Intro. Res. No. 2231-2010 Laid on Table 12/7/2010
Introduced by Presiding Officer, on request of the County Executive and Legislator Montano

RESOLUTION NO. 1190 -2010, AUTHORIZING EXECUTION OF TITLE SPONSORSHIP AGREEMENT WITH BETHPAGE FEDERAL CREDIT UNION FOR NAMING RIGHTS TO SUFFOLK COUNTY BALLPARK

WHEREAS, the County is the owner of a minor league ballpark located in Central Islip, Suffolk County, New York, which is home to the minor league baseball team known as the Long Island Ducks (the "Ballpark"); and

WHEREAS, the County desires to enter into a title sponsorship agreement with a corporate sponsor, under which the sponsor will erect signage at the Ballpark and pay an annual fee to the County; and

WHEREAS, the title sponsorship agreement with the previous corporate sponsor has expired; and

WHEREAS, Bethpage Federal Credit Union desires to enter into a title sponsorship agreement with the County; and

WHEREAS, this Legislature has determined that a title sponsorship agreement with Bethpage Federal Credit Union will be beneficial to the County; now therefore be it

1st **RESOLVED**, that the Commissioner of the Department of Public Works is authorized, directed and empowered to enter into a title sponsor agreement with Bethpage Federal Credit Union, in substantial compliance with Exhibit "A" attached hereto, and to take such other actions as necessary to comply with the terms of the agreement; and be it further

2nd **RESOLVED**, that this Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this resolution constitutes a Type II action pursuant to Section 617.5(c)(20)and (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection, and the Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this resolution.

DATED: December 21, 2010

APPROVED BY:

County Executive of Suffolk County

Date: 12-28-10

Title Sponsorship Contract

This Contract ("the Contract") is between the **County of Suffolk ("the County")**, a municipal corporation of the State of New York, acting through its duly constituted **Department of Public Works ("the Department")**, located at 335 Yaphank Avenue, Yaphank, New York, 11980; and

Bethpage Federal Credit Union, ("the Contractor"), having an address at 899 S. Oyster Bay Road, Bethpage, New York, 11714-1030.

Term of the Contract: January 1, 2011 through December 31, 2015 (Initial term)
January 1, 2016 through December 31, 2020 (Optional renewal term)

Total Cost of the Contract: Title sponsorship fee to be paid by Contractor shall be $950,000 for initial term ($175,000 years one and two; $200,000 years three, four and five). Title sponsorship fee to be paid by Contractor shall be $1,150,000 for optional renewal term ($230,000 each year). Eight percent (8%) of title sponsorship fee shall be paid directly to broker by Contractor, so that net fee paid to County shall be $874,000 for initial term and $1,058,000 for optional renewal term.

Terms and Conditions: The time and manner of payment of the title sponsorship fee and broker's commission, and the other terms and conditions of this Contract, shall be as set forth in Articles I and II and Exhibits 1 and 2, attached hereto and made a part hereof.

In Witness Whereof, the parties hereto have executed the Contract as of the latest date written below.

Bethpage Federal Credit Union

By:_____
Name
Title
Fed. Tax ID #
Date_____

COUNTY OF SUFFOLK

By: _____

Name: _____

Title: Deputy County Executive

Date: _____

Approved as to Legality:
Christine Malafi, County Attorney

By: _____
Linda A. Spahr
Assistant County Attorney
Date_____

Approved:
Department of Public Works

By: _____
Name
Title
Date_____

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Article I
Description of Transaction

Whereas, the County is the owner of a minor league ballpark located in Central Islip, Suffolk County, New York, which is home to the minor league baseball team known as the Long Island Ducks (the "Ballpark"); and

Whereas, the County desires to enter into a title sponsorship agreement with a corporate sponsor, under which the sponsor will erect signage at the Ballpark and pay an annual fee to the County; and

Whereas, the County entered into a Marketing Consultant Agreement with Newmark of Long Island LLC d/b/a Newmark Knight Frank LI ("NKF"), on February 18, 2010, under which NKF assisted the County for the purpose of securing a title sponsor for the ballpark ("Consultant Agreement"); and

