

STRICKEN AS OF END OF YEAR

Intro. Res. No. 1491-2011

Laid on Table 6/7/2011

Introduced by Presiding Officer, on request of the County Executive

**RESOLUTION NO. -2011, AUTHORIZING A CUSTODIAL
LICENSE AGREEMENT WITH INDEPENDENT GROUP HOME
LIVING PROGRAM FOUNDATION FOR TWA FLIGHT 800
MEMORIAL, SMITH POINT BEACH COUNTY PARK, SHIRLEY**

WHEREAS, Independent Group Home Living Program Foundation is a not-for-profit organization located at 221 North Sunrise Service Road, Manorville, New York; and

WHEREAS, Resolution No. 249-1999 authorized the erection, on County land, of a memorial in honor of those who lost their lives in the crash of TWA Flight 800 and those who aided in the recovery operation; and

WHEREAS, since 2005, Independent Group Home Living Program Foundation with its own staff and volunteers has assisted the County with maintenance and management of the TWA Flight 800 Memorial at Smith Point Beach County Park; and

WHEREAS, in order to properly assist the County with the maintenance and management of the TWA Flight 800 Memorial, Independent Group Home Living Program Foundation wishes to maintain an office/storage trailer, shed and pickup truck upon County property; and

WHEREAS, Independent Group Home Living Program Foundation would like to enter into a custodial license agreement with the County to assist in the maintenance and management of the TWA Flight 800 Memorial at Smith Point Beach County Park; now, therefore be it

1st **RESOLVED**, that the Suffolk County Department of Parks, Recreation, and Conservation is hereby authorized, empowered, and directed, pursuant to Section 28-4(D) of the SUFFOLK COUNTY CHARTER, to enter into a License Agreement, for a term of ten (10) years with two (2) optional terms of an additional five (5) years each with Independent Group Home Living Program Foundation, for the maintenance and management of the TWA Flight 800 Memorial at Smith Point County Park, Shirley; and be it further

2nd **RESOLVED**, that this Legislature, being the lead agency under the State Environmental Quality Review Act ("SEQRA"), New York Environmental Conservation Law, Article 8, hereby finds and determines that this resolution constitutes a Type II action, pursuant to Volume 6 of New York Code of Rules and Regulations ("NYCRR") §617.5(c)(15), (20), and (27), in that the resolution concerns minor temporary uses of land having negligible or no permanent impact on the environment, routine, or continuing agency administration and management, not including new programs or major reordering of priorities, and adoption of a local legislative decision in connection with the same, and, since this is a Type II action, the County Legislature has no further responsibilities under SEQRA.

DATED:

APPROVED BY:

County Executive of Suffolk County

Date:

Custodial License Agreement

This Custodial License Agreement (“Agreement”) is between the County of Suffolk (“County”), a municipal corporation of the State of New York, acting through its duly constituted Department of Parks, Recreation, and Conservation (“Department”) located at Montauk Highway, West Sayville, New York 11796 (mailing address: P.O. Box 144, West Sayville, NY 11796), and the INDEPENDENT GROUP HOME LIVING PROGRAM FOUNDATION (“Licensee”), a New York not for profit organization located at 221 North Sunrise service Road. Manorville, New York 11949.

The parties hereto desire to enter into a Custodial License Agreement for the Licensee to assist in the maintenance and management of the TWA Flight 800 Memorial at Smith Point County Park, Shirley, New York (the “Licensed Premises”).

Term of Agreement: Shall be from September 1, 2010 through December 31, 2020 with two five-year option periods to extend the Agreement from January 1, 2021 through December 31, 2025 and January 1, 2026 through December 31, 2030, at the sole discretion of the Commissioner.

Total Cost of Agreement: No Payments made by the County.

Terms and Conditions: Shall be as set forth in Exhibits A through G, attached hereto and made a part hereof.

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

INDEPENDENT GROUP HOME LIVING PROGRAM FOUNDATION

By: _____
Name: _____
Title: _____
Federal Tax ID # _____
Date _____

_____ hereby certifies under penalties of perjury that I am an Officer of Independent Group Home Living Program Foundation, that I have read and I am familiar with §A5-7 of Article V of the Suffolk County Code, and that Independent Group Home Living Program Foundation meets all requirements to qualify for exemption hereunder.

Name: _____
Date _____

Approved as to Legality:
Christine Malafi,
County Attorney

By: _____
Thomas C. Young
Assistant County Attorney
Date _____

COUNTY OF SUFFOLK

By: _____
County Executive
Date: _____

Approved:
Suffolk County Department of Parks, Recreation & Conservation

By: _____
Joseph J. Montuori
Commissioner
Date _____

List of Exhibits

Exhibit A

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Exhibit B

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Exhibit D

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Exhibit E

Financial Terms and Conditions/Other Variable Terms and Conditions

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Exhibit F

Resolution No. -2010

Exhibit G

Site Map of Licensed Premises

Exhibit A
General Terms and Conditions

Whereas, the County, acting by and through the Department, owns, operates, and maintains a park system within the County of Suffolk and in connection with such ownership, operation, and maintenance, the Commissioner of the Department (“Commissioner”) supervises and manages the facilities as necessary, desirable, and convenient for the use of the public for healthful recreation; and

Whereas, the County, by Resolution 249-1999 authorized the erection, on County land, of a memorial in honor of those who lost their lives in the crash of TWA Flight 800 and those who aided in the recovery operation; and)

Whereas, the Suffolk County Legislature, by *Resolution No. _____ -2011* has authorized a Custodial License Agreement with the INDEPENDENT GROUP HOME LIVING FOUNDATION for the Smith Point County Park, Shirley, New York for the upkeep and management of the memorial; and

Whereas, the County, pursuant to Section 224(1) of the New York County Law, desires to provide for the maintenance and operation of the memorial; and

Whereas, Licensee, with its own staff and volunteers, is willing to assist the County in the maintenance and management of the memorial at the Smith Point County Park; and

Whereas, the Licensee, in order to fulfill its obligation under this agreement, wishes to maintain an office/storage trailer and shed upon County property; and

Whereas, the Licensee desires to obtain from the County a License for the Licensed Premises, as further described in the Exhibits “A” through “G” attached hereto, whereby the Licensee will assist the Department by providing services to maintain and manage the TWA Flight 800 Memorial at Smith Point County Park;

Now, therefore, in consideration of the premises and the mutual covenants and conditions herein contained, it is agreed by the parties hereto, as follows:

