

RESOLUTION NO. 871 -2010, AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE A CO-APPLICANT AGREEMENT IN FURTHERANCE OF APPLICATION FOR FEDERALLY QUALIFIED HEALTH CENTER STATUS

WHEREAS, Resolution No. 314-2010, *Authorizing the County Executive to Apply For Federally Qualified Health Center Status As A Public Entity With Look-Alike Status*, approved by the County Executive on May 7, 2010, authorized the County to seek the designation of some or all of its health centers as FQHC's, and to that end, to pursue the establishment of a Co-Applicant with a fifteen member Co-Applicant Board pursuant to the United States Human Resources Services Administration (HRSA) standards, which, through agreement with Suffolk County, would oversee certain functions of one or more Suffolk County Department of Health Services' Health Centers applying for Federally Qualified Health Center (FQHC) Look-Alike Status; and

WHEREAS, Resolution No. 314-2010 also authorized the County to develop an agreement, subject to approval by the County Executive and the County Legislature, between Suffolk County and the Co-Applicant setting forth the responsibilities each will have relative to the governance and operations of the Health Centers; and

WHEREAS, HRSA recently announced the potential availability of up to \$250 million in grants for FQHC Grantees for the delivery of primary health care services for underserved and vulnerable populations; and

WHEREAS, in light of this potential funding, this Resolution seeks Legislative approval to seek an application for FQHC status either as a public entity look-alike or, if grant money is available, as an FQHC Grantee; and

WHEREAS, this Resolution also seeks Legislative approval of a Co-Applicant agreement in substantially the same form as attached to this Resolution as Exhibit "A"; and

WHEREAS, this Resolution also seeks to clarify that the Co-Applicant Board, required to be established pursuant to Resolution No. 314-2010, shall, consistent with HRSA rules and regulations, serve only as the initial Board of the Co-Applicant and shall thereafter be self-perpetuating pursuant to its own certificate of incorporation and by-laws; now, therefore be it

1st **RESOLVED**, that the Department of Health Services apply for FQHC status as either a public entity look alike or, if grant money is available, as a standard FQHC; and be it further

2nd **RESOLVED**, that the fifteen 15 member Co-Applicant Board authorized in Resolution No. 314-2010 shall serve only as the initial Board of the Co-Applicant; and be it further

3rd **RESOLVED**, that the initial Board of the Co-Applicant shall hold an annual meeting following approval of the Certificate of Need (CON) Application to be made to the New York State Department of Health, and at that meeting, and subsequently, the Co-Applicant

Board shall be self-perpetuating and the ongoing elections of all Board members shall be performed by its Board in accordance with the by-laws of the Co-Applicant and the requirements of HRSA regarding composition of the Board and the independence of the Co-Applicant from the control of the County in the management of the FQHC; and be it further

4th **RESOLVED**, that the initial Board and all subsequent Directors of the Co-Applicant will not be accountable to any outside organization for any activities related to those for which the Co-Applicant is responsible; and be it further

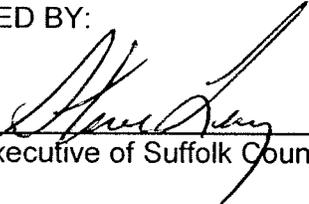
5th **RESOLVED**, the County Executive and/or his designee(s) are authorized to execute and deliver, on behalf of the County, a Co-Applicant agreement in substantially the same form as attached to this Resolution as Exhibit "A", as well as any other such agreements, instruments or authorizations as may be contemplated by, or necessary or advisable to facilitate and effectuate Suffolk County Department of Health Services' application as either a public entity look-alike or, if grant money is available, as an FQHC Grantee for one or more of the Health Centers currently operated by, or on behalf of, Suffolk County; and be it further

6th **RESOLVED**, that the Department of Health Services is hereby authorized, empowered and directed to take any such other actions as may be necessary to effectuate the filing of an FQHC application as either a public entity look-alike or, if grant money is available, as an FQHC Grantee; and be it further

7th **RESOLVED**, that this Legislature, being the State Environmental Quality Review Act (SEQRA) Lead Agency, hereby finds and determines that the adoption of this law is a Type II action pursuant to Title 6 NYCRR Section 617.5(c)(20) and (27) since it constitutes a local legislative decision in connection with routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment. As a Type II action, the Legislature has no further responsibilities under SEQRA.

DATED: **SEP 16 2010**

APPROVED BY:



County Executive of Suffolk County

Date: **SEP 24 2010**

FQHC CO-APPLICANT AGREEMENT

This Co-Applicant Agreement (“Agreement”) is made and entered into as of this ___ day of July, 2010, by and between [INSERT NAME] (the “Co-Applicant”), a New York not-for-profit corporation, and the Suffolk County Department of Health Services (the “Health Department”), a Department of Suffolk County, New York (collectively, the “Parties”) to memorialize mutual understandings and agreements regarding the Parties’ collaborative governance of a federally qualified health center (“FQHC”).

