's compensation insurance. Barist shall provide a certificate of insurance regarding said liability

coverage which shall name the Town of Riverhead as an additional insured upon execution of this contract. Barist hereby indemnifies and holds 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 Barist under this agreement.

**12. CONFLICT OF INTEREST**

Barist 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. Barist 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 hereto. Barist 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 Barist fails to perform any of its obligations hereunder in accordance with the terms hereof then, after reasonable notice to Barist not to exceed thirty days and an opportunity for Barist 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 Barist and the amount incurred by the Town in connection with such care shall be payable by Barist to 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, Barist shall proceed diligently with the performance of this agreement in accordance with the decision of Town.

**15. WORK HOURS**

All work is to be performed during Barist's regular working hours of 8:00 am to 4:30 pm on Barist's regular working days Monday through Friday excluding holidays. Included in this contract (only if marked X) are the following hours of coverage at no charge:

- 24 hours/7 days a week for emergency service on complete system failures
- 24 hours/7 days a week Emergency Telephone Monitoring Service (if applicable)

In the event a device malfunction occurs between regular examinations, Barist's customer service representative will, at Town's request, dispatch an examiner to perform emergency minor

adjustment callback service during Barist's regular working hours on Barist's regular working days.

If examinations, repairs or emergency minor adjustment callback services are later requested by the Town or its representative beyond regular working days/working hours, the Town agrees to pay extra for additional service/labor, as follows: for regular mechanic the billing rate is \$153.30 per hour; for team personnel (defined as two or more persons) billing rate is \$279.82 per hour; regarding service before 8:00 a.m. and after 5:00 p.m., Monday through Friday and all day on weekend days and holidays as follows: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and Christmas Day.

Barist will use elevator mechanics directly employed and supervised by Barist who will use all reasonable care to maintain the elevator equipment in proper and safe operating condition.

#### **16. SERVICE**

Barist will regularly and systematically service, adjust and lubricate the elevator equipment and, if in Barist's professional judgment conditions warrant, repair or replace the following items in accordance with paragraph below entitled pro-rated parts: (Motor parts, controller parts, car door operating mechanisms, hoistway door interlocks and hangers, bottom door guides and auxiliary door closing devices, safety devices, hatchway limit switch(s), guide shoes and gibs and/or roller guides, steel selector tapes or cable and traveling conductor cables; pump parts, strainer and valve body, cylinder head packing, gland packing and hydraulic fluid tanks.) Signal lamps and position indicating equipment will be serviced during Barist's regular service intervals only. Barist will furnish all necessary lubricants to perform the aforementioned service.

Barist agrees to do all work in compliance with the rules and regulations of the subject municipality having jurisdiction provided that such work/violations are due to normal wear and tear while this maintenance contract is in effect, are not pre-dated from the date this agreement is signed and do not cover any additions, changes to, or alter the equipment's existing design or its method of operation existing on the date this agreement is signed.

#### **17. PRO-RATED PARTS**

Notwithstanding the aforementioned, in order to provide Town with the maximum of service from the parts listed above, Barist is accepting them in their present condition with the understanding that Town is to pay, in addition to the base amount of this contract, an extra charge at the time the items listed are first replaced, if replaced during the term of this contract. The charge for this replacement will be determined by prorating the total cost of replacing the individual items.

#### **18. SPECIFIC EXCEPTIONS**

The following of the aforementioned items are specifically exempt from the repair and replacement guarantee: Piston, Cylinder, Oil Line Piping, Hydraulic fluid, Obsolete Equipment For Which Replacement Parts Are No Longer Available, Replacement with parts of a different design or type, Misuse/Abuse of The Elevator Equipment, Modifications, Alterations of Any Kind, New attachments, Water Damage, Power Failure(s), Brown outs, Computer and Microcomputer devices, Machine parts, Rotating elements, Safeties or Compensation equipment of any kind, Proprietary equipment and Any Damages as a Result of Occurrences Beyond Our Control.

**19. GENERAL EXCEPTIONS**

This contract does not, under any circumstances, include any work on or cover any of the following items including but not limited to: Machine room, power feeders, mainline disconnect switches their wiring and fuses, hoistway enclosure, hoistway inserts and brackets, rails or rail alignment, hatchway entrances, hatchway entrance finish, hoistway door checks or hinges, car enclosures, cab, cab fans, cab finish, cab flooring or coverings, cab wall panels, hung ceilings, cab lighting, light tubes or bulbs, emergency lighting and all batteries including those for emergency lowering devices, mirrors, handrails, gate and/or door panels, door/gate pull straps, sills, entrances and finishes, smoke sensors, heat sensors, telephones, intercoms or communication devices or items not specifically mentioned in this contract. This contract does not cover any work or the installation of new attachments recommended or directed by insurance companies, or any work required due to future revisions to the code and/or regulations by the authorities having jurisdiction.

**20. TESTING/INSPECTIONS**

If those elevator units listed are provided with firefighters service and are required by code to be tested monthly or however directed by the authorities having jurisdiction, Town assumes responsibility for performing and keeping a record of such tests. The following testing/inspections as per code or directed by authorities having jurisdiction (Only if marked by an X) are included in this contract:

X Annual Valve Pressure Test X  
Semi-Annual Visual Inspections

**21. TOWN'S RESPONSIBILITY**

The Town agrees to maintain the hatchway, pit and machine room in clean condition and to keep the elevator equipment from being exposed to the elements or to physical damage. The Town agrees to shut down the equipment immediately upon the manifestation or appearance of any irregularity in operation of the elevator equipment, to notify Barist at once, and keep the equipment shut down until the completion of repairs. The Town will keep the equipment under observation by personnel competent to detect any such manifestation or appearance of irregularities in operation between periods of Barist's inspections. The Town will give Barist written notice within twenty-four hours after occurrence of any accident in or about the elevators.

**22. SHARED RESPONSIBILITY**

The Town agrees to provide Barist unrestricted ready and safe access to all areas of the building in which any part of the devices are located and to keep all machine rooms and pit areas free from water, stored materials and debris. The Town agrees to provide a safe work place for Barist's personnel, and to remove and remediate any waste or hazardous materials in accordance with applicable laws and regulations.

If any device is malfunctioning or is in dangerous condition, Town agrees to immediately notify Barist using the Barist 24-hour service line. Until the problem is corrected, Town agrees to remove the device from service and take all necessary precautions to prevent access or use.

**The Town agrees to properly post, maintain and preserve any and all instructions or warnings to passengers in connection with the use of any devices.**

**This Agreement hereby executed on the date last written below.**

\_\_\_\_\_  
**Steven Dalvano, General Manager  
Barist Elevator Company, Inc.,  
113 F Brook Avenue  
Deer Park, New York 11729**

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

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

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

TOWN OF RIVERHEAD

Resolution # 342

2009 CALVERTON RAIL CAPITAL PROJECT

BUDGET ADJUSTMENT

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

**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>
405.052300.523000.44006 Infrastructure Construction & Impr	494,000	
405.052300.543500.44006 Professional Services - Engineer		494,000

**RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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  Was Not   
Thereupon Duly Declared Adopted

## TOWN OF RIVERHEAD

## Resolution # 343

SPECIAL TRUST PARK AND REC FUNDBUDGET ADJUSTMENT

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

**WHEREAS**, several Parks and Recreation Capital Projects have been considered complete and the remaining funds are to be transferred back to the Special Trust Parks Fund.

**NOW THEREFORE BE IT RESOLVED**, that the Town Board hereby authorizes the Accounting Department to close the necessary projects and complete the following transfer of funds:

		<u>FROM</u>	<u>TO</u>
406.099010.595736.40185	Transfer to Special Trust	58,241.01	
406.099010.595736.40188	Transfer to Special Trust	262.65	
406.099010.595736.70054	Transfer to Special Trust	29,273.64	
406.099010.595736.70055	Transfer to Special Trust	16,887.59	
406.099010.595736.70800	Transfer to Special Trust	1,006.28	
406.099010.595736.70801	Transfer to Special Trust	90,000.00	
406.099010.595736.70802	Transfer to Special Trust	2,068.21	
406.099010.595736.70803	Transfer to Special Trust	20,500.00	
406.099010.595736.70804	Transfer to Special Trust	2,047.25	
406.099010.595736.70900	Transfer to Special Trust	1,013.49	
406.099010.595736.70901	Transfer to Special Trust	135,000.00	
406.099010.595736.70902	Transfer to Special Trust	35,000.00	
406.095031.481900.70059	Transfer to 2007 Capital Impr		20,139.66
736.092801.487000	Capital Proj Transfers to Special Trust		371,160.46

**RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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  Was Not

Thereupon Duly Declared Adopted

5/4/10

ADOPTED

TOWN OF RIVERHEAD

Resolution # 344

**APPROVES CHAPTER 90 APPLICATION OF WADING RIVER SHOREHAM  
CHAMBER OF COMMERCE, INC.  
(Duck Pond Day)**

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

**WHEREAS**, on April 8, 2010, the Wading River Shoreham Chamber of Commerce, Inc. submitted a Chapter 90 Application for the purpose of conducting their "16<sup>th</sup> Annual Duck Pond Day", to include a parade, musical entertainment, crafts and educational exhibits to be held on North Country Road, Wading River, New York, on Sunday, May 23, 2010, between the hours of 12:00 noon and 4:00 p.m.; and

**WHEREAS**, the Wading River Shoreham Chamber of Commerce, Inc. has completed and filed a Short Environmental Assessment Form in accordance with 6 NYCRR 617; and

**WHEREAS**, the Town Board of the Town of Riverhead has declared itself "Lead Agency" in accordance with 6 NYCRR 617.6(b); and

**WHEREAS**, due to its not-for-profit status, the applicant has requested the Chapter 90 application fee be waived; and

**WHEREAS**, a certificate of insurance has been received naming the Town of Riverhead as an additional insured; and

**WHEREAS**, the Town Attorney of the Town of Riverhead has reviewed all documents including the certificate of insurance regarding said application.

**NOW THEREFORE BE IT RESOLVED**, that Town of Riverhead hereby determines the action to be an "Unlisted" action in accordance with 6 NYCRR 617.7(a) and hereby issues a Negative Declaration pursuant to 6 NYCRR 617.7(a)(2); and be it further

**RESOLVED**, that the application of the Wading River Shoreham Chamber of Commerce, Inc. for the purpose of conducting their "16<sup>th</sup> Annual Duck Pond Day", to include a parade, musical entertainment, crafts and educational exhibits to be held on North Country Road, Wading River, New York, on Sunday, May 23, 2010, between the hours of 12:00 noon and 4:00 p.m. is hereby approved; and be it further

**RESOLVED**, that a fire safety inspection by the Town Fire Marshal is required prior to the opening of this event to the public and shall be contacted at least three days in advance for the purpose of arranging the "pre-opening" inspection appointment at (631) 727-3200 extension 601; and be it further

**RESOLVED**, that this approval is subject to the provisions of Riverhead Town Code Chapter 81 - "Noise Control", Chapter 108-56 - "Signs" and any other section of the Riverhead Town Code that may pertain to this event; and be further

**RESOLVED**, that any tent installations, including the obtainment of any necessary tent permits, and any all electric shall comply with the applicable provisions of the Building and Fire Code of New York State, the National Electrical Code and National Fire Protection Agency 102 (Tents & Membrane Structures); and be it further

**RESOLVED**, that the Town Board of the Town of Riverhead hereby waives the Chapter 90 application fee for this event; and be it further

**RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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  Was Not   
Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution #345

APPROVES THE CHAPTER 90 APPLICATION OF RIVERHEAD ELKS LODGE #2044

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

**WHEREAS**, on April 9, 2010, the Riverhead Elks Lodge #2044 (Riverhead Elks) submitted a Chapter 90 Application for the purpose of conducting an event to include lawn mower race(s), children's bicycle races, and a kick ball event to be held at the Riverhead Elks Lodge located at 1239 East Main Street, Riverhead, New York, on May 16, 2010, having a rain date of May 30, 2010, between the hours of 12:00 noon and 4:00 p.m.; and

**WHEREAS**, the Riverhead Elks have submitted and completed a Short Environmental Assessment Form pursuant to 6 NYCRR Part 617 identifying the potential adverse environmental impacts of the event; and

**WHEREAS**, the Riverhead Elks has requested the Chapter 90 Application fee for this event be waived due to their not-for-profit status; and

**WHEREAS**, a certificate of insurance has been received; and

**WHEREAS**, the Town Attorney of the Town of Riverhead has reviewed all documents regarding said application.

**NOW THEREFORE BE IT RESOLVED**, that Town of Riverhead hereby determines the action to be an "Unlisted" action in accordance with 6 NYCRR 617.7(a) and hereby issues a Negative Declaration pursuant to 6 NYCRR 617.7(a)(2); and be it further

**RESOLVED** that the Chapter 90 Application of the Riverhead Elks for the purpose of conducting an event to include lawn mower race(s), children's bicycle races, and a kick ball event to be held at the Riverhead Elks Lodge located at 1239 East Main Street, Riverhead, New York, on May 16, 2010, having a rain date of May 23, 2010, between the hours of 12:00 noon and 4:00 p.m., is hereby approved subject to the conditions set forth herein; and be it further

**RESOLVED**, that there shall be no music played out of doors before 12:30 p.m. or after 5:30 p.m. on the day of the event, including music played from vehicles; and be it further

**RESOLVED**, that the Town Board of the Town of Riverhead hereby waives the Chapter 90 Application fee due to the applicant's not-for-profit status; and be it further

**RESOLVED**, that this approval is subject to the provisions of Riverhead Town Code Chapter 81 - "Noise Control", Chapter 108-56 - "Signs" and any other section of the Riverhead Town Code that may pertain to this event; and be further

**RESOLVED**, that any tent permits shall be obtained and all tent installations and electrical work shall comply with the applicable provisions of the Building and Fire Code of New York State, the National Electrical Code and National Fire Protection Agency 102 (Tents & Membrane Structures); and be it further

**RESOLVED**, that should the conditions of this approval be violated that the Riverhead Police Department shall have the authority to revoke the permit and require the public to vacate the premises; and be it further

**RESOLVED**, that this approval is subject to a fire safety inspection by the Town Fire Marshal prior to the opening of this event to the public. The Riverhead Fire Marshal shall be contacted at least three days in advance at (631) 727-3200 extension 601, for the purpose of arranging the "pre-opening" inspection appointment; and be it further

**RESOLVED**, that the Town Clerk is hereby authorized to forward a copy of this resolution to the Riverhead Elks Lodge #2044, P.O. Box 688, 1239 E. Main Street, Riverhead, New York, 11901; and be it

**RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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

Waiter Yes No

The Resolution Was  Was Not

Thereupon Duly Declared Adopted

## TOWN OF RIVERHEAD

Resolution # 346APPROVES ADDITIONAL LEAVE FOR A POLICE OFFICER

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

**WHEREAS**, as per Resolution #92, Police Officer Timothy McAllister has been on an approved military leave of absence from February 15, 2010 through March 31, 2010; and

**WHEREAS**, Police Officer McAllister has received orders extending his active duty through June 2010, and has made application to the Chief of Police and the Riverhead Town Board for an extension of said leave.

**NOW, THEREFORE, BE IT RESOLVED**, that in accordance with the Uniformed Services Employment and Reemployment Rights Act, Title 38, this Town Board hereby extends the aforementioned leave of absence for Police Officer McAllister through July 1, 2010.

**RESOLVED**, that a copy of this resolution shall be forwarded to Timothy McAllister, Police Department, Personnel Department and the Payroll Department.

THE VOTE

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

Walter Yes No

The Resolution Was  Was Not

Thereupon Duly Declared Adopted

## TOWN OF RIVERHEAD

Resolution # 347GENERAL FUND BUDGET ADJUSTMENTFOR POLICE K-9 EXPENSES

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

**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>
001.031200.542405	Uniform Replacement Expense	4,500	
001.031200.542318	K-9 Expenses		4,500

**RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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  Was Not   
Thereupon Duly Declared Adopted



TOWN OF RIVERHEAD

Resolution #349

RATIFIES THE AUTHORIZATION OF THE SUBMISSION OF MAIN STREET GRANT PROGRAM APPLICATION

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

**WHEREAS**, the New York State Division of Housing and Community Renewal has issued a request for proposals and funding application for a New York State Main Street Grant Program; and

**WHEREAS**, eligible applicants for the 2010 funding round include municipalities; and

**WHEREAS**, the Riverhead Main Street Area is a priority of the Town Board of the Town of Riverhead and has been the focus of numerous plans and studies, capital improvement projects and substantial investment by Town of Riverhead; and

**WHEREAS**, the Community Development Department has successfully administered two prior Main Street grants on behalf of the Business Improvement District resulting in a total of \$400,000 in state funds in and approximately \$5,000,000 in private funds being used to improve the central district;

**WHEREAS**, the Town of Riverhead has proposed a project to include a Downtown Anchor Grant in the amount of \$250,000 for renovation of the Suffolk Theatre; and

**WHEREAS**, this anchor project will result in the renovation and reopening of this historical cultural anchor; and

**WHEREAS**, the 2010 grant allows for 7.5% (\$37,500) to offset the administrative responsibilities of overseeing the Main Street Program.