1. License

- a. The Department grants to the Licensee, and the Licensee accepts from the Department, an non-exclusive, non-transferable (except as indicated herein) License ("License") to assist in the maintenance and management of the Licensed Premises, and operate the Memorial dedicated to honoring the memory of those who lost their lives in the crash of TWA Flight 800 and in recognition of those who aided in the recovery operation. The operation of the Licensed Premises is subject to the terms and conditions in Exhibits "A" through "G" herein. The Licensee agrees to perform all of its obligations in accordance with the terms and conditions of this Agreement. The Licensee shall provide the services and programs, as more particularly described in Exhibit D, entitled "Description of Services." The Licensee acknowledges and agrees that this Agreement is of limited scope and duration.
- b. The Licensed Premises is defined to include the memorial located on the site and the right to place and maintain an office/storage trailer, an additional storage shed at the site, and to keep one motor vehicle no larger than a pickup truck at the site all subject to the approval of the Commissioner. The Licensed Premises shall also include all shrubbery, trees, plantings, grounds, and landscaping materials used in connection with the memorial.
- c. Licensee agrees to conduct and use the Licensed Premises for no purposes other than as herein stated. Licensee will not interfere with the Department or with any other licensees of the Department. Any service or activity not described in this Agreement must be approved, in advance, and in writing, by the Commissioner. No physical alteration, building, construction, or repair to the memorial or licensed premises may occur without a further written agreement between the parties.
- d. Licensee shall comply with all applicable Federal, State, County, and local laws, rules, regulations, codes, ordinances, and requirements in effect on the date of execution of this Agreement and as may be adopted or amended from time to time, including those related to employee compensation and workplace safety, pest control, pesticide use, prohibitions on County parkland, and the Suffolk County Sanitary Code. As applicable, the Licensee shall require contractors and subcontractors to comply with New York State Prevailing Wage Rate Laws and/or Suffolk County Living Wage Laws.
- e. Licensee acknowledges and agrees that public access to the Licensed Premises and surrounding grounds will not be restricted during the normal hours of operation of the Park.
- f. Qualifications, Licenses, and Professional Standards
 - i. Qualifications. The Licensee specifically represents and warrants that it has and shall continuously possess, and that, its employees, agents, and subcontractors have and shall continuously possess, the required education, knowledge, experience, and character necessary to qualify them individually for the particular duties they perform. Additionally, the Licensee has and shall continuously have, and its employees, agents, and subcontractors have and shall continuously have, all required authorization(s), certificates(s), certifications(s), registration(s), license(s), permit(s), and other approval(s) required by the Federal, State, County, or local authorities for the services provided in accordance with this Agreement.
 - ii. **Documentation of Professional Standards.** The Licensee shall maintain on file, in one location in Suffolk County, the address to be provided by Licensee to the Department, all records that demonstrate that it, and its employees, agents, and subcontractors, have complied with sub-paragraph i. above. Such documentation shall be kept, maintained, and available for audit and inspection by the County upon 24 hours notice.
 - iii. **Submission of Employee Listing.** The Licensee shall forward to the Department annually, on or before July 1 of each year, a complete list of its employees, agents, subcontractors, and volunteers providing Services, including names and areas of any required certification.

2. Term and Termination of Agreement

- a. **Term.** This Agreement shall cover the period provided on the first page hereof, unless sooner terminated as provided herein.
- b. **Option Periods.** It is agreed by the parties hereto that it is at the sole discretion of the Commissioner, acting in the best interests of the County, to grant permission to exercise option periods (if any) to extend this Agreement. Frequent

failure to comply with contractual obligations (payments, providing required documentation, insurance, etc.) could have a negative impact on whether or not the Licensee's request to exercise option periods will be approved. Notification of the Licensee's desire to renew must be received by the Commissioner no later than six months prior to the expiration of this Agreement. Each option period exercised must be by written amendment signed by all parties.

c. **Termination by County in the Public Interest.** Notwithstanding anything herein to the contrary, in the event that the Commissioner determines in his/her sole discretion that termination is in the public interest, the County reserves the right to terminate this Agreement. Such termination shall occur upon twenty (20) days notice of intent to terminate this Agreement. Upon such termination, the Licensee shall quit and surrender the premises to the Commissioner immediately.

d. **Default/Termination for Cause.** The County may terminate this Agreement based upon the following events, which constitute a default:

- i. A failure to maintain the amounts and types of insurance required by this Agreement. In such event, the County may terminate this License immediately, at the sole discretion of the Commissioner.
- ii. A failure by the Licensee to comply with any of the inspection requirements, including, without limitation: (i) the requirements to make the Premises available for inspection or to make the books and records available for inspection; or (ii) the removal or destruction of required records. Upon the expiration of one (1) day from the date a written notice to cure and notice of intent to terminate is given to the Licensee and the default has not been cured, the County may terminate this Agreement upon one (1) additional day written notice.
- iii. A failure by the Licensee to comply with Federal, State, or local laws, rules, regulations, or County policies or directives, may result in immediate termination of this Agreement, at the sole discretion of the Commissioner.
- iv. A failure by the Licensee to comply with any other provisions of this Agreement. Upon the expiration of five (5) days from the date a written notice to cure and notice of intent to terminate is given to the Licensee, and the default has not been cured, the County may terminate this

Agreement upon five (5) additional days written notice.

e. **Termination for Emergency.** This Agreement may be terminated in the event of an emergency or other condition involving possible loss of life, threat to health and safety, destruction of property or other condition deemed to be dangerous, in the sole discretion of the Commissioner. In such event, the County may terminate this Agreement immediately, in the sole discretion of the Commissioner.

f. All notices herein shall be in writing and shall comply with the Exhibit entitled, "Notices and Contact Persons." The notice to cure and notice of intent to terminate shall call attention to the existence of the failure, particularize the claimed failure in reasonable detail, and state the intended date of termination.

g. Upon due notice of termination of this Agreement, the Department may request, and in such event, the Licensee shall provide, the County with any information, records, or reports that are within the purview of this Agreement, subject to any applicable provisions of law or regulations. The Licensee shall also relinquish title and possession of any furniture, fixtures, equipment, materials, or supplies as specified in this Agreement.

h. If the term of this Agreement expires naturally, as provided herein; or if the Licensee shall abandon the Licensed Premises; or if the Licensee is dispossessed of its interest in this Agreement as a result of any determination against the Licensee in any legal or administrative proceeding in which the Licensee has no right to further appeal: the Commissioner may, without further notice, resorting to force, summary proceedings, or otherwise, reenter the Licensed Premises, and the Licensee hereby waives the service of any further notice of the Commissioner's intent to reenter or repossess the Licensed Premises, or to institute legal proceedings to that end.

i. In the event this Agreement is terminated for any reason, the Licensee shall quit and surrender the Licensed Premises to the Commissioner and leave same in the condition as received by the Licensee, reasonable wear and tear excepted. It is further agreed, that upon termination, unless otherwise directed by the Commissioner, the Licensee shall have twenty-four (24) hours to remove all personal property of the Licensee and any personal property of the Licensee not so removed within twenty-four (24) hours of the effective date of termination, shall be considered as having been abandoned by the

Licensee to the County, and title thereto shall rest in the County.