WHEREAS, the Health Department is the licensed operator of several community health centers, licensed under New York State law as diagnostic and treatment centers, that provide comprehensive primary and preventive health care and related services to medically underserved communities in Suffolk County, New York; and

WHEREAS, to promote access to comprehensive preventive and primary health services (including essential ancillary and enabling services) for medically underserved residents of the Health Department, regardless of the ability to pay for such services, the Health Department will submit an application to the Health Resources and Services Administration (“HRSA”) of the United States Department of Health and Human Services (“DHHS”) seeking designation of the community health centers operated by the Health Department and located at [INSERT ADDRESS(ES)], New York, (collectively, the “Health Center”) as public-entity model Federally Qualified Health Center (FQHC) Look-Alike OR Grantee (“Public Health Center”); and

WHEREAS, the Co-Applicant is governed by a Board of Directors (the “Co-Applicant Board”) that meets the selection, composition, and governance requirements of Section 330 of the Public Health Service Act, 42 U.S.C. § 254b (“Section 330”) and the federal regulations and policies promulgated there under (collectively, the “Governance Requirements”); and

WHEREAS, consistent with applicable Federal laws, regulations, and policies regarding the establishment of a Public Health Center, the Parties have agreed to enter a co-applicant arrangement for the purpose of the Health Department’s application for FQHC status; and

WHEREAS, under such arrangement the Health Department, the public entity responsible for the operation of the Health Center, shall retain authority over certain general policy-setting functions and management of the Health Center, including limited governance functions, and, to the extent permitted by the Health Department’s enabling legislation, the Health Department and the Co-Applicant Board shall share the authority to perform additional governance functions as specified in this Agreement; and

WHEREAS, the Parties wish to set forth in this Agreement, the authorities to be exercised by each Party and the shared responsibilities of the Parties with respect to the Health Center, in accordance with the Governance Requirements and other applicable Federal laws, regulations and policies; and

NOW, THEREFORE, the Health Department and the Co-Applicant agree as follows:

1. Role of the Co-Applicant Board.

1.1 Composition. As described in the Co-Applicant's Bylaws, the Co-Applicant Board provides community-based governance and oversight of the Co-Applicant. The structure and composition of the Board of Directors shall be as follows:

(a) A majority, at least fifty-one percent (51%), of the Directors must be individuals who are served by the Health Center as their principal source of primary care and should have used the Health Center's health services within the last two (2) years ("Consumer Directors"). A legal guardian of a dependent child or adult, or a legal sponsor of an immigrant, may also be considered a Consumer Director for Board composition purposes. Consumer Directors must live in the service area of the Health Center and must be individuals who, taken collectively, reasonably represent the Health Center's consumers in terms of demographic factors such as race, ethnicity, and gender.

(b) The remaining Directors shall be representative of the general community served by the Health Center, and shall be selected for their expertise in health care delivery, community affairs, local government, finance and banking, legal affairs, trade unions, and other commercial and industrial concerns, or social service agencies within Suffolk County. No more than one-half of such Directors may be individuals who derive more than ten percent (10%) of their annual income from the health care industry.

(c) The Health Center Executive Director shall be ex-officio, nonvoting member of the Board.

(d) No Director shall be an employee or officer of Suffolk County, the Health Center or of the Health Department, or a spouse or child, parent, brother or sister, or related by blood or marriage, to such an employee or officer of Suffolk County, the Health Center or of the Health Department.

(e) The Board shall select Directors in accordance with the election process and nominating process described in the Co-Applicant's Bylaws.

(f) The Health Department may recommend candidates for the Co-Applicant's Board membership to the Co-Applicant's Board of Directors, provided that in no event shall Directors nominated by any third party (including, but not limited to, the Health Department) constitute a majority of the entire Co-Applicant Board nor a majority of the non-consumer Directors, as described in the Co-Applicant's Bylaws. Nominations made by the Co-Applicant Board may not be rejected by or precluded by any third party, including but not limited to the Health Department, as described in the Co-Applicant's Bylaws.

1.2 Governance Authorities and Responsibilities. The Co-Applicant Board shall have authority and responsibility for the following Health Center activities:

(a) Adoption of Policies. The Co-Applicant Board shall adopt the Health Center's policies concerning: (i) hours of operation; (ii) health services provided; (iii) quality-of-care audit procedures; and (iv) in the event of relocation or redevelopment of the physical plant, the locations of the Health Center's sites;

(b) Executive Director. The Co-Applicant Board shall have final authority to select, remove, and evaluate the Health Center's Executive Director, as described in Sections 1.3 and 1.4 of this Agreement;

(c) Approval of the Annual Budgets. The Co-Applicant Board shall have final authority to approve the Health Center's annual operating and capital budget, which shall be prepared by the Health Department and preliminarily approved by the Health Department, consistent with Section 2.1(a) of this Agreement;