Whereas, under the terms of the Consultant Agreement, the County agreed that NKF would receive a commission equal to 8% of the annual sponsorship revenue, and that payments for same would be made directly to NKF by the title sponsor when the County receives its payments from the title sponsor; and

Whereas, the County has consented to the subcontracting of consulting responsibilities and assignment of monies to become due under the Consultant Agreement by NKF to The EGC Group ("EGC"); and

Whereas, the County has selected the Contractor to provide the services as set forth herein; and

Whereas, the Contractor desires to provide the services and pay the fees set forth herein; and

Whereas, the Contractor is authorized to enter into this Agreement by virtue of its charter and other constituent documents; and

Whereas, the County is authorized to enter into this Agreement by Legislative Resolution No. _____-2010;

Now Therefore, in consideration of the mutual provisions and covenants hereafter set forth, the parties hereto agree as follows:

1. Conflicting Provisions

In the event of any conflict between any provision in this Article I and an exhibit to this contract, the exhibit shall prevail unless it is expressly stated in the conflicting provision in this Article I, that it shall prevail over the exhibit.

2. Naming Rights

In consideration of the provisions and terms herein, the Contractor shall have exclusive naming rights for the Ballpark. As used herein, "Naming Rights" means the exclusive rights to name and re-name the Ballpark. In selecting such name, the Contractor shall not give any name to the Ballpark or any portion thereof that (a) is offensive, (b) could reasonably be expected to cause embarrassment to the County or (c) contains any political reference. The County shall use the name designated by the Contractor exclusively in all areas and all parts of the Ballpark, in all correspondence, communications, advertising and promotion the County may undertake with respect to the Ballpark, including, without limitation, all

press releases and in connection with the sale of admission tickets to the Long Island Ducks baseball games and any other public event at the Ballpark. In addition, the County shall use the name designated by the Contractor on all directional or other signage that is installed by the County or the Department which refers to or identifies the Ballpark and use its best efforts to cause New York State Department of Transportation to use such name on any direction signs installed or maintained by it. The Contractor also may prepare, at its sole expense, a logo to be used separately or in conjunction with the designated name, provided the logo shall comply with the requirements of this paragraph. Initially, the Ballpark shall be known as "Bethpage Ballpark."

3. Contractor Responsibilities

a. Contractor shall provide and install, at the sole cost of the Contractor, an exterior sign over the main entrance to the Ballpark, as well exterior signs over the east and west entrances, in accordance with specifications and standards to be approved by the Department. The Contractor shall provide all services as may be necessary to accomplish the work required to be performed under and in accordance with this agreement.

b. Contractor shall pay to the County an Annual Title Sponsorship Fee, as set forth in Article II, for the right to be the Title Sponsor of the County's Ballpark located in Central Islip, New York.

c. The Contractor shall cooperate with the County in employing its marketing resources to promote event attendance at the Ballpark and facility use by event producers.

d. The Contractor shall throughout the term of this agreement maintain any and all of its signage at the Ballpark, including routine maintenance and repairs, and the Contractor shall ensure that any necessary maintenance is performed as quickly as possible, to preserve the appearance and safety of the sign.

e. In addition to terms set forth in exhibit 1, upon termination of the Contract, Contractor shall remove the exterior signs installed pursuant to Paragraph 3(a).

4. County Responsibilities

a. The County shall cause the Department to fabricate and install, at its sole cost, 49 directional and highway signs at appropriate locations that make reference to the Ballpark, utilizing the Contractor's designated name and/or logo.

b. The County shall cause the Department to maintain such highway signs at its sole cost and expense, including routine maintenance and repairs, and the Department shall ensure that any necessary maintenance is performed as quickly as possible, to preserve the appearance and safety of the sign.

c. Highway signs shall not be installed until after Contractor's payment of the first Annual Title Sponsorship Fee, as set forth in paragraph 3 in Article II.

d. All highway signs shall be installed no later than two weeks prior to the commencement of the 2011 baseball season.

5. Term

a. The term of the Contract shall be from January 1, 2011 through December 31, 2015.

b. The Contractor shall have and may exercise an option to renew the Contract for a renewal term that shall run from January 1, 2016 through December 31, 2020.

c. In order to exercise the renewal option, Contractor must notify the County of its intention, in writing, at least one year prior to the expiration of the initial term.

