

APPENDIX A

TOWN-RELATED DOCUMENTS

**Appendix A-1
Community Benefits Agreement (CBA)**

COMMUNITY BENEFITS AGREEMENT
HUNTINGTON STATION PROJECT

I. PURPOSE

This Agreement, dated this 14th of January, 2015, is by and between the Town of Huntington (the "Town"), the Town of Huntington Economic Development Corporation (the "EDC") and Renaissance Downtowns at Huntington Station LLC (the "Master Developer"). Master Developer is working with the Town and the EDC to advance the development of the Huntington Station downtown area. Master Developer has entered into an MDA (as defined below) with regard to the development of certain Municipality Properties (as defined in the MDA) located within the Project Area as defined in the MDA. All Parties to this Agreement are interested in these development activities and believe said development activities provide tremendous benefits to Huntington Station and surrounding communities. The Parties therefore are entering into this Agreement to establish certain commitments of the Parties to each other with respect to the Project, and to maximize the community benefits derived as a result of the Project.

II. DEFINITIONS

As used in this Agreement, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

"Advisory Committee" shall mean a committee designated by the Town of Huntington to assist in monitoring and oversight of the terms of the Policies.

"Agreement" shall mean this Community Benefits Agreement, including all attachments.

"Applicant(s)" shall mean any individual(s) or entity(ies) developing a Covered Project in the Project Area.

"Assumption Agreement" shall mean Attachment D.

"Community Benefits Policies" shall mean the Construction Jobs Policy, the Operations Jobs Policy, and the Local Contracting Policy.

"Construction Jobs Policy" shall mean Attachment A.

"Covered Project" shall mean any project involving improvements to a Municipality Property (as defined in the MDA) and/or improvements to a project containing both Municipality Property(ies) and any other PAP(s) (as defined in the MDA) where Project Construction Work shall take place in Huntington Station.

"Effective Date" shall mean the date set forth in Section XI.I.

"Fees" shall mean payments by Applicants pursuant to a fee schedule attached hereto as Attachment E.

"Jobs and Business Referral Center" shall mean a referral center designated by the Town as such for purposes of implementation of the Policies.

"Local Contracting Policy" shall mean Attachment C.

"Local Contracting Referral Center" shall mean a referral center to be designated by the Town as such for purposes of implementation of this Policy.

"Master Developer" shall mean as defined above.

"MDA" shall mean the Master Developer Agreement executed April 26, 2012, by and between the Town, the Master Developer, and the EDC, as amended by that certain First Amendment to Master Developer Agreement by and between the Town, the EDC and the Developer dated as of February 4, 2014.

"Operations Job" shall have the meaning set forth in the Operations Jobs Policy. "Operations Jobs Policy" shall mean Attachment B.

"Party" shall mean the Town, the EDC and the Master Developer. "The Parties" shall mean each and every Party.

"Policies" shall mean the Construction Jobs Policy, Operations Jobs Policy and Local Contracting Policy, collectively.

"Project Construction Agreement" shall mean any contract, sub-contract, lease or sub-lease or any other agreement under which Project Construction Work may be performed on a Covered Project.

"Project Area" shall mean the area comprised of the Project Area Properties.

"Project Area Properties" shall mean those properties to be included in the Project as shown on Exhibit A of the MDA.

"Project Construction Work" shall mean any construction work performed on a Covered Project.

"Project PLA" shall mean any project labor agreement or project stabilization agreement covering Project Construction Work.

"Successor" shall mean successors in interest, transferees, assigns, agents, and representatives.

"Targeted Businesses" shall have the meaning set forth in the Local Contracting Policy.

III. CONSTRUCTION EMPLOYMENT.

A. Master Developer's Inclusion of Construction Jobs Policy in Relevant Contracts. Master Developer shall include the Construction Jobs Policy as a material term of any Project Construction Agreement to which it is a party.

B. Master Developer's Inclusion of Construction Jobs Policy in Project PLAs. Master Developer shall enter into a Project PLA only if the Project PLA incorporates the Construction Jobs

Policy, facilitates the achievement of the goals of the Construction Jobs Policy, and enables the Project to be developed in an economically viable manner. Furthermore, the Parties will work with union representatives to either (a) eliminate or modify conditions to union/apprentice membership that act as barriers to membership, or (b) identify programs that will enable aspiring union/apprentice program members to satisfy such conditions.

C. Inclusion of Construction Jobs Policy in Relevant Town and EDC Contracts. The Town and the EDC shall each include the Construction Jobs Policy as a material term of any Project Construction Agreement to which it is a party.

D. Inclusion of Construction Jobs Policy in Town and EDC Project PLAs. The Town and/or the EDC may enter into a Project PLA only if the Project PLA incorporates the Construction Jobs Policy, facilitates the achievement of the goals of the Construction Jobs Policy and enables the Project to be developed in an economically viable manner. Furthermore, the Parties will work with union representatives to either (a) eliminate or modify conditions to union/apprentice membership that act as barriers to membership, or (b) identify programs that will enable aspiring union/apprentice program members to satisfy such conditions.

E. Inclusion of Policies in the Town's and EDC's Development Agreements. The Town and the EDC shall each include compliance with the Policies as a material term of all development agreements or similar agreements into which it enters with regard to land use development within the Project Area.

F. Apprentice Program Requirement. Notwithstanding anything to the contrary in this Agreement or any of the attached policies, the Town and the Master Developer agree and acknowledge that the apprenticeship requirements set forth in Huntington Town Code Section 87-55.1[Added 5-10-2005 by L.L. No. 16-2005], as existing as of the date of this Agreement, shall apply with respect to construction jobs for all Project Construction Work in the Project Area, except that (a) the threshold set forth in such section shall, for the purposes of this Agreement, be reduced from one hundred thousand (100,000) square feet to seventy-five thousand (75,000) square feet, and (b) with respect to the currently non-sewered properties within the Project Area (i.e., those properties within the Project Area that are outside of the Huntington Sewer District TSD-06, as of the date hereof, the Developer shall have the right to propose alternatives to the apprenticeship programs required as a condition to the development of 75,000 square feet or more as referenced in Section 87.55.1 (b) of the Town Code and as applicable herein. The parties further agree and acknowledge that the terms and conditions of any such alternative must be acceptable to both the Town and the Developer and that such acceptance shall be a condition precedent to site plan approval for any such project. For the purpose of this Agreement, the parties agree and acknowledge that Section 87.55-1 of the Town Code does not apply to the construction of buildings or portions thereof for residential use.

IV. EMPLOYMENT IN PROJECT OPERATIONS.

A. Master Developer's Inclusion of Operations Jobs Policy in Relevant Contracts. Master Developer shall include the Operations Jobs Policy as a material term of any lease or non-construction contract that it enters into under which Operations Jobs may be performed.

B. Master Developer Compliance. Master Developer shall comply with all terms of the Operations Jobs Policy with regard to its direct employment of workers in performance of Operations Jobs.

V. LOCAL CONTRACTING POLICY.

A. Inclusion of Local Contracting Policy in Relevant Contracts. Master Developer shall include the Local Contracting Policy as a material term of any leases, Project Construction Agreements, or other contracts under which subcontracts or subleases may be awarded.

B. Master Developer Compliance. Master Developer shall comply with the Local Contracting Policy in award of contracts for work to be performed within the Project Area.

VI. JOBS AND BUSINESS REFERRAL CENTER.

A. Establishment. The Town shall establish a Jobs and Business Referral Center, in an appropriate form, in a readily accessible location in Huntington Station. The Jobs and Business Referral Center will be operated by an entity(ies) or an individual(s), selected by the Town Board that possesses the necessary expertise to fulfill the required responsibilities as set forth by the Town. The Jobs and Business Referral Center shall serve as a resource for contractors, employers and job seekers by providing the following services:

- connect job seekers with job training, education and other support services that are organized and/or operated by the Town, any of its agencies, organized labor and any other local, state or federal agency providing employment training and/or other employment services;
- receive notifications of job opportunities from employers at Covered Projects;
- circulate such notifications to a network of local job training programs;
- cooperating with organized labor and other entities engaged in job training, promptly refer qualified workers to employers in response to notifications of job opportunities;
- provide technical support to employers, to assist them in understanding and complying with the Construction Jobs Policy and Operations Jobs Policy;
- in referring workers and businesses, apply the priorities set forth in the Community Benefits Policies;
- assist the Town and the Advisory Committee in monitoring and/or enforcement with the Community Benefits Policies.