(d) Financial Management Protocol. Subject to and consistent with Sections 2.1 and 2.2 of this Agreement, the Co-Applicant Board shall consult with the Health Department in establishing a written protocol regarding the adoption and periodic updating of policies for the financial management practices of the Health Center (including a system to assure accountability for the Health Center's resources, provision of an annual audit, long-range financial planning, billing and collection policies, and accounting procedures);

(e) Evaluation of the Health Center's Activities and Achievements. On at least an annual basis, the Co-Applicant Board, in conjunction with the Health Department, shall conduct an evaluation of the Health Center's activities and achievements and recommend, as necessary, revision of the Health Center's goals, objectives and strategic plan;

(f) Approval of Applications. In consultation with the Liaison Committee as set forth in Section 3.1(b) of this Agreement, the Co-Applicant Board shall approve applications for annual FQHC Look-Alike recertification, annual Section 330 grants (as applicable), and other grant funds for the Health Center;

(g) Corporate Compliance. The Co-Applicant Board, in conjunction with the Health Department, shall assure the Health Center's compliance with applicable federal, state and local laws, regulations and policies. The Health Department shall provide the Co-Applicant Board with periodic reports regarding the Health Center's legal and regulatory compliance program. On at least a biannual basis, the Co-Applicant Board shall evaluate the Health Center's compliance activities and, recommend, as necessary, the revision, restructuring, or updating of the compliance program by the Health Department;

(h) Quality Assurance. The Co-Applicant Board, through its Quality Assurance Committee, shall evaluate the quality assurance programs developed and recommended by the staff of the Health Center and approved by the Health Department in accordance with Section 2.2(j). The Co-Applicant Board shall be integrated into the Health Department quality assurance and management activities related to the Health Center, including audits and state quality assurance reporting requirements. Quality assurance reports shall be shared periodically between the Co-Applicant Board's Quality Assurance Committee and the Health

Department representatives responsible for quality assurance matters at the Health Center. The Co-Applicant Board's Quality Assurance Committee shall, as appropriate, report to the Co-Applicant Board on matters concerning the quality of the medical services provided by the Health Center;

(i) Evaluation of the Co-Applicant Board. On at least a quarterly basis, the Co-Applicant Board shall evaluate its compliance with the Governance Requirements and report its findings and any recommendations for corrective action to the Health Department. The Co-Applicant Board shall evaluate itself and its actions for effectiveness, efficiency and compliance with the authorities set forth in this Agreement on a yearly basis, consistent with the requirements of Section 330; and

(j) Personnel Policies. Subject to and consistent with Section 2.1(c), the Co-Applicant Board shall ratify the personnel policies developed and approved by the Health Department, including selection and dismissal procedures, salary and benefit scales, employee grievance procedures and processes, and equal employment opportunity practices.

1.3 Duties and Evaluation of the Executive Director.

(a) Duties. The Executive Director will be the chief administrative officer of the Health Center and shall have responsibility for the general care, management, supervision, and direction of the Health Center's affairs, consistent with the priorities and policies established by the Co-Applicant Board. The Executive Director shall report directly to the Co-Applicant Board and shall act in accordance with the best interests of the Health Center, regardless of and notwithstanding any employment arrangement between the Executive Director and the Health Department. The Executive Director shall have the authority to select, supervise, and discharge all Health Center personnel in accordance with the laws, collective bargaining agreements, and personnel policies applicable to the Health Department, (as ratified by the Co-Applicant Board in accordance with Section 1.2(j)). The Executive Director shall also have the authority to negotiate and administer all contracts for goods and services as required for the operation of the Health Center, subject to the laws and policies applicable to the Health Department's procurement and purchasing, the budget approved by the Co-Applicant Board for the Health Center, and the laws and policies applicable to the Health Department's administration of contracts.

(b) Evaluation. The Board shall review the Executive Director's performance annually. The review shall be coordinated and conducted by the Co-Applicant Board's Executive Committee. The report of the annual review shall be submitted to the full Co-Applicant Board and to the Health Department.

1.4 Selection, Approval, and Removal of Executive Director.

(a) Search Committee.

(i) The Search Committee shall consist of up to four (4) members of the Liaison Committee, as described in Section 3 of this Agreement, and shall include an equal number of representatives of the Co-Applicant Board and the Health Department.

(ii) The Search Committee shall evaluate and conduct preliminary interviews of candidates for the Executive Director position in accordance with the Health Department's personnel policies and procedures.

(iii) The Search Committee shall develop a slate of at least two (2), but no more than three (3) candidates from those individuals previously evaluated and interviewed for presentation to the Co-Applicant Board.

(b) Selection and Approval. The Co-Applicant Board shall have sole authority to select and approve the Executive Director from the slate of candidates presented by the Search Committee.