**NOW THEREFORE BE IT RESOLVED**, Town Board strongly supports the Main Street Application prepared by the Community Development Department in the amount of \$500,000 and ratifies the authorization of its submission.

**THEREFORE, BE IT FURTHER RESOLVED**, that the Town Clerk shall provide a copy of this resolution to the Community Development Department Director Chris Kempner.

THE VOTE

Giglio Yes No Gabrielsen Yes No

Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was  Was Not

Thereupon Duly Declared Adopted

## TOWN OF RIVERHEAD

Resolution #350**AUTHORIZES SUPERVISOR TO SIGN NYSDOT TRI-PARTY GRANT CONTRACT**

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

**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, (the "Recovery Act") according to the apportionment of the costs of such program to be borne at the ratio of 100% Federal funds and 0% non-federal 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 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" awarding to Railroad Construction Co., Inc. in the amount of Three Million Four Hundred Ninety Six Thousand Six Hundred Eighty Four & 00/100 (\$3,496,684.00); and

**WHEREAS**, the Town Engineer and NYS DOT have recommended that additional work is required due to the installation of a turnout switch from the mainline off the Long Island Railroad (LIRR) causing the need for additional materials and labor to complete the switch installation for an increase of Three Hundred Ten Thousand Five Hundred Eighty-Four & 50/100 Dollars (\$310,584.50) under the Recovery Act; and

**WHEREAS**, the installation of the switch on LIRR right of way is not eligible for funding under the Recovery Act, however, is an integral part to the Calverton Freight Rail Access Rehabilitation; and

**WHEREAS**, NYSDOT has secured additional non-Recovery Act NYS funding for the installation of the switch on LIRR right of way to cover LIRR force account labor and other costs; and

**WHEREAS**, NYSDOT will reimburse LIRR directly, however, NYSDOT has requested that the Town of Riverhead sign the attached tri-party agreement as well.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town of Riverhead Supervisor be and is hereby authorized to sign the attached tri-party agreement with NYSDOT and LIRR subject to review and approval by the Town Attorney; and

**BE IT FURTHER RESOLVED**, that the Town Clerk is hereby directed to forward a copy of this resolution to the Community Development Agency.

**THE VOTE**

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

Walter Yes No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION**

**GRANT AGREEMENT**

**THE LONG ISLAND RAILROAD COMPANY**

**TOWN OF RIVERHEAD**

**COMPTROLLER CONTRACT # \_\_\_\_\_**

**PROJECT IDENTIFICATION #0935.61.301**

This Agreement dated this 9<sup>th</sup> day of April, 2010, by and between the People of the State of New York (hereinafter referred to as "STATE") acting by and through the Commissioner of the Department of Transportation (hereinafter referred to as "COMMISSIONER"), with offices at 50 Wolf Road, Albany, New York 12232, the Long Island Railroad Company, (hereinafter referred to as the "GRANTEE"), with offices at Jamaica Station, Jamaica, New York 11435-4380, a public benefit corporation and a subsidiary of the Metropolitan Transportation Authority (hereinafter referred to as the "MTA") with offices at 347 Madison Avenue, New York, NY 10017-3739 and the Town of Riverhead with offices at 200 Howell Avenue, Riverhead, New York 11901, provides funding for the design, construction, reconstruction, improvement or rehabilitation of rail facilities as is more fully described in Appendix I of this Agreement.

**WITNESSETH**

**WHEREAS**, the STATE, GRANTEE and the Town of Riverhead wish to provide for the preservation and improvement of the Project Facilities so as to allow for the safe and efficient movement of rail and vehicular traffic; and,

**WHEREAS**, the Town of Riverhead is the local sponsor of Comptroller's Contract D032417, effective January 8, 2010, CALVERTON INDUSTRIAL ENTERPRISE PARK FREIGHT RAIL ACCESS REHABILITATION, located in the Towns of Brookhaven and Riverhead, County of Suffolk, with funding provided by the American Recovery and Reinvestment Act (ARRA), and

**WHEREAS**, the utility of the Town of Riverhead's project is dependent on its

connection with the contiguous railroad system of the United States, specifically connecting with the Main Line of the Long Island Railroad (LIRR) at Milepost 67.56, and likewise the utility of such connection is dependent on the completion of the Town of Riverhead's project and

**WHEREAS**, ARRA funds are not available for the installation of the connecting switch by LIRR forces, and

**WHEREAS**, Section 14 of the Transportation Law authorizes the COMMISSIONER to enter into contracts for the purpose of maintaining and improving rail transportation service; and,

**WHEREAS**, the total cost for this project is three hundred fifty thousand dollars (\$350,000); and,

**WHEREAS**, by Chapter 54, Section 1, of the Laws of 1994 and Chapter 54, Section 1 of the Laws of 1996, Rail Passenger and Freight Rail Preservation Purpose funds have been appropriated to the Department of Transportation to provide assistance to Railroads for the payment of the STATE's share of a rail project to be undertaken in accordance with the provisions of the aforesaid Section 14 of the Transportation Law; and,

**WHEREAS**, it has been determined to be in the best interest of the public to make three hundred fifty thousand dollars (\$350,000) available to the Long Island Railroad Company, for those capital improvements used in connection herewith.

**NOW THEREFORE**, the parties hereto in consideration of the mutual promises, conditions, terms and obligations herein set forth, agree and covenant as follows:

#### **ARTICLE ONE: DEFINITIONS**

What is intended by the words and expressions defined below, shall be construed to have these meanings except where it is clear from the context that another meaning is intended.

"Agreement" means this document (with appendices).

"STATE" means the People of the State of New York acting by and through the Commissioner of the Department of Transportation.

"COMMISSIONER" means the Commissioner of the New York State Department of Transportation or his designated representative.

"GRANTEE" means the Long Island Railroad Company receiving financial assistance under this Agreement.

"Project or Approved Project" means the design, construction, reconstruction, establishment, improvement, rehabilitation or modernization of rail facilities and other capital improvements conducted pursuant to this Agreement.

"Project Costs" means those costs as defined and contemplated in Section 2.4 for accomplishing the work set forth in Appendix I of this Agreement and computed in accordance with 23 CFR, Part 140, Subpart I, and amendments thereto.

"Project Facilities" means those facilities being constructed on underlying property excluding the underlying property, together with all materials, equipment, facilities or supplies acquired, constructed, reconstructed, established, improved or rehabilitated by or on behalf of the GRANTEE pursuant to the provisions of this Agreement to accomplish the work program set forth in the Work Schedule.

"Work Schedule" means a description of the project as described in Appendix I.

## **ARTICLE TWO: CAPITAL IMPROVEMENTS**

### **Section 2.1. Description of Work**

GRANTEE agrees to complete or cause to be completed the work described in the Work Schedule constituting Appendix I of this Agreement (hereinafter referred to as the "Work Schedule"), which is attached hereto and made a part hereof, in accordance with said Work Schedule as may be modified or amended, and within the time limits

specified in said Work Schedule or any extension thereof.

Any time limits for the accomplishing of work which are set forth in said Work Schedule may be extended or modified by mutual agreement between the parties in writing. No work to be financed by the STATE may begin without written approval from the COMMISSIONER.

#### Section 2.2. Approvals and Compliance

GRANTEE agrees to obtain or cause to be obtained all approvals necessary to progress the work, and also agrees to comply or cause to be complied with all applicable Federal, State and Local Laws, including New York Railroad Law, which in any way impacts work to be accomplished by the project.

#### Section 2.3 Maintenance

GRANTEE agrees to maintain, or arrange to have maintained at no expense to STATE, the Project Facilities, as well as ancillary facilities useful or necessary for providing rail transportation services thereon or therewith, in accordance with usage, for the term of the Agreement as defined in Section 3.17. of this Agreement.

#### Section 2.4. Reimbursement

STATE agrees to reimburse GRANTEE for the STATE's share of eligible Project Costs up to the amount identified in the Work Schedule which GRANTEE incurs for the work performed or facilities provided as described in the attached Work Schedule. Project Costs in excess of STATE funds available for the work shall be the responsibility of GRANTEE. The STATE shall not be obligated to pay nor shall GRANTEE claim reimbursement for the use of facilities or equipment which have been acquired by GRANTEE in whole or in part with funds provided by STATE under this or any other agreement.

Prior to start of construction, GRANTEE shall certify the source and availability of funds for Project Costs which are in excess of STATE funds being made available under this Agreement.

GRANTEE shall submit to STATE fair and reasonable charges less the value of

materials recovered, as evidence by detailed invoices, for the cost of the work performed or facilities provided as described above, in accordance with the procedures acceptable to the COMMISSIONER and the State Comptroller.

STATE shall reimburse GRANTEE in the amount of the approved Project Costs so submitted as to the work performed. In no event shall the cost to STATE of said work exceed the amount specified in the Work Schedule, except as such cost may hereinafter be increased pursuant to a written amendment to this Agreement by the parties hereto. All costs so submitted by GRANTEE shall be subject to approval by COMMISSIONER, and to audit by the COMMISSIONER and the State Comptroller.

Monthly accounting, in accordance with approved certification of such costs incurred by GRANTEE including the last day of the previous month less the value of materials recovered during that month, shall be submitted, provided the amount is \$1,000.00 or more and may be submitted for smaller amounts or lesser time-frames upon special request by the party originating the same and approval of COMMISSIONER. Upon the completion of all said work by GRANTEE pursuant to this Agreement, a final statement of costs shall be submitted to the STATE within one hundred eighty (180) days. Upon receipt of the final statement of costs by the COMMISSIONER, the COMMISSIONER will conduct an audit of the GRANTEE project account records within one hundred eighty (180) days to determine the resources applied or used by GRANTEE in fulfilling the terms of this Agreement. Upon the completion of said audit and concurrence by GRANTEE, the final reimbursement payment will be made to GRANTEE.

In the event that any payments are made by the STATE to the GRANTEE for costs incurred by GRANTEE, which are subsequently determined to be ineligible for reimbursement under this Agreement, STATE may retain an amount equal to any such excess payments from any monies then or which may become due and owing to GRANTEE under the Agreement, or GRANTEE shall repay such amount to STATE within forty-five (45) days from the date GRANTEE receives notice of such determination of ineligibility.

All costs charged to the project shall be properly supported by executed payrolls or abstracts thereof, time, material and accounts payable distribution records, invoices, contracts, vouchers and/or canceled checks evidencing in proper detail the nature and

propriety of the charges. These documents shall be retained and maintained by the GRANTEE, as provided in Section 3.9 herein, so that they will be available for audit by authorized representatives of the COMMISSIONER and State Comptroller.

### Section 2.5 Electronic Contract Payments

GRANTEE shall provide complete and accurate supporting documentation of eligible expenditures as required by this contract, NYSDOT and the State Comptroller. Following NYSDOT approval of such supporting documentation, payment for invoices submitted by the GRANTEE shall only be rendered electronically unless payment by paper check is expressly authorized by the COMMISSIONER, in the COMMISSIONER's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The GRANTEE shall comply with the State Comptroller's procedures for all Federal and applicable State Aid to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-474-4032. The GRANTEE herein acknowledges that it will not receive payment on any invoices submitted under this Contract agreement if it does not comply with the applicable State Comptroller's electronic payment procedures, except where the COMMISSIONER has expressly authorized payment by paper check as set forth above.

### Section 2.6 Title to Materials

The materials installed at STATE expense pursuant to this Agreement, excluding the underlying land, shall be the property of the STATE and title thereto shall be vested in the STATE at the time of acquisition and shall remain vested in the STATE for the term of this Agreement. Upon completion of the term of this Agreement as identified in Section 3.17. herein, title shall be vested in the GRANTEE without the need of any execution and delivery of deeds, bill of sale or other title document.

### Section 2.7 Use and Disposition of Project Facilities

Upon completion and acceptance of the Project Facilities by GRANTEE, GRANTEE shall certify in writing to the COMMISSIONER that the Project Facilities have been completed and accepted in accordance with the WORK SCHEDULE.

GRANTEE shall use or cause to be used and provide or cause to be provided rail service on or in connection with the Project Facilities in a careful and proper manner and comply with and conform to or cause to be complied with and conformed to all applicable Federal, State and Local laws, ordinances and regulations in any way relating to the use, rail service or maintenance thereof.

GRANTEE agrees that, during the period of time during which Title to the Project Facilities paid for by the STATE is held by the STATE or in any event if funding of the STATE's share is from the proceeds of bonds or other obligations issued by the STATE or any of its public benefit corporations, such Project Facilities shall not be sold, rendered unusable, relinquished, or disposed of by GRANTEE without the express written consent of the COMMISSIONER having first been obtained.

#### Section 2.8 Abandonment

GRANTEE shall have the right to abandon part or all or the Project Facilities, or to discontinue or curtail service thereover, provided that:

- a. Said abandonment, discontinuance or curtailment of service has been authorized by the federal Surface Transportation Board or any body having jurisdiction thereof;
- b. At the time of abandonment, discontinuance or curtailment of service, the Project Facilities shall comply with all provisions of said Agreement, and
- c. The GRANTEE has obtained the written permission of the COMMISSIONER prior to abandoning any or all of the Project Facilities.
- d. Should GRANTEE exercise this right to abandon part or all of the Project Facilities or permanently discontinue use thereof, GRANTEE shall reimburse STATE for Project Costs previously reimbursed by STATE under this Agreement based on straight line depreciation of Project Costs reimbursed by STATE calculated over the term of this agreement.

### Section 2.9 Manner of Performing Work

GRANTEE agrees to undertake or cause to be undertaken and to proceed expeditiously with the work to be accomplished as described in the Work Schedule, and to complete or cause to be completed said work within the time limits specified in said Work Schedule. GRANTEE shall update said schedule upon written approval of the COMMISSIONER as necessary to assure that it accurately reflects the GRANTEE's timetable for completion.

### Section 2.10 Inspection

During the term of this Agreement, the COMMISSIONER shall have the right to enter upon the Project Facilities for the purposes of inspecting and examining the condition of the Project Facilities and any activities conducted pursuant to this Agreement. Such right shall be exercised only at reasonable times and upon prior notice to GRANTEE.

Such inspection shall be conducted as outlined in the "Manual of Construction Supervision and Inspection Procedures for Work by Railroad Force Account" and/or the "Manual of Construction Supervision and Inspection Procedures for Railroad Let Contracts" as prepared by the Rail Division/Operations Bureau of the New York State Department of Transportation and dated January 1984, as amended. It is intended by the parties hereto that by reference to said manuals, it is agreed that the provisions thereof are deemed to be included herein and are accepted as binding upon the parties for purposes establishing construction inspection standards to the same extent and with the same force and effect as if said manuals had been set forth in and made a part of this Agreement.

### Section 2.11 Environmental Protection

GRANTEE agrees that all work accomplished under this Agreement will be performed in accordance with all applicable local, State and Federal environmental laws and regulations.

## **ARTICLE THREE: GENERAL PROVISIONS**

### Section 3.1. Liability and Indemnification

GRANTEE hereby agrees to indemnify and hold harmless the STATE, the Department of Transportation and their respective agents and employees from any and all liability for injury to or death of any person or persons and for loss of, damage to, or destruction of any property or equipment which arises from activities conducted by or on behalf of the GRANTEE pursuant to this Agreement, including all related costs and counsel fees, except when attributable to the fault or negligence of the STATE, the Department of Transportation, its respective agents and employees other than GRANTEE.