6. County's Consent

Wherever the County's consent is required pursuant to the applicable provisions of this Contract, such consent shall not unreasonably be withheld, delayed or conditioned.

End of Text for Article I

Article II
Financial Terms and Conditions

1. Conflicting Provisions

In the event of any conflict between any provision in this Article II and an exhibit to this Contract, the exhibit shall prevail unless it is expressly stated in the conflicting provision in this Article II that it shall prevail over the exhibit.

2. Marketing Consultant Agreement/Commission

The County and the Contractor acknowledge the existence of a February 18, 2010 Marketing Consultant Agreement between the County and Newmark of Long Island LLC d/b/a Newmark Knight Frank LI ("NKF"). NKF provided services which helped to secure this Title Sponsorship Agreement. Under the terms of said Consultant Agreement, eight percent (8%) of the Annual Title Sponsorship Fee is to be paid as commission to NKF in accordance with the payment schedule set forth in paragraph 3 of this Article II.

The County warrants and represents that it has consulted with NKF and The EGC Group ("EGC") in securing this Contract, and no other broker, finder or third party has provided services to County in connection with same. Contractor warrants and represents that it has consulted with The EGC Group in securing this Contract, and no other broker, finder or third party has provided services to Contractor in connection with same. EGC is not a third party beneficiary to this contract. Any commissions to be paid to EGC shall be made directly by NKF to EGC under a separate agreement between NKF and EGC.

Contractor shall pay an Annual Title Sponsorship Fee (defined below) in the amounts as set forth in paragraph 3 in this Article II. Each year, the Contractor shall pay the Annual Fee as set forth in paragraph 3 in this Article II, less commission ("Net to County"), directly to the County. Additionally, Contractor shall pay the 8% commission as set forth in paragraph 3 in this Article II ("Commission") directly to NKF, under the terms of a separate agreement between Contractor and NKF. Payment of both the "Commission" and the "Net to County" as set forth in paragraph 3 in this Article II shall constitute payment of the "Annual Title Sponsorship Fee."

No other parties are due a commission under this Contract, and each party shall indemnify the other against claims that a broker, finder or third party providing similar services acted on behalf of the indemnifying party.

3. Annual Title Sponsorship Fee

Contractor shall pay to the County an annual Title Sponsorship Fee as follows:

Year	Annual Fee	Commission	Net to County
January 1, 2011- December 31, 2011	$175,000	$14,000	$161,000
January 1, 2012- December 31, 2012	$175,000	$14,000	$161,000
January 1, 2013- December 31, 2013	$200,000	$16,000	$184,000
January 1, 2014- December 31, 2014	$200,000	$16,000	$184,000

January 1, 2015- December 31, 2015	$200,000	$16,000	$184,000

In the event that Contractor exercises a renewal option, Contractor shall pay to the County an annual Title Sponsorship Fee as follows:

Year	Annual Fee	Commission	Net to County
January 1, 2016- December 31, 2016	$230,000	$18,400	$211,600
January 1, 2017- December 31, 2017	$230,000	$18,400	$211,600
January 1, 2018- December 31, 2018	$230,000	$18,400	$211,600
January 1, 2019- December 31, 2019	$230,000	$18,400	$211,600
January 1, 2020- December 31, 2020	$230,000	$18,400	$211,600

4. Annual Title Fee Payment Schedule

The first payment of the Annual Title Sponsorship Fee shall be paid in full no later than January 15, 2011. In each subsequent year, the payment shall be made no later than January 15 of such year.

5. Form of Payment

Payments to the County shall be made by check payable to the Suffolk County Treasurer, and shall be mailed to the following address:

Department of Public Works
Attn: _____
335 Yaphank Avenue
Yaphank, New York 11980

End of Text for Article II

Exhibit 1
County Terms and Conditions

1. Elements of Interpretation

As used throughout the Contract:

a. Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa. Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons, and shall include successors and assigns.

b. Capitalized terms used, but not otherwise defined herein, shall have the meanings assigned to them in the Contract.

2. Meanings of Terms

As used in the Contract:

"**Comptroller**" means the Comptroller of the County of Suffolk.

"**Contract**" means all terms and conditions herein forming all rights and obligations of the Contractor and the County.