- j. Upon the repossession of the Licensed Premises by virtue of the termination or expiration of this Agreement, or any renewal hereof, the Licensee shall remain liable to the Commissioner and the County for:

i. All fees and other sums due and owing from the Licensee (if any). The Licensee shall be deemed liable for all fees up to and including the next following installment or yearly fee, whatever the case may be, which may be prorated at the discretion of the Commissioner; and

ii. The reasonable costs expended by the Commissioner and the County to place the Premises in the physical condition in which the Licensee is obligated to leave the Premises upon the expiration of the term, and to secure the Premises after termination; and

iii. The costs incurred by the Commissioner and the County, whether by or without legal process to remove the Licensee and any effects of the Licensee; the cost to expel, oust, and remove all parties who may be present upon or occupy any part of the Licensed Premises and all personal property that may be thereon and therein contained. The Licensee hereby agrees that the County shall not be liable for prosecution, or for any damage or damages to, or loss of, any personal property belonging to any party upon or occupying the Licensed Premises, or any part thereof, from any cause whatsoever by reason of such removal. The Licensee expressly waives any and all claims for damages and loss against the County and its officials, officers, employees, servants, contractors and agents for or on account of any act done or caused to be done in exercising this right; and the County shall have the right to sell any personal property so seized or removed, and may recover by such sale or legal process any and all sums due to the County under the terms of this Agreement, in addition to all other available remedies.

- k. Upon the termination or expiration of this Agreement, in accordance with the foregoing paragraphs, the Licensee acknowledges and agrees that it shall not be entitled to, nor shall it make a claim for, lost profits or loss of anticipated earnings because of such termination or expiration.

- l. As used herein, the words "reenter" and "reentry" are broadly used and are not intended to be restricted to their legal definitions.

3. Indemnification

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

b. **Federal Copyright Act.** Licensee hereby represents and warrants the Licensee will not infringe upon any copyrighted work or material in accordance with the Federal Copyright Act during the performance of this Agreement. Furthermore, the Licensee agrees that it shall protect, indemnify and hold harmless the County and its officers, officials, employees, contractors, agents and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' fees, arising out of the acts or omissions or the negligence of the Licensee in connection with the services described or referred to in this Agreement. The Licensee shall defend the County and its officers, officials, employees, contractors, agents and other persons in any suit, including appeals, or, at the County's option, pay reasonable attorneys' fees for defense of any such suit arising out of the acts or omissions or negligence of the Licensee, its officers, officials, employees, subcontractors, lessees, licensees, invitees or agents, if any, in connection with the services described or referred to in this Agreement.

4. Insurance

a. Licensee agrees to procure, pay the entire premium for and maintain throughout the term of this Agreement insurance coverage in amounts and types specified by the County and as may be mandated and increased from time to time. The Licensee agrees to

require that all of its subcontractors, in connection with work performed for the Licensee related to this Agreement, procure, pay the entire premium for and maintain throughout the term of this Agreement insurance in amounts and types equal to that specified by the County for the Licensee. Unless otherwise specified by the County and agreed to by the Licensee, in writing, such insurance will be as follows:

- i. **Commercial General Liability Insurance**, including contractual liability coverage, in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and Two One Dollars (\$1,000,000.00) per occurrence for property damage. The Licensee is advised that certain special events will require additional insurance as directed by the Department.
- ii. **Tenants Legal Liability Insurance**, in an amount no less than \$500,000.00 per occurrence.
- iii. **Automobile Liability Insurance** (if any vehicles are used in the performance of this Agreement) 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.
- iv. **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 Licensee shall furnish to the County, prior to its execution of this Agreement, the documentation required by the State of New York Workers' Compensation Board of coverage or exemption from coverage pursuant to §§57 and 220 of the Workers' Compensation Law. In accordance with General Municipal Law §108, this Agreement shall be void and of no effect unless the Licensee shall provide and maintain coverage during the term of this Agreement for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law. The Licensee represents that it currently has no employees and will hold the County harmless and indemnify the County from any claims by any employees or governmental agency. Prior to hiring any employees the licensee shall provide the County with proof of insurance as provided herein. The Licensee agrees that it shall protect, indemnify and hold harmless the County and its officers, officials,

members, employees, agents and invitees from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and costs, including reasonable attorneys' fees, and shall defend the County, its officers, officials, members, employees, agents and invitees in any suit, including appeals, or at the County's option, pay reasonable attorneys' fees for defense of any such suit arising out of the acts or omissions or negligence of the Licensee, its agents, employees, servants, officers, invitees, members, volunteers or subcontractors in connection with this provision.

- b. All policies providing such coverage shall be issued by insurance companies with an A.M. Best rating of A- or better.
- c. Licensee shall furnish to the County Declaration Pages for each such policy of insurance, and, upon request, 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 County of Suffolk shall be named as an additional insured and the Licensee shall furnish a Declaration Page and endorsement page evidencing the County's status as an additional insured on said policy.
- d. All such Declaration Pages, certificates, and other evidence of insurance shall provide for the County of Suffolk to be notified in writing thirty (30) days prior to any cancellation, nonrenewal, or material change in said policies. Such Declaration Pages, certificates, policies, and other evidence of insurance and notices shall be mailed to the Department at its address set forth in the Exhibit entitled "Notices and Contact Persons," or at such other address of which the County shall have given the Licensee notice in writing.
- e. In the event the Licensee shall fail to provide the Declaration Pages or certificates of insurance or to maintain any insurance required by this Agreement, the County may, but shall not be required to, obtain such policies and deduct the cost thereof from payments due to the Licensee under this Agreement or any other agreement between the County and the Licensee.
- f. If any of the insurance policies required under the provisions of this Agreement are subject to deductibles and/or self-insurance retentions, such deductibles and self insurance retentions shall be the sole responsibility of the Licensee. Proof of ability to fund deductible will be required.

g. Licensee shall not use or occupy or permit the Licensed Premises to be used or occupied, nor do or permit anything to be done in, on or about the Licensed Premises, in whole or in part, in any manner that would in any way make void or voidable any insurance coverage required to be carried by the Licensee or the County hereunder with respect to the Licensed Premises, or that may make it impossible to obtain fire or other insurance coverage with respect to the Licensed Premises.

h. If such policies expire without renewal or are terminated for any reason, the resulting failure to maintain the coverage may cause an immediate default of this Agreement without the necessity for any action on the part of the County.

5. County Property

It is expressly understood and agreed that the Licensed Premises covered under this Agreement is and shall be the sole property of the County at all times during the term of this Agreement.

6. Public Access

The Licensee acknowledges and agrees that public access to the Licensed Premises will not be restricted during the normal hours of operation of the Park and shall be made available equally and at no cost to all residents of Suffolk County.

7. Advertising

- a. All advertising and signage under this Agreement is subject to prior review and approval by the Department and must reflect the County's ownership of the Licensed Premises.
- b. All brochures, media advertisement, and similar copy to be released, disseminated to the public or distributed in any manner shall be in good taste, consistent with the County's mission and policies, reflect the County's ownership of the Licensed Premises, include the Department's logo, and must be provided to the County no less than forty-eight (48) hours, for approval by the Commissioner, prior to the release, dissemination or distribution of the material. The County reserves the right to reasonably and promptly object to the form and content of any such material, and the Licensee agrees to discontinue or withhold the release, dissemination and distribution of any such material unless and until the County and the Licensee have agreed to a resolution of the County's objection. In the event there is no resolution, the material may not be released.