GRANTEE agrees to require its contractor(s) to procure and maintain until final acceptance of the Project by the STATE, insurance of the kinds and in the amounts hereinafter provided in insurance companies authorized to do business in the State of New York, covering all companies under this Agreement whether performed by the GRANTEE, its contractor(s) or subcontractor(s). GRANTEE shall furnish to the STATE a certificate(s), in a form satisfactory to the STATE, showing compliance with this Article, which certificate(s), shall provide that the policies shall not be changed or canceled until thirty (30) days written notice has been given to the STATE. The kinds and amounts of insurance required are as follows:

In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, the GRANTEE's Contractor will be required to carry insurance of the following kinds and amounts:

a. Public Liability Insurance

With respect to the operations performed, regular Contractor's Public Liability Insurance is provided for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

b. Protective Public Liability Insurance

With respect to the operations performed, subcontractors provide regular Contractor's Protective Public Liability Insurance for a limit of not less than

\$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

c. Motor Vehicle Liability Insurance

With respect to any motor vehicles which may be used in connection with the work to be performed, the Contractor shall maintain a policy(s) as required by the Motor Vehicle Laws of the State of New York to bear license plates.

d. Railroad Protective Public Liability Insurance

With respect to the operations the Contractor or any of the Contractor's subcontractors perform, Contractor shall provide Railroad Protective Public Liability Insurance (AAR-AASHTO Form) in the name of all railroad companies operating at the location of the Project Facilities providing for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Such insurance shall be furnished with an aggregate of not less than \$6,000,000 for damages as a result of more than one occurrence.

The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a violation of the Agreement.

Section 3.2. Assignment

GRANTEE shall not assign this Agreement or any interest herein without first obtaining COMMISSIONER'S written consent thereto, which consent shall not be unreasonably withheld or delayed.

Section 3.3 Approval of Contracts

GRANTEE shall not execute any contract, subcontract or amendment thereto, or obligate itself in any other manner with any third party relating to or with respect to the Project to be undertaken pursuant to this Agreement without the prior written approval of the COMMISSIONER. This Section 3.3. shall apply only to contracts, subcontracts, amendments and obligations pursuant to which GRANTEE incurs costs or expenses which are to be paid for in whole or in part by the STATE pursuant to this Agreement.

#### Section 3.4. Non-Waiver

No covenant or condition of this Agreement can be waived except by the written consent of the parties hereto. Forbearance or indulgence by STATE in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by GRANTEE as applicable, and until complete performance by the appropriate party of such covenant or condition, STATE shall be entitled to invoke any remedy available to it under this Agreement or by law or in equity despite such forbearance or indulgence.

#### Section 3.5. Entire Agreement

This instrument and the appendices identified herein constitute the entire agreement between STATE and GRANTEE and it shall not be amended, altered or changed except by a written agreement signed by all of the parties hereto.

#### Section 3.6. Force Majeure

The obligations of the parties hereunder shall be subject to force majeure (which shall include strikes, riots, floods, acts of God, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for non-performance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

#### Section 3.7. Successors and Assigns

All the covenants and obligations of the parties hereunder shall bind their successors and assigns, and any document assigning same will incorporate language whereby assignee will specifically accept and assume all such covenants and

obligations.

### Section 3.8. Interpretation

The Article and Section headings utilized in this Agreement are for convenience only. This Agreement shall be construed in accordance with and governed by the Laws of the State of New York. All appendices attached hereto are integral parts of this Agreement and the provisions set forth in the Appendices shall bind the parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement. Nothing expressed or implied herein shall give or be construed to give to any person, firm or corporation other than STATE or GRANTEE any legal or equitable right, remedy or claim under or in respect to this Agreement. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by COMMISSIONER and GRANTEE unless a provision hereof expressly permits any of the parties to effect termination, amendment, supplementation, waiver or modification hereunder, in which such action shall be taken in accordance with the terms of such provision.

### Section 3.9. Records and Documents

GRANTEE shall maintain books, records and supporting documents in connection with the work to be accomplished pursuant to this Agreement. For a period of fifteen (15) years from the date of submission of the final bill by GRANTEE, books, records, bills, vouchers, payrolls, invoices and other documents of every type and description pertaining to the work to be accomplished under this Agreement shall be available to COMMISSIONER or the State Comptroller, or their authorized representatives, for inspection and audit. All costs charged under this Agreement shall be supported by payrolls and time records, material consumption reports, business expense statements, paid invoices and contracts evidencing in detail the nature of the charges for which reimbursement is sought.

### Section 3.10 Termination or Suspension

The STATE shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

(a) If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of GRANTEE, final payment shall be made based on the actual cost incurred by GRANTEE in accordance with the terms of this Agreement and as verified by audit. In determining the value of the work performed by GRANTEE prior to the termination, no consideration will be given to profit which GRANTEE might have made on the uncompleted portion of the work.

(b) If the termination is brought about as a result of unsatisfactory performance on the part of GRANTEE, the value of the work performed by GRANTEE, prior to termination shall be established by the percent of the amount of such work completed by GRANTEE and acceptable to the STATE, of the total amount of work contemplated by this Agreement.

(c) If, for any reason, the commencement, prosecution or timely completion of the Project is rendered improbable, infeasible, impossible or illegal, or if GRANTEE is determined by the STATE to be in default under its agreement, then the STATE may terminate the Project upon fifteen (15) days prior written notice to GRANTEE.

#### Section 3.11. Permits

The GRANTEE will obtain or will cause to be obtained all necessary permits, licenses and other forms of permission necessary to construct the Project Facilities described in the Work Schedule.

#### Section 3.12. Severability

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

#### Section 3.13. Notices

Any request, authorization, direction, notice, consent, waiver or other document provided for or permitted by this Agreement to be made upon, give or furnished to, or filed with one party by the other party, shall be in writing and shall be transmitted either: by deposit in the mails of the United States, postage prepaid, to the COMMISSIONER, or to GRANTEE, at the address here before identified; by facsimile transmission (COMMISSIONER 518-457-3183; GRANTEE 904-366-4042); by personal delivery; by expedited delivery service or by e-mail (COMMISSIONER [rhessinger@dot.state.ny.us](mailto:rhessinger@dot.state.ny.us); GRANTEE [gmgreen@lirr.org](mailto:gmgreen@lirr.org)). Each party may change the address at which it shall receive notification hereunder by notifying the other of such change.

#### Section 3.14. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be original.

#### Section 3.15. Relationship to Parties

The relationship of the GRANTEE to the STATE is that of any independent contractor, and the GRANTEE, in accordance with its status as such contractor, covenants and agrees that it will conduct itself consistent with such status, that is will neither hold itself out as nor claim to be an officer or employee of the STATE by reason hereof, and that it will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including, but not limited to worker's compensation coverage, retirement membership or credit.

#### Section 3.16. Effective Date of Agreement

This Agreement shall take effect at the time at which it is approved by the State Comptroller.

#### Section 3.17. Term of Agreement

The term of this Agreement shall commence on the effective date thereof specified in Section 3.16 and shall extend until ten (10) years from the date of

completion of the work as accepted by STATE.

Section 3.18. Documents Forming Agreement

This Agreement shall consist of this document and the following attachments: Appendix I, Work Schedule and Appendix A, Standard Clauses for all New York State Contracts.

CONTRACT NUMBER \_\_\_\_\_

THE LONG ISLAND RAILROAD COMPANY  
SIGNATURE

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

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally came \_\_\_\_\_ to me known to be the

\_\_\_\_\_ of the Long Island Railroad Company, the entity described in and which executed the foregoing instrument: acknowledged to me that he executed the same, pursuant to authorization by the Long Island Railroad Company.

\_\_\_\_\_  
Notary Public

Dated: \_\_\_\_\_

CONTRACT NUMBER \_\_\_\_\_

**TOWN OF RIVERHEAD  
SIGNATURE**

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

**Title:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally came \_\_\_\_\_ to me known to be the

\_\_\_\_\_ of the Town of Riverhead, the entity described in and which executed the foregoing instrument: acknowledged to me that he executed the same, pursuant to authorization by the Town of Riverhead.

\_\_\_\_\_

**Notary Public**

**Department Certification**

“In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.”

\_\_\_\_\_

**COMMISSIONER'S SIGNATURE**

**Dated:** \_\_\_\_\_

CONTRACT NUMBER \_\_\_\_\_

ATTORNEY GENERAL'S SIGNATURE

COMPTROLLER'S SIGNATURE

\_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**APPENDIX I – WORK SCHEDULE**

The project will consist of the items of work set forth in this Work Schedule, and as more fully described in plans and estimates prepared by or on behalf of the LIRR as may be required. Should contract plans, specifications and estimates be required, they shall be prepared by or on behalf of the LIRR and subject to STATE approval and shall be deemed to be included herein as part of the Work Schedule.

The Project provides three hundred fifty thousand dollars (\$350,000) for the installation of a new Number 10 Switch, supplied by others, along the LIRR Main Line at MP 67.56 in conjunction with Comptroller's Contract D032417.

All work will be completed by LIRR personnel.

**TRACK CONSTRUCTION:**

<b>Removal of existing main track, installation of new switch and spur supplied by others, and surfacing of new switch and spur.</b>	<b>\$64,500.00</b>
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**SIGNAL CONSTRUCTION:**

<b>Installation of necessary items to complete signal communication for new switch.</b>	<b>269,000.00</b>
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<b>PROJECT MANAGEMENT:</b>	<b><u>\$16,500.00</u></b>
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<b>TOTAL PROJECT COST: _</b>	<b>\$350,000.00</b>
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Individual work elements may be adjusted within the total Agreement amount with prior written approval of NYSDOT. NYSDOT's financial participation is limited to \$350,000.00 project costs. Any overage will be the responsibility of the GRANTEE.

This Agreement covers eligible costs incurred on or after April 9, 2010.

All work identified in this Work Schedule shall be completed no later than December 31, 2011.

## APPENDIX A: STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).
4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing

wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter or three (3) years after final payment, whichever is later. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in

Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Empire State Development Corporation's Division of Minority and Women's Business Development (MWBD) pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES (NON-FEDERAL AID NEW YORK STATE CONTRACTS).** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland; or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992 (NON-FEDERAL AID NEW YORK STATE CONTRACTS).** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS (NON-FEDERAL AID NEW YORK STATE CONTRACTS).** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

**23. CONTRACT TERMINATION PROVISION.** The State reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with the requirements contained in State Finance Laws §139j and §139k was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.

**24. PERSONAL INFORMATION SECURITY.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.

5/4/10

ADOPTED

**Town of Riverhead**

**Resolution #351**

**Authorizes Supervisor to Sign a Grant Agreement with the New York State Department of Environmental Conservation**

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

**WHEREAS**, the Town of Riverhead provides boat pumpout facilities for marine waste holding tanks and portable toilets free of charge in order to reduce effluent into the Peconic Bay to improve the water quality in this area

**WHEREAS**, the facilities include a pumpout boat that patrols the town's waterways, as well as two stationary facilities (Downtown Riverfront Dock and East Creek Facility in Jamesport); and

**WHEREAS**, the Town of Riverhead has been awarded a contract of up to \$9,000 (\$5,000 for the boat and \$2,000 per land-based facility) from New York State Department of Environmental Conservation towards the operation and maintenance of this service; and

**THEREFORE, BE IT FURTHER RESOLVED**, that the Supervisor is hereby authorized to sign a grant agreement with the DEC for said agreement.

**THE VOTE**

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

Walter Yes No

The Resolution Was  Was Not

Thereupon Duly Declared Adopted

5/4/10

**ADOPTED**

**TOWN OF RIVERHEAD**

**Resolution #352**

**APPOINTS TEMPORARY CLERKS TO THE TAX RECEIVER'S OFFICE**

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

**WHEREAS**, This Town Board recognizes that the need to provide additional clerical personnel to the Office of the Receiver of Taxes to assist in the processing of tax money.

**NOW, THEREFORE, BE IT RESOLVED**, that Juliet Blass and Erika Haas be and are hereby reappointed as temporary clerks effective May 17, 2010 through June 16, 2010 at the hourly rate of \$10.25.

**BE IT FURTHER RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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  Was Not

Thereupon Duly Declared Adopted

## TOWN OF RIVERHEAD

Resolution # 353AUTHORIZATION TO DISCARD FIXED ASSETS

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

**WHEREAS**, the indicated broken equipment has been salvaged for parts and is no longer usable; and

**WHEREAS**, after careful consideration the following departments have made recommendations to the Accounting Department that this equipment has no residual value and should be discarded. The Accounting Department hereby requests that the Town Board excess this property so that it may be removed from the records.

**WHEREAS**, unless the Sanitation Supervisor determines the item can be disposed of through the STOP Program.

**NOW THEREFORE BE IT RESOLVED**, that the Accounting Department is hereby authorized to discard the following items:

<u>Department</u>	<u>Tag #</u>	<u>Description</u>
Assessor	27387	Samsung Fax machine
Assessor	1086	IBM typewriter
Recreation	7215	Card table
Town Clerk	8691	Electric Seal
Seniors	28231	Brown folding chair
Seniors	28260	Brown folding chair
Seniors	28252	Brown folding chair
Seniors	28237	Brown folding chair
Seniors	28242	Brown folding chair
Seniors	28250	Brown folding chair
Seniors	28247	Brown folding chair
Seniors	28230	Brown folding chair
Seniors	28236	Brown folding chair
Seniors	28239	Brown folding chair
Seniors	28258	Brown folding chair
Seniors	28224	Padded folding chair
Seniors	28220	Padded folding chair

Seniors	21775	Metal folding chair
Seniors	25742	198CF Refrigerator
Water	22164	Mita Photocopier
Police	23016	GBC Paper shredder

**THE VOTE**

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

Walter Yes No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

5/4/10

**ADOPTED**

**TOWN OF RIVERHEAD**

**Resolution #354**

**AUTHORIZATION TO PUBLISH ADVERTISEMENT FOR JANITORIAL SUPPLIES  
FOR THE TOWN OF RIVERHEAD**

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

**WHEREAS, the Town Clerk is authorized to publish and post a notice to bidders for proposals for JANITORIAL SUPPLIES FOR THE TOWN OF RIVERHEAD and;**

**WHEREAS, the Town Clerk is hereby authorized to publish and post the following public notice in the MAY 14, 2010 issue of the News Review and;**

**NOW THEREFORE BE IT**

**RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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  Was Not   
Thereupon Duly Declared Adopted

**TOWN OF RIVERHEAD  
NOTICE TO BIDDERS**

**Sealed bids for the purchase of JANITORIAL SUPPLIES for the use in the Town of Riverhead, Riverhead, New York will be received by the Town of Riverhead at the Office of the Town Clerk, Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York until 11:00 am on MAY 24, 2010 at which time they will be publicly opened and read aloud.**

**Specifications may be examined and/or obtained on MAY 14, 2010 on the Town of Riverhead website at [www.riverheadli.com](http://www.riverheadli.com), click on bid requests or at the Office of the Town Clerk between the hours of 8:30 am and 4:30 pm weekdays, except holidays.**

**Each proposal must be submitted on the form provided in a sealed envelope clearly marked JANITORIAL SUPPLIES . Any and all exceptions to the specifications must be listed on a separate sheet of paper, bearing the designation ‘EXCEPTIONS TO THE SPECIFICATIONS’ and attached to the bid form.**

**The Town board reserves the right and responsibility to reject any or all bids or to waive any formality if it believes such action to be in the best interest of the Town.**

**BY ORDER OF THE TOWN BOARD  
OF THE TOWN OF RIVERHEAD**

**Diane M. Wilhelm, Town Clerk**

5/4/10

**ADOPTED**

**TOWN OF RIVERHEAD**

**Resolution #355**

**AUTHORIZES LEGAL ACTION AGAINST THE OWNERS, TENANTS, OCCUPANTS AND MORTGAGEE OF THE PROPERTY LOCATED AT 2114 SOUND AVENUE, BAITING HOLLOW, NEW YORK**

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

**WHEREAS**, the Town Board has determined that the property situated at 2114 Sound Avenue, Baiting Hollow, New York is being used and occupied in violation of various sections of the Code of the Town of Riverhead and the New York State Uniform Fire Prevention and Building Code;

**NOW, THEREFORE, BE IT HEREBY RESOLVED**, that Dawn C. Thomas, Town Attorney for the Town of Riverhead is authorized to institute legal action in the name of the Town of Riverhead against the owners, tenants, occupants and mortgagee of the structure situated at 2114 Sound Avenue, Baiting Hollow, New York in the Supreme Court of the State of New York to enjoin the illegal use, occupancy and/or maintenance of said property and the structure situated upon such; and be it further

**RESOLVED**, that it is left to the discretion of Dawn C. Thomas, Town Attorney for the Town of Riverhead as whether said cause of action should seek monetary and/or punitive damages against the owners, tenants, occupants and/or mortgagee of said property for their illegal use, occupancy and maintenance of said property; and be it further

**RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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 ABSTAINED

Walter Yes No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

5/4/10

ADOPTED

TOWN OF RIVERHEAD

Resolution # 356

**AUTHORIZES SELLING OF THE 2010 BEACH PERMITS BY WARREN'S TACKLE CENTER, FISHERMAN'S DELI AND ANGELO'S BAKERY PIZZA**

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

**WHEREAS**, Warren's Tackle Center, located at 548 Main Road, Aquebogue, NY 11931, Fisherman's Deli, located at 1315 West Main Street, Riverhead, NY 11901 and Angelo's Bakery Pizza, located at 737 Hulse Landing, Wading River, request to sell annual and daily non-resident beach permits and South Jamesport boat ramp permits at their facilities from April 6, 2010 through December 31, 2010 without any reimbursement or services being charged.