(c) Removal.

(i) The Liaison Committee, established by Section 3 of this Agreement, shall develop criteria for removal of the Executive Director, which will be presented to the full Co-Applicant Board for approval.

(ii) The Co-Applicant Board shall have authority to remove the Executive Director from his or her position based on the criteria developed by the Liaison Committee. In accordance with Section 2.1(c) of this Agreement, such removal shall not constitute a termination of employment by the Health Department.

2. Role of the Health Department

2.1 Notwithstanding the terms of this Agreement or the Bylaws of the Co-Applicant and subject to the authorities shared with the Co-Applicant Board, neither Party shall take any action inconsistent with the Health Department's authority to manage:

(a) Fiscal Controls.

(i) The Health Department shall develop and shall provide preliminary approval of the annual operating and capital budgets of the Health Center. Following its preliminary approval of the operating and capital budgets of the Health Center, the Health Department shall recommend such budgets to the Co-Applicant Board for review and final approval, which shall not be unreasonably withheld. In the event that the Co-Applicant Board does not approve the recommended preliminary budget, the Health Department and the Co-Applicant Board shall meet and confer to develop an appropriate budget that is satisfactory to the Co-Applicant Board. If the Health Department and the Co-Applicant Board fail to develop a mutually agreed upon budget within thirty (30) days, then the dispute shall be resolved in accordance with Section 8. As described in Section 1.2(c), the Co-Applicant Board shall have final authority to approve the annual operating and capital budgets.

(ii) The Parties shall not materially deviate from the adopted budget except that the Health Department, as manager of the Health Center, may modify planned fiscal activities if there is a reduction in available resources (e.g. decreased levels of

reimbursement, diminished revenues, or adverse labor events); provided, however, that the Health Department shall obtain Co-Applicant Board approval of any budgetary change that would materially modify the scope of the FQHC project.

(iii) The Health Department shall be solely responsible for the management of the financial affairs of the Health Center, including capital and operating borrowing.

(iv) The Health Department shall have sole authority to develop and implement financial policies and controls related to the Health Center, in consultation with the Co-Applicant Board, as set forth in Section 1.2(d) of this Agreement.

(v) All funds received for services provided and all income otherwise generated by the Health Center, including fees, premiums, third-party reimbursements and other state and local operational funding, and Section 330 grant funds (“Program Income”), as well as all Program Income greater than the amount budgeted (“Excess Program Income”), shall be under the control of the Health Department. All Program Income and Excess Program Income shall be used to further the goals of the Health Center’s federally-approved program and consistent with the policies and priorities established and approved by the Co-Applicant Board, subject to Section 4.3 of this Agreement.

(vi) The Health Department and its agents shall have sole authority to receive, manage, allocate, and disburse, as applicable, revenues necessary for the operation of the Health Center, consistent with Section 2.2(b) below.

(b) Funding From Governmental and Charitable Sources. Neither Party shall take any action that would negatively impact the Health Department’s funding from federal, state, or local sources or financial support from foundations or other charitable organizations.

(c) Employer-Employee Relations.

(i) Subject to Section 1.4 of this Agreement regarding the selection, evaluation, approval and removal of the Health Center’s Executive Director, the Health Department shall have sole authority over employment matters and development and approval of personnel policies and procedures including selection and dismissal procedures, salary and benefit scales, employee grievance procedures and processes, equal employment opportunity practices, collective bargaining agreements, labor disputes and other labor and human resources issues, as well as agreements for the provision of staff who are employees of other agencies or organizations. Consistent with Section 1.2(j) of this Agreement, the Co-Applicant Board shall ratify the personnel policies and procedures developed and approved by the Health Department.

(ii) The Executive Director of the Health Center shall be an employee of the Health Department. Removal of the Executive Director by the Co-Applicant Board pursuant to Section 1.4 of this Agreement shall not constitute a termination of employment by the Health Department nor impede the continuation of the Executive

Director's employment relationship with the Health Department in another capacity, as may be agreed between the Executive Director and the Health Department.

2.2 Operational Responsibilities. The Health Department shall have responsibility for the day-to-day operations of the Health Center. Such operational responsibilities shall include but not be limited to:

(a) Applying for and maintaining all licenses, permits, certifications, accreditations and approvals necessary for the operation of the Health Center.

(b) Receiving, managing and disbursing, as applicable, revenues of the Health Center consistent with the approved budget for the Health Center. The Health Department shall not be required to disburse funds for any expenditure not authorized by the approved budget.

(c) Subject to Sections 1.3 and 1.4 of this Agreement, employing or contracting personnel to perform all clinical, managerial, and administrative services necessary to assure the provision of high-quality health care services to the Health Center's patients.

(d) Subject to Sections 1.3 and 1.4 of this Agreement, managing and evaluating all Health Center staff and, if necessary removing such staff pursuant to the Health Department's personnel policies.