8. Representation of Inspection

Licensee acknowledges that it has examined the Licensed Premises, location, facilities structures, area, spaces, and equipment to be used in connection with this Agreement. The Licensee acknowledges that the equipment on the Licensed Premises may or may not be in working order and agrees to accept same "as is" and the Licensee agrees to return the Licensed Premises and equipment in good working order at the expiration of this Agreement, subject to making all required repairs, replacements and improvements, reasonable wear and tear excepted.

9. Risks of Licensee

- a. Licensee, in addition to any terms contained herein, assumes all risks in the operation of this Agreement and shall be solely responsible and wholly answerable in damages for all injuries and accidents in person or property.
- b. During the term of this Agreement, the risk of loss, damage or destruction from any peril to the furniture, fixtures, equipment, or other personal property of the Licensee shall be borne by the Licensee. The Licensee waives any right to subrogation against the County for loss, damage or destruction from any peril to the furniture, fixtures, equipment or other personal property of the Licensee.

10. Screening and Conduct of Licensee's Employees and Volunteers

- a. Every employee and volunteer of the licensee shall, prior to acting in said capacity, be checked against the New York State Sex Offender Registry. The Commissioner of the Suffolk County Department of Parks, Recreation & Conservation is authorized, empowered and directed to disqualify any applicant if such applicant is found to be listed on the New York State Sex Offender Registry, and such applicant's potential employment would pose an unreasonable risk to Suffolk County residents. When determining whether an applicant would pose an unreasonable risk necessitating disqualification the Commissioner shall, consistent with the overall policy of Article 23A of the New York State Correction Law, consider the factors outlined in Section 753 of the New York State Correction Law, and any rules and regulations issued and promulgated by the Commissioner of Parks, Recreation & Conservation.
- b. The Commissioner shall inform the Licensee, in writing, or if orally, a written confirmation shall be

sent immediately, of any employee or volunteer of the Licensee whose conduct the Commissioner deems detrimental to the best interests of the Department or the public using the Licensed Premises. The Licensee shall immediately take any and all action necessary and appropriate to remedy the conduct. In the event the Licensee fails to remedy the conduct, within a reasonable period of time under the circumstances, this Agreement shall terminate five (5) days from receipt of written notice from the Commissioner of the Licensee's failure to cure, notwithstanding the provisions of the paragraph entitled "Term and Termination of Agreement."

- c. In order to facilitate the required search of the New York State Sex Offender Registry of any individual the licensee wishes to employ, the Licensee shall provide the Commissioner of Parks with the name and such other information as may be required by the Commissioner to effectuate a search of the registry.
- d. The licensee, in lieu of the Commissioner of Parks checking volunteers provided by the American Red Cross Community Service of Suffolk County against the New York State Sex Offenders Registry, shall provide the Commissioner of Parks with written certification from the American Red Cross Community Service Program of Suffolk County that the volunteers are not on the New York State Sex Offender Registry.

11. Preservation of Features; Soil and Vegetation Removal

In conducting its activities hereunder, the Licensee shall preserve and avoid damage to and destruction of natural, historic or cultural features, including, but not limited to, waterways, rare or endangered plants or animals, habitats, trees, shrubs, and other vegetation. The Licensee shall not remove soil from the premises, clear vegetation, or plant any trees, shrubs, or other vegetation without written approval of the Commissioner.

12. Claims For Compensation; Licensee's Right to Terminate

- a. The Licensee hereby expressly waives any and all claims for compensation for any and all loss or damages sustained by reason of any interference by any public agency or official in the operation of this Agreement; any such interference shall not relieve the Licensee from any obligation hereunder.
- b. The Licensee hereby expressly waives any and all claims for compensation for any and all loss or

damage sustained by reason of any defect, deficiency or impairment of the electrical apparatus and water supply equipment furnished for the Licensed Premises hereby granted, or by reason of any loss or impairment of light, current, or water supply which may occur from time to time for any cause, or for any loss or damage sustained by the Licensee resulting from fire, water, storm, tornadoes, civil commotion, riots, acts of God or other disasters; and the Licensee hereby expressly waives all rights, claims, and demands and forever releases and discharges the people of the State of New York, the County, the Commissioner, the Department and their officers, employees and agents from any and all demands, claims, actions and causes of action arising from any of the enumerated causes whatsoever.

- c. The Licensee may terminate the Agreement upon thirty (30) days prior written notice. In the event of termination by the Licensee: such termination shall be deemed an abandonment of the Licensed Premises and the Licensee shall leave the Licensed Premises in serviceable and operable condition, subject to reasonable wear and tear.

13. Personal Property of Licensee

During the term of this Agreement, unless personal property is required for the performance by the Licensee of its obligations hereunder, the Licensee shall have the right at any time, to remove same from the Licensed Premises, with the following exceptions: Books, reports, and records required to be kept by this Agreement shall be maintained on the Licensed Premises at all times and may not be removed; and removal of personal property upon expiration and/or termination of this Agreement shall be governed by the paragraph entitled, "Term and Termination of Agreement."

14. Compliance with Law

- a. All chemicals, fungicides, herbicides and pesticides (if any) applied to the Licensed Premises shall be approved by the Commissioner prior to use. The Licensee shall comply with Suffolk County Code Chapter 380 (Pest Control), the Organic Parks Maintenance Plan and any other applicable Federal, State, and Local Laws. The Licensee shall apply for any necessary exemptions from Suffolk County Code Chapter 380. All notice and reporting requirements shall be adhered to.
- b. The Licensee is required to adhere to an Integrated Pest Management Program (IPM), which shall be approved by the Commissioner and which minimizes potential negative impact upon the environment or wildlife.

- c. Licensee shall keep and maintain detailed records of all chemicals, pesticides, herbicides, and fungicides stored and applied to the facilities throughout the term of this Agreement and shall comply with Resolution No. 719-2000 entitled "A Local Law to Adopt Countywide Pesticide Notice Provisions."

15. License/Not A Lease

It is expressly understood and agreed that no interest in real or personal property is leased or granted to the Licensee; that this Agreement is a License and not a lease; that the Licensee's right to occupy and to operate the Licensed Premises shall continue only so long as the Licensee shall comply strictly and promptly with each and all the undertakings, provisions, covenants, agreements, stipulations, and conditions contained herein; and that this License is not coupled with any interest in real property.

16. Fire Safety Standards

Licensee shall not use or permit the storage of any turpentine, benzene, naphtha, or other similar substances or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies licensed to do business in the State of New York, in any buildings erected or to be erected on the Licensed Premises. In addition, the Licensee shall provide a list of all stored flammable materials necessary for its operation, subject to inspection and approval by the Suffolk County Fire Marshal. Storage shall be in a location and manner acceptable to the Commissioner and the Suffolk County Fire Marshal.