**NOW THEREFORE BE IT RESOLVED**, the Town Board of Riverhead hereby authorizes Warren's Tackle Center, Fisherman's Deli and Angelo's Bakery Pizza to sell annual and daily non-resident beach permits and South Jamesport boat ramp permits at prices set by the Riverhead Recreation Department.

**BE IT FURTHER, RESOLVED**, that the Town Clerk be and is hereby directed to forward a copy of this resolution to Warren's Tackle Center, Fisherman's Deli, Angelo's Bakery Pizza, Recreation Department 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  Was Not

Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution # 357

RIVER ROAD CULVERT

CAPITAL PROJECT

BUDGET ADOPTION

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

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

		<u>FROM</u>	<u>TO</u>
406.095731.494200.45112	Serial Bond Proceeds	36,836.79	
406.053589.492500.45112	Transportation State Aid	43,163.21	
406.053589.541301.45112	Road Reconstruction & Improvements		80,000

**RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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  Was Not   
Thereupon Duly Declared Adopted

5/4/10

05/04/10

**TABLED**

06/02/10

**UNTABLED**

06/02/10

**WITHDRAWN**

**TOWN OF RIVERHEAD**

**Resolution #358**

**AUTHORIZES THE SUPERVISOR TO EXECUTE AN AGREEMENT WITH THE RIVERHEAD BUSINESS IMPROVEMENT DISTRICT MANAGEMENT ASSOCIATION, INC.**

**Councilman Wooten offered the following resolution,**

**which was seconded by Councilman Gabrielsen**

**WHEREAS**, the Town of Riverhead, with the assistance of the Riverhead Business Improvement District Management Association, Inc., wishes to continue to administer the District Plan as adopted by the Town of Riverhead pursuant to Local Law No. 222 of 1991.

**NOW THEREFORE BE IT RESOLVED** that the town supervisor is authorized to execute the attached agreement with the Riverhead Business Improvement District Management Association, Inc.; and

**BE IT FURTHER RESOLVED THAT** a copy of this resolution shall be forwarded to Raymond Pickersgill, President, Riverhead Business Improvement District Management Association, Inc., PO Box 913, 21 West 2<sup>nd</sup> Street, Riverhead, New York 11901, the Accounting Department and the Office of the Town Attorney; and be it further

**THE VOTE**

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

Walter Yes No

The Resolution Was  Was Not   
Thereupon Duly Declared TABLED

On a motion of Councilman Wooten, seconded by Councilman Dunleavy resolution #358 was **UNTABLED**

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

On a further motion of Councilman Wooten, seconded by Councilman Dunleavy resolution #358 was **WITHDRAWN**

YES – 5 Giglio, Gabrielsen, Wooten, Dunleavy, Walter  
NO - 0

(Updated 4/28/10)

Agreement

-made between-

TOWN OF RIVERHEAD  
(Business Improvement District)

-and-

RIVERHEAD BUSINESS IMPROVEMENT DISTRICT  
MANAGEMENT ASSOCIATION, INC.

This Agreement made the        day of        , 2010, between the Town of Riverhead Business Improvement District ("BID"), with principal offices located at 200 Howell Avenue, Riverhead, New York, 11901, and the Riverhead Business Improvement District Management Association, Inc. ("BIDMA"), a not-for-profit corporation organized under the laws of the State of New York, having its principal offices at 112 West Main Street, Riverhead, New York, 11901.

NOW, THEREFORE, the parties mutually agree that:

1. The BIDMA shall proffer projects, capital improvements, events and services in regard to the BID. BID shall provide all proper and reasonable funding regarding administrative services/expenses incurred by the BIDMA necessary to carry out the District Plan as adopted by the Town of Riverhead pursuant to Local Law #222 of 1991. Administrative services as specified herein are defined as payment of employee salaries and the associated payroll expenses, rent, purchase of incidental office supplies, telephone expenses, photocopier expenses, insurance and advertising expenses and any other expenses related to the actual administration of the BID. The BIDMA shall provide a detailed, comprehensive and exhaustive accounting of all actual and anticipated administrative services/expenses it has or anticipates it shall incur during the term of this Agreement prior to execution of this Agreement. The BID shall pay all legitimate, proper and necessary administrative expenses in a timely manner. The BIDMA agrees to provide all documentation, written, recorded or otherwise in support of its determination of administrative services/expenses to the Chief Financial Administrator on a monthly basis and to any member of the Town Attorney's Office, if requested, within three business days, or if not available, within a reasonable time.
2. The BIDMA shall proffer and recommend to the BID-Town Board designated projects, including capital improvements, events and services designed for the purpose of promoting and enhancing the business improvement district in

the interests of economic stimulus and/or betterment of the district as a whole.

3. The BIDMA shall submit a written list of projects, including suggested capital improvements, events and services, including actual or estimated costs with supporting documentation and projected dates of commencement/completion it recommends for approval to the BID on or before September 1 for those projects, events and services anticipated to occur on or after January 1<sup>st</sup> of the following calendar year. In addition, the BIDMA shall submit its budgetary request regarding its recommended list of projects, including capital improvements, events and services, as well as its projected administrative expenses to the Town of Riverhead's Chief Financial Officer on or before September 1. The recommendations of the BIDMA are not binding upon the Bid-Town Board which may approve or disapprove any or all of the recommendations. For those projects, events or services that the BIDMA wishes to recommend and becomes aware of after October 1, the BIDMA shall forthwith notify the BID of its recommendation in the same format addressed above. The BIDMA shall and must provide a valid and properly authorized written BIDMA resolution by its board approving the recommended projects, capital improvements, events and services before the BID shall consider same for approval.

4. Notification Procedure of recommended projects, events or services.

The BIDMA shall notify the BID of all recommended projects, events or services by submitting in writing to each town board member a list of recommended projects, events, or services so recommended. The BID shall consider and address each of the recommended projects, events or services in work session and notify BIDMA of its decision in a timely manner. The BIDMA shall make available to the BID one or more persons who are familiar with the recommended projects, events or services whom shall be present at the scheduled work session. Said representative shall be made available for any subsequent meetings of the BID on an as-needed basis. The BID shall consider each recommended project, event or service and the anticipated cost of same. For those projects, events or services so approved by the BID, the BID shall provide the necessary funding to the BIDMA in a timely manner. The BID reserves the right to request additional information and/or documentation at any time and may withhold partial or full payment in the absence of same.

5. Location of meetings.

All BIDMA meetings shall take place at the Riverhead Town Hall board meeting room at dates and times to be determined by the parties to this agreement. All monthly meeting dates shall be provided in writing to each town board member and the town attorney's office no later than 30 days

before any scheduled meeting, including all special meetings. In the event that the BIDMA schedules all of its monthly meetings before the subject calendar year, a schedule of same shall be provided to each town board member and the town attorney's office within 10 days of publication.

6. Minutes/Agenda of meetings.

The BIDMA secretary or designee shall keep an accurate record of all business that comes before the BIDMA, including but not limited to: subject matter, identification of all parties at the meetings (including directors, officers and members and nature of participation) and resolutions, including resolution number and identification of voting interests. An accurate record of all business that comes before the BIDMA shall be provided to the BID-Town Board, Town Attorney's Office and the Chief Financial Officer within seven (7) days of the subject meeting.

7. Cablecast of meetings.

All BIDMA meetings shall be recorded and cablecast on channel 22 on dates and at times to be determined by Town personnel.

8. Attendees at meetings.

The BID and BIDMA hereby acknowledge and agree that every meeting shall be open to the general public, except that an executive session of such association may be called and business transacted thereat in accordance with the New York State Public Officers Law section 105.

9. Assignment

This Agreement may not be assigned by the BIDMA without the express written consent of the Town of Riverhead Business Improvement District.

10. Term of the Agreement.

This Agreement shall expire on December 31, 2010, and shall not be renewed except upon the written consent of all parties.

11. Records.

The BIDMA further agrees to provide any and all documents, records, notes, or other information regarding all recommended projects, events or services regarding the business improvement district immediately upon request by the BID-Town Board, Town's Financial Administrator and/or Chief Fiscal Officer and any employee of the Town Attorney's Office, or anyone so designated by the above parties to receive same within three (3) days of such request.

12. Insurance

The BIDMA shall procure insurance in amounts and at policy limits as determined by the BID notwithstanding any other insurance requirements or obligations pursuant to New York State Law.

13. Director/Officer Elections

The BIDMA shall notify the BID of all candidates for director and officer positions in writing no later than ten (10) days before the respective election regarding the respective classification and position; for example, commercial property owner or commercial tenant and/or officer position and the subject term. The BIDMA shall notify the BID in writing of all election results within three (3) days of the election, including classification, title and term of office.

14. Independent Contractor

Notwithstanding anything contained herein to the contrary, it is specifically understood and agreed that, in the performance of the terms, covenants and conditions of the Agreement, neither the BIDMA nor any of its officers, directors, employees, agents or independent contractors shall be deemed to be acting as agents, servants, or employees of the Town by virtue of this Agreement or by virtue of any approval, permit, license, grant, right or other authorization given by the Town of any of its officers, agents or employees pursuant to this Agreement, but shall be deemed to be independent contractors performing services for the BID or the BIDMA, as the case may be, without power or authority to bind the Town and shall be deemed solely responsible for all acts taken or omitted by them in the performance of or otherwise pursuant to this Agreement.

15. Indemnification

(a) Except as otherwise expressly stated herein, the BIDMA hereby assumes liability for, and hereby agrees to indemnify, protect, defend, save and hold harmless, the BID-Town from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including, without imitations, reasonable legal and investigative fees and expenses, of whatsoever kind and nature (hereinafter called "Liabilities") which may be incurred or imposed at any time (whether during the Agreement Term or thereafter) on the BID-Town (whether or not also indemnified against by any other person) and in any way relating to or arising out of, or alleged (by a person other than the BID-Town) to in any way relate to or arise out of any act, omission or error in judgment of any performance of the Agreement,

actively, passively or otherwise by the BIDMA, its members, directors and/or officers. Such liabilities shall include, without limitations, the following: claims or penalties arising from any violation of any federal, state or local laws, rules or regulations or insurance requirements, as well as any claim resulting from latent, patent, and other defects, whether or not discoverable by the BID-Town, any claim the insurance as to which is inadequate, any claim for patent, trademark or copyright infringement, any tort claim or claim for damages, any claim or liability in respect to any adverse environmental impact or effects. The BIDMA shall assume full responsibility for the defense against or settlement of any such liability, and the BID-Town shall cooperate with the BIDMA by providing, at the expense of the BIDMA, such witnesses, documents and other assistance as the BIDMA may reasonably request; provided, however, that: (i) the BID-Town shall be consulted as to the legal counsel to be employed in respect hereof and may veto, for good cause shown, the employment of any legal counsel unacceptable to it and (ii) if the BID-Town shall give to the BIDMA notice that, in good faith judgment, an important general interest of the BID-Town is involved in such liability or potential liability, the BID-Town shall have the right to consult with the BIDMA in the defense against or settlement of such liability.

(b) The BIDMA shall require each of its contractors and subcontractors to agree to indemnify the Town and assume liability for injuries on the same basis as the BIDMA under subsection (a) above.

(c) The obligations of the BIDMA under this section shall survive the expiration or earlier termination of this Agreement and are expressly made for the benefit of, and shall be enforceable by the Town without necessity of declaring this Agreement in default.

#### 16. Notice

Each written notice, demand, request or other communication in connection with this Agreement shall be either served in person, with delivery or service acknowledged in writing, by the party receiving the same, or deposited in the United States mail by certified mail, return receipt requested, postage prepaid and addressed to:

(a) the Town Attorney's Office at the address hereinafter set forth:

(b) the Town and/or Supervisor at:

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

Town Attorney's Office  
Riverhead Town Hall  
200 Howell Avenue  
Riverhead, New York 11901

and to the BIDMA at: 200 Howell Avenue

Riverhead, New York 11901

or such other addresses as may be specified by written notice sent in accordance herewith. Every notice, demand, request, or other communication hereunder shall be deemed to have been given at the time of mailing as aforesaid.

17. Amendments

Changes may be made to this Agreement by written amendment approved by the BID and the BIDMA. All such changes, modifications and amendments shall become part of the original Agreement.

18. Entire Agreement

This Agreement contains all the terms and conditions agreed upon by the parties hereto and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS HEREOF, this Agreement has been duly executed by the respective parties on the date last written herein.

RIVERHEAD BUSINESS IMPROVEMENT  
DISTRICT MANAGEMENT ASSOCIATION, INC.

\_\_\_\_\_  
By: Raymond Pickersgill, President

\_\_\_\_\_  
Date

TOWN OF RIVERHEAD  
BUSINESS IMPROVEMENT DISTRICT

\_\_\_\_\_  
By: Sean M. Walter, Town Supervisor

\_\_\_\_\_  
Date

TOWN OF RIVERHEAD

Resolution # 359

**SCAVENGER WASTE BUDGET TRANSFER  
FOR UNANTICIPATED REPAIRS TO BAR SCREEN**

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

**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>
128.081890.542503	Chemical Expense	2,500	
128.081890.547504	Sanitation Disposal	2,500	
128.081890.541416	Replacements & Improvements		5,000

**RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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  Was Not   
Thereupon Duly Declared Adopted

5/4/10

ADOPTED

TOWN OF RIVERHEAD

Resolution #360

ESTABLISHES STANDARD WORK DAY FOR ELECTED OFFICIALS

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

**BE IT RESOLVED**, that the Town Board of the Town of Riverhead hereby establishes the following as standard work days for the following elected and appointed officials and will report the following days worked to the New York State and Local Employees' Retirement System based on the record of activities maintained and submitted by these officials to the clerk of this body:

Title	Name	Social Security Number  (Last 4 digits)	Registration Number	Standard Work Day  (Hrs/day)	Term Begins/Ends	Participates in Employer's Time Keeping System  (Y/N)	Days/Month  (based on Record of Activities)
<b>Elected Officials</b>							
<b>Councilman</b>	George Gabrielsen		4335791-2	7	11/3/2009-12/31/2011	N	20
<b>Town Clerk</b>	Diane Wilhelm		3802066-5	7	1/1/2010-12/31/2013	N	20
<b>Supervisor</b>	Sean Walter		3972351-5	7	1/1/2010-12/31/2013	N	20
<b>Appointed Officials</b>							

**BE IT FURTHER RESOLVED**, that a copy of this resolution shall be forwarded to the Personnel Department .

**THE VOTE**

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

Walter Yes No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

**TOWN OF RIVERHEAD**

**Resolution # 361**

**AUTHORIZES TOWN CLERK TO PUBLISH AND POST NOTICE OF PUBLIC HEARING**  
**CHANGE OF ZONE PETITION OF AQUEBOGUE MEWS**

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

**WHEREAS**, the Riverhead Town Board is in receipt of a change of zone petition made by AAA Buffalo 2 Realty Corporation to impose the provision of the Hamlet Center Zoning Use District to the exclusion of the existing Hamlet Residential Zoning Use District upon real property located at New York State Route 25, Aquebogue, New York; such real property more particularly described as Suffolk County Tax Lot No. 0600-66-2-13 and 0600-66-2-14.1, and.

**WHEREAS**, the matter has been referred to the Riverhead Planning Board for its report and recommendation; such Planning Board recommending the conditional approval of the petition, and

**WHEREAS**, the matter was referred to the Suffolk County Planning Commission for its report and recommendation; such Planning Commission declaring the matter to be one of local determination, and

**WHEREAS**, the Planning Director has prepared a land use study of the general vicinity which assessed the impact of the proposed zoning amendment, and

**WHEREAS**, the Town Board desires to hold a public hearing on the matter at this time, now

**THEREFORE BE IT**

**RESOLVED**, that the Town Clerk be authorized to publish and post the following notice of public hearing in the May 13, 2010 edition of the official newspaper of the Town of Riverhead, and

**BE IT FURTHER**

**RESOLVED**, that a copy of this resolution shall be forwarded to the Planning Department and the Office of the Town Attorney.