"**Contractor**" means the signatory person, partnership, corporation, association or other entity, and where applicable its officers, officials, employees, agents, servants, or sub-contractors, as well as any successor or assign of any one or more of the foregoing.

"**County**" means the County of Suffolk, its departments, agents, servants, officials, and employees.

"**County Attorney**" means the County Attorney of the County of Suffolk.

"**Department**" means the signatory department approving the Contract.

"**Engineering Services**" means the definition of the practice of engineering and the definition of practice of land surveying, as the case may be, under Section 7201 and Section 7203 of the State Education Law, respectively.

"**Event of Default**" means

a. The Contractor's failure to maintain the amount and types of insurance required by the Contract; or

b. The Contractor's failure to comply with any material Federal, State or local law, rule, or regulation, and County policies or directives applicable to this Contract; or

c. The Contractor's bankruptcy or insolvency; or

d. The Contractor's failure to cooperate in an Audit; or

e. The Contractor's falsification of records or reports, misuse of funds, or malfeasance or nonfeasance in financial record keeping arising out of, or in connection with, any contract with the County; or

f. The inability of the County or the Contractor to obtain Federal or State funds due to any act or omission of the Contractor; or

g. Any condition the County determines, in its sole discretion that is dangerous; or

h. The Contractor's failure to make timely payment of any fees due under Article II of the Contract.

"**Federal**" means the United States government, its departments and agencies.

"**Fund Source**" means any direct or indirect sum payable to the Contractor by the County pursuant to any lawful obligation.

"**Legislature**" means the Legislature of the County of Suffolk.

"**Services**" means all that which the Contractor must do and any part thereof arising out of, or in connection with, the Contract necessary to render the assistance and benefit intended by the Contract.

"**State**" means the State of New York.

"**Suffolk County Payment Voucher**" means the document authorized and required by the Comptroller for release of payment.

"**Term**" means the time period set forth on page one of the Contract and, if exercised by the Contractor, the option period.

3. Contractor Responsibilities

a. It shall be the duty of the Contractor to discharge, or cause to be discharged, all of its responsibilities in the interest of the County in accordance with the provisions of the Contract.

b. The Contractor shall promptly take all action as may be necessary to render the Services.

c. The Contractor shall not take any action that is inconsistent with the provisions of the Contract.

4. **Termination**

a. **Ninety Days Termination**

The County shall have the right to terminate the Contract without cause, for any reason, at any time, upon such terms and conditions it deems appropriate, provided, however, that no such termination shall be effective until the later of (1) 90 days after Contractor receives notice of termination from the County and (2) the end of the then current Long Island Ducks baseball season and (ii) the County shall not have the right to terminate this Contract solely for the purpose of engaging another contractor who has agreed to pay the County a greater Title Sponsorship Fee (or equivalent) than Contractor is required to pay hereunder.

b. **Event of Default; Termination on Notice**

i.) The County may immediately terminate the Contract, for cause, upon such terms and conditions it deems appropriate, in the Event of Default, if the Contractor fails to cure such default within 15 days written notice from the County.

ii.) If the Contractor defaults under any other provision of the Contract, and the Contractor fails to cure such default within 30 days written notice from the County, the County may terminate the Contract, on not less than five (5) days notice, upon such terms and conditions it deems appropriate.

c. **Duties upon Termination**

i.) The Contractor shall discontinue the Services as directed in the termination notice.

ii.) The County shall reimburse the Contractor for the pro-rata portion of the title sponsorship fee based on the date of termination.

iii.) Upon reimbursement as provided in subparagraph 4c(ii) above the County shall be released from any and all liability under the Contract, effective as of the date of the termination notice.

iv.) Nothing contained in this paragraph shall be construed as a limitation on the County's legal or equitable remedies, or other rights available to it as set forth in the Contract.