The Town may, in its sole discretion, choose separate entities or individuals to operate the Jobs and Business Referral Center and the Local Contracting Referral Center, or alternatively, choose one entity or individual to run both Centers. The Jobs and Business Referral Center will be staffed with one or more persons who are bilingual in both English and Spanish.

B. Funding. Funding for the Jobs and Business Referral Center shall be provided by Fees from Applicants for Covered Projects, as well as from donations, grants or other funding mechanisms and any discretionary funding provided by the Town. Simultaneous with the execution of an agreement between the Town and the individual(s) or entity(ies) selected by the Town to operate the Jobs and Business Referral Center, Master Developer shall deposit \$20,000.00 (as a pre-payment of Fees due hereunder) into a designated escrow account with the

Town to be used solely to fund costs for supporting the activities of the Jobs and Business Referral Center. Such pre-funded Fees shall be credited towards any subsequent Fees due by Master Developer pursuant to the Fee Schedule. Notwithstanding the foregoing, it is the intention of the Parties that the majority of the fees generated pursuant to the terms and conditions of this Agreement will be devoted and applied to those Community Serving Programs and Facilities that will be proposed and accepted as provided herein.

VII. LOCAL CONTRACTING REFERRAL CENTER.

A. **Establishment.** A Local Contracting Referral Center shall be established by the Town in a readily accessible location in Huntington Station. The Local Contracting Referral Center will be operated by an entity(ies) or an individual(s), selected by the Town Board that possesses the necessary expertise to fulfill the required responsibilities as set forth by the Town, The Local Contracting Referral Center serves as a resource that sets forth certain requirements regarding the awarding of contracts related to Covered Projects by providing the following services:

- screen and maintain a list of Targeted Businesses (as defined in this Policy) that are prequalified for performance of Covered Contracts related to Covered Projects; assess and maintain information on the capacities and experience of Targeted Businesses, and their status as Targeted Businesses; promptly refer such businesses to entities awarding covered contracts;
- provide technical support to entities awarding Construction Subcontracts and Covered Contracts, to assist them in understanding and complying with this Policy;
- assist the Town and the Advisory Committee in monitoring and/or enforcement of this Policy.

The Town may, in its sole discretion, choose separate entities or individuals to run the Jobs and Business Referral Center and the Local Contracting Referral Center, or alternatively, choose one entity or individual to run both centers. The Local Contracting Referral Center will be staffed with one or more persons who are bilingual in both English and Spanish."

A. **Funding.** Funding for the Local Contracting Referral Center shall be provided by Fees from Applicants for Covered Projects, as well as from donations, grants or other funding mechanisms and any discretionary funding provided by the Town. Simultaneous with the execution of an agreement between the Town and the individual(s) or entity(ies) selected by the Town to operate the Local Contracting Referral Center, Master Developer shall deposit \$20,000.00 (as a pre-payment of Fees due hereunder) into a designated escrow account with the Town to be used solely to fund costs for supporting the activities of the Local Contracting Referral Center. Such pre-funded Fees shall be credited towards any subsequent Fees due by Master Developer pursuant to the Fee Schedule. Notwithstanding the foregoing, it is the intention of the Parties that the majority of the fees generated pursuant to the terms and conditions of this Agreement will be devoted and applied to those Community Serving Programs and Facilities that will be proposed and accepted as provided herein.

VIII. COMMUNITY-SERVING PROGRAMS AND FACILITIES.

A. Cooperative Efforts Toward Community-Serving Programs and Facilities. The following categories of community-serving programs and facilities are examples of the types of community programs that may be established by the Town, provided that they are located within Huntington Station: education programs, youth-oriented activities, crime prevention programs, public safety, emergency services and health and wellness programs. Funding for each of these community-serving programs and facilities may be provided by the Town and/or Fees from the Master Developer and/or Applicants for Covered Projects, as well as from donations, grants or other funding mechanisms and any discretionary funding provided by the Town. The program proposals shall be reviewed and programs to be funded shall be selected by the Town, by the EDC or other appropriate entity designated by the Town with input from the Advisory Committee referenced in Article X below.

For each of the community-serving programs and facilities, Master Developer shall assist the Town by working collaboratively with the Town to (i) identify strategic partners, (ii) develop fund-raising strategies, (iii) identify suggested locations of community-serving facilities in the downtown area, (iv) obtain necessary approvals and permits, and (v) manage facility construction.

- B. Funding.** Funding for the Community Serving Programs and Facilities shall be provided by Fees from Applicants for Covered Projects, as well as from donations, grants or other funding mechanisms and any discretionary funding provided by the Town. Upon execution of the agreements with the individual(s) or entity(ies) selected to operate each of the Jobs and Business Referral Center and the Local Contracting Referral Center, Master Developer shall deposit \$20,000.00 (as a pre-payment of Fees due hereunder) into a designated escrow account with the Town to be used solely to fund costs for supporting the activities of the Community Serving Programs and Facilities. Such pre-funded Fees shall be credited towards any subsequent Fees due by Master Developer pursuant to the Fee Schedule. It is the intention of the Parties that the majority of the fees generated pursuant to the terms and conditions of this Agreement will be devoted and applied to those Community Serving Programs and Facilities that will be proposed and accepted as provided herein.

IX. PROJECT AREA PROPERTIES.

A. Inclusion in Project Area Properties. The Town shall require that any individual(s) or entity(ies) that owns any Municipality Property (as defined in the MDA) that elects to develop its property must comply with the Community Benefits Policies, as a condition of the Town's (or any department's) approval of any such proposed development.

X. MONITORING AND ENFORCEMENT.

A. Advisory Committee.

1. Establishment. The Town shall appoint an Advisory Committee to assist in monitoring and oversight of this Agreement. The Town shall establish basic rules of operation of the Advisory Committee. Additional rules of operation may be established by the Advisory Committee, and shall be subject to approval by the Town.

2. Composition. The Town shall initially act as the Advisory Committee and the Town shall, within 30 days of formation of both the Jobs and Business Referral Center and the Local Contracting Referral Center and selection by the Town of an entity(ies) or individual(s) to operate both Centers, appoint five (5) volunteer members to serve on the Advisory Committee along with Town designees. Volunteer members shall be specific individuals, rather than organizations, and shall be appointed to and agree to serve designated terms. The Town shall establish standards for regular participation, and the Town shall, in their sole discretion, replace members who do not satisfy such standards. A representative of the Master Developer shall have the option to participate in all meetings and shall be provided with advance notice of all meetings of the Advisory Committee. The Master Developer will have no vote on the Advisory Committee and will provide technical assistance to the Advisory Committee as requested.

3. Authority. The Advisory Committee shall have the authority to:

- i. review implementation of this Agreement and the Community Benefits Policies, and work with Parties to attempt to resolve issues that arise in implementation;
- ii. oversee the Jobs and Business Referral Center to monitor and suggest performance improvements;
- iii. oversee the Local Contracting Referral Center to monitor and suggest performance improvements;
- iv. recommend to the Town standardized forms for reporting for purposes of monitoring compliance with the Community Benefits Policies;
- v. recommend to the Town additional measures and initiatives to advance the purposes of this Agreement; and
- vi. recommend to the Town that the Town act to enforce terms of the Community Benefits Policies in identified cases.

B. Use of Liquidated Damages. Any monetary damages, including liquidated damages, collected by the Town pursuant to this Agreement and/or the Community Benefits Policies shall be used solely to support training, referral, monitoring, enforcement, or technical assistance to advance the purposes of this Agreement.

XI. USE OF EMINENT DOMAIN.

A. The Town does not intend to utilize its eminent domain powers against property owners or lawful occupants in the Project Area.