**THE VOTE**

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

Walter – ABSTAIN

The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

**PROPOSED ZONING**



**HAMLET RESIDENTIAL**

MAIN RD

EDGAR AVE

**LEGEND**

-  Parcels
-  (HC) Hamlet Center
-  (HR) Hamlet Residential

**EXISTING ZONING**

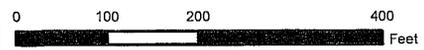
**HAMLET RESIDENTIAL**

MAIN RD

EDGAR AVE

*map of*  
**PROPOSED HC ZONING MODIFICATION**

**DATE: 5/3/2010**



Property Lines Courtesy:  
Suffolk County Real Property Tax Service  
COPYRIGHT (c) 2010 COUNTY OF SUFFOLK, N.Y.



**TOWN OF RIVERHEAD**  
200 Howell Ave.  
Riverhead, New York 11901

**TOWN OF RIVERHEAD  
NOTICE OF PUBLIC HEARING**

**PLEASE TAKE NOTICE** that a public hearing will be held before the Town Board of the Town of Riverhead at the Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York, on the June 2, 2010 at 2:10 o'clock pm, to consider the merits of the change of zone petition of AAA Buffalo 2 Realty Corporation to impose the provisions of the Hamlet Center Zoning Use District to the exclusion of the existing Hamlet Residential Zoning Use District upon real property located at New York State Route 25, Aquebogue, New York; such real property more particularly described as Suffolk County Tax Lot No. 0600-66-2-13 and 0600-66-2-14.1. A graphic depiction of the proposed zone change follows.

Dated: Riverhead, New York

Date: May 4, 2010

**BY THE ORDER OF THE TOWN BOARD OF  
THE TOWN OF RIVERHEAD**

TOWN OF RIVERHEAD

Resolution #362

PAYS BILLS

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

RESOLUTION #		ABSTRACT #10-18 April 29, 2010 (TBM 05/04/10)			
offered the following Resolution which was seconded by					
FUND NAME				04/29/10 CHECKRUN	GRAND TOTALS
GENERAL FUND	1			212,619.80	212,619.80
POLICE ATHLETIC LEAGUE	4			5,413.78	5,413.78
RECREATION PROGRAM FUND	6			4,493.88	4,493.88
ECONOMIC DEVELOPMENT ZONE FUND	30			36.99	36.99
HIGHWAY FUND	111			42,675.04	42,675.04
WATER DISTRICT	112			16,498.13	16,498.13
RIVERHEAD SEWER DISTRICT	114			3,027.50	3,027.50
REFUSE & GARBAGE COLLECTION DI	115			1,098.46	1,098.46
STREET LIGHTING DISTRICT	116			7,331.92	7,331.92
PUBLIC PARKING DISTRICT	117			3,566.54	3,566.54
BUSINESS IMPROVEMENT DISTRICT	118			55.37	55.37
AMBULANCE DISTRICT	120			3,851.03	3,851.03
EAST CREEK DOCKING FACILITY FU	122			15,466.53	15,466.53
CALVERTON SEWER DISTRICT	124			15.85	15.85
RIVERHEAD SCAVANGER WASTE DIST	128			437.01	437.01
WORKERS' COMPENSATION FUND	173			5,065.34	5,065.34
RISK RETENTION FUND	175			29,490.26	29,490.26
TOWN HALL CAPITAL PROJECTS	406			94,283.60	94,283.60
YOUTH SERVICES CAP PROJECT	452			13.20	13.20
TRUST & AGENCY	735			963,683.52	963,683.52
TOTAL ALL FUNDS				1,409,123.75	1,409,123.75

THE VOTE

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

Walter  Yes  No  
 The Resolution Was  Was Not   
 Thereupon Duly Declared Adopted

TOWN OF RIVERHEAD

Resolution #362

PAYS BILLS

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

RESOLUTION #	ABSTRACT #10-17 April 22, 2010 (TBM 05/04/10)		
offered the following Resolution which was seconded by			
FUND NAME		04/22/10 CHECKRUN	GRAND TOTALS
GENERAL FUND	1	860,859.71	860,859.71
RECREATION PROGRAM FUND	6	3,572.52	3,572.52
ECONOMIC DEVELOPMENT ZONE FUND	30	3,319.08	3,319.08
HIGHWAY FUND	111	90,594.65	90,594.65
WATER DISTRICT	112	106,146.94	106,146.94
RIVERHEAD SEWER DISTRICT	114	89,646.82	89,646.82
REFUSE & GARBAGE COLLECTION DI	115	5,963.14	5,963.14
STREET LIGHTING DISTRICT	116	6,227.11	6,227.11
PUBLIC PARKING DISTRICT	117	65.90	65.90
AMBULANCE DISTRICT	120	10.90	10.90
EAST CREEK DOCKING FACILITY FU	122	10.20	10.20
CALVERTON SEWER DISTRICT	124	6,750.55	6,750.55
RIVERHEAD SCAVANGER WASTE DIST	128	33,832.42	33,832.42
WORKERS' COMPENSATION FUND	173	95,256.83	95,256.83
UNEMPLOYMENT INSURANCE RESERVE	176	11,986.50	11,986.50
CDBG CONSORTIUM ACCOUNT	181	656.23	656.23
WATER DISTRICT CAPITAL PROJECT	412	48,818.42	48,818.42
TRUST & AGENCY	735	1,074,607.34	1,074,607.34
TOTAL ALL FUNDS		2,438,325.26	2,438,325.26

THE VOTE

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

Walter  Yes  No

The Resolution Was  Was Not   
 Thereupon Duly Declared Adopted

5/4/10

ADOPTED

**TOWN OF RIVERHEAD**

**Resolution #363**

**AUTHORIZATION TO PUBLISH ADVERTISEMENT FOR  
OPERATION OF THE TOWN OF RIVERHEAD ANIMAL SHELTER AND  
ADOPTION CENTER**

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

**WHEREAS**, the Town Clerk is authorized to publish and post a Request for proposals for OPERATION OF THE TOWN OF RIVERHEAD ANIMAL SHELTER AND ADOPTION CENTER and;

**BE IT RESOLVED**, the Town Clerk is hereby authorized to publish and post the following public notice in the MAY 13, 2010 issue of the News Review and;

**BE IT RESOLVED**, that the Town Clerk be, and hereby is, authorized to forward a copy of this resolution to the Purchasing Department.

**THE VOTE**

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

Walter Yes No  
The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

On a motion of Councilman Dunleavy, seconded by Councilman Gabrielsen the resolution was **TAKEN OFF THE FLOOR**

YES-5 Giglio, Gabrielsen, Wooten, Dunleavy, Walter  
NO-0

## NOTICE TO BIDDERS

Sealed proposals for will be received by the Office of the Town Clerk at Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York on **May 21, 2010 at 4 o'clock pm** , prevailing time, for:

### REQUEST FOR PROPOSALS

The Town of Riverhead is seeking proposals for **Operation of the Riverhead Town Animal Shelter and Adoption Center.**

Specifications and guidelines for submission of proposals are available on the Town website at [www.riverheadli.com](http://www.riverheadli.com); click on bids or at the Office of the Town Clerk between the hours of 8:30 am and 4:30 pm, Monday through Friday, beginning **May 13, 2010.**

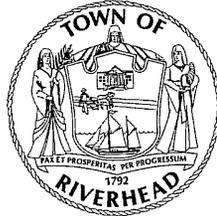
Each proposal must be submitted in a sealed envelope clearly marked "**ANIMAL SHELTER OPERATION**" Proposals must be received by the Office of the Town Clerk by no later than **4:00 pm on May 21, 2010.**

This RFP is not an offer or a binding commitment to contract on the part of the Town. The Town retains the right to postpone or cancel the RFP or to reject all proposals, if the Town determines, in its sole discretion that the best interests of the Town will be served thereby.

**BY ORDER OF THE TOWN BOARD  
TOWN OF RIVERHEAD  
DIANE M. WILHELM, TOWN CLERK**

# Town of Riverhead Suffolk County, New York

TOWN OF RIVERHEAD



## Request for Proposals

For

## Operation of the Town of Riverhead Animal Shelter and Adoption Center

Sealed Proposals Must be Received  
In the Office of the Town Clerk  
200 Howell Avenue  
Riverhead, New York 11901  
**At 4:00 P.M. on May 21, 2010**

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## I. NOTICE TO BIDDERS

TAKE NOTICE, that sealed proposals will be received by the Office of the Town Clerk at Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York on **May 21, 2010 at 4 o'clock pm**, prevailing time, for:

### REQUEST FOR PROPOSALS

The Town of Riverhead is seeking proposals for **Operation of the Riverhead Town Animal Shelter and Adoption Center.**

Specifications and guidelines for submission of proposals are available at the Office of the Town Clerk and may be picked up between the hours of 8:30 am and 4:30 pm, Monday through Friday, beginning May 13, 2010 or on the Town website at [www.riverheadli.com](http://www.riverheadli.com), click on bids.

Each proposal must be submitted in a sealed envelope clearly marked "**ANIMAL SHELTER OPERATION**" Proposals must be received by the Office of the Town Clerk by no later than **4:00 pm on May 21, 2010.**

This RFP is not an offer or a binding commitment to contract on the part of the Town. The Town retains the right to postpone or cancel the RFP or to reject all proposals, if the Town determines, in its sole discretion that the best interests of the Town will be served thereby.

**BY ORDER OF THE TOWN BOARD  
TOWN OF RIVERHEAD  
Diane M. Wilhelm, TOWN CLERK**

## II. INSTRUCTIONS TO BIDDERS

### 1. Receipt of Proposals

The Town of Riverhead invites proposals for the Operation of the Town of Riverhead Animal Shelter and Adoption Center. Proposals must be submitted per the instructions in the Notice to Bidders.

### 2. Form, Preparation, and Presentation of Proposal

Bidders should return the *entire bid package*, with the information requested on the green pages completed.

Each proposal must be submitted on the forms provided. Bids must be contained in a sealed envelope marked “Operation of the Town of Riverhead Animal Shelter and Adoption Center.”

Bidders must provide ALL INFORMATION.

#### INCOMPLETE SUBMISSIONS MAY BE REJECTED!!

- If a question is not applicable, indicate by writing “N/A” in answer space.
- All blank spaces for bid prices must be filled in, in ink, in both words and figures, with a total or gross sum for which the bid is made. In case of discrepancy between the unit price and total amount bid for any item, the unit price, as expressed in words, shall govern.
- All Bidders Qualifications questions must be answered.
- General Municipal Law forms must be signed.
- Proposals that contain any omission, erasure, alteration, addition or items not called for in the itemized bid form, or that contain irregularities of any kind may be rejected.

### 3. Rejection of Proposals

- A. The Town Board reserves the right to reject any proposal if the information submitted in the Bidder’s Qualifications statement or an investigation of such bidder fails to satisfy the Town Board that such bidder is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein.
- B. The Town Board reserves the right to reject any and all proposals in whole or in part, to waive any information in any or all proposals, and to accept the proposal or part thereof which it deems most favorable to the Town after all

proposals have been examined and/or checked. No proposal shall be withdrawn for a period of forty-five (45) days after being received.

#### **4. Method of Award**

All proposals will be compared based on the totality of the bidder's presentation regarding the Operation of the Town of Riverhead Animal Shelter and Adoption Center, (the "Project"). The Town reserves the right to award the Contract to the bidder who, in the Town's sole determination, offers a proposal that outlines the most efficient and effective plan for managing the Project in the best interests of the Town.

#### **5. Insurance Required By The Town of Riverhead**

- A. Workers' compensation Insurance, as required by Applicable Law, the coverage must be evidenced on a C-105.2 form or if exempt on the CE-200 form. If you have questions please visit [www.wcb.state.ny.us/main/forms](http://www.wcb.state.ny.us/main/forms).
- B. Disability Benefits Insurance must be evidenced on a DB-102.1 form or if exempt on the CE-200 form. If you have questions please visit [www.wcb.state.ny.us/main/forms](http://www.wcb.state.ny.us/main/forms).
- C. General Liability insurance to include bodily injury and injury to property in the amount of \$1,000,000 per occurrence, the Accord form is acceptable to evidence the liability coverage.
- D. Professional Liability insurance to include malpractice and bodily injury and injury to property in the amount of \$1,000,000 per occurrence, the Accord form is acceptable to evidence the liability coverage. The Town will be named as an additional insured on the Liability policy.

This contract will not be signed by the Town's Supervisor until all required insurances are received.

#### **6. Town's Reservation of Rights**

**The Town reserves all rights with respect to this RFP, including but not limited to the following:**

This RFP is not an offer or a binding commitment to contract on the part of the Town. The Town retains the right to postpone or cancel this RFP or to reject all proposals if the Town determines, in its sole discretion, the best interests of the Town will be served thereby. The Town further reserves the right to reject any proposal that is, in the Town's sole discretion, determined to be incomplete, non-responsive, purports to alter any required terms or conditions of this RFP, or that contains any other irregularities.

The Town may make such investigation as the Town deems necessary to determine the responsibility of any bidder or to verify the ability of any bidder to perform the construction management services specified herein. The Town reserves the right to

reject any proposal if the information requested by the Town is not submitted as required or if the information submitted by or the investigation of any bidder fails to satisfy the Town that the bidder is responsible or is qualified and capable of carrying out the obligations of the Contract.

Upon acceptance of a proposal, the Town shall, by letter, officially notify the successful bidder of said acceptance and, prior to the award of the Contract, enter into negotiations with the successful bidder. The Town retains the right to withdraw from such negotiations with the successful bidder and to rescind its acceptance of the successful bidder's proposal should the Town be unable to conclude the negotiations within thirty (30) business days following the official notification of acceptance.

Once negotiations have been completed, the Town will pass a resolution awarding the Contract, and the successful bidder will be required to sign the Contract and provide evidence of insurance and any additional documentation required by the Town. If the successful bidder refuses, fails, or neglects to sign the Contract or to provide evidence of required insurance or any other documentation required by the Town within ten (10) business days of receipt of a Notice of Award from the Town, the bidder shall be considered to have abandoned the Contract, and the Town shall have the right to rescind the award of the Contract.

The Town shall not be liable for any costs, expenses, or losses, including without limitation loss of business opportunity, claimed or incurred by any party in connection with the preparation or submission of a proposal in response to this RFP, or otherwise in connection with this RFP or its modification, postponement, or cancellation. All proposals become the property of the Town upon submission.

### III. SPECIFICATIONS

#### 1. Summary

The Town of Riverhead, hereinafter referred to as the "Town," is requesting proposals from all qualified parties interested in assuming operation of the Town of Riverhead Animal Shelter and Adoption Center.

The term "Offeror" as used herein shall refer to individuals, firms or organizations submitting proposals in response to this Request for Proposals (RFP). The term "Contractor" or "Provider" is also used to describe the successful offeror(s) in the context of providing services under a contract resulting from this RFP.

All responses received in response to this RFP will be evaluated on the criteria described herein.

**PLEASE NOTE:** All inquiries regarding the substantive terms or requirements of this RFP must be submitted in writing. Inquiries should be faxed to the Office of the Town Clerk, 631-727-3200 ext. 260 or fax at 631- 208-4034, and **must be received by no later than 4:00 pm: MAY 21, 2010** Responses to inquiries deemed appropriate by the Town will be issued in the form of addenda to the RFP and provided to all those who request or had previously received a copy of the RFP.

Officially issued written addenda from the Towns shall be the **only** authorized method for communicating the clarification or modification of the requirements of this RFP. Interested parties may contact the Town of Riverhead to verify receipt of the RFP and any addenda.

#### 2. General Conditions

- A. Prime Responsibility: The selected Contractor will be required to assume full responsibility for all services and activities offered in its/their proposal, whether or not provided directly. Further, the Town will consider the selected Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.
- B. Assurance: Any contract awarded under this RFP must be carried out in full compliance with Title VI and VII of the Civil Rights Act of 1964 as amended, and Section 504 of the Rehabilitation Act of 1973 as amended. The Provider must guarantee that services provided will be performed in compliance with all applicable local, county, state and federal laws and regulations pertinent to this project.
- C. Independent Contractor: In performance of the work, duties and obligations assumed by the Offeror, it is mutually understood and agreed that the Contractor, including any and all of the Contractor's officers, agents and employees, will at all times be acting and performing in an independent

capacity and not as an officer, agent, servant, employee, joint venture, partner or associate of the Town.