5. **Indemnification and Defense**

a. The Contractor shall protect, indemnify, and hold harmless the County, its agents, servants, officials, and employees from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, suits or actions, costs, and expenses caused by the negligence or any acts or omissions of the Contractor, including reimbursement of the cost of reasonable attorneys' fees incurred by the County, its agents, servants, officials, and employees in any action or proceeding arising out of or in connection with the Contract.

b. The Contractor hereby represents and warrants that it will not infringe upon any copyright in performing the Services. The Contractor agrees that it shall protect, indemnify, and hold harmless the County, its agents, servants, officials, and employees from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, suits or actions, costs, and expenses arising out of any claim asserted for infringement of copyright, including reimbursement of the cost of reasonable attorneys' fees incurred by the County, its agents, servants, officials, and employees in any action or proceeding arising out of or in connection with any claim asserted for infringement of copyright due to the Contractor's actions in carrying out its duties under this Contract.

c. The Contractor shall defend the County, its agents, servants, officials, and employees in any proceeding or action, including appeals, arising out of, or in connection with, the Contract, and any copyright infringement proceeding or action. At the County's option, the County may defend any such proceeding or action and require the Contractor to pay reasonable attorneys' fees for the defense of any such suit.

6. **Insurance**

a. The Contractor shall continuously maintain, during the Term of the Contract, insurance in amounts and types as follows:

i.) **Commercial General Liability** insurance, including contractual liability coverage, in an amount not less than Two Million Dollars ($2,000,000.00) per occurrence for bodily injury and Two Million Dollars ($2,000,000.00) per occurrence for property damage. The County shall be named an additional insured.

ii.) **Automobile Liability** insurance (if any vehicles are used by the Contractor in the performance of the Contract) in an amount not less than Five Hundred Thousand Dollars ($500,000.00) per person, per accident, for bodily injury and not less than One Hundred Thousand Dollars ($100,000.00) for property damage per occurrence.

iii.) **Workers' Compensation** and **Employer's Liability** insurance in compliance with all applicable New York State laws and regulations and **Disability Benefits** insurance, if required by law. The

Contractor shall furnish to the County, prior to its execution of the Contract, the documentation required by the State of New York Workers' Compensation Board of coverage or exemption from coverage pursuant to §§57 and 220 of the Workers' Compensation Law. In accordance with General Municipal Law §108, the Contract shall be void and of no effect unless the Contractor shall provide and maintain coverage during the Term for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

b. The County may mandate a reasonable increase in the liability limits set forth above in the preceding paragraph 11(a)(i).

c. All policies providing such coverage shall be issued by insurance companies with an A.M. Best rating of A- or better.

d. The Contractor shall furnish to the County, prior to the execution of the Contract, declaration pages for each policy of insurance, other than a policy for commercial general liability insurance, and upon demand, a true and certified original copy of each such policy evidencing compliance with the aforesaid insurance requirements. In the case of commercial general liability insurance, the Contractor shall furnish to the County, prior to the execution of the Contract, a declaration page or insuring agreement and endorsement page evidencing the County's status as an additional insured on said policy, and upon demand, a true and certified original copy of such policy evidencing compliance with the aforesaid insurance requirements.

e. All evidence of insurance shall provide for the County to be notified in writing thirty (30) days prior to any cancellation, nonrenewal, or material change in the policy to which such evidence relates. It shall be the duty of the Contractor to notify the County immediately of any cancellation, nonrenewal, or material change in any insurance policy.

f. In the event the Contractor shall fail to provide evidence of insurance, the County may provide the insurance required in such manner as the County deems appropriate and deduct the cost thereof from a Fund Source.

7. Independent Contractor

The Contractor is not, and shall never be, considered an employee of the County for any purpose. Notwithstanding anything herein, the Contract shall not be construed as creating a principal-agent relationship between the County and the Contractor or the Contractor and the County, as the case may be.

8. Severability

It is expressly agreed that if any term or provision of the Contract, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of the Contract, 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 the Contract shall be valid and shall be enforced to the fullest extent permitted by law.

9. Merger; No Oral Changes

It is expressly agreed that the Contract represents the entire agreement of the parties and that all previous understandings are herein merged in the Contract. No modification of the Contract shall be valid unless in written form and executed by both parties.

10. Set-Off Rights

The County shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold from a Fund Source an amount no greater than any moneys due and owing to the County for any reason. The County shall exercise its set-off rights subject to approval by the County Attorney. In cases of set-off pursuant to a Comptroller's audit, the County shall only exercise such right after the finalization thereof, and only after consultation with the County Attorney.