(e) Preparing and submitting cost reports, supporting data, and other materials required in connection with reimbursement under Medicare, Medicaid, and other third-party payment contracts and programs.

(f) Providing for the annual audit of the Health Center, which shall be approved in consultation with the Co-Applicant Board in accordance with Section 1.2(d) of this Agreement, consistent with the requirements of the United States Office of Management and Budget Circular A-133, and the compliance supplement applicable to the consolidated Health Center Program to determine, at a minimum, the fiscal integrity of financial transactions and reports and compliance with Section 330 requirements.

(g) Preparing monthly financial reports, which shall be submitted to the Co-Applicant Board, and managing financial matters related to the operation of the Health Center.

(h) Developing and managing internal control systems, in consultation with the Co-Applicant Board as set forth in Section 1.2(d) of this Agreement (as applicable), in accordance with sound management procedures and Section 330 that provide for:

(i) eligibility determinations, subject to the duties of the Liaison Committee set forth in Section 3.1(b) of this Agreement;

(ii) development, preparation, and safekeeping of records and books of account relating to the business and financial affairs of the Health Center;

(iii) separate maintenance of the Health Center's business and financial records from other records related to the finances of the Health Department so as to ensure that funds of the Health Center may be properly allocated;

(iv) accounting procedures and financial controls in accordance with generally accepted accounting principles;

(v) a schedule of charges and partial payment schedules (*i.e.*, a sliding fee schedule of discounts) for services provided to certain uninsured and underinsured patients with annual incomes at or below 200% of the federal poverty level, and a nominal fee policy for those with annual incomes at or below 100% of the federal poverty level, and in compliance with, but not greater than, the requirements set forth in the New York State charity care law (New York Public Health Law §2807-k(9-a), subject to the duties of the Liaison Committee set forth in Section 3.1(b) below;

(vi) billing and collection of payments for services rendered to individuals who are: (1) eligible for federal, state or local public assistance; (2) eligible for payment by private third-party payors and (3) underinsured or uninsured and whose earnings fit the low-income criteria; and

(vii) compliance with the terms and conditions of the FQHC Look-Alike and/or Grantee designation, as applicable.

(i) Unless otherwise stated in this Agreement, establishment of the Health Center's operational, management, and patient care policies including but not limited to policies related to:

(i) a code of ethics;

(ii) enforcement of standards mandated by state law, regulation or administrative guidance;

(iii) appointment and evaluation of medical and dental clinicians and the assignment of staff privileges;

(iv) patient emergencies;

(v) the provision of staff, space, facilities, supplies and equipment for all functions and services;

(vi) the maintenance of all equipment in safe and working order;

(vii) the maintenance and security of the Health Center;

(viii) maintenance and security of medical records;

(ix) incident reporting; and

(x) approval of written contracts and agreements.

(j) Establishing ongoing quality improvement programs that include clinical services and management, are overseen by the Medical Director, and maintain the confidentiality of records, per Section 330(k)(3)(C) and 42 C.F.R. Part 51c.303(c)(1-2).

(k) Ensuring the effective and efficient operation of the Health Center.

3. Liaison Committee.

3.1 Duties.

(a) The Liaison Committee shall facilitate the cooperative relationship between the Co-Applicant and the Health Department as joint operators of the Health Center and provide a mechanism to further the Parties' common goal of providing quality health care services.

(b) Subject to Sections 2 and 3 of this Agreement, the duties of the Liaison Committee shall include but not be limited to:

(i) Developing and recommending to the Health Department the Health Center's policies regarding fees, sliding scale fee eligibility, and the privileging and credentialing of licensed health care professionals;

(ii) Developing criteria for removal of the Executive Director in accordance with Section 2 of this Agreement; and

(iii) Reviewing and making recommendations to the Co-Applicant Board regarding approval of applications for annual FQHC Look-Alike recertification, annual Section 330 grants (as applicable), and other grant funds for the Health Center.

(c) Under no event may the Liaison Committee supersede any of the Co-Applicant Board's authorities, as described in Section 1.2.

3.2 Composition.

The Liaison Committee shall be comprised of two (2) representatives of the Co-Applicant and two (2) representatives of the Health Department. In the event that a representative of either Party is unable to attend a Liaison Committee meeting, or is disqualified by virtue of a personal interest, the respective Party will be required to nominate a suitable deputy who will be vested with full voting rights. Any impasse in decision-making shall be resolved by dispute resolution and mediation, in accordance with Section 8.

4. Mutual Obligations.

4.1 Compliance with Laws and Regulations. The Parties shall have a mutual commitment and responsibility to work together to ensure that the Health Center provides care in compliance with all federal, state and local laws and regulations.

4.2 Financial Responsibility. Each Party agrees not to undertake expenditures in excess of available resources and to recognize the Health Department's responsibility with

respect to the Fiscal Controls and related financial matters, described in Section 2.1(a) of this Agreement.