- D. Offerors may submit alternate proposals, including, but not limited to the use of a portion of the Shelter as a veterinary clinic. Alternate proposals shall be clearly marked as such and shall demonstrate cost savings to the Town.
- E. The Town of Riverhead prohibits discrimination in employment or in the provision of services because of race, color, religion, religious creed, sex, age, marital status, ancestry, national origin, political affiliation, physical disability or medical condition. This clause does not require the hiring of unqualified persons.
- F. The Town reserves the right to reject any and all proposals; to negotiate specific terms, conditions, compensation, and provisions on any contracts that may arise from this solicitation; to waive any informalities or irregularities in the proposals; and to accept the proposal(s) that appear(s) to be in the best interest of the Town. In determining and evaluating the proposals, costs will not necessarily be controlling; the experience of those who will be providing services under the contract, quality, equality, efficiency, utility, suitability of the services offered, and the reputation of Offerors will be considered, along with other relevant factors.
- G. The Town reserves the right to:
- Request clarification of any submitted information;
  - Not enter into any agreement;
  - Not to select any Offerors;
  - Amend or cancel this process at any time;
  - Interview Offerors prior to award and request additional information during the interview;
  - Negotiate a multi-year contract or a contract with an option to extend the duration;
  - Award more than one contract if it is in the best interest of the Town; and/or
  - Issue similar RFPs in the future.

- H. Qualified Offerors must be prepared to enter into a contract with the Town. The contract will incorporate many standards, terms and conditions referenced in this RFP. Portions of this RFP and the Offeror's proposal may be made part of any resultant contract and incorporated in the contract.
- I. Prior to commencement of services, the Contractor must provide evidence of the following insurance coverages further detailed in 32.3 Operations, Subsection "J" below: Workers' compensation, Disability, Automobile Liability for Owned Automobiles and Non-owned /Hired Automobiles, Professional Liability insurance to include malpractice and bodily injury and injury to property in the amount of \$1,000,000 per occurrence, the Accord form is acceptable to evidence the liability coverage.
- J. The Contractor will be required to maintain the required coverages, at its sole cost and expense, throughout the entire term and any subsequent renewal terms of the contract.

### 3. **Background and Description of Services Required**

#### A. Background

The Town of Riverhead Animal Shelter provides temporary housing and medical care for domestic companion animals that are found as strays or surrendered by their owners, while seeking suitable homes for their permanent placement as pets. While housed at the Shelter, the animals are provided with regular medical care, socialization, and, if needed, behavior modification programs to enhance their adoptability and enrich their quality of life during their stay.

The Town operates one animal shelter located at 483 Youngs Avenue, Riverhead, New York. Shelter personnel are responsible for the daily care of animals housed at the shelter.

The shelter also hosts low cost rabies vaccination and microchip clinics, operates a volunteer program, and is actively involved in public education programs that promote responsible pet ownership.

The Town seeks a qualified contractor to assume operation of the Town of Riverhead Animal Shelter and Adoption Center. The primary function of the Contractor will be to provide care, humane treatment, vaccinations / medical care and veterinary services to animals housed at the shelter, including those brought to the shelter by Town Animal Control Officers. The Contractor will be responsible for ensuring the complete execution of contract services as detailed further in this RFP.

## B. Scope of Services to be Provided by the Contractor

### 1. Hours of Operation

Public: The shelter shall be open to the public a minimum of thirty-six (36) hours per week excluding holidays when the shelter may be closed. The Contractor shall develop a staffing schedule to demonstrate proposed staffing. The Town recognizes that, on occasion, circumstances beyond the control of the Contractor may arise that require reduced service hours. When these events occur the Contractor will notify the public via a recorded phone message. Aside from closing due to inclement weather or emergency, the Contractor will notify the Town within 24 hours of any unscheduled closure and report the reasons for closure and projected time the facility will reopen. Notwithstanding the foregoing provisions, the Contractor may establish reasonable hours during which animals may be viewed, redeemed, or adopted.

Town: Staff must be available seven (7) days a week to provide care for sheltered animals and accept animals from Town Animal Control Officers acting pursuant to their job duties and responsibilities as set forth in the Code of the Town of Riverhead and New York State Agricultural & Markets Law.

Contractor shall develop a staffing schedule to demonstrate proposed staffing to meet the public hours of operation and Town staff hours of operation set forth above.

### 2. Other Animals

The shelter may be required to temporarily house animals other than domestic companion animals, when necessary. Other animals may include livestock, birds, pet rodents, snakes and other exotic animals.

### 3. General Operations

- a. The Contractor must conform to applicable New York State, Suffolk County, and Town of Riverhead laws, ordinances, rules, regulations and policies.
- b. The Contractor shall operate and manage a shelter and provide care for (i) lost, strayed, or homeless animals in the Town of Riverhead (ii) animals that are surrendered by residents of the Town of Riverhead pursuant to 58-4.1, and (iii) animals seized by the Town's Animal Control officers or held pursuant to court order.
- c. The Contractor shall be required to house animals received at the shelter for the redemption period set forth in Section 118 of Article 7 of New York State Agricultural and Markets Law. At the end of the appropriate

redemption period, animals that have not been redeemed by their owner after a reasonable effort to locate same, shall be offered for adoption or euthanized pursuant to subdivisions 2-a, 2-b, 2-c, 2-d and 2-e of Section 374 of New York State Agriculture and Markets Law. The Contractor shall encourage adoption where the animal and the potential adoptive home are both appropriate.

- d. In the exercise of its discretion, the selected Contractor may hold animals housed at the shelter beyond the time required by law, provided however that in no event shall the Contractor house or hold animals beyond the time required by law if the same will result in there being insufficient space or facilities for the impoundment of seized animals.
- e. The Contractor shall provide humane treatment to all animals while housed at the shelter, and shall also be responsible for the cost of feeding and humanely maintaining all animals at the shelter.

#### 4. Medical

- a. The Contractor shall provide necessary veterinary services to the animals housed at the shelter, and shall ensure that all veterinary services are provided by qualified personnel licensed by New York State. Any dog or cat deemed to be adoptable shall be spayed/neutered as soon as practicable when determined to be medically sound. It shall be in the Contractor's discretion to spay/neuter any other animal.
- b. The Contractor shall pay for all reasonable and necessary medical expenses incurred with regard to the treatment of the animals at the shelter. For animals seized by Town Animal Control Officers during the time frame for which the Town is responsible under State law (see 3(b) and (c) above), the medical expenses and any such other costs related to housing the animal shall be considered as part of the budgeted amount given to the Contractor by the Town.
- c. The Contractor's veterinarian and/or staff must be trained and certified to administer controlled euthanasia solutions. The Contractor and/or its veterinarian are responsible for obtaining euthanasia solution, keeping records pertaining to such, and safely keeping the solution in accordance with all applicable regulations.
- d. The Contractor shall develop and implement a system whereby animals are assessed for behavior and temperament, similar to the Town of Riverhead euthanasia policy. Under no circumstances shall the Contractor allow any animals that have manifested a sign of a behavioral or temperamental defect that could pose a health or safety risk or otherwise make the animal unsuitable for placement as a pet

available for adoption. The Contractor shall euthanize animals that are irremediably suffering from injury or illness which adversely affects the health of the animal or likely to adversely affect the animal's health in the future, or potentially affect the health, safety or welfare of the potential adoptee or public at large.

- e. As soon as medically sound, the Contractor shall also provide the following for all dogs and cats prior to their adoption:
  - i. For dogs: Bordetella, DA2PP/CV vaccination, Heartworm test, Heartworm preventative.
  - ii. For cats: FVRCP vaccination, FELV/FIV test.
  - iii. For both dogs and cats: Surgical sterilization, fecal testing for internal parasites, flea/tick preventative, microchip identification, Rabies vaccinations.

#### 5. Records & Reports

- a. The Contractor shall maintain complete records of any seized dog and the subsequent disposition of any dog in the manner prescribed by Article 7 of the Agricultural and Markets Law and regulations promulgated thereunder by the Commissioner of Agriculture and Markets.
- b. The Contractor shall be required to maintain records for all animals admitted, housed, or maintained at the shelter. Such records shall include, but may not be limited to, kennel records, animal medical records, animal behavior records, adoption records, redemption records, euthanasia records, receipts, inventory and activity records. All such records shall remain confidential and the property of the Town of Riverhead, and shall be maintained for a minimum of seven (7) years.
- c. Animal inventory reports will be submitted to the Town upon request.
- d. The Contractor shall provide the Town with an audited financial report on an annual basis and financial compilations on a quarterly basis.
- e. The Contractor shall review and substantially comply with the quality of existing shelter policies and procedures pertaining to record keeping and report generating.

#### 6. Licensing, Redemption, & Adoption Fees

- a. Pursuant to Article 7 of the Agricultural & Markets Law §109, the Town Clerk of the Riverhead is responsible for the issuance of all dog licenses

and reporting/accounting of licenses issued, together with fees collected to the appropriate County Financial Officer. The Town will consider an alternate plan which may include Town request to Commissioner of Agriculture & Markets to authorize Contactor such that the Town Clerk and Contractor may issue said licenses, however, Contractor shall propose a plan such that all reporting/accounting procedures set forth in Article 7 §109-111 are satisfied.

- b. The Contractor shall be entitled to keep all adoption fees collected, or shall propose an alternate plan.
- c. The Town shall collect all fines and penalties, not including redemption/impound fees, for enforcement and/or violation of Article 7 and the Code of the Town of Riverhead and use such moneys for the purposes set forth in Agricultural & Markets Law, Article 7 §120.
- d. Contractor shall be entitled to keep redemption/impound fees provided that the fees are disposed in accordance with Section 120 of New York State Agriculture and Markets Law.

#### 7. Employees and Volunteers

- a. The Contractor shall employ, at all times during the term of the contract, such trained and qualified personnel as are necessary to properly perform the duties and responsibilities specified herein.
- b. The Contractor shall designate a suitable person who shall exercise overall supervision of the shelter and for all of its employees and advise the Town of the name, address, and telephone number of such person, as well as any changes thereto.
- c. The Contractor shall maintain adequate staffing levels to ensure all services outlined in the contract are provided in an efficient and professional manner.
- d. The Contractor may operate a volunteer and/or community service program. In the event the Contractor provides a volunteer and/or community service program, the Contractor shall assume all liability for, screen, supervise, and train volunteers assisting at the shelter.

- e. Mindful of the existing municipal employees at the shelter, Contractor's proposal shall consider how to assimilate said employees into the proposed organizational structure of Contractor's operational plan and how, upon termination of the contract, employees may revert back to Town employment.

#### 8. Insurance & Bond

- a. The Contractor shall provide Workers' compensation and disability insurance as may be required by law for any person working at the shelter or performing services for the Contractor required to be performed under the Contract with the Town. Certificates of such insurance shall be filed annually with the Town Clerk.
- b. The successful bidder will be required to procure and pay for, at his/her expense, the following types of insurance with limits of coverage as further specified in the General Contract Provisions:
  - i) Workers' compensation Insurance, as required by Applicable Law, the coverage must be evidenced on a C-105.2 form or if exempt on the CE-200 form. If you have questions please visit [www.wcb.state.ny.us/main/forms](http://www.wcb.state.ny.us/main/forms).
  - ii) Disability Benefits Insurance must be evidenced on a DB-102.1 form or if exempt on the CE-200 form. If you have questions please visit [www.wcb.state.ny.us/main/forms](http://www.wcb.state.ny.us/main/forms).
  - iii) General Liability insurance to include bodily injury and injury to property in the amount of \$1,000,000 per occurrence, the Accord form is acceptable to evidence the liability coverage.
  - iv) Professional Liability insurance to include malpractice and bodily injury and injury to property in the amount of \$1,000,000 per occurrence, the Accord form is acceptable to evidence the liability coverage.

The Town will be named as an additional insured on the Liability policy.

A contract will not be signed by the Town's Supervisor until all required insurances are received.

- c. As an assurance that it will faithfully and fully perform each and every obligation, duty, and responsibility provided for herein and in the eventual contract, the Contractor, prior to the effective date of the contract, shall deposit with the Town Clerk the sum of \$25,000. In the event of any default by the Contractor in any of the terms and conditions of the contract, the Town shall give written notice thereof to

the Contractor, whereupon the Contractor shall have ten (10) days from the receipt of such notice to cure the default. If the Contractor shall fail to cure said default, the Town may cure such default by which means it deems advisable and pay the cost and expense thereof from said sum deposited with the Town Clerk. In the event that the Contractor denies such default, such dispute shall be resolved by mediation. In the event that the mediation is unsuccessful, such dispute shall be resolved by arbitration through the American Arbitration Association or such other organization as is agreeable to the parties upon the application of either party. In the event the Contractor faithfully and fully performs each and every obligation on its part to be performed then at the expiration of the Contract according to its terms, said deposit shall be paid over to the Contractor.

f. Payment of Utilities

The Contractor shall pay for the telephone service, fuel, electricity, water, and any other utility expenses at the shelter. The Town encourages sustainable practices and green initiatives.

g. Animal Care

- a. At a frequency no less than one time per day, all animals are to be fed and provided fresh water, all water bowls, litters, and cages/kennels are to be cleaned and sanitized. For larger breeds, it is recommended that animals be fed a minimum of twice per day.
- b. At a frequency no less than one time per day, the Contractor shall collect and properly dispose of animal refuse, manure or other animal waste from the shelter including, but not limited to, in kennels, cages, or in the agility yards. Said refuse shall be contained within a covered dumpster.
- c. In accordance with Public Health regulations, the Contractor will properly store all animal carcasses until such time as the carcasses are removed from the shelter. The Contractor shall arrange and be financially responsible for proper removal and transport of animal carcasses generated within the shelter.

h. Working with Town of Riverhead Animal Control

- a. Under the supervision of the Town Animal Control, the Contractor will be required to document and monitor all animals under quarantine conforming to New York State, Suffolk County, and Town of Riverhead laws, ordinances, rules, regulations and policies.
- b. The Contractor shall immediately report to Town Animal Control the improper or accidental release of any animal from the shelter.

- c. The Contractor shall provide for the use of shelter facilities, computer software, and equipment by Animal Control personnel.
  - d. The Contractor shall promote animal care and control in accordance with New York State, Suffolk County, and Town of Riverhead laws, ordinances, rules, regulations and policies. The Contractor shall provide public assistance and referral to Town Animal Control issues related to animal control.
- i. Facility
- a. The Contractor shall purchase and maintain an adequate inventory of all consumable supplies and equipment necessary to conduct shelter operations.
  - b. The Contractor shall do nothing detrimental to the facilities, equipment, or property.
  - c. The Contractor shall contact Town Engineering Department when repairs to the facility are needed. The Contractor is responsible for contacting Town Facilities Management in a timely manner for emergency or non-routine maintenance issues that may arise. Such maintenance and repair to the shelter shall be in the Town's discretion, which shall be reasonably exercised.
  - d. The Contractor shall not intentionally harm the building, grounds or equipment. Upon Town determination of intentional harm (through willful act or neglect) to building, grounds or equipment, the Contractor will be held financially responsible for all repairs and may be subject to Contract termination.
  - e. Title to the Town Animal Shelter and furniture, furnishings, fixtures, appliances, and equipment currently remaining within shall remain vested in the Town. Any furniture, furnishings, fixtures, appliances, and equipment installed by the Contractor at the shelter shall remain vested in the Contractor and, at the expiration of the contract or on the prior termination thereof, the Contractor shall have the right and a reasonable time within which to remove the same and all other property belonging to the Contractor provided, however, that such removal can be made without injury or damage to the premises or building.
  - f. The Contractor shall make no major alterations renovations or additions to the shelter without prior written approval of the Town. The Contractor shall be financially responsible for all alterations, renovations, or additions made to the shelter without written approval of the Town.
  - g. The Town and its authorized officers, agents, and employees shall have the right to enter upon the shelter, including the buildings or structures, at

any reasonable time for the purpose of examining same, conferring with the officers and/or management of the Contractor, and to make such necessary repairs as the Town may deem necessary.

- h. The Contractor covenants and agrees that, unless this contract is renewed or extended by agreement of the parties, at the expiration of the term of this contract, it will surrender the shelter to the Town in good repair, normal wear and tear excepted.