XII. MISCELLANEOUS.

A. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Successors to any Party, and to Successors of Successors to any Party. Master Developer's Successors include, but are not limited to, any party that obtains any interest in any portion of the Municipality Properties located within the Project Area. References in this Agreement to any entity shall be deemed to apply to any Successor of that entity. Master Developer shall not participate in any development entity, including but not limited to a joint

venture or a partnership, to develop any portion of the Covered Project, unless that development entity assumes the obligations of Master Developer in this Agreement, through a written Assumption Agreement in the form of Attachment D.

B. Entire Agreement. The Agreement contains the entire agreement between the Parties and supersedes any prior agreements, whether written or oral. This Agreement may not be altered, amended or modified except by an instrument in writing signed by all Parties.

C. Authority, Representations and Warranties. Each signatory to this Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the entity for whom he or she is signing. Upon proper execution and delivery, this Agreement will have been duly entered into by the Parties, will constitute as against each Party a valid, legal and binding obligation, and will be enforceable by each Party and against each Party in accordance with the terms herein. Each Party agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Agreement in any judicial action or arbitration proceeding, provided that the Parties have complied with the procedural prerequisites to initiation of judicial action or arbitration as set forth in this Agreement.

D. Applicable Law and Compliance with Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed wholly in such State, and shall be enforced only to the extent that it is consistent with those laws and applicable federal and local laws. Parties agree: (i) that their understanding is that all terms of this Agreement are consistent with federal, state, and local law; (ii) that this Agreement shall be reasonably interpreted so as to comply with any conflicting law; and (iii) that if terms of this Agreement cannot be enforced because they are inconsistent with federal, state, or local law, the Parties will meet in good faith to consider amending this Agreement so as to advance its purposes in a manner consistent with such laws. This Agreement shall be enforced in a court of competent jurisdiction with venue in Suffolk County, New York.

E. Severability. If any of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Agreement.

F. Attorneys' Fees. In any litigation or other proceeding arising out of this Agreement, each party shall be responsible for their own attorney's fees and costs incurred in the litigation or other proceeding.

G. Transfer of Interests.

1. Requirements. Master Developer shall comply in all respects with the terms and conditions set forth in Section 6.01 of the MDA in connection with any conveyance of any interest in the entirety of or any portion of the Covered Project or Municipality Properties (as defined in the MDA) located within the Project Area.

2. Procedure. Upon execution of any deed or contract implicating Section XII.G .1, Master Developer shall deliver to the Town an executed copy of the executed Assumption Agreement.

H. Default and Remedies.

1. **Default.** Failure by any Party to perform or comply with any term or provision of this Agreement, if not cured, shall constitute a default under this Agreement.

2. **Right to Cure.** If any Party believes that another Party is in default of this Agreement, it shall provide written notice to the allegedly defaulting Party of the alleged default; offer to meet and confer in a good-faith effort to resolve the issue; and, except where a delay may cause irreparable injury, provide thirty (30) days to cure the alleged default, commencing at the time of the notice. This thirty (30) day period may be extended where cure within the thirty (30) days is not possible, and cure is being diligently pursued. Any notice given pursuant to this provision shall specify the nature of the alleged default, and, where appropriate, the manner in which the alleged default may be cured.

3. **Remedies.** In the event that another Party is allegedly in default under this Agreement, then the Party alleging default (a "Complaining Party"), may elect to waive the default or to pursue remedies as described in this Section. Such remedies may be pursued only after exhaustion of the cure period described above, except where an alleged default may result in irreparable injury, in which case the Complaining Party may immediately pursue the remedies described herein. Remedies may be pursued in state or federal courts of competent jurisdiction and located within the State of New York, with initial venue agreed to be Suffolk County, New York. A Complaining Party may seek relief ordering, and the court shall have the power to order, affirmative equitable and/or affirmative injunctive relief, temporary or permanent, requiring another Party to comply with this Agreement. No Party shall seek relief awarding, and the court shall not have power to award, any money damages, although to the extent that funds are required to be expended or provided by this Agreement, or liquidated damages are specified, the court shall have power to compel the Party in question to expend or provide those funds. Each Party shall bear its own legal fees and other costs of such court action.

I. **Effective Date.** The Effective Date of this Agreement shall be the date upon which this Agreement has been executed by each Party. All commitments of the Parties described herein are effective upon the Effective Date, unless otherwise specified.

J. **No Funding Responsibilities Without Site Plan Approval.** For so long as the MDA remains in full force and effect, other than as set forth in this Agreement, no Party shall have responsibilities to provide funds required by this Agreement unless and until such time as site specific site plan approval has been granted by resolution by the Town of Huntington Planning Board.

K. **Recordation.** Any Party may record this Agreement in the office of the Suffolk County Clerk.

L. **Implementation Through Relevant Contracts.** Where this Agreement requires a Party to impose responsibilities on entities that are not parties to this Agreement, that Party shall ensure that relevant contracts: (i) impose such responsibilities on such entities; (ii) require such entities to impose such responsibilities on subcontractors or other parties involved in the Covered Project through the contract in question; (iii) allow enforcement of such responsibilities directly against such entities by the Town, as an intended third-party beneficiary of relevant contracts; and (iv) require all entities with such responsibilities to provide to Parties and to the Advisory Committee upon request any information necessary to determine

compliance with such responsibilities. If a Party enters into a contract in violation of this Section XII.L, then upon request from the Town it shall either amend that contract to include the provisions described in this Section and required by this Agreement, terminate that contract or be subject to liquidated damages and other remedies pursuant to Attachments A, B or C, as applicable.

M. Waiver. The waiver by any Party of any provision or term of this Agreement shall not be deemed a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed a waiver of any provision or term of this Agreement.

N. Construction. Each of the Parties has had the opportunity to be advised by legal counsel with regard to this Agreement. Accordingly, this Agreement shall not be strictly construed against any Party, and any rule of construction that any ambiguities be resolved against the drafting Party shall not apply to this Agreement.

P. Notices. All notices shall be in writing and shall be delivered either personally (receipt acknowledged), or, by certified mail or recognized overnight carrier, in either case, return receipt requested, shall be addressed to the respective Parties at the addresses below and shall be deemed served on the date of delivery or the date of refusal as shown on a return receipt, as the case may be:

If to Master Developer:

Renaissance Downtowns at Huntington Station LLC
Attn: Donald Monti
9 Gerhard Road
Plainview, NY 11803

With Copy To:

Robert V. Guido, Esq.
Of Counsel
Jaspan Schlesinger LLP
300 Garden City Plaza
Garden City, New York 11530

If to the Town:

The Honorable Frank Petrone
Town Hall
100 Main Street
Huntington, NY 11743

With Copy To:

Cindy Elan-Mangano, Esq. Town Attorney
Town Hall

100 Main Street
Huntington, NY 11743

Barry Lites, Esq.
Law Offices of Barry D. Lites, LLP
23 Green Street, Suite 209
Huntington, NY 11743

Each of the Parties hereto shall promptly notify each other of any changes to their respective addresses above.

P. Counterparts. This Agreement may be executed in two or more counterparts, each of which may be deemed an original, but all of which shall constitute one and the same document.

Q. Further Acts. The Parties shall execute and deliver such further documents and instruments and take such other further actions as may be reasonably necessary to carry out the intent and provisions of this Agreement.

R. Conflict. If any conflict arises between this Agreement and any of the Community Benefits Policies, the provisions of the Community Benefits Policies, as may be amended, shall govern.