4.3 Expenses of Parties. The expenses of the Health Department and the Co-Applicant incurred in carrying out its respective obligations for governance and operation of the Health Center pursuant to this Agreement shall be considered expenses incurred in furtherance of the health center program and thus shall be reimbursed utilizing Program Income and Excess Program Income.

4.4 Record Keeping and Reporting.

(a) Each Party shall maintain records, reports, supporting documents and all other relevant books, papers and other documents so as to enable the Parties to meet all Health Center-related reporting requirements. Records shall be maintained for a period of four (4) years from the date this Agreement expires or is terminated, unless state and/or federal law requires that records be maintained for a period greater than a four (4) year period specified herein (“the retention period”). If an audit, litigation, or other action involving the records is started before the end of the retention period, the Parties agree to maintain the records until the end of the retention period or until the audit, litigation, or other action is completed, whichever is later. The Parties shall make available to each other, DHHS and the Comptroller General of the United States, the New York State Department of Health, the Office of the Comptroller of the State of New York or any of their duly authorized representatives, upon appropriate notice, such records, reports, books, documents, and papers as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to each Party’s personnel for purposes of interview and discussion related to such documents.

(b) Confidentiality. Subject to the Health Department’s obligations, if any, to make public its records in accordance with applicable state law, the Parties agree that all information, records, data, and data elements collected and maintained for the administration of this Agreement (in any form, including, but not limited to, written, oral, or contained on video tapes, audio tapes or computer diskettes) shall be treated as confidential and proprietary information. Accordingly, each Party shall take all reasonable precautions to protect such information from unauthorized disclosure; however, nothing contained herein shall be construed to prohibit any Federal or other appropriate official from obtaining, reviewing, and auditing any information, record, data, and data element to which (s)he is lawfully entitled. The Parties (and their directors, officers, employees, agents, and contractors) shall maintain the privacy and confidentiality of all protected health information (“PHI”) of the patients receiving care provided by the Health Center, in accordance with all applicable state and federal laws and regulations, including the Health Insurance Portability and Accountability Act (“HIPAA”).

(c) Medical Records. The Parties agree that the Health Department, as the operator of the Health Center, shall retain ownership of all medical records established and maintained relating to diagnosis and treatment of patients served by the Health Center.

4.5 Insurance. Subject to paragraph (g) of this Section 4.5, as applicable, the Parties shall procure and maintain insurance policies for general liability, fidelity bonding and other insurance as may be customarily maintained, in the judgment of each Party, to insure such Party and its directors, officers, trustees, agents and employees against any liability or claims for damages arising by reason of any loss resulting from the negligence, fraud, or dishonesty of such Party and its directors, officers, trustees, agents and employees in connection with the performance of that Party's responsibilities under this Agreement. At a minimum, such insurance shall include:

(a) Professional Liability Insurance. The Health Department shall ensure that the Health Center's health care practitioners secure and maintain, or cause to be secured and maintained, in full force and effect during the term of this Agreement, policies of professional liability (malpractice, errors, and omissions) insurance or self-insurance of at least one million three hundred thousand dollars (\$1,300,000) per claim and three million nine hundred thousand dollars (\$3,900,000) in the aggregate against professional liabilities which may occur as a result of services provided by the Health Center under this Agreement. If the Health Center secures a Section 330 grant, to the extent permitted by Federal law, in lieu of the professional liability insurance coverage specified, the Parties agree to apply for and secure, on behalf of the Health Center, the Co-Applicant and all personnel employed (and, in certain circumstances, contracted) by the Parties to provide services on behalf of the Health Center (including personnel employed or contracted by the Health Department for such purpose), Federal Tort Claims Act ("FTCA") coverage for professional liability actions, claims, or proceedings arising out of any and all negligent acts or omissions committed in the course of providing the services to the patients of the Health Center served at the Health Center's sites (or at other sites as approved by HRSA).

(b) Workers' Compensation Insurance. The Health Department shall maintain, throughout the term of this Agreement, worker's compensation insurance or self insurance for its Health Center employees and such other persons as required by law, as the same may be from time to time amended. The Health Department shall require its subcontractors to provide Worker's Compensation Insurance for their employees in accordance with applicable law.

(c) General Liability and Property Damage Insurance. The Health Department shall maintain general liability insurance or self insurance (including, but not limited to, automobile and broad form contractual coverage) against bodily injury or death of any person, as well as insurance or self insurance against liability for property damages, related to the Health Center.

(d) Directors and Officers Insurance. Each Party shall maintain, throughout the term of this Agreement and in amounts consistent with prevailing standards, directors and officers insurance or self insurance against liabilities and damages arising from the actions or omissions of the Co-Applicant Board and/or the Health Department.