11. Governing Law

The Contract shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws. Venue shall be designated in the Supreme Court, Suffolk County, the United States District Court for the Eastern District of New York, or, if appropriate, a court of inferior jurisdiction in Suffolk County.

12. No Waiver

It shall not be construed that any failure or forbearance of the County to enforce any provision of the Contract in any particular instance or instances is a waiver of that provision. Such provision shall otherwise remain in full force and effect, notwithstanding any such failure or forbearance.

13. Conflicts of Interest

The Contractor shall not, during the Term, pursue a course of conduct which would cause a reasonable person to believe that he or she is likely to be engaged in acts that create a substantial conflict between its obligations under the Contract and its private interests. The Contractor is charged with the duty to disclose to the County the existence of any

such adverse interests, whether existing or potential. This duty shall continue as long as the Term. The determination as to whether or when a conflict may potentially exist shall ultimately be made by the County Attorney after full disclosure is obtained.

14. Cooperation on Claims

The Contractor and the County shall render diligently to each other, without compensation, any and all cooperation that may be required to defend the other party, its employees and designated representatives against any claim, demand or action that may be brought against the other party, its employees or designated representatives arising out of or in connection with the Contract.

15. Assignment and Subcontracting

a. Except in connection with a Permitted transfer described in paragraph 16 below, the Contractor shall not delegate its duties under the Contract, or assign, transfer, convey, subcontract, or otherwise dispose of the Contract, or any of its right, title or interest therein, or its power to execute the Contract, or assign all or any portion of the monies that may be due or become due hereunder, (collectively referred to in this paragraph 15 as "Assignment"), to any other person, entity or thing without the prior written consent of the County, and any attempt to do any of the foregoing without such consent shall be a material default by the Contractor.

b. Any Assignment or subcontract shall be subject to **i.** all of the provisions of the Contract; **ii.** assumption of all of the provisions of the Contract by the Contractor's assignee; and **iii.** to any other condition the County requires. No approval of any Assignment shall be construed as enlarging any obligation of the County under the terms and provisions of the Contract. No Assignment of the Contract or assumption by any person of any duty of the Contractor under the Contract shall provide for, or otherwise be construed as, releasing the Contractor from any term or provision of the Contract.

16. Changes to Contractor

a. The Contractor may, from time to time, with the County's consent, enter into a Permitted Transfer. For purposes of the Contract, a Permitted Transfer means:

i.) if the Contractor is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of the partners, or transfer of partnership interests (other than the purchase of partnership interests by existing partners, by the partnership itself or the immediate family members by reason of gift, sale or devise), or the dissolution of the partnership without immediate reconstitution thereof, and

ii.) if the Contractor is a closely held corporation (i.e. whose stock is not publicly held and not traded through an exchange or over the counter),

1. the dissolution, merger, consolidation or other reorganization of the Contractor,

2. the sale or other transfer of twenty percent (20%) or more of the shares of the Contractor (other than to existing shareholders, the corporation itself or the immediate family members of shareholders by reason of gift, sale or devise), or

3. the sale, mortgage, hypothecation or pledge of the unencumbered assets of the Contractor. If the Contractor is a not for profit corporation, a change of twenty percent (20%) or more of its members shall be deemed a permitted Transfer.

b. The Contractor shall notify the County in writing, which notice (the "Transfer Notice") shall include:

i.) the proposed effective date of the Permitted Transfer, which shall not be less than thirty (30) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice;

ii.) a summary of the material terms of the proposed Permitted Transfer,

iii.) the name and address of the proposed transferee,

iv.) such information reasonably required by the County, which will enable the County to determine the financial responsibility, character, and reputation of the proposed transferee, nature of the proposed assignee/transferee's business and experience;

v.) all forms required pursuant to Exhibit 2 of the Contract, that are required to be submitted by the Contractor; and

vi.) such other information as the County may reasonably require.

c. The County agrees that any request for its consent to a Permitted Transfer shall be granted provided that the transfer does not violate any provision of the Contract, and the transferee has not been convicted of a criminal offense as described under Article II of Chapter 143 of the Suffolk County Code. The County shall grant or deny its consent to any request of a Permitted Transfer within twenty (20)

days after delivery to the County of the Transfer Notice, in accordance with the provisions of Paragraph 20 of Exhibit 1 of the Contract. If the County shall not give written notice to the Contractor denying its consent to such Permitted Transfer (and setting forth the basis for such denial in reasonable detail) within such 20-day period, then the County shall be deemed to have granted its consent to such Permitted Transfer.

d. Notwithstanding the County's consent,

i.) the terms and conditions of the Contract shall in no way be deemed to have been waived or modified, and

ii.) such consent shall not be deemed consent to any further transfers.