S. Covenant of Good Faith and Fair Dealing. The Parties recognize that the successful implementation of this Agreement and their respective ability to perform their obligations under this Agreement will require extraordinary cooperation among them. Accordingly, this Agreement imposes an obligation of good faith and fair dealing on the Parties in the performance and enforcement of their respective rights and obligations hereunder. Each Party, with a shared commitment to honesty and integrity in the performance and administration of this Agreement, agrees to the following mutual duties: (i) each will be held to a standard of good faith and fair dealing in the performance of its duties and obligations under this Agreement, (ii) each will function within the laws and statutes applicable to their duties and responsibilities, (iii) each will cooperate to facilitate the other's performance, (iv) each will avoid hindering the other's performance, (v) each will respond promptly and completely to the reasonable requests of the other, (vi) each will proceed to fulfill its obligations under this Agreement diligently and honestly, (vii) each agrees to use all commercially reasonable efforts to discharge their respective obligations under this Agreement dependent in any measure in another Party's performance, and (viii) each will cooperate in the common endeavor of completing the performance and administration of this Agreement and the consummation of the transactions contemplated by this Agreement in a timely and efficient manner. Except as otherwise provided in this Agreement, all consents and approvals required or desired of any Party shall be promptly addressed and not unreasonably delayed; provided, no Party shall claim that the exercise of a Party's sole, absolute or arbitrary discretion shall be deemed a breach of this Section XI.S.

[Signature Page To Follow]

IN WITNESS WHEREOF, the following Parties have executed this Agreement:

Renaissance Downtowns at Huntington Station LLC:

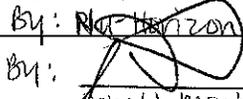
By: RDRXR LLC, Its manager

By: Renaissance Downtowns Investors LLC, Its operations manager

By: Renaissance Downtowns LLC, Its Manager

Its: By: ~~Horizons~~ Management Corp., Its manager

By:


Donald Monti, President

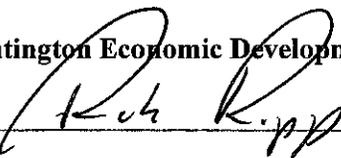
Town of Huntington:

By:


Town Supervisor

Huntington Economic Development Agency:

By:


~~Executive Director~~ CHAIRMAN

List of Attachments:

Attachment A: Construction Jobs Policy

Attachment B: Operations Jobs Policy

Attachment C: Local Contracting Policy

Attachment D: Assumption Agreement

Attachment E: Schedule of Fees

ATTACHMENT A

Construction Jobs Policy Town of Huntington

I. Purpose.

This Construction Jobs Policy sets forth certain requirements regarding hiring and employment for Project Construction Work for Covered Projects within Huntington Station. Contractors working on Covered Projects agree to comply with terms of this Policy as a condition of working on a Covered Project.

II. Definitions.

As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

"Advisory Committee" shall mean a committee designated by the Town of Huntington to assist in monitoring and oversight of the terms of this Policy.

"Applicant(s)" shall mean any individual(s) or entity(ies) developing a Covered Project in the Project Area.

"Assumption Agreement" shall mean Attachment D

"Contractor" shall mean any entity that has entered into a contract for performance of Project Construction Work on a Covered Project, including, but not limited to, a prime contractor, subcontractors of any tier, a construction manager, or a property owner or tenant performing any of the above functions.

"Covered Project" shall mean any project involving improvements to a Municipality Property (as defined in the MDA) where Project Construction Work shall take place in Huntington Station.

"Fees" shall mean payments by Applicants pursuant to a fee schedule attached hereto as Exhibit ____.

"Jobs and Business Referral Center" shall mean a referral center designated by the Town as such for purposes of implementation of this Policy.

"MDA" shall mean the Master Developer Agreement executed April 26, 2012, by and between the Town, the Master Developer, and the EDC, as amended by that certain First Amendment to Master Developer Agreement by and between the Town, the EDC and the Developer dated as of February 4, 2014.

"Percentage Goal" shall have the meaning ascribed to it in III.A. hereof.

"Policy" shall mean this Construction Jobs Policy.

"Prime Contractor" shall mean any entity with a prime contract or construction management contract for performance of Project Construction Work, or a property owner, tenant, or other entity serving prime contracting or construction management functions.

"Project Area Targeted Worker" shall mean an individual that is able to demonstrate that they have domiciled in the Project Area (as defined in the MDA) for at least one (1) year prior to applying for Project Construction Work under the Construction Jobs Policy in question.

"Project Construction Agreement" shall mean any contract, sub-contract, lease or sub-lease or any other agreement under which Project Construction Work may be performed on a Covered Project.

"Project PLA" shall mean any project labor agreement or project stabilization agreement governing Project Construction Work.

"Project Construction Work" shall mean any construction work performed on a Covered Project.

"Project Construction Work Hours" shall mean hours of construction work performed on a Covered Project.

"Successor" shall mean successors in interest, transferees, assigns, agents, and representatives.

"Targeted Businesses" shall mean businesses that have been headquartered in a physical location (not a post office box) within the Project Area (as defined in the MDA) for at least one (1) year prior to applying for Project Construction Work under this Policy.

"Targeted Worker" shall mean an individual that is able to demonstrate that they have domiciled in the Town for at least one (1) year prior to applying for Project Construction Work under the Construction Jobs Policy in question.

"Town" shall mean the Town of Huntington, Suffolk County, New York, acting through its Town Board.

"Union(s)" shall mean construction trades unions that have executed any Project PLA.

III. JOBS AND BUSINESS REFERRAL CENTER.

A. Establishment. A Jobs and Business Referral Center has been established by the Town and is operated by an entity(ies) or individual(s) selected by the Town Board that in the Town Board's judgment possesses the necessary expertise to fulfill the required responsibilities as set forth by the Town. The Jobs and Business Referral Center serves as a resource for Contractors, employers and job seekers by providing the following services:

- connect job seekers with job training, education and other support services that are organized and/or operated by the Town, any of its agencies, organized labor and any other local, state or federal agency providing employment training and/or other employment services;
- receive notifications of job opportunities from employers at Covered Projects;

- circulate such notifications to a network of local job training programs;
- cooperating with organized labor and other entities engaged in job training, promptly refer qualified workers to employers in response to notifications of job opportunities;
- provide technical support to employers, to assist them in understanding and complying with this Policy;
- in referring workers and businesses, apply the priorities set forth in this Policy;
- assist the Town and the Advisory Committee in monitoring and/or enforcement of this Policy.

B. Funding. Funding for the Jobs and Business Referral Center shall be provided by Fees from Applicants for Covered Projects, as well as from donations, grants or other funding mechanisms and any discretionary funding provided by the Town.

IV. ADVISORY COMMITTEE.

A. Establishment. The Town has appointed an Advisory Committee to assist in monitoring and oversight of this Policy. The Town has established basic rules of operation of the Advisory Committee. Additional rules of operation may be established by the Advisory Committee, and shall be subject to approval by the Town.

- B. Authority.** The Advisory Committee has the authority to:
- i. review implementation of this Policy and work with parties to attempt to resolve issues that arise in implementation;
 - ii. oversee the Jobs and Business Referral Center to monitor and suggest performance improvements;
 - iii. oversee the Local Contracting Referral Center to monitor and suggest performance improvements;
 - iv. recommend to the Town standardized forms for reporting for purposes of monitoring compliance with this Policy;
 - v. recommend to the Town additional measures and initiatives to advance the purposes of this Policy; and
 - vi. recommend to the Town that the Town act to enforce terms of this Policy in identified cases.

V. EMPLOYMENT REQUIREMENTS.

A. Percentage Goal. Each Contractor shall use their best efforts to ensure that, in each calendar year, for each Covered Project, at least twenty-five percent (25%) of Project Construction Work Hours are performed by Targeted Workers with a preference towards Project Area Targeted Workers. Construction work hours to be credited toward the Percentage Goal may be hours of Project Construction Work or work on other construction projects performed by any Contractor.

B. Employment Needs Projections. Each contractor shall use their best efforts to ensure that, in each calendar year, for each Covered Project, at least twenty-five percent (25%) of the Project Construction Work Hours are performed by Targeted Workers, with a preference

towards Project Area Targeted Workers. For the purposes of this Policy, hours spent by Targeted Workers in any Contractor's apprentice program shall be credited towards Project Construction Work performed by Target Workers. Construction work hours to be credited toward the Percentage Goal may be hours of Project Construction Work or work on other construction projects performed by any contractor.