(e) Policy Type. If any policy required by this Section is written in a "claims made", as opposed to an "occurrence" form, the policyholder agrees to purchase, self-insure or otherwise make arrangements for a "tail" or extended disclosure period policy for all

activities so insured during the course of this Agreement.

(f) Proof of Insurance. Each Party shall furnish evidence of insurance to the other Party upon this Agreement's execution. Each Party agrees to provide the other Party with a minimum of thirty (30) days' prior written notice in the event any of the required insurance policies or self-insurance funds are modified, revised, or canceled in whole or in part. Each Party shall, from time to time, upon reasonable request of the other Party, furnish such Party with written evidence that the policies of insurance required hereunder are in full force and effect and valid and existing in accordance with the provisions of this Agreement.

(g) Immunity. Nothing in this Agreement shall limit, or shall be deemed to limit, the Health Department's right to the protections and limitations provided by statutes designed to protect and limit the exposure and liability of the Health Department as a public benefit corporation of the State of New York, including statutory immunity and statutory limitations on damages.

(h) Survival of Section 4.5. This Section 4.5 shall survive the termination of this Agreement without regard to the cause for termination.

5. Governing Law.

5.1 Applicable Laws, Regulations and Policies. This Agreement shall be governed and construed in accordance with applicable Federal laws, regulations, and policies, as may be amended, including but not limited to: Section 330, its implementing regulations at 42 C.F.R. Part 51c, applicable HRSA policies (including, but not limited to, HRSA Policy Information Notice: 99-09 Implementation of the Balanced Budget Act Amendment of the Definition of Federally Qualified Health Center Look-Alike Entities for Public Entities; Policy Information Notice: 98-23 HRSA Health Center Program Expectations), the DHHS Grants Policy Statement in effect as of the date the Agreement as executed, DHHS administrative regulations set forth in 45 C.F.R Part 92 and 45 C.F.R. Part 74, as applicable, and relevant Office of Management and Budget Circulars. In addition, each Party covenants to comply with all applicable laws, ordinances and codes of the State of New York and local governments in the performance of the Agreement, including all licensing standards and applicable accreditation standards.

5.2 New HRSA Directives. The Health Center's Executive Director shall submit promptly to each Party any directives or policies that are received from HRSA after execution of this Agreement and are pertinent to FQHC Look-Alike designation (and the Section 330 grant, if secured), as applicable, and the Parties shall comply with such additional directives/policies, as applicable.

5.3 Non-Discrimination. Each Party agrees that it and its subcontractors, if any, will not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, religion, color, sex, disability, national origin or ancestry.

6. Term.

This Agreement shall remain in effect during the Health Center's designation as a public-entity model FQHC Look-Alike or, as applicable, the project period of any Section 330 grant award that the Health Department receives with Co-Applicant as its co-applicant, unless terminated at an earlier date in accordance with the terms of Section 7 of this Agreement.

7. Termination.

7.1 Termination for Mutual Convenience or Without Cause. This Agreement may be terminated upon the mutual approval of the Parties, subject to Section 7.3. In addition, either Party may terminate this Agreement without cause upon giving not less than one hundred eighty (180) days' prior written notice to the other Party, subject to Section 7.3.

7.2 For Cause or Upon Change in Circumstances. This Agreement may be terminated upon not less than ninety (90) days' prior written notice to the other Party, in the following circumstances:

(a) By either Party if the Health Center fails to achieve FQHC Look-Alike designation or Grantee status, or if such designation is suspended, revoked or otherwise terminated, or upon the loss of any license, permit or other material authorization required by law or regulation for the operation of the Health Center;

(b) By either Party upon any substantive adverse change in the Federal laws or regulations governing FQHCs, including, without limitation, the method or amount of reimbursement;

(c) By either Party in the event of a material breach of the other Party and failure to cure within thirty (30) days after receiving written notice specifying the nature of the breach; or

(d) By the Health Department if the Health Center's participation in Medicare, Medicaid or any other federal, state or private insurance plan which materially impacts the budget of the Health Center is barred, suspended, terminated or revoked.

7.3 Termination Contingent Upon HRSA Approval. With the exception of a termination for cause arising from the voluntary or involuntary loss of the Health Center's FQHC Look-Alike designation (or its Section 330 grant, if secured), termination shall not become effective unless and until HRSA issues its written approval of such termination.

8. Dispute Resolution and Mediation.

The Parties shall first attempt to resolve any dispute or impasse in decision-making arising under this Agreement by informal discussions between the Executive Director of the Health Center and the Commissioner of the Health Department. Any dispute or impasse in decision-making not resolved within a reasonable time following such discussions (not to exceed

thirty (30) days) shall be resolved by mediation. If the Parties are unable to resolve the dispute through mediation, either Party may pursue any remedy available at law.