#### 9. Miscellaneous

- a. The Contractor hereby represents that it is legally qualified to perform all the duties on its part to be performed under the terms and conditions of the contract, specifically being an incorporated humane society or similar incorporated dog protective association formed under the Not-For-Profit Corporation Law pursuant to Section 115 of Article 7 of New York State Agricultural and Markets Law.
- b. The Contractor shall keep on file with the Town Clerk and deliver upon the execution of the Contract, copies of the Contractor's Certificate of Incorporation and current Bylaws.
- c. Term of the agreement will be for a minimum of three (3) years. Either party may terminate the contract for any reason by giving one (1) year written notice to the other.
- d. The Town reserves the right to make inspections of the shelter to assure compliance with the scope of work outlined above and ensure the animals are cared for in a humane manner. The Town also reserves the right for the Suffolk County SPCA and the Humane Society of the United States, or their designee(s), to inspect the shelter.
- e. Nothing shall be found to construe the parties of the contract as partners or authorize either party to contract any debt liability or obligation for or against or on behalf of the other party of the contract. Neither the Town, nor the Contractor, shall be considered as the agent of the other nor shall either have the right to bind the other in any manner whatsoever and the contract shall not be deemed or construed as a contract of agency. The Contractor shall be deemed throughout the term hereof as an independent contractor and as such be liable for its own acts.
- f. The Contractor shall protect, save, and keep the Town harmless and indemnify the Town from and against any and all claims, losses, costs, damages, suits, judgments, penalties, expenses, and liabilities of any kind or nature whatsoever arising directly or indirectly out of or in

connection with the performance by the Contractor of the terms and conditions of the contract.

- g. In the event that either party defaults in fulfilling any of the terms or conditions of the contract, the other party may give six months (6) six months written notice of its intention to terminate the contract and, thereupon at the expiration of such six month period, if the condition or conditions which form the basis of the notice continue to exist, the contract shall terminate completely as if that day were the day definitely fixed for the expiration of the contract. In the event the defaulting party denies such default, such dispute shall be resolved by arbitration through the American Arbitration Association or such other organization as is agreeable to the parties. In the event of such termination, the Contractor shall forthwith surrender the shelter occupied by it and deliver to the Town any and all Town property in its possession whereupon the Contractor shall have no further rights or responsibilities hereunder except to remove its property as provided herein.
- h. The Contractor shall not assign the contract or subcontract or otherwise engage any other organization to perform the work and services to be performed hereunder without the express written approval of the Town.
- i. In the event Federal, State or County laws, rules or regulations require the Contractor to incur additional expenses to provide the services the Contractor has agreed to provide, the Town agrees to negotiate with the Contractor with regard to such additional expenses.

#### C. Scope of Services to be Provided By the Town

The Town will:

1. Permit the selected Contractor to occupy and operate the Town Animal Shelter for the purpose of providing animal shelter services for the Town.
2. Provide all forms required by Town, County, or State Law.
3. Provide maintenance and repair of the building's exterior and grounds, but shall not include maintenance or clean up of pens or exercise areas, mowing or snow plowing. Such maintenance and repair to the shelter shall be in the Town's discretion, which shall be reasonably exercised.
4. Maintain the shelter's electrical, plumbing, septic, mechanical, alarm, heating and air conditioning systems.
5. Remit to the selected Contractor twelve equal monthly payments on the 15th day of each month for the preceding month.

#### 4. Proposal Content and Format Requirements

##### A. Cover Sheet

1. Provide the full legal name of the Contractor who will execute the contract. Provide specific information concerning the Offeror, including: the proposing entity's legal name, type of entity, and Federal Tax ID Number.
2. The cover sheet must be signed by an owner, corporate officer, or agent authorized by the Offeror.

##### B. Description of Services, Background and Staff

###### 1. Services

- a. Itemize the complete list of services to be provided.
- b. Note instances where services exceed the scope or detail requested in this RFP.
- c. Note instances where services offered do not meet the scope requested in this RFP.
- d. Address instances where possible cost efficiencies may be gained, quality may be improved or the Town may otherwise benefit from adopting your proposal over the generally listed terms of this RFP.

###### 2. Background and Experience

- a. Provide an overview of the types of work and history of your organization. Include a high level account of your qualifications as they relate to this proposal and how they qualify your organization to be the best fit for these services.
- b. Provide examples and references that substantiate experience in providing the types of service requested in this proposal. This needs to be detailed and verifiable.
- c. Please describe any current, pending or past litigation (within the last 10 years) that the Offeror has been, is, or is expected to be a party to.

###### 3. Staffing

- a. Provide names and qualifications of key employees to be assigned to this work.
- b. Provide a staffing plan for meeting the requirements.

- c. Provide other relevant information that can aid the Town in its selection process.
- d. If the Offeror is considering a volunteer program, please describe your plans for recruitment, training, size, work scope, and assignment of liability.

#### 4. Financial Stability

Provide documentation of the Offeror's financial stability. Three years of audited financial statements would be ideal if available; however, the Town will consider other forms of documentation provided to meet this content requirement.

### C. Proposed Costs

1. Break out costs (to Town) by year over a one (1), three (3), and five (5) year term.
2. Provide pricing that breaks out fixed and variable costs.
3. List out the cost basis for all variable charges. (e.g. hourly rates for staff)
4. Provide basis for costing adjustments on subsequent years in contract or for potential future contract extensions.
5. If your staffing strategy will include volunteers, please outline costs associated with setting up and running the volunteer program.

## 5. **Selection Procedures**

The Town will only consider proposals from qualified Offerors that can provide the described services for less than the Town's current cost. The Town will not consider reduced levels of service or quality in order to reach this target. If proposals do not offer adequate savings, the Town will not contract for these services. Offerors are encouraged to present cost saving and quality enhancement options within their proposals for the Town's consideration.

Proposals will be evaluated on the criteria outlined in the PROPOSAL CONTENT AND FORMAT REQUIREMENTS section.

After an initial review of each of the proposals for completeness, the Offerors submitting the most highly rated proposals may be invited for interviews prior to final selection, to further elaborate on their proposals. The Town reserves the right to award a contract without holding interviews, in the event the written proposals provide a clear preference on the basis of the criteria described.

Should interviews be conducted, the same criteria will be used to select the final provider.

The Contractor selected for this project will be required to accept the Town's contract and to comply with insurance standards as deemed acceptable to the Town Attorney. No agreement with the Town is in effect until both parties have signed a contract.

**6. Inquiries**

Direct all inquiries regarding the proposal process to: or proposal submissions to:  
Maryann Tague, Purchasing Agent.  
631-722-4444 ext. 271

Direct all proposal submissions to:  
Town of Riverhead  
200 Howell Avenue  
Riverhead, New York 11901  
Attention: TOWN CLERK  
631-727-3200

**IV. GENERAL MUNICIPAL LAW - SECTION 103-a and 103-b**

**GROUND S FOR CANCELLATION OF CONTRACT BY MUNICIPAL CORPORATIONS**

Upon the refusal of a person, when called before a grand jury to testify concerning any transaction or contract had with the State, and political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract,

- a) such person, and any firm, partnership or corporation, of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or any public department, agency or official thereof for goods, work, or services, for a period of five years after such refusal, and to provide also that,
- b) any and all contracts made with any municipal corporation or any public department, agency or official thereof, since the effective date of this law, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the municipal corporation without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the municipal corporation for goods delivered or work done prior to the cancellation or termination shall be paid.

This condition shall be further subjected to any other provisions or subsequent amendments to Section 103-a and 103-b of the General Municipal Law.

In acknowledgment of the above:

Offeror's Business Name: \_\_\_\_\_

Signed by: \_\_\_\_\_

Title: \_\_\_\_\_

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

**V. GENERAL MUNICIPAL LAW – SECTION 103-d**

**Non-Collusive Bidding Certificate**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under the penalty of perjury, that to the best of his knowledge and belief:

- (A) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, and for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor or potential competitor;
- (B) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder prior to the opening, directly or indirectly to any other bidder, competitor or potential competitor;
- (C) No attempt has been or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

I hereby affirm, under the penalty of perjury, the foregoing statement is true:

Signed by: \_\_\_\_\_

Title: \_\_\_\_\_

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

Affix corporate seal if contractor is a corporation.

**VI. BIDDER QUALIFICATIONS**

All questions must be answered and the information given must be clear and comprehensive. If necessary, questions may be answered on separate attached sheets.

**Section A.**

1. Name of Offeror/Organization: \_\_\_\_\_

2. Main Office Address: \_\_\_\_\_

3. When Organized: \_\_\_\_\_

4. If a Corporation, Indicate State Incorporated In: \_\_\_\_\_

5. **NAME OF PARTNERS**

**HOME ADDRESS OF PARTNERS**

(If Bidder is a FIRM, state here the name and home address of each member thereof)

\_\_\_\_\_  
\_\_\_\_\_

If Bidder is a CORPORATION, complete the information below:

Name and Address of President: \_\_\_\_\_

Name and Address of Vice President: \_\_\_\_\_

Name and Address of Secretary: \_\_\_\_\_

6. Does any other contractor, vendor or person have, hold, or may derive any actual or beneficial percentage of interest in any other form of ownership of the Offeror in an amount of 5% or more? Yes/No \_\_\_\_\_

If yes, please provide:

Name: \_\_\_\_\_

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

**Section B.**

Provide information below regarding similar contracts held:

Organization Name:

Contact Person (Name and Phone Number):

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Amount of Contract:

Date Completed:

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**Section C.**

1. Have you ever failed to complete any contract awarded to you? Yes/No \_\_\_\_\_

2. Have you ever defaulted on a contract? Yes/No \_\_\_\_\_ If yes, state where and why:

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3. Has any officer or partner of your organization ever been an officer or partner of some other organization that failed to complete a contract? Yes/No \_\_\_\_\_

If yes, state name of individual, other organization and reason:

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4. Has any officer or partner of your organization ever failed to complete a contract in his/her own name? Yes/No \_\_\_\_\_ If yes, state name and reason:

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5. In what other lines of business are you financially interested?

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6. Who will personally supervise this contract?

Name and Phone Number

Title

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7. Do you have, or can you obtain, sufficient personnel and equipment to perform this contract as required by the "Bid Proposal"? Yes/No \_\_\_\_\_

8. Provide names and phone numbers of local (Long Island) government references:

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9. Provide contact names and phone numbers for emergencies that require an immediate response:

Day: \_\_\_\_\_ Night: \_\_\_\_\_

10. List all major equipment you will utilize to perform all work. Indicate whether you currently own or lease the equipment, or will lease it (attach a separate sheet if necessary).

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11. Successful Offeror shall provide the Town, at the signing of the contract, the following information:

a. Table of Organization of the CONTRACTOR showing the names and addresses of all individuals serving on the Board of Directors or comparable body of the CONTRACTOR.

b. Proof of financial capability and a detailed financial statement.

**Section D.**

(\*Delete phrases that are not applicable)

I, \_\_\_\_\_ the \*(applicant herein),  
(an officer or agent of the corporate applicant) namely its \_\_\_\_\_, (list  
corporate interest) (swears) or (affirms) under the penalties of perjury that:

1. The following persons have a direct or indirect interest in this bid:

<u>NAME</u>	<u>ADDRESS</u>	<u>DATE OF BIRTH</u>
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(In case of corporations, all officers of the corporation and stockholders owning more than 5% of the corporate stock must be listed. Attach an additional sheet, if necessary).

2. The following person(s) listed immediately above are related by blood or marriage to an officer or employee of the OWNER. Attach an additional sheet, if necessary.

<u>NAME</u>	<u>RELATIONSHIP</u>	<u>NAME/POSITION OF EMPLOYEE/OFFICER</u>
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False statements made herein are punishable as a Class A misdemeanor pursuant to 210.45 of the Penal Law.

\_\_\_\_\_  
Legal Name of Person/Firm/Corporation

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

**TOWN OF RIVERHEAD**

**Resolution # 364**

**AUTHORIZES THE SUPERVISOR TO EXECUTE A SECURITY AGREEMENT**

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

**WHEREAS**, the Town of Riverhead requires security services for 755 East Main Street, Riverhead, New York;

**NOW, THEREFORE, BE IT RESOLVED**, that the Supervisor is hereby authorized to execute a security agreement regarding 755 East Main Street, Riverhead, New York; and be it further

**RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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  Was Not   
Thereupon Duly Declared Adopted

On a motion of Councilman Dunleavy, seconded by Councilman Gabrielsen the resolution was **TAKEN OFF THE FLOOR**  
YES-5 Giglio, Gabrielsen, Wooten, Dunleavy, Walter  
NO-0

## CONSULTANT/PROFESSIONAL SERVICES AGREEMENT

This Agreement made the \_\_\_\_\_ of \_\_\_\_\_, 2010 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 set forth in the schedule attached hereto and made a part hereof. These services are to be rendered by Consultant as an independent contractor and not as an employee of Town.

### 2. TERM OF AGREEMENT

The Agreement shall commence on \_\_\_\_\_ and terminate on December 31, 2010, 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 on the signatory page.

### 3. PAYMENT

For these services, Town will pay Consultant at the rates set forth in the attached schedule. The Town shall not have any liability for any other expenses or costs incurred by Consultant except for expenses expressly provided for in the attached schedule. Consultant shall not incur any expenses in Town's behalf except for those items expressly provided for in the attached schedule. 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 one million dollars (\$1,000,000.00) per occurrence three million dollars (\$3,000,000.00) 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.

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

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

# SCHEDULE A

**WHEREAS**, the Town desires and Consultant agrees to provide both "security" and "fire" central office monitoring service in connection with the property known as

755 East Main Street, Riverhead, New York 11901.

**1. CENTRAL OFFICE TRANSMITTER IS LEASED AND REMAINS PERSONAL PROPERTY OF COMPANY:** Consultant shall waive its proprietary interest in the central office transmitter and all other attendant equipment, software and programming during the term of this agreement; however all parties acknowledge that Town is leasing said equipment and programming during the term of the agreement the cost of which is subsumed within the fee schedule delineated in paragraph 2 below. Town shall have full and unfettered access to said equipment and programming during the term of the agreement as it deems appropriate in its own discretion. Upon termination of said agreement and in the event Town renews its lease with the subject property owner, Consultant shall remove its central office transmitter and all other attendant leased equipment, software and programming at Consultant's own cost .

. Equipment leased by SUBSCRIBER listed below:

Existing Vista 20P Security System –Consultant and Town agree that central station monitoring shall be accomplished via both a phone line signal and GSM radio signal.

## 2. Fees

Consultant and Town mutually agree that the total installation cost to activate the entire system is waived. However, parties agree that the Town shall pay a one-time fee of \$395.00 regarding the GSM Radio device which upon payment shall become the unconditional property of the Town of Riverhead although Consultant shall continue to maintain and if needed, repair said device at no additional charge to the Town. In addition, Town shall pay to Consultant \$50.00 per month during the term of the Agreement for central station monitoring itemized as follows: \$25.00 per month for basic monitoring; \$15.00 per month for supervised open/closing signals and \$10.00 per month for monitoring the GSM radio signal. Consultant and Town mutually agree that there shall be no other costs or fees associated with this Agreement.

## 3. Central Station Monitoring

Upon receipt of a signal from the communication software, Consultant's communication center shall make every reasonable effort to notify Town and the appropriate municipal police and/or fire department unless otherwise contracted under an original or subsequent contract. Parties agree that Consultant shall not be responsible for equipment failure not controlled nor maintained by Consultant. Town agrees to provide to Consultant a written list of personnel with telephone numbers authorized to receive notification of signal alarms.

5/4/10

**ADOPTED**

**TOWN OF RIVERHEAD**

**Resolution #365**

**AUTHORIZES THE TOWN CLERK TO PUBLISH AND POST  
A HELP WANTED AD FOR SEASONAL GROUNDSKEEPERS**

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

**BE IT RESOLVED**, that the Town Clerk be and is hereby directed to publish the attached Help Wanted Ad in the May 13, 2010 issue of The News Review.

**THE VOTE**

Giglio - ABSTAIN    Gabrielsen Yes No  
Wooten Yes No      Dunleavy Yes No

Walter Yes No

The Resolution Was  Was Not

Thereupon Duly Declared Adopted

On a motion of Councilman Dunleavy, seconded by Councilman Gabrielsen the resolution was **TAKEN OFF THE FLOOR**

YES-5    Giglio, Gabrielsen, Wooten, Dunleavy, Walter

NO-0

## **HELP WANTED**

PLEASE TAKE NOTICE that the Town of Riverhead is seeking qualified individuals to serve in the position of Seasonal Groundskeepers from May – September, 2010. Some landscaping experience desired. Applications are to be submitted to the Personnel Department, 1295 Pulaski Street, Riverhead, NY. No applications will be accepted after 4:00 pm on May 21, 2010. EOE.