C. Union Commitments Regarding Referrals. The following commitments apply only to Project Construction Work for Covered Projects for which there is a Project PLA. This Policy does not require any party to enter into a Project PLA. If a Project PLA is in effect with regard to a Covered Project, Unions agree:

1. if a Contractor requests referral of Targeted Workers from a hiring hall, then, if the hiring hall's out-of-work list contains Targeted Workers, the Union shall dispatch such workers in order to facilitate compliance with this Policy (until such time as the Percentage Goal of Targeted Workers is achieved), regardless of such workers' place on hiring hall lists;

2. if a hiring hall list does not contain requested Targeted Workers, Contractors who have requested such workers may obtain such workers through sources other than the hiring hall;

3. if a Targeted Business or a Non-Targeted Business is awarded a Project Construction Agreement for a Covered Project, this Targeted Business shall be permitted to work without any interference and with total cooperation from all Union contractors;

4. to provide training facilities for potential Targeted Workers in various Union trades, in furtherance of the goals and objectives to achieve the Percentage Goal; and

5. that this Policy is a term of any Project PLA, and terms of this Policy shall govern construction employment on the Covered Project, overriding conflicting terms of collective bargaining agreements or any Project PLA.

VI. MONITORING AND ENFORCEMENT.

A. Reporting Requirements. All Contractors shall submit monthly certified payroll records to the Prime Contractor, by the fifteenth (15th) of the month following the month that Project Construction Work was performed on a Covered Project. The Prime Contractor shall then submit these records to the Town, the Jobs and Business Referral Center and the Advisory Committee by the twentieth (20th) of the month following the month that Project Work was performed on a Covered Project. All such records and information shall be made public by means determined by the Town in consultation with the Advisory Committee. The report shall show a total of Project Construction Work Hours worked on each Covered Project in the previous month, with an indication as to the total portion of Project Construction Work Hours worked by Targeted Workers and the total portion of Project Construction Work Hours worked by non-Targeted Workers, each with an indication of the number of Project Construction Work Hours performed by particular Contractors in each category. Each Contractor shall also provide other records or information requested by the Town, the Jobs and Business Referral Center or the Advisory Committee regarding fulfillment of responsibilities

under this Policy.

B. Liquidated Damages/ Penalties. For Covered Projects under which project coverage is established through inclusion of this Policy in a Project Construction Agreement, the following provisions shall apply, in addition to any other applicable liquidated damages or other penalties pursuant to Town Law.

1. **Targeted Hiring.** Each Contractor agrees that, if it does not satisfy the Percentage Goal in a given calendar quarter, it shall pay to the Town, or other entity as directed by the Town, liquidated damages in the amount of \$25.00 per hour short of such requirements. A Contractor shall not owe liquidated damages if it can show that each Contractor made Good Faith Efforts to satisfy the Percentage Goal with regard to its portion of the Project Construction Work.

2. **Compliance With Reporting Requirements.** Each Contractor agrees that, if it does not comply with the reporting requirements as required in Section VI.A, above, it shall pay to the Town liquidated damages in the amount of \$50.00 per day in which compliance information is due but has not been provided.

3. Any liquidated damages collected by the Town pursuant to Sections VI.B.1. and VI.B.2. above, shall be used solely to support training, referral, monitoring, enforcement or technical assistance to advance the purposes of this Policy.

C. Good Faith Efforts Standard. To demonstrate Good Faith Efforts, a Contractor needs to show:

1. if it is a Union contractor or is operating under a Project PLA, that it requested that the Union hiring hall dispatch Targeted Workers;
2. that it requested referral of Targeted Workers from the Jobs and Business Referral Center;
3. that it left positions open for at least 48 hours after requesting Targeted Workers from Union hiring halls and/or the Jobs and Business Referral Center;
4. that it interviewed any Targeted Workers referred by the Union hiring hall or the Jobs and Business Referral Center within 48 hours of the request, and documented reasons for failing to hire any such workers; and
5. that it complied with all other terms of this Policy, including reporting requirements.

D. Additional Enforcement Mechanisms. Provisions of this Policy, including liquidated damages/penalties provisions, may be enforced by the Town through any legal means, including, but not limited to, obtaining injunctive relief, orders of specific performance, and/or imposition of a lien on property on which a Covered Project is located. Non-compliance with this Policy may be grounds for a stop-work order or other enforcement action by the Town after thirty

(30) days' notice and such Contractor fails to cure within such 30-day period (or promptly commences to cure following receipt of such notice and diligently and continuously prosecutes such cure to completion). Collection of liquidated damages/penalties or other monetary damages or assessments does not derogate from other contractual or legal remedies the Town may have for failure to comply with this Policy. Contractors that repeatedly violate this Policy may be debarred from future Town Project Construction Agreements. Entities found to have violated this Policy shall reimburse the Town for costs of enforcement actions, including reasonable costs and attorney's fees.

VII. MISCELLANEOUS.

A. Project Construction Agreements. Each Contractor required to comply with this Policy and any other applicable policies shall itself include compliance with this Policy(s) as a material term of any Project Construction Agreement under which Project Construction Work may be performed on a Covered Project. To ensure Contractor compliance in every Project Construction Agreement, each Project Construction Agreement must contain the following provision ("Mandatory Provision"):

Mandatory Provision

"Notwithstanding anything to contrary contained in this Project Construction Agreement, it is hereby agreed by the Parties to this Project Construction Agreement that the provisions of the Construction Jobs Policy, the Operations Jobs Policy and the Local Contracting Jobs Policy (all attached hereto and made a part hereof, respectively as Attachment A, Attachment B and Attachment C), shall be applicable to this Project Construction Agreement. If any conflict arises between this Project Construction Agreement and any of the aforementioned Attachments A, B and C, the provisions of Attachments A, B and C shall govern."

If a Contractor enters into a Project Construction Agreement that does not contain the Mandatory Provision or is in violation of this subsection A., then upon request from the Town the Contractor shall either amend the Project Construction Agreement to include the Mandatory Provision as well as any other violations of this subsection A., terminate that Project Construction Agreement or be subject to additional enforcement mechanisms described in VI.D. above.

B. Assurance Regarding Preexisting Contracts. Each Contractor that agrees to comply with this Policy warrants and represents that as of the date that a Project Construction Agreement incorporating this Policy became effective, it has executed no Project Construction Agreement pertaining to the Covered Project that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, a Contractor that has agreed to comply with this Policy has entered into a Project Construction Agreement in violation of this Section VII.B, then upon request from the Town it shall either amend that Project Construction Agreement to include the provisions required by this Policy, terminate that Project Construction Agreement or be subject to additional enforcement mechanisms described in IV.D. above.

C. Third Party Beneficiaries. Each entity that agrees to comply with this Policy agrees that, with regard to the terms of this Policy, the Town is an intended third-party

beneficiary of any contract that incorporates this Policy, and that such intended beneficiary has the right to enforce the terms of this Policy directly against entities that have agreed to comply with this Policy.

D. Material Term. This Policy is a material term of any new or existing Project Construction Agreement into which it is incorporated. In case of conflict between this Policy and any other provision of a Project Construction Agreement into which it is incorporated, this Policy shall prevail.

E. Funding Restrictions. For any portions of the Covered Project on which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements described above, the Town will work collaboratively with the funding agency to adapt the above requirements to the restrictions imposed by the funding agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, the adapted requirements agreed to by the Town and the funding agency shall be applied to portions of the Covered Project in question, and shall automatically become terms of this Construction Jobs Policy, to which all Contractors agree.

F. Severability. If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy.

G. Out-of-State Workers. The Percentage Goal shall not apply to Project Construction Work Hours performed by residents of states other than the State of New York. Notwithstanding the above, if, for any calendar quarter on a particular Covered Project, the percentage of Project Construction Work Hours worked by residents of states other than the State of New York exceeds thirty percent, then for all subsequent years of work on that Covered Project, the first sentence of this Section VII.F. shall not apply, and the Percentage Goals shall be applicable to all Project Construction Work Hours.

H. Applicable Law and Compliance with Law. This Policy shall be governed by and construed in accordance with the laws of the State of New York and the United States and shall be enforced only to the extent that it is consistent with those laws. Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law; (iii) that it may be enforced in a court of competent jurisdiction, with venue in Suffolk County.