17. Hazardous Substances and Waste

- a. The Licensee shall not generate, treat, release, store, discharge, dispose of, transport, recycle, use, reuse, handle, or permit hazardous substances or hazardous waste on the Licensed Premises without prior written permission of the Department and all such substances shall be handled in the manner required or recommended by any government or quasi-governmental authority. This section is not intended and shall not be construed to prohibit the reasonable, legal, and proper use and storage of ordinary cleaning solutions and solvents in the ordinary course of the Licensee's operations and maintenance of the Licensed Premises.
- b. In the event the Licensee receives any notice, advice, summons or complaint from any governmental or quasi-governmental agency or any other person or entity with regard to health, safety, environment, and hazardous materials on, under or affecting the Licensed Premises, then the Licensee shall immediately notify the Department. The Licensee

shall conduct, complete and pay for all investigations, studies, sampling, and testing and all remedial, removal, and actions necessary to clean and remove all hazardous material on, under, from or affecting the Licensed Premises arising from the Licensee's or the Licensee's agents', servants', contractors' employees' and invitees' acts or omissions in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies.

- c. In the event of any release of hazardous materials or hazardous substances, except releases in accordance with applicable permits and law, Licensee shall promptly report such release to the applicable governmental authorities and to the County and shall provide to the County copies of any reports required to be filed by any other governmental agency in connection with such release. Licensee shall exercise due care with respect to such release.
- d. The Licensee shall protect, indemnify, defend, and save harmless the Department, the County and its officers, officials, members, employees, agents, and invitees from and against all liabilities, obligations, claims, damages, penalties, causes of actions, costs, and expenses (including reasonable attorneys' fees) whatsoever imposed upon or incurred by or asserted against the Department or County and its officers, officials, members, employees, agents and invitees arising from the Licensee's or the Licensee's agents', servants', contractors', and invitees' acts or omissions or negligence, by reason of:
 - i. the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any hazardous material on, under, from or affecting the Licensed Premises or any other property;
 - ii. any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials;
 - iii. any lawsuit brought or threatened or settlement reached, provided, however that the Licensee will be given the opportunity, if available with no adverse effect to the County, to contest any such settlement on the grounds therefore with the opposing person or entity, after paying same, or governmental order relating to such hazardous materials; or
 - iv. any violations of laws, ordinances, rules, orders, or regulations which are based upon or any way related to such hazardous materials, health, safety or environment including attorney or consultant fees, investigation and laboratory fees,

court costs, and litigation expenses.

This provision shall survive the termination or expiration of this Agreement.

18. Inspection of Licensed Premises/Remediation of Unsatisfactory Conditions

- a. It is agreed that the Licensed Premises may be inspected at any time by the Commissioner, authorized representatives of the Commissioner, or representatives of the Suffolk County Department of Health Services or the Suffolk County Department of Fire, Rescue and Emergency Services (FRES).
- b. The Licensee agrees that upon written notification by the Commissioner that any part of the Licensed Premises or the facilities thereon is unsatisfactory, the Licensee shall, where such condition is caused by the Licensee, remedy the same within a reasonable time except in the event of dangerous health and/or safety conditions impacting upon persons or animals, which shall be corrected immediately. Where applicable, notice of the unsatisfactory condition shall also serve as a notice to cure and/or notice of intent to terminate.
- c. In the event the Licensee fails to remedy the unsatisfactory condition, the County may terminate this Agreement, in the sole discretion of the Commissioner, and termination of this Agreement shall be governed by subparagraph 2(d) entitled "Default/Termination for Cause."

19. Illegal or Objectionable Conduct:

- a. The Licensee agrees not to use, or suffer, or permit any person to use in any manner whatsoever, the Licensed Premises or any part thereof or any building thereon for any illegal purpose, or for any purpose in violation of any Federal, State, County or municipal law, ordinance, rule, order or regulation now in effect or hereafter enacted, amended or adopted, and will protect, defend, indemnify, and forever hold harmless the County of Suffolk, the Department and any individual members thereof and their agents, from and against any damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed, or incurred for any violation or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of the Licensee, or any employee, volunteer, person or invitee of the Licensed Premises; and in the event of any violation, the County shall have the right and power, and is hereby authorized by the Licensee, to immediately declare this Agreement terminated as if it had

naturally expired, notwithstanding any other provision in this Agreement to the contrary.

- b. The Licensee agrees not to use, or suffer, or permit any person to use in any manner whatsoever, the said Licensed Premises or any part thereof or any building thereon for any purpose in violation of any ordinance, rule or regulation of the Department now in effect or hereafter enacted, amended or adopted, and in the event of any violation, or in case the County or its representatives shall deem any conduct on the part of the Licensee, any employee, volunteer, person, or invitee of the Licensed Premises, or the operation thereof to be objectionable or improper, the County shall have the right and power, and is hereby authorized by the Licensee, to immediately declare this Agreement terminated as if it had naturally expired, notwithstanding any other provision in this Agreement to the contrary.

20. Fundraising/Contribution

Any planned fundraising activities to occur on the Licensed Premises must first be presented in writing for authorization by the Commissioner at least thirty (30) days prior to the scheduled event. All proceeds generated by activities on the Licensed Premises shall be utilized to benefit the people of Suffolk County through maintenance and upkeep of the Licensed Premises as well as programs conducted for the public at the site.

21. Not a Co-Partnership

Nothing herein contained shall create or be construed as creating a co-partnership between the Department and the Licensee, or between the County and the Licensee, or to constitute the Licensee or the Licensee's employees as agents or employees of the Department or of the County.

22. County Representatives

It is expressly understood and agreed by and between the parties hereto that the officers and agents of the County and the Department and its officers, employees, and agents are acting in a representative capacity for the County of Suffolk and not for their own benefit, and that neither the Licensee nor any occupant of the Licensed Premises shall have any claim against them or any of them as individuals in any event whatsoever.

23. County Monies

As to the obligation of the County under the provisions of this Agreement, the same shall be deemed executory only to the extent of the monies appropriated therefor by the Suffolk County Legislature, and no liability shall be incurred by the County beyond the monies available for that purpose.

24. Change in Park Facilities

It is understood that the County may from time to time make changes in the location and capacities of park facilities, including the Licensed Premises, and methods of operations and may change the amount charged for the use of same or may discontinue certain park facilities or their use by the public during the term of this Agreement. The Licensee shall not make any claims for loss of profits or anticipated earnings as a result of any changes in the park facilities, including the Licensed Premises.

25. Change in Department

In the event that during the term of this Agreement, the functions and duties of the Department are transferred to a new or other department of the County of Suffolk, then in that event the said new or other department will assume the functions and duties of the Department hereunder.

26. Severability; No Implied Waiver

It is expressly agreed that if any term or provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and every other term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law. No waiver shall be inferred from any failure or forbearance of the County to enforce any provision of this Agreement in any particular instance or instances, but the same shall otherwise remain in full force and effect notwithstanding any such failure or forbearance.