17. No Intended Third Party Beneficiaries

The Contract is entered into solely for the benefit of the County and the Contractor. No third party shall be deemed a beneficiary of the Contract and no third party shall have the right to make any claim or assert any right under the Contract.

18. Certification as to Relationships

The Contractor certifies under penalties of perjury that, other than through the funds provided in the Contract and other valid agreements with the County, the Contractor has no business, commercial, economic, or financial relationship with the County or its elected officials. The Contractor also certifies that there is no relationship within the third degree of consanguinity, between the Contractor, any of its partners, members, directors, or shareholders owning five (5%) percent or more of the Contractor and the County.

19. Publications and Publicity

a. The Contractor shall not issue or publish any book, article, report, or other publication related to the Services or the County, or any person associated with the County, which contains any disparaging remarks or statements.

b. The Contractor shall not issue press releases or any other information to the media, in any form, concerning the Services, without obtaining prior written approval from the County.

c. No press releases, books, articles, reports or other publications related to the Services shall by express words or implication implicate or suggest that Contractor has any ownership rights in the Ballpark.

20. Arrears to County

The Contractor warrants that, except as may otherwise be authorized by agreement, it is not in arrears to the County upon any debt, contract, or any other lawful obligation, and is not in default to the County as surety.

21. Notice

Unless otherwise expressly provided herein, all notices shall be in writing and shall be deemed sufficiently given if sent by regular first class mail and certified mail, or personally delivered during business hours as follows: 1.) to the Contractor at the address on page 1 of the Contract and 2.) to the County at the Department, or as to either of the foregoing, to such other address as the addressee shall have indicated by prior written notice to the addressor. All notices received by the Contractor relating to a legal claim shall be immediately sent to the Department and also to the County Attorney at 100 Veterans Memorial Highway, P.O. Box 6100, (Sixth Floor), Hauppauge, New York, 11788. The County shall report to the Contractor in writing within ten (10) days of the initiation by or against it of any legal action or proceeding in connection with or relating to The Contract.

End of Text for Exhibit 1

Exhibit 2
Suffolk County Legislative Requirements

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

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of section A5-7 of Article V of the Suffolk County Code.

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

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

2. **Living Wage Law**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Chapter 347, of the Suffolk County Code.

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

Required Forms:
Suffolk County Living Wage Form LW-1; entitled "Suffolk County Department of Labor – Living Wage Unit Notice of Application for County Compensation (Contract)"

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

3. **Use of County Resources to Interfere with Collective Bargaining Activities**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Chapter 466 of the Suffolk County Code.

County Contractors (as defined by section 466-2) shall comply with all requirements of Chapter 466 of the Suffolk County Code, including the following prohibitions:

a. The Contractor shall not use County funds to assist, promote, or deter union organizing.

b. No County funds shall be used to reimburse the Contractor for any costs incurred to assist, promote, or deter union organizing.

c. The Contractor shall not use County funds to assist, promote, or deter union organizing.

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

If the Services are performed on County property, the Contractor must adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, non-intimidation agreement, and a majority authorization card agreement.

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

Under the provisions of Chapter 466, the County shall have the authority, under appropriate circumstances, to terminate the Contract and to seek other remedies as set forth therein, for violations of this Law.

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

4. **Lawful Hiring of Employees Law**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Chapter 234 of the Suffolk County Code.

This Contract is subject to the Lawful Hiring of Employees Law of the County of Suffolk. It provides that all covered employers, (as defined), and the owners thereof, as the case may be, that are recipients of compensation from the County through any grant, loan, subsidy, funding, appropriation,

payment, tax incentive, contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or an awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees (as defined) and with respect to the alien and nationality status of the owners thereof. The affidavit shall be executed by an authorized representative of the covered employer or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement with the County; and shall be made available to the public upon request.