I. Successors. This Policy shall be binding upon and inure to the benefit of any Successors of any party, and to Successors of Successors of any party, to a Project Construction Agreement incorporating this Policy. References in this Policy to any entity shall be deemed to apply to any Successor of that entity. Contractors shall be responsible for requiring Successor to execute a written Assumption Agreement in the Form of Attachment D.

J. Town Policies and Guidance. The Town may adopt policies and guidance regarding interpretation, implementation and modification of this Policy, in order to establish clear requirements over time. Any such policies and guidance are incorporated by reference into this Policy. Such policies and guidance must be consistent with the intent of this Policy.

K. Warranties and Representation. Each party to a Project Construction Agreement incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding; has had the opportunity to consult counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a Project Construction Agreement that incorporates this Policy. This Policy shall not be strictly construed against any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.

ATTACHMENT B

Operations Jobs Policy Town of Huntington

I. Purpose.

This Operations Jobs Policy sets forth certain requirements regarding hiring and employment in the operation of Covered Projects. Employers within a Covered Project agree to comply with terms of this Policy as a condition of operation within the Covered Project. This Policy does not cover construction hiring or employment.

II. Definitions.

As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

"Advisory Committee" shall mean a committee designated by the Town of Huntington to assist in the monitoring and oversight of the terms of this Policy.

"Applicant(s)" shall mean any individual(s) or entity(ies) developing a Covered Project in the Project Area.

"Assumption Agreement" shall mean Attachment D

"Contract" shall mean any lease agreement, sub-lease agreement, contract for services agreement or any other agreement relating to employment of individuals working under this Policy on a Covered Project.

"Covered Project" shall mean any project involving improvements to a Municipality Property (as defined in the MDA) where Project Construction Work shall take place in Huntington Station.

"Employer" shall mean any entity employing at least ten individuals (full-time or part-time) to perform Operations Jobs.

"Fees" shall mean payments by Applicants pursuant to a fee schedule attached hereto as Exhibit ____.

"Jobs and Business Referral Center" shall mean a referral center to be designated by the Town as such for purposes of implementation of this Policy.

"MDA" shall mean the Master Developer Agreement executed April 26, 2012, by and between the Town, the Master Developer, and the EDC, as amended by that certain First Amendment to Master Developer Agreement by and between the Town, the EDC and the Developer dated as of February 4, 2014.

"Operations Job" shall mean any non-construction job, full-time or part-time, for which at least fifty percent of the work hours are performed on site within a Covered Project.

"Policy" shall mean this Operations Jobs Policy.

"Project Construction Work" shall mean any construction work performed on a Covered Project .

"Successor" shall mean successors in interest, transferees, assigns, agents, and representatives.

"Targeted Worker" shall mean an individual that is able to demonstrate that they have domiciled in the Project Area (as defined in the MDA) for at least one (1) year prior to applying for any employment related to the operation of Covered Projects under the Operation Jobs Policy.

"Town" shall mean the Town of Huntington, Suffolk County, New York, acting through its Town Board.

III. JOBS AND BUSINESS REFERRAL CENTER.

A. Establishment. A Jobs and Business Referral Center has been established by the Town and is operated by an entity(ies) or individual(s) selected by the Town Board that possesses the necessary expertise to fulfill the required responsibilities as set forth by the Town. The Jobs and Business Referral Center serves as a resource for contractors, Employers and job seekers by providing the following services:

- connect job seekers with job training, education and other support services that are organized and/or operated by the Town, any of its agencies, organized labor and any other local, state or federal agency providing employment training and/or other employment services;
- receive notifications of job opportunities from employers at Covered Projects;
- circulate such notifications to a network of local job training programs;
- cooperating with organized labor and other entities engaged in job training, promptly refer qualified workers to employers in response to notifications of job opportunities;
- provide technical support to employers, to assist them in understanding and complying with this Policy;
- in referring workers and businesses, apply the priorities set forth in this Policy;
- provide technical support to entities awarding Contracts, to assist them in understanding and complying with this Policy;
- assist the Town and the Advisory Committee in monitoring and/or enforcement of this Policy.

B. Funding. Funding for the Jobs and Business Referral Center shall be provided by Fees from Applicants for Covered Projects, as well as from donations, grants or other funding mechanisms and any discretionary funding provided by the Town.

IV. ADVISORY COMMITTEE.

A. **Establishment.** The Town has appointed an Advisory Committee to assist in monitoring and oversight of this Policy. The Town has established basic rules of operation of the Advisory Committee. Additional rules of operation may be established by the Advisory Committee, and shall be subject to approval by the Town.

- B. **Authority.** The Advisory Committee has the authority to:
- i. review implementation of this Policy and work with parties to attempt to resolve issues that arise in implementation;
 - ii. oversee the Jobs and Business Referral Center to monitor and suggest performance improvements;
 - iii. oversee the Local Contracting Referral Center to monitor and suggest performance improvements;
 - iv. recommend to the Town standardized forms for reporting for purposes of monitoring compliance with this Policy;
 - v. recommend to the Town additional measures and initiatives to advance the purposes of this Policy; and
 - vi. recommend to the Town that the Town act to enforce terms of this Policy in identified cases.

V. Targeted Hiring.

A. **Targeted Hiring Requirements.** Each Employer shall use their best efforts to ensure that, for each calendar year, for each Covered Project, or portion thereof, at least twenty-five percent (25%) of workers newly hired for Operations Jobs are Targeted Workers with a preference towards Project Are Targeted Workers.

B. Hiring Process.

1. Initial Hiring Process.

a. Notification of Job Opportunities. At least two (2) weeks prior to an Employer commencing operations in a Covered Project, each Employer shall notify the Jobs and Business Referral Center of available job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (e.g. language skills, drivers' license, etc.). Job qualifications shall be limited to skills directly related to performance of job duties.

b. Hiring. The Employer shall use normal hiring practices, including interviews, to consider all Targeted Workers referred by the Jobs and Business Referral Center during a two (2) week period after initial notification, or until all open positions are filled, whichever is sooner. The Employer shall make best efforts to fill all available positions with Targeted Workers pursuant to paragraph V.A. above, including interviewing Targeted Workers referred by the Jobs and Business Referral Center. If at the conclusion of the two (2) week period the Employer has been unable to fill all available positions with Targeted Workers, the Employer may use other recruitment methods, although the Employer shall continue to make best efforts to hire Targeted Workers later referred by the Jobs and Business Referral

Center.

c. Pre-opening Transfer. Provisions of subsections 2.a and 2.b, above, are not applicable to an Employer that is transferring its staff members from a previous facility to a new facility within a Covered Project. At time of the Employer's commencement of operation in a Covered Project, names of all such transferred workers shall be provided to the Jobs and Business Referral Center. Upon commencing operation in the new facility, such an Employer is covered by subsection 3, below. If an Employer hires for positions in facilities located outside the Town with the intention of transferring such hires to a new facility within the Town, then provisions of this subsection 2 are applicable to all such hires.

2. Ongoing Hiring Process.

a. Notification of job opportunities. After an Employer has commenced operations in a Covered Project, it shall continue to use the Jobs and Business Referral Center to fill positions that become available. When an Employer has positions available, the Employer shall notify the Jobs and Business Referral Center of available job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (e.g. language skills, drivers' license, etc.). Job qualifications shall be limited to skills directly related to performance of job duties.

b. Hiring. The Employer shall then use standard hiring practices, including interviews, to consider all Targeted Workers referred by the Jobs and Business Referral Center during a five day period after initial notification, or until all open positions are filled, whichever is sooner. The Employer shall make good faith efforts to fill all available positions with Targeted Workers pursuant to paragraph V.A. above, including interviewing Targeted Workers referred through the Jobs and Business Referral Center. If at the conclusion of the five day period the Employer has been unable to fill all available positions with Targeted Workers, the Employer may use other recruitment methods, although the Employer shall continue to make good faith efforts to hire Targeted Workers later referred through the Jobs and Business Referral Center.