27. Independent Contractor

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

28. Assignment and Subcontracting

a. The Licensee shall not assign, transfer, convey, subcontract, or otherwise dispose of this Agreement, or any of its right, title or interest therein, or its power to execute this Agreement, or assign all or any portion of the monies that may be due or become due to the Licensee under the terms of this Agreement, to any person or corporation, without the prior consent in writing of the County, and any attempt to do any of the foregoing without such consent shall be of no effect.

b. The Licensee shall not enter into subcontracts for any

of the work contemplated under this Agreement without obtaining prior written approval of the Department. Such subcontracts shall be subject to all of the provisions of this Agreement and to such other conditions and provisions as the Department may deem necessary; provided, however, that notwithstanding the foregoing, unless otherwise provided in this Agreement, such prior written approval shall not be required for the purchase of articles, supplies, equipment and services which are incidental to, but necessary for, the performance of the work required under this Agreement. No approval by the Department of any subcontract shall provide for the incurrence of any obligation by the County in addition to the total agreed upon price. The Licensee shall be solely responsible to the County for the performance and services under this Agreement, whether the work is performed by the Licensee or its subcontractors.

29. Cooperation on Claims

The Licensee agrees to render diligently to the County any and all cooperation, without additional compensation, that may be required to defend the County against any claims, demand, or action that may be brought against the County in connection with this Agreement.

30. Conflicts of Interest

The Licensee agrees that it will not, during the term of this Agreement, engage in any activity that is contrary to and/or in conflict with the goals and purposes of the County. The Licensee is charged with the duty to disclose to the County the existence of any such adverse interests, whether existing or potential. This duty shall continue so long as this Agreement remains in effect. The Commissioner, upon consultation with the County Attorney, shall ultimately make the determination as to whether or when a conflict exists or may potentially exist after full disclosure is obtained.

31. Non-Discrimination in Services

During the performance of this Agreement, the Licensee agrees he/she will not, on the grounds of race, creed, color, national origin, sex, age, disability, sexual orientation, military status or marital status, deny any individual any service(s) or other benefits provided in accordance with this Agreement or provide any service(s) or other benefits to an individual which are different, or are provided in a different manner from those provided to others in accordance with this Agreement.

32. Nonsectarian Declaration

The Licensee agrees that all services performed under this Agreement are secular in nature, that no funds received pursuant to this Agreement will be used for sectarian purposes or to further the advancement of any religion, and that no services performed pursuant to this Agreement will discriminate on the basis of religious belief. Furthermore, the Licensee agrees that all program services are and will be available to all eligible individuals regardless of religious belief or affiliation.

33. Publications and Publicity

Licensee shall not issue or publish any book, article, report or other publication related to the Services provided pursuant to this Agreement without first obtaining prior written approval from the County. Any such printed matter or publication shall contain the following statement in clear and legible print: "This publication is fully or partially funded by the Suffolk County Executive's Office." The Licensee shall not issue press releases or any other information provided to the media, in any form, concerning the Services provided pursuant to this Agreement without first obtaining written approval from the Department.

34. Copyrights and Patents

- a. **Copyrights.** If the work of the Licensee under this Agreement should result in the production of original books, manuals, films or other materials for which a copyright may be granted, the Licensee may secure copyright protection. However, the County reserves, and the Licensee hereby gives to the County, and to any other municipality or government agency or body designated by the County, a royalty-free, nonexclusive license to produce, reproduce, publish, translate or otherwise use any such materials.
- b. **Patents.** If the Licensee under this Agreement makes any discovery or invention in the course of or as a result of work performed under this Agreement, the Licensee may apply for and secure for itself patent protection. However, the County reserves, and the Licensee hereby gives to the County, and to any other municipality or government agency or body designated by the County, a royalty-free, nonexclusive license to produce or otherwise use any item so discovered or patented.

35. Confidentiality

Any records, reports or other documents of the County or any of its agencies used by the Licensee pursuant to this Agreement or any documents created as a part of this Agreement shall remain the property of the County and shall be kept confidential in accordance with applicable laws, rules, and regulations.

36. No Intended Third Party Beneficiaries

This Agreement is entered into solely for the benefit of the County and the Licensee. No third party shall be deemed a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.

37. Certification as to Relationships

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

38. All Rights Reserved

All rights not specifically granted in this Agreement are reserved to County.

39. Governing Law

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

40. No Oral Changes

No modification of this Agreement shall be valid unless written in the form of an Addendum or Amendment signed by both parties and approved by the Commissioner and the County Comptroller as to financial safeguards upon such terms and conditions as may be mutually agreed upon between the Licensee and the County but no such modification, termination, cancellation, or extension shall be effective until so executed and approved.

41. Entire Agreement

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

End of Text for Exhibit A

Exhibit B
Suffolk County Legislative Requirements for Contracts

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

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

Required Form:

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

2. Living Wage Law

This Agreement is subject to the Living Wage Law of the County of Suffolk. The law requires that, unless specific exemptions apply all employers (as defined) under service contracts and recipients of County financial assistance, (as defined) shall provide payment of a minimum wage to employees as set forth in the Living Wage Law. Such rate shall be adjusted annually pursuant to the terms of the Suffolk County Living Wage Law of the County of Suffolk. Under the provisions of the Living Wage Law, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law. The Licensee represents and warrants that it has read and shall comply with the requirements of Suffolk County Code Chapter 347, Suffolk County Local Law No. 12-2001, the Living Wage Law.

Required 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 Local Law No. 26-2003

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

- a. The Licensee shall not use County funds to assist, promote, or deter union organizing.
- b. No County funds shall be used to reimburse the Licensee for any costs incurred to assist, promote, or deter union organizing.
- c. The County of Suffolk shall not use County funds to assist, promote, or deter union organizing.
- d. No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote, or deter union organizing.

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

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

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

Required Form:

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

4. Lawful Hiring of Employees Law

This Agreement is subject to the Lawful Hiring of Employees Law of the County of Suffolk (Local Law 52-2006). 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 Licensee 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 this agreement.

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

The Licensee represents and warrants that it has read, is in compliance with, and shall comply with the requirements of Suffolk County Code Chapter 234, Suffolk County Local Law No. 52-2006, the Lawful Hiring of Employees Law.

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

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

6. Prohibition Against Contracting with Corporations that Reincorporate Overseas

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

7. Child Sexual Abuse Reporting Policy

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

8. Non Responsible Bidder

The Licensee represents and warrants that it has read and is familiar with the provisions of Suffolk County Code Chapter 143, Article II, §§143-5 through 143-9. Upon signing this Agreement the Licensee certifies that he, she, it, or they have not been convicted of a criminal offense within the last ten (10) years. The term "conviction" shall mean a finding of guilty after a trial or a plea of guilty to an offense covered under the provision of Section 143-5 of the Suffolk County Code under "Nonresponsible Bidder."