All contractors and subcontractors (as defined) of covered employers, and the owners thereof, as the case may be, that are assigned to perform work in connection with a County contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit to the covered employer a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees and with respect to the alien and nationality status of the owners thereof, as the case may be. The affidavit shall be executed by an authorized representative of the contractor, subcontractor, or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement between the covered employer and the County; and shall be made available to the public upon request.

An updated affidavit shall be submitted by each such employer, owner, contractor and subcontractor no later than January 1 of each year for the duration of any contract and upon the renewal or amendment of the contract, and whenever a new contractor or subcontractor is hired under the terms of the contract.

The Contractor acknowledges that such filings are a material, contractual and statutory duty and that the failure to file any such statement shall constitute a material breach of the Contract.

Under the provisions of the Lawful Hiring of Employees Law, the County shall have the authority to terminate the Contract for violations of this Law and to seek other remedies available under the law.

The documentation mandated to be kept by this law shall at all times be kept on site. Employee sign-in sheets and register/log books shall be kept on site at all times during working hours and all covered employees, as defined in the law, shall be required to sign such sign-in sheets/register/log books to indicate their presence on the site during such working hours.

Required Forms:
Suffolk County Lawful Hiring of Employees Law Form LHE-1; entitled "Suffolk County Department of Labor – Notice Of Application To Certify Compliance With Federal Law (8 U.S.C. SECTION 1324a) With Respect To Lawful Hiring of Employees."

"Affidavit Of Compliance With The Requirements Of 8 U.S.C. Section 1324a With Respect To Lawful Hiring Of Employees" Form LHE-2.

5. Gratuities

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Chapter 386 of the Suffolk County Code.

The Contractor represents and warrants that it has not offered or given any gratuity to any official, employee or agent of the County or the State or of any political party, with the purpose or intent of securing an agreement or securing favorable treatment with respect to the awarding or amending of an agreement or the making of any determinations with respect to the performance of an agreement.

6. Prohibition Against Contracting with Corporations that Reincorporate Overseas

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of sections A4-13 and A4-14 of Article IV of the Suffolk County Code.

The Contractor represents that it is in compliance with sections A4-13 and A4-14 of Article IV of the Suffolk County Code. Such law provides that no contract for consulting services or goods and services shall be awarded by the County to a business previously incorporated within the U.S.A. that has reincorporated outside the U.S.A.

7. Child Sexual Abuse Reporting Policy

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article IV of Chapter 577 of the Suffolk County Code.

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

8. Non Responsible Bidder

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article II of Chapter 143 of the Suffolk County Code.

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

9. Use of Funds in Prosecution of Civil Actions Prohibited

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of section 590-3 of Article III of Chapter 590 of the Suffolk County Code.

The Contractor shall not use any of the moneys, in part or in whole, and either directly or indirectly, received under the Contract in connection with the prosecution of any civil action against the County in any jurisdiction or any judicial or administrative forum.

10. Youth Sports

In accordance with Local Law No. 44-2009, (Suffolk County Code Chapter), all contract agencies that conduct youth sports programs are required to develop and maintain a written plan or policy addressing incidents of possible or actual concussion or other head injuries among sports program participants. Such plan or policy must be submitted prior to the award of the County contract, grant or funding. Receipt of such plan or policy by the County does not represent approval or endorsement of any such plan or policy, nor shall the County be subject to any liability in connection with any such plan or policy.

11. Suffolk County Local Laws Website Address

Suffolk County Local Laws, Rules and Regulations can be found on the Suffolk County website at http://www.co.suffolk.ny.us.

End of Text for Exhibit 2

Appendix

Public Disclosure

Union Certification

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 December 21,2010 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.

Tim Laube

Clerk of the Legislature

Intro. Res. 2231 Res. No. 1190 December 21, 2010

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

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

Second:
Romaine, Schneiderman, Browning, Muratore, Losquadro
Eddington, Montano, Cilmi, Lindsay, Viloria-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

X 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 ✓ FAILED ___
No Motion ___ No Second ___

RESOLUTION DECLARED

X ADOPTED
___ NOT ADOPTED

Roll Call ___ Voice Vote X

Tim Laube
Tim Laube, Clerk of the Legislature