C. **Nondiscrimination**. Employers shall not discriminate against Targeted Workers in any terms and conditions of employment, including retention, promotions, job duties, shift assignments, and training opportunities.

D. **Monitoring and Enforcement.**

I. **Safe Harbor Provision**. Any Employer who has satisfied the percentage goals of Section V.A, above, during a particular quarter, shall be deemed to be in compliance with Sections V.A, V.B.1, and V.B.2 of this Policy for all hiring during that quarter.

a. **Liquidated Damages**. Each Employer agrees that, if it has not satisfied the percentage goal of Section V.A, above, during a given calendar quarter, it shall pay to the Town liquidated damages in the amount of \$1000 per job short of the percentage goals. An Employer shall not owe liquidated damages if it can demonstrate that it followed the processes set forth in Sections V.B.1 and V.B.2, above, that it documented reasons for not

employing any Targeted Workers referred by the Jobs and Business Referral Center during the time periods specified in Sections V.B.1 and V.B.2, and that it has otherwise complied with this Policy. Any liquidated damages collected by the Town shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

b. **Compliance Records.** Each Employer shall submit a report to the to the Town and the Jobs and Business Referral Center on a quarterly basis within thirty (30) days from the end of each calendar quarter, containing records sufficient to determine compliance with this Policy for the previous quarter. Such records shall include, but shall not be limited to, an indication of the number of workers hired during the previous quarter, the number of such workers that were Targeted Workers, the number of Targeted Workers interviewed, and documentation of the reasons for not hiring particular Targeted Workers who were interviewed and not hired. An Employer may redact names and social security numbers from requested records in order to protect the privacy of individual employees. Employers who fail to submit such report in a timely manner shall owe liquidated damages of \$50 per day in which compliance information is due but has not been provided. Any liquidated damages collected by the Town shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

c. **Additional Enforcement Mechanisms.** Provisions of this Policy, including liquidated damages/penalties provisions, may be enforced by the Town through any legal means, including, but not limited to, obtaining injunctive relief, orders of specific performance, and/or imposition of a lien on property on which a Covered Project is located. In addition, if the Covered Project is operational, then non-compliance with this Policy may be grounds for an enforcement action. Collection of liquidated damages/penalties or other monetary damages or assessments does not derogate from other contractual or legal remedies the Town may have for failure to comply with this Policy. Contractors that repeatedly violate this Policy may be debarred from future Town Contracts. Entities found to have violated this Policy shall reimburse the Town for costs of enforcement actions, including reasonable costs and attorney's fees.

VI. MISCELLANEOUS.

A. **Contact Person.** Within 30 days of having entered into any contract related to operations in the Project Area, each Employer will designate a contact person for all matters related to implementation of this Policy. The Employer shall forward the name, address and phone number of the designated individual to the Advisory Committee and the Town.

B. **Subcontracts.** Each entity required to comply with this Policy shall itself include compliance with this Policy as a material term of any subcontract, sublease, or other agreement under which Operations Jobs may be required. Each Employer shall include compliance with this Policy as a material term of any subcontract or other agreement under which Operations Jobs may be required. If an Employer enters into a contract in violation of this Section VI.B., then upon request from the Town it shall either amend that contract to include all requirements of this Policy, or terminate that contract. To ensure Employer compliance in every Contract, each Contract must contain the following provision ("Mandatory Provision"):

Mandatory Provision

"Notwithstanding anything to contrary contained in this Contract, it is hereby agreed by the Parties to this Contract that the provisions of the Construction Jobs Policy, the Operations Jobs Policy and the Local Contracting Jobs Policy (all attached hereto and made a part hereof, respectively as Attachment A, Attachment B and Attachment C), shall be applicable to this Contract. If any conflict arises between this Contract and any of the aforementioned Attachments A, B and C, the provisions of Attachments A, B and C shall govern."

If an Employer enters into a Contract that does not contain the Mandatory Provision or is in violation of this subsection A., then upon request from the Town, the Employer shall either amend the Contract to include the Mandatory Provision as well as any other violations of this subsection A., terminate that Contract or be subject to additional enforcement mechanisms described in IV.D. above.

C. Assurance Regarding Preexisting Contracts. Each entity that agrees to comply with this Policy warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the Project or the Project Area that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, an entity that has agreed to comply with this Policy has entered into a contract in violation of this Section VI.C, then upon request from the Town it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.

D. Funding Restrictions. For any portions of the Project on which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements described above, the Town will work collaboratively with the funding agency to adapt the above requirements to the restrictions imposed by the funding agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, the adapted requirements agreed to by the Town and the funding agency shall be applied to portions of the Project in question, and shall automatically become terms of this Policy, to which all Employers agree.

E. Third Party Beneficiaries. Each entity that agrees to comply with this Policy agrees that, with regard to the terms of this Policy, the Town is an intended third-party beneficiary of any Contract that incorporates this Policy, and that such intended beneficiary has the right to enforce terms of this Policy directly against entities that have agreed to comply with this Policy.

F. Material Term. This Policy is a material term of any contract into which it is incorporated. Violation of this Policy constitutes a violation of and material default under the term of any lease or contract into which it is incorporated.

G. Severability. If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way

affect, impair, or invalidate any of the other provisions of this Policy.

H. Applicable Law and Compliance with Law. This Policy shall be governed by and construed in accordance with the laws of the State of New York and the United States and shall be enforced only to the extent that it is consistent with those laws. Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law; (iii) that it may be enforced in a court of competent jurisdiction, with venue in Suffolk County.

I. Successors. This Policy shall be binding upon and inure to the benefit of any Successors of any party, and to Successors of Successors of any party, to a Contract incorporating this Policy. References in this Policy to any entity shall be deemed to apply to any Successor of that entity. Employers shall be responsible for requiring Successor to execute a written Assumption Agreement in the Form of Attachment D.

J. Town Policies and Guidance. The Town may adopt policies and guidance regarding interpretation, implementation and modification of this Policy, in order to establish clear requirements over time. Any such policies and guidance are incorporated by reference into this Policy. Such policies and guidance must be consistent with the intent of this Policy.

K. Warranties and Representation. Each party to a contract incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding; has had the opportunity to consult counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this Policy. This Policy shall not be strictly construed against any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.

ATTACHMENT C

Local Contracting Policy Town of Huntington

I. PURPOSE.

This Local Contracting Policy sets forth certain requirements regarding award of contracts related to Covered Projects. Employers within a Covered Project agree to comply with terms of this Policy as a condition of operation within the Covered Project. This Policy does not cover construction employment.

II. DEFINITIONS.

As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

"Advisory Committee" shall mean a committee designated by the Town of Huntington to assist in the monitoring and oversight of the terms of this Policy.

"Applicant(s)" shall mean any individual(s) or entity(ies) developing a Covered Project in the Project Area.

"Assumption Agreement" shall mean Attachment D

"Awarding Entity" shall mean any entity that retains services of a Prime Contractor for performance of a Covered Contract.

"Covered Contract" shall mean a construction or service contract worth more than \$25,000 and to be performed on-site at a Covered Project.

"Covered Project" shall mean any project involving improvements to a Municipality Property (as defined in the MDA) where Project Construction Work shall take place in Huntington Station.

"Construction Prime Contract" shall mean a prime contract for performance of Project Construction Work.

"Construction Subcontract" shall mean a contract for performance of more than \$50,000 of Project Construction Work, other than a Construction Prime Contract.

"Fees" shall mean payments by Applicants pursuant to a fee schedule attached hereto as Exhibit ____.

"Jobs and Business Referral Center" shall mean a referral center to be designated by the Town as such for purposes of implementation of this Policy.

"Local Contracting Referral Center" shall mean a referral center to be designated by the Town as such for purposes of implementation of this Policy.

"MDA" shall mean the Master Developer Agreement executed April 26, 2012, by and between the Town, the Master Developer, and the EDC, as amended by that certain First Amendment to Master Developer Agreement by and between the Town, the EDC and the Developer dated as of February 4, 2014.

"Policy" shall mean this Local Contracting Policy.