9. Use of Funds in Prosecution of Civil Actions

Prohibited

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

10. Suffolk County Local Laws

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

End of Text for Exhibit B

Exhibit C Notices and Contact Persons

1. Operational Notices

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

For the County:
By Regular or Certified Mail in Postpaid Envelope or by Nationally Recognized Courier Service or by Fax and Email

Suffolk County Department of Parks, Recreation and Conservation
P.O. Box 144, Montauk Highway
West Sayville, New York 11796
Attn: Contracts Management Unit
Tel No.: 631-854-4949
Fax No.: 631-854-4978
E-mail Address: colleenhofmeister@co.suffolk.ny.us

And

For the Licensee:
By Regular or Certified Mail in Postpaid Envelope or by Nationally Recognized Courier Service or by Fax and Email

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

Tel No.: 631-878-8900
Fax No. 631-874-4967
E-mail Address: flombardi@ighl.org

2. Notices Relating to Termination, Indemnification or Litigation

In the event the Licensee receives a notice or claim or becomes a party (plaintiff, petitioner, defendant, respondent, third party complainant, third party defendant) to a lawsuit or any legal proceeding related to this Agreement, the Licensee shall immediately deliver to the County Attorney, at the address set forth below, copies of all papers filed by or against the Licensee.

Any communication or notice regarding insurance, indemnification, termination or litigation shall also be sent to the following address, or at such other address that

may be specified in writing by the parties and must be delivered as follows:

For the County:
By Nationally Recognized Courier Service or Personally and by First Class Mail

Joseph J. Montuori, Commissioner Suffolk County
Department of Parks, Recreation and Conservation
P.O. Box 144, Montauk Highway
West Sayville, New York 11796

and

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

and

For the Licensee:
By Nationally Recognized Courier Service or Personally and First Class Mail

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

3. Changes in Contact Persons.

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

4. Receipt of Notice

Notices shall be deemed to have been duly delivered (i) if by First Class Mail, on the date they are mailed or deposited with the United States Postal Service; or (ii) if mailed by Registered or Certified mail, upon the seventh business day after the mailing thereof; or (iii) if by Nationally Recognized Courier service, upon the first business day subsequent to the transmittal thereof; or (iv) if by Fax or Email, upon the transmittal thereof; or (v) if personally, pursuant to New York Civil Practice Law and Rules Section 311. "Business Day" shall be defined as any day except a Saturday, a Sunday, or any day in which commercial banks are required or authorized to close in Suffolk County, New York.

5. Litigation/Accidents

- a. In the event the Licensee becomes a party (plaintiff, petitioner, defendant, respondent, third party complainant, third party defendant, etc.) to a lawsuit or any legal proceeding, arising out of this Agreement or in connection with the Licensed Premises, the Licensee will immediately forward copies of all papers filed by or against the Licensee to the Department and the Suffolk County Department of Law at the addresses listed above.
- b. The Licensee shall notify the County of any accidents and/or claims, or property damage, arising on or within the Licensed Premises. Notice of accidents and/or claims shall be given immediately (or as soon as possible) to the County by telephone, at (631) 854-4949 or Park Police at (631) 854-1422 or at such other number the County provides to the Licensee in writing.
- c. In addition, written notice, together with a report on the incident and all accompanying documentation, shall be provided in writing to the County as soon as practicable, however, in any event within (1) business day, as defined above, of the Licensee's receipt of notice or of information regarding an accident or claim.
- d. In the event of any disturbance, emergency, criminal or illegal behavior, serious violations of the Department's rules and regulations and other circumstances that may warrant such action, the Licensee shall also immediately notify the Park Police at (631) 854-1422 and/or other emergency responders.
- e. All written notices to the County shall comply with this section.

End of Text for Exhibit C

Exhibit D Description of Services

1. Operations and Use of Licensed Premises

- a. In consideration of the provision and maintenance of the Licensed Premises by the County, the Licensee agrees to help preserve and foster public appreciation for the unique features and historic value of the Licensed Premises at its own cost and expense.
- b. The Licensee's use of the Licensed Premises is to be non-exclusive, with the Licensee being granted use of the Licensed Premises at the sole discretion of the Commissioner. The facility shall at all times be operated in a manner that meets the approval of and is satisfactory to the Commissioner and shall conform to rules and directives of the Department.
- c. The Licensee shall, subject to the approval of the Commissioner, be permitted to maintain an office/storage trailer and shed in conjunction with the maintenance and management of the memorial at the licensee's sole cost and expense, at a location to be approved by the Commissioner in writing.
- d. The Licensee understands and agrees that the Commissioner, in his discretion, reserves the right to make changes from time to time as to the use of the Licensed Premises, in the best interest of the County.
- e. The Licensee shall be responsible for the security and safeguarding of the office/storage trailer and shed located on the premises throughout the term of this Agreement.
- f. The Licensee, at its sole cost and expense, shall manage the memorial and maintain and provide the gardens, plantings and flags of the national origin of the victims, located at the memorial. Detailed and specific plans regarding the plantings shall be submitted to the Commissioner in writing prior to the commencement of any such plantings and in addition, the Licensee shall receive such approval from the Commissioner in writing, prior to the commencement of any such plantings.
- g. Due to the historic nature of the memorial, the Licensee understands and agrees that no changes may be made to the Licensed Premises, or any part thereof, including, but not limited to, all structures and vegetation without the written approval of the Department. In addition, the Licensee understands and agrees that any proposed improvements to designated wetlands shall require the approval of the New York State Department of Environmental Conservation ("NYSDEC"), which shall be at the Licensee's cost and expense, however all applications to the NYSDEC shall be administered through the Department.
- h. Collections that are acquired by the Licensee specifically for the Licensed Premises are to remain on site and be used solely for the maintenance and management of the memorial. A detailed inventory of said collections is to be provided to the Commissioner on the first of each year.
- i. The Licensee shall not impose any fees or charges pursuant to this Agreement and shall conform to rules and directives of the Department.
- j. The Licensee shall not incur any expense, fees or charges in the name of the County nor shall the County be responsible for any debt incurred by the memorial without the prior written consent of the County.

2. Plan; Operations Schedule; Schedule of Charges

- a. **Plan.** The Licensee shall be responsible for the management of the memorial and maintenance as set forth in this agreement and shall submit to the Department in writing a proposed operational plan that includes a detailed and specific description of the hours, proposed maintenance, plantings, and any annual memorial programs which may be held by the Licensee for that year, no later than January 30th of each year of this Agreement. Approval of the proposed plan is at the sole discretion of the Commissioner. Once the plan has been approved in writing by the Department ("the Plan"), it shall be incorporated herein as if originally included. Prior to implementation of the Plan, the Licensee shall procure, in accordance with the paragraph entitled Licenses and Permits in Schedule A herein, all permits or approvals necessary for the legal provision of the Services hereunder. Any changes to the Plan shall require the prior written approval of the Department.
- b. **Operation Schedule.** The memorial shall be open to the public only during the hours of operation of the park. Licensee shall submit to the Department in writing a proposed schedule that includes a detailed time schedule of any memorial program to be held at the Licensed Premises, no later than January 30th of each year of the Agreement. Approval of the proposed schedule is at the sole discretion of the

Commissioner. Once the schedule has been approved in writing by the Department ("the Schedule"), it shall be incorporated herein as if originally included. Any changes to the Schedule shall require the prior written approval of the Department, however, it is recognized that certain events are weather-dependent. The Commissioner shall be notified of schedule changes or closures caused by weather or emergency.