9. Notices.

All notices permitted or required by this Agreement shall be deemed given when in writing and delivered personally or deposited in the United States Mail, first class postage prepaid, Certified and Return Receipt Requested, addressed to the other Party at the addresses set forth below, or such other addresses as the Party may designate in writing:

For Co-Applicant: Chairperson
[]
[]
[]
[]

For Health Center: Executive Director
Health Center
[]
[]
[]

For the Health Department:
Suffolk County Department of Health Services
[]
[]
[]

With a copy to: Christine Malafi, Esq.
Suffolk County Attorney
100 Veterans Memorial Hwy,
PO Box 6100
Hauppauge, NY 11788

10. Assignment.

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective transferees, successors and assigns; provided that neither Party shall have the right to assign, delegate or transfer this Agreement, or its rights and obligations hereunder, without the express prior written consent of the other Party and HRSA. Furthermore, the Co-Applicant shall not execute a merger, consolidation, or major structural or contractual affiliation with a third-party that materially impacts the governance or operation of the Health Center or materially impairs its performance under this Agreement without the written consent of the Health Department. The Parties agree that the Co-Applicant's designation by HRSA as a FQHC cannot be transferred to another entity without express prior written consent from HRSA.

11. Non-Severability.

The provisions of this Agreement are not severable. In the event that any one or more provisions of this Agreement are deemed null, void, illegal or unenforceable, or should any part of this Agreement, as determined by DHHS or any other governmental authority, cause the Co-Applicant, as co-applicant, and the Health Department, as the applicant for FQHC Look-Alike and or Grantee designation, not to comply with Section 330-related requirements, the Parties agree to attempt to amend this Agreement as shall be reasonably necessary to achieve compliance. In the event that the Parties reach such an agreement, this Agreement shall be construed in all respects as if such invalid or unenforceable provisions have been omitted. In the event that no such amendments or agreements for amendments can reasonably be made, this Agreement shall immediately terminate.

12. Amendments.

Any amendment to this Agreement shall be in writing and signed by both Parties. Except for the specific provision of this Agreement which thereby may be amended, this Agreement shall remain in full force and effect after such amendment.

13. Waiver.

No provision of this Agreement shall be waived by any act, omission or knowledge of a Party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

14. Agency.

Except as may be required by the State as a condition of licensure, neither Party is, nor shall be deemed to be, an employee, agent, co-venturer or legal representative of the other Party for any purpose. Neither Party shall be entitled to enter into any contracts in the name of, or on behalf of the other Party, nor shall either Party be entitled to pledge the credit of the other Party in any way or hold itself out as having the authority to do so.

15. Third-Party Beneficiaries.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any third-party, including, without limitation, any creditor of either Party. No third-party shall obtain any right under any provision of this Agreement or shall by reason of any provisions make any claim relating to any debt, liability, obligation or otherwise against any Party to this Agreement.

16. Force Majeure.

In the event either Party is unable to timely perform its obligations hereunder due to causes that are beyond its control, including, without limitation, strikes, riots, earthquakes, epidemics, war, fire, or any other general catastrophe or act of God, neither Party shall be liable

to the other for any loss or damage resulting therefrom.

17. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and no statements, promises or inducements made by a Party or by agents of either Party which are not contained in this Agreement shall be valid or binding.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

[INSERT NAME], INC.

SUFFOLK COUNTY DEPARTMENT OF
HEALTH SERVICES

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY



This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on September 16, 2010 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.


Clerk of the Legislature

Intro. Res. 1189 Res. No. 871

September 16, 2010

Motion:

Romaine, Schneiderman, Browning, Muratore, Losquadro
 Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Co-Sponsors:

Romaine, Schneiderman, Browning, Muratore, Losquadro
 Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Second:

Romaine, Schneiderman, Browning, Muratore, Losquadro
 Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE					
2	Jay H. SCHNEIDERMAN					
3	Kate M. BROWNING					
4	Thomas MURATORE					
6	Daniel P. LOSQUADRO					
7	Jack EDDINGTON					
9	Ricardo MONTANO					
10	Thomas CILMI					
11	Thomas F. BARRAGA					
12	John M. KENNEDY, JR.					
13	Lynne C. NOWICK					
14	Wayne R. HORSLEY					
15	DuWayne GREGORY					
16	Steven H. STERN					
17	Lou D'AMARO					
18	Jon COOPER					
5	Vivian VILORIA-FISHER, D.P.O.					
8	William J. LINDSAY, P.O.					
	Totals	18				

MOTION
<input checked="" type="checkbox"/> Approve
Table: _____
Send To Committee _____
Table Subject To Call _____
Lay On The Table _____
Discharge _____
Take Out of Order _____
Reconsider _____
Waive Rule _____
Override Veto _____
Close _____
Recess _____
APPROVED <input checked="" type="checkbox"/> FAILED _____
No Motion _____ No Second _____

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
NOT ADOPTED _____

Tim Laube

Tim Laube, Clerk of the Legislature

Roll Call _____ Voice Vote