BY ORDER OF:  
THE RIVERHEAD TOWN BOARD  
DIANE M. WILHELM, TOWN CLERK

5/4/10

ADOPTED

**TOWN OF RIVERHEAD**

**Resolution # 366**

**AUTHORIZES THE SUPERVISOR TO EXECUTE A DWI ENFORCEMENT AGREEMENT BETWEEN THE COUNTY OF SUFFOLK AND THE TOWN OF RIVERHEAD (STOP DWI PROGRAM)**

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

**WHEREAS**, funding is available from the Suffolk County STOP DWI program;  
and

**WHEREAS**, the Riverhead Police Department has applied for this funding that will allow them to increase enforcement of DWI laws within the Town of Riverhead; and

**WHEREAS**, Supervisor Walter has requested authorization from the Town Board to enter into this contract with the County of Suffolk on behalf of the Town of Riverhead.

**NOW, THEREFORE BE IT RESOLVED**, that the Town Board hereby authorizes the Town Supervisor to sign a contract with the County of Suffolk.

**BE IT FURTHER RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet and, if needed, a certified copy of same 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  Was Not   
Thereupon Duly Declared Adopted

On a motion of Councilman Dunleavy, seconded by Councilman Gabrielsen the resolution was **TAKEN OFF THE FLOOR**

YES-5 Giglio, Gabrielsen, Wooten, Dunleavy, Walter

NO-0

5/4/10

**ADOPTED**

**TOWN OF RIVERHEAD**

**Resolution #367**

**AUTHORIZES EMERGENCY WORK AT BUILDING DEPARTMENT BUILDING  
LOCATED AT 201 HOWELL AVENUE**

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

**WHEREAS**, the Town of Riverhead Building Department building located at 201 Howell Avenue, Riverhead New York was subjected to flooding on or about March 29-30, 2010 and thereafter sustained fire damage on April 16<sup>th</sup>, 2010, and

**WHEREAS**, the Town must engage contractors to remove burned debris, restore damaged files and protect and secure the structure from the elements and illegal entry, and

**WHEREAS**, the Town has insurance coverage for the damage to the building, and

**WHEREAS**, General Municipal Law §103(4) when a public emergency arising out of an accident or other unforeseen occurrence which requires immediate action which cannot await competitive bidding contracts for work may be let by the appropriate board

**NOW, THEREFORE BE IT HEREBY RESOLVED**, that the Town of Riverhead authorized the Town Supervisor to retain contractors to perform the aforementioned work, and be it further

**RESOLVED**, that the Riverhead Town Board hereby authorizes the Supervisor to execute the needed vouchers for payment of work to be done for the work described herein; and be it further

**RESOLVED**, that the Town Clerk is hereby directed to forward a certified copy of this resolution to the Town Engineer, Sanitation, the Office of the Town Attorney 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  Was Not   
Thereupon Duly Declared Adopted

On a motion of Councilman Dunleavy, seconded by Councilman Gabrielsen  
resolution #367 was TAKEN OFF THE FLOOR

YES-5 Giglio, Gabrielsen, Wooten, Dunleavy, Walter

NO-0

## TOWN OF RIVERHEAD

## Resolution # 368

**AUTHORIZES THE SUPERVISOR TO EXECUTE A GRANT EXTENSION AGREEMENT WITH THE US DEPARTMENT OF AGRICULTURE**

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

**WHEREAS**, grant funding is available from the United States Department of Agriculture (USDA) to provide funds to the Town of Riverhead for the Town's Home Improvement Program; and

**WHEREAS**, the Town of Riverhead Community Development Department ("CDD") has applied for and received an award of \$80,000 and;

**WHEREAS**, the Town Board authorized the Supervisor to sign the grant agreement and now said contract requires extension (see attached contract extension); and

**NOW, THEREFORE, BE IT RESOLVED**, that the Riverhead Town Board hereby authorizes the Town Supervisor to execute the grant extension documents with USDA subject to review and approval by the Town Attorney; and

**BE IT FURTHER RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the E-Cabinet 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  Was Not   
Thereupon Duly Declared Adopted

On a motion of Councilman Dunleavy, seconded by Councilman Gabrielsen the resolution was TAKEN OFF THE FLOOR

YES-5 Giglio, Gabrielsen, Wooten, Dunleavy, Walter

NO-0

AMENDMENT  
TO  
HOUSING PRESERVATION GRANT AGREEMENT

This amendment between Town of Riverhead,  
herein called the "Grantee," and the United States of America acting  
through the Farmers Home Administration, Department of Agriculture, herein  
called "FmHA," hereby amends the Housing Preservation Grant Agreement  
originally executed by said parties on September 10, 2007.

Said grant agreement is amended by extending the ending date of the grant  
agreement to May 26, 2010, and/or by making the following  
changes noted in the attachments hereto (list and identify proposal(s) and  
any other documents pertinent to the grant agreement which are attached to  
this amendments).

The grantee has caused this "Amendment To Housing Preservation Grant  
Agreement" to be executed by its duly authorized Town Supervisor,  
properly attested to and its corporate seal affixed by its duly authorized  
\_\_\_\_\_.

Attest:

Grantee:

By: Town of Riverhead

\_\_\_\_\_  
(Title)

Date of Execution of Amendment to Grant  
Agreement by Grantee:

United States of America  
Farmers Home Administration:

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

\_\_\_\_\_  
(Title)

Date of Execution of Amendment to Grant  
Agreement by FmHA:

\_\_\_\_\_

oOo

5/4/10

ADOPTED

TOWN OF RIVERHEAD

Resolution #369

**AUTHORIZES THE SUPERVISOR  
TO EXECUTE A COVENANT AND RESTRICTION IN FAVOR OF THE SUFFOLK  
COUNTY DEPARTMENT OF HEALTH SERVICES**

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

**WHEREAS**, the Suffolk County Department of Health Services requires that the Town record Covenants and Restrictions in its favor for the placement of temporary sanitary facilities at the Town's recreational facility located at EPCAL,

NOW, THEREFORE, BE IT

**RESOLVED**, that the Supervisor is authorized to execute an Covenant and Restriction, and be it further

**RESOLVED**, that the Town Clerk is hereby directed to forward a certified copy of this resolution to the Office of the Town Attorney, Office of the County Attorney (attn: Lynne Bizzarro, Esq., Deputy County Attorney) 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  Was Not   
Thereupon Duly Declared Adopted

On a motion of Councilman Dunleavy, seconded by Councilman Gabrielsen the resolution was TAKEN OFF THE FLOOR

YES-5 Giglio, Gabrielsen, Wooten, Dunleavy, Walter

NO-0

5/4/10

ADOPTED

**TOWN OF RIVERHEAD**

**Resolution # 370**

**APPROVES CHAPTER 90 APPLICATION OF VAIL LEAVITT**  
**(12<sup>th</sup> Annual Blues/Musical Festival)**

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

**WHEREAS**, on April 5, 2010, Vail Leavitt submitted a Chapter 90 Application for the purpose of conducting an event entitled "12<sup>th</sup> Annual Blues/Musical Festival" to be held at the Peconic Riverfront, Riverhead, New York, to include food and music and merchandise vendors in the parking lot to be held on Saturday, July 17, 2010 between the hours of 11:00 a.m. and 11:00 p.m. and Sunday, July 18, 2010 between the hours of 1:00 p.m. and 5:00 p.m.; and

**WHEREAS**, Vail Leavitt has completed and filed a Long Environmental Assessment Form in accordance with 6 NYCRR 617.6(b); and

**WHEREAS**, the Town Board of the Town of Riverhead has declared itself "Lead Agency" in accordance with 6 NYCRR 617; and

**WHEREAS**, Vail Leavitt has requested that this event be exempt from Chapter 46 of the Riverhead Town Code entitled, "Alcohol Consumption"; and

**WHEREAS**, due to its not-for-profit status, the applicant has requested the Chapter 90 Application fee be waived; and

**WHEREAS**, the Town Attorney of the Town of Riverhead has reviewed all documents regarding said application.

**NOW THEREFORE BE IT RESOLVED**, that Town of Riverhead hereby determines the action to be an "Unlisted" action in accordance with 6 NYCRR 617.7(a) and hereby issues a Negative Declaration pursuant to 6 NYCRR 617.7(a)(2); and be it further

**RESOLVED**, that the Chapter 90 Application for the purpose of conducting an event entitled "12<sup>th</sup> Annual Blues/Musical Festival" to be held at the Peconic Riverfront, Riverhead, New York, to include food and music and merchandise vendors in the parking lot to be held on Saturday, July 17, 2010 between the hours of 11:00 a.m. and 11:00 p.m. and on Sunday, July 18, 2010 between the hours of 1:00 p.m. and 5:00 p.m., is hereby approved; and be it further

**RESOLVED**, that approval for this event shall be subject to the following:

- Receipt of required Suffolk County Department of Health permit(s), including the food handling permit(s);
- Receipt of required Public Gathering/Emergency Medical Services (EMS) permit(s); and be it further
- Receipt of a profit and loss statement showing all associated expenses and revenues in detail and using as a minimum the profit and loss form attached hereto, to the Office of the Town Attorney within 60 days of the conclusion of this event; and be it further

**RESOLVED**, that Chapter 46 entitled "Alcoholic Beverages" is deemed to be waived for the service of alcoholic beer during the event in or at locations by licensed alcohol service providers to be determined prior to the commencement of the event; and be it further

**RESOLVED**, that the Town Board of the Town of Riverhead hereby authorizes this event to be exempt from Chapter 86 entitled, "Noise Control" of the Riverhead Town Code; and be it further

**RESOLVED**, that any tent installations, including the obtainment of any necessary tent permits, and all electric shall comply with the applicable provisions of the Building and Fire Code of New York State and the National Electrical Code and National Fire Protection Agency 102 (Tents & Membrane Structures); and be it further

**RESOLVED**, that the Town Board of the Town of Riverhead hereby waives the Chapter 90 Application fee; and be it further

**RESOLVED**, that the approval for this event shall be subject to receipt of a valid certificate of insurance naming the Town of Riverhead as an additional insured in a form acceptable to the Town Attorney ***no later than July 1, 2010***; and be it further

**RESOLVED**, that a fire safety inspection by the Town Fire Marshal is required prior to the opening of this event to the public and shall be contacted at least three days in advance at (631) 727-3200 extension 601, for the purpose of arranging the "pre-opening" inspection appointment; and be it further

**RESOLVED**, that employees of the Riverhead Buildings and Grounds Department, the Riverhead Police Department, the Riverhead Highway Department, the Sanitation Department and the Riverhead Fire Marshal Office are hereby authorized to utilize overtime expenditures to ensure the necessary public safety and security in connection with this event; and be it further

**RESOLVED**, that the Town Clerk is hereby authorized to forward a copy of this resolution to Vail Leavitt, Attn: Robert Barta, P.O. Box 147, Riverhead, New York, 11901, the Office of the Fire Marshal, Police Chief David Hegermiller, Kenneth Testa, P.E., the Sanitation Department, the Highway Department and the Office of the Town Attorney; and be it further

**THE VOTE**

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

Walter Yes No

The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

On a motion of Councilman Dunleavy, seconded by Councilman Gabrielsen the resolution was TAKEN OFF THE FLOOR

YES-5 Giglio, Gabrielsen, Wooten, Dunleavy, Walter

NO-0

## Event Profit and Loss Statement

2010

**Income:**

Sales (Admissions)	\$ -
Vendor Fees	
Contributions	
Other Receipts	
<b>Total Receipts</b>	<u>\$ -</u>

**Expenses:**

Advertising	
Cleanup Expenses	
Insurance	
Labor Expenses	
Miscellaneous	
Permits and Fees	
Venues (Entertainers)	
<b>Total Expenses</b>	<u>\$ -</u>
<b>Profit</b>	<u><u>\$ -</u></u>

5/4/10

**ADOPTED**

**TOWN OF RIVERHEAD**

**TERMINATES A LEGAL SECRETARY IN  
THE TOWN ATTORNEY'S OFFICE**

**RESOLUTION #371**

Councilman Gabrielsen offered the following resolution,

which was seconded by Councilwoman Giglio

**WHEREAS**, the Town Board has determined it appropriate to terminate a legal secretary in the Town Attorney's office effective May 4, 2010

**NOW, THEREFORE, BE IT RESOLVED**, that this Town Board hereby terminates Christine Hubbs,

**BE IT FURTHER RESOLVED**, that the Town Clerk be and hereby is directed to forward a Copy of this Resolution to Christine Hubbs, the Supervisor's Office 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  Was Not   
Thereupon Duly Declared Adopted

On a motion of Councilman Dunleavy, seconded by Councilman Gabrielsen the resolution was  
**TAKEN OFF THE FLOOR**

YES-5    Giglio, Gabrielsen, Wooten, Dunleavy, Walter

NO-0

**TOWN OF RIVERHEAD**

**Resolution #372**

**DETERMINES ZONING COMPLIANCE FOR RIVERHEAD FIRE DEPARTMENT  
COMMUNICATION EQUIPMENT UPGRADES**

Councilwoman Giglio offered the following resolution,

which was seconded by Councilman Dunleavy

**WHEREAS**, plans for communications structures and facilities have been submitted by the Town of Riverhead Building Department for the improvement of the Fire Department communication and the tie in between the existing substations located at 303 Hubbard Avenue and 517 Twomey Avenue, Suffolk County Tax Map Numbers SCTM # 600-79-2-1.6, and 600-112-1-20.

**WHEREAS**, together with the application the Riverhead Fire District has submitted a short form environmental assessment (EAF) supporting the application, and

**WHEREAS**, the Fire District has declared itself “lead agency” on the project and determined that the project will not have any significant adverse impacts on the natural and social environments,

**WHEREAS**, the properties are existing Fire District buildings, and

**WHEREAS**, §108-54 of the Town Code of the Town of Riverhead states as follows:

“Municipal buildings and hospitals shall be permitted in all districts, provided that such buildings shall conform to all other provisions of this chapter for the district in which located”, and

**WHEREAS**, the Town Board has completed the required eight step balancing test set forth in the case “In the Matter of the County of Monroe, 72 NY2d 338 and In Nanuet First Engine Co. No. 1 v. Arnold Amster, 1998 NY Slip. Op. 98387” and, based upon application of that balancing test (which initially assumes that the Town’s regulations *do* apply), has determined that the applicant complies with zoning and that it shall not be subjected to formal site plan review by the Town of Riverhead Planning Board; and

**WHEREAS**, in applying the balancing test to the zoning and site plan requirements set forth in the Town Code, the Town Board determined as follows:

The nature and scope of the instrumentality seeking the exemption is the Riverhead Fire District;

There is a great public interest to be served by permitting the construction of improved communications facilities to enhance response time and public safety, and

**WHEREAS**, The Fire District has represented that there will be no commercial use of the new communication facilities; and

**WHEREAS**, The impact upon the legitimate local interests, including, but not limited to aesthetics, traffic, drainage and possible impacts on adjoining uses is served by the construction of the improved communication facilities as proposed;

**WHEREAS**, adequate intergovernmental participation by the Fire District with the Town and its Planning Department and engineering consultant together with the subsequent review of the Building Department for conformity to New York State Building Construction Code requirements will allow for the construction of the communications facilities ensuring the proper planning and layout of the site to promote the health, safety and welfare of the community; and

**WHEREAS**, the Town Board has carefully considered the merits of the application, the SEQRA record to date, the report of the Planning Department, as well as all other relevant Planning, Zoning and Environmental information and the criteria required by the "Monroe balancing test"; and

**WHEREAS**, this Town Board has reviewed the plans aforementioned, and

**RESOLVED**, that based upon the foregoing, the Town Board finds that the applicant is compliant with the applicable zoning law and exempts the project from zoning and formal site plan review subject to the following conditions:

That the provisions of the **Riverhead Town Code**, which are not addressed by this resolution, or other official action of the Town shall, at all times, be complied with by the owner of the property covered by the plan;

**AND BE IT FURTHER,**

**RESOLVED**, that the Town Clerk be and is hereby authorized to forward a certified copy of this resolution to Riverhead Fire Department, Jonathan Brown, Esq., the Riverhead Planning Department, Riverhead Building Department, and the Town Engineer.

**THE VOTE**

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

The Resolution Was  Was Not   
Thereupon Duly Declared Adopted

On a motion of Councilman Dunleavy, seconded by Councilman Gabrielsen the resolution was TAKEN OFF THE FLOOR

YES-5    Giglio, Gabrielsen, Wooten, Dunleavy, Walter

NO-0