3. Maintenance and Upkeep of Licensed Premises

- a. The County shall maintain the monument on Licensed Premises in good and serviceable condition and repair, at its sole cost and expense, in a manner acceptable to the Commissioner. The Licensee shall repair any damage to the Licensed Premises, including the monument, caused by any act or omission of the licensee, its employees, agents, invitees, contractors or subcontractors at its sole cost and expense, in a manner acceptable to the Commissioner.
- b. All costs associated with the maintenance, upkeep, renovations, alterations, and necessary repairs of the office/storage trailer, shed and gardens at the Licensed Premises shall be at the Licensee's sole cost and expense.
- c. All space, equipment and furnishings covered by this Agreement and used by the Licensee shall be maintained, cleaned, and operated safely by the Licensee at its own cost and expense as directed by the Commissioner and as otherwise in accordance with the provisions of this Agreement and any other recognized and accepted standards of operation.
- d. Where necessary, as determined by the Commissioner, the Licensee shall provide security for repairs made on the Licensed Premises by the Licensee, in a manner that is appropriate, at its own cost and expense.
- e. The Licensee, at its sole cost and expense, shall manage the memorial and maintain and provide the gardens and plantings located at the memorial. Detailed and specific plans regarding the plantings shall be submitted to the Commissioner in writing prior to the commencement of any such plantings and in addition, the Licensee shall receive such approval from the Commissioner in writing, prior to the commencement of any such plantings.

4. Improvements

- a. The Licensee agrees that it shall not improve, construct, or renovate the Licensed Premises over the term of this Agreement without the prior written

consent of the Commissioner, which shall be at Licensee's sole cost and expense.

- b. It is expressly understood and agreed that the Licensed Premises is and shall be the sole property of the County. All improvements to the Licensed Premises shall immediately become the property of the County and become part of the Licensed Premises and shall be lien and encumbrance free.
- c. The Licensee is responsible for the condition and appearance of the Licensed Premises and the Licensed Premises shall at all times be maintained in a clean and safe condition. Where there are any ongoing improvements being made to the Licensed Premises by the Licensee, that portion of the Licensed Premises shall be secured by the Licensee in an appropriate manner at its own cost and expense.
- d. All improvements, construction, and renovations approved by the Commissioner shall be constructed, installed, maintained, and operated in a good, safe, and workmanlike manner, and all work shall be performed in accordance with good, sound, and acceptable construction procedures. Immediately following the completion of any improvement, construction or renovation, the Licensee shall restore all areas affected to the conditions existing at the time of execution of the Agreement.

5. Licensee Provided Services

- a. **Maintenance and Repair.** The Licensee shall throughout the term of this Agreement, unless otherwise agreed to in writing by the Department and except as provided in paragraph 6(c) of this Exhibit, maintain and keep in serviceable condition all new or existing facilities, improvements, equipment, and furnishings within the Licensed Premises, at its own cost and expense. In the event this Agreement is terminated or otherwise expires, the Licensee is responsible, and shall remain liable, for all costs and expenses associated with returning the Licensed Premises, facility improvements, equipment and furnishings to a serviceable condition. The licensee at its sole cost and expense shall manage the memorial and maintain and provide the gardens and plantings located at the memorial. In addition, the Licensee shall maintain the office/storage trailer and shed.
- b. **Personnel.** The Licensee shall provide sufficient personnel, as determined by the Commissioner, to adequately carry out the terms of this Agreement at the Licensee's own cost and expense.

- c. **Sanitary Condition of Premises/Grounds.** The Licensee is responsible for the appearance of the memorial, office/storage trailer and shed covered under this Agreement and shall at all times keep the memorial, office/storage trailer, shed, and area surrounding them in a clean, litter-free, and sanitary condition to the satisfaction of the Commissioner and shall cleanse, fumigate, disinfect, and deodorize the premises covered by this Agreement whenever directed to do so by the Commissioner.

- d. **Responsible Principal.** The Licensee undertakes and agrees that at least one (1) principal will be designated by the Licensee who shall be responsible for the activities on the Licensed Premises and who has the authority to act on behalf of the Licensee with regard to said operation thereof. If a manager is to be employed, the Licensee agrees to employ a manager who is satisfactory to the Commissioner, who shall be held accountable to the same minimum standard of participation as set forth above. The Licensee shall furnish the name, home address and home or cell telephone numbers of the responsible principal or manager so that he/she can be reached at all times. The Licensee shall furnish such information for another responsible person to serve as a second contact person in the event that such principal or manager becomes unavailable or is unable to be reached.

6. County Responsibilities

- a. **Utilities.** The County will provide electrical service to the memorial and trailer located at the Licensed Premises. The Licensee shall be responsible for all costs associated with any telephone service. In the event of fluctuation or interruption electricity service provided by the County, the Department shall undertake to repair such interruption promptly; however, the County shall not be liable or in any manner responsible for any claim, loss or damage of any kind sustained by the Licensee or any third party as a result of such delay or interruption in utility service regardless of cause. Under all circumstances, the Licensee shall be solely responsible for the cost and provision of its own sources of temporary power as may be necessary.

- b. **Refuse and Garbage; Costs.** The County shall be responsible for all refuse and garbage removal costs. All refuse and garbage is to be collected and deposited in such locations and containers deemed satisfactory to the Commissioner.

- c. **Maintenance.** The County shall be primarily responsible for maintenance and restoration of the monument and the grounds of the Licensed Premises. Maintenance of the grounds by the County shall include grass cutting and snow removal and exclude the maintenance of the gardens, office/storage trailer and shed.

- d. **Extermination.** The County shall provide exterminating services as needed and in accordance with County regulations.

End of Text for Exhibit D

Exhibit E
Financial Terms and Conditions/Other Variable Terms and Conditions

1. Fees; Expenditures; Accounting and Record Keeping; Inspection of Records; Reporting; N.Y.S. Sales Tax

- a. Licensee shall not charge any fees to the public for access to the memorial nor offer for sale any goods or merchandise.
- b. Licensee shall not offer any merchandise for sale at the memorial.
- c. Licensee agrees that all revenue collected by the Licensee that is generated arising out of this Agreement, or for the use and upkeep of the memorial, shall be utilized to benefit the people of Suffolk County through the maintenance and upkeep of the Licensed Premises only.

2. Comptroller's Rules and Regulations for Consultant Agreements

Licensee shall comply with the "Comptroller's Rules and Regulations for Consultant Agreements" as promulgated by the Department of Audit and Control of Suffolk County and any amendments thereto during the term of this Agreement. The County shall provide the Licensee with a copy of any amendments to the "Comptroller's Rules and Regulations for Consultant Agreements" during the term of this Agreement.

End of Text for Exhibit E

Rev. 3/24/11 Law No. 30-PK-005
Term: 9/01/10-12/31/2020; (2) 5 year options
TWA Flight 800 Memorial

Exhibit F
Suffolk County Resolution No.



Exhibit G
Site Map of Licensed Premises



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