"Prequalified Contractors" shall mean contractors prequalified by the Jobs and Business Referral Center, as described in Section III.A.

"Prime Contractor" shall mean an entity with a prime contract or construction management contract for performance of Project Construction Work, or a property owner, tenant or other entity serving prime contracting or construction management functions.

"Project Area Targeted Businesses" shall mean businesses that have been headquartered in a physical location (not a post office box) within the Project Area for at least one (1) year prior to applying for a contract under this Policy and if required pursuant to the terms of Section III (F) of this Agreement, have in place either a New York state-registered apprentice program or such other program as shall have been proposed by Developer and approved by the Town pursuant to Section III (F) of this Agreement.

"Project Construction Work" shall mean any construction work performed on a Covered Project.

"Successor" shall mean successors in interest, transferees, assigns, agents, and representatives.

"Targeted Businesses" shall mean businesses that have been headquartered in a physical location (not a post office box) within the Town for at least one (1) year prior to applying for a contract under this Policy and if required pursuant to the terms of Section III (F) of this Agreement, have in place either a New York state-registered apprentice program or such other program as shall have been proposed by Developer and approved by the Town pursuant to Section III (F) of this Agreement.

"Town" shall mean the Town of Huntington, Suffolk County, New York, acting through its Town Board.

"Unions" shall mean construction trades unions that have executed any Project PLA.

III. JOBS AND BUSINESS REFERRAL CENTER.

A. **Establishment.** A Jobs and Business Referral Center has been established by the Town and is operated by an entity(ies) or individual(s) selected by the Town Board that possesses the necessary expertise to fulfill the required responsibilities as set forth by the Town. The Jobs and Business Referral Center serves as a resource for Prime Contractors, Awarding Entities, employers and job seekers by providing the following services:

- connect job seekers with job training, education and other support

services that are organized and/or operated by the Town, any of its agencies, organized labor and any other local, state or federal agency providing employment training and/or other employment services ;

- receive notifications of job opportunities from employers at Covered Projects;
- circulate such notifications to a network of local job training programs;
- cooperating with organized labor and other entities engaged in job training, promptly refer qualified workers to employers in response to notifications of job opportunities;
- provide technical support to employers, to assist them in understanding and complying with this Policy;
- in referring workers and businesses, apply the priorities set forth in this Policy;
- assist the Town and the Advisory Committee in monitoring and/or enforcement of this Policy.

B. Funding. Funding for the Jobs and Business Referral Center shall be provided by Fees from Applicants for Covered Projects, as well as from donations, grants or other funding mechanisms and any discretionary funding provided by the Town.

IV. LOCAL CONTRACTING REFERRAL CENTER.

A. Establishment. A Local Contracting Referral Center shall be established by the Town, and will be operated by an entity(ies) or an individual(s) selected by the Town Board that possesses the necessary expertise to fulfill the required responsibilities as set forth by the Town. The Local Contracting Referral Center serves as a resource that sets forth certain requirements regarding award of contracts related to Covered Projects by providing the following services:

- screen and maintain a list of Targeted Businesses (as defined in this Policy) that are prequalified for performance of Covered Contracts related to Covered Projects; assess and maintain information on the capacities and experience of Targeted Businesses, and their status as Targeted Businesses; promptly refer such businesses to entities awarding covered contracts;
- provide technical support to entities awarding Construction Subcontracts and Covered Contracts, to assist them in understanding and complying with this Policy;
- assist the Town and the Advisory Committee in monitoring and/or enforcement of this Policy.

B. Funding. Funding for the Local Contracting Referral Center shall be provided by Fees from Applicants for Covered Projects, as well as from donations, grants or other funding mechanisms and any discretionary funding provided by the Town.

V. ADVISORY COMMITTEE.

A. Establishment. The Town has appointed an Advisory Committee to assist in monitoring and oversight of this Policy. The Town has established basic rules of

operation of the Advisory Committee. Additional rules of operation may be established by the Advisory Committee, and shall be subject to approval by the Town.

- B. Authority.** The Advisory Committee has the authority to:
- i. review implementation of this Policy and work with parties to attempt to resolve issues that arise in implementation;
 - ii. oversee the Jobs and Business Referral Center to monitor and suggest performance improvements;
 - iii. oversee the Local Contracting Referral Center to monitor and suggest performance improvements;
 - iv. recommend to the Town standardized forms for reporting for purposes of monitoring compliance with this Policy;
 - v. recommend to the Town additional measures and initiatives to advance the purposes of this Policy; and
 - vi. recommend to the Town that the Town act to enforce terms of this Policy in identified cases.

VI. PREQUALIFICATION OF TARGETED BUSINESSES.

The Local Contracting Referral Center shall screen and maintain a list of Targeted Businesses that are prequalified for performance of Covered Contracts. The Local Contracting Referral Center will assess and maintain information on the capacities and experience of Targeted Businesses, and their status as Targeted Businesses on a regular basis.

VII. CONTRACT AWARD PROCESSES.

A. Award of Covered Contracts. For all Covered Contracts, the Awarding Entity shall:

1. notify the Local Contracting Referral Center of the contracting opportunity at least twenty-one (21) days before a designated date when bids are due to give the Local Contracting Referral Center the opportunity to reach out to Targeted Businesses;
2. provide a reasonable opportunity for Prequalified Contractors and other Targeted Businesses to bid on the Covered Contract, including provision of information necessary for bid submission, at least twenty-one (21) days before a designated date when bids are due;
3. document reasons for rejecting timely-submitted bids from any Prequalified Contractors or other Targeted Businesses.

B. Award of Construction Subcontracts.

O. Process. For all Construction Prime Contracts worth over \$50,000, Prime

Contractors shall:

1. prior to awarding any Construction Subcontracts, notify the Local Contracting Referral Center of subcontracting opportunities; and
2. provide Targeted Businesses, including all Prequalified Businesses referred by the Local Contracting Referral Center, the opportunity to bid for any Construction Subcontracts, including provision of information necessary for bid submission, at least ten days before a designated date when bids are due.

P. Percentage Goal. For Construction Prime Contracts worth over \$100,000, the Prime Contractor shall use their best efforts to award at least 25% of the dollar value of the Prime Contract to Targeted Businesses with a preference towards Project Area Targeted Businesses (the "Percentage Goal").

Q. Good Faith Efforts. Good faith efforts to satisfy the Percentage Goal include the steps set forth in Section VI.B.1, above; documentation of reasons for rejection of any bids timely-submitted by Prequalified Contractors or other Targeted Businesses; and documentation of notifications of bidding opportunities for each Construction Subcontract.

R. Qualifications. Prime Contractors shall ensure that all subcontractors retained for performance of Construction Subcontracts possess all necessary qualifications and experience, including, but not limited to, performance on previous projects of an appropriate type and scope of work to indicate capacity to perform the Construction Subcontract in question, adequate bonding and insurance, etc. Nothing in this Policy requires any entity to retain a Contractor that is not qualified for performance of the Covered Contract in question.

VIII. MONITORING AND ENFORCEMENT.

A. Liquidated Damages. Each Prime Contractor agrees that, if it has not satisfied the Percentage Goal with regard to a particular Covered Contract, it shall pay to the Town liquidated damages in the amount of \$.20 per dollar of Covered Contract work by which the Prime Contractor fell short of the Percentage Goal. A Prime Contractor shall not owe liquidated damages if it can demonstrate that it satisfied all steps set forth in the Good Faith Efforts provision above, and that it has otherwise complied with this Policy. Any liquidated damages collected by the Town shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

B. Compliance Records. Within seven days after either (i) award of any Covered Contract, or (ii) award of initial Construction Subcontracts for a Covered Contract worth over \$100,000, the Awarding Entity or Prime Contractor shall submit a report to the Town and the Jobs and Business Referral Center containing records sufficient to determine compliance with this Policy for the Covered Contract or Construction Subcontract. The Town shall make available to Contractors a standardized form for provision of compliance information. Awarding Entities and Prime Contractors that fail to submit such report in a timely manner shall owe liquidated damages of \$50 per day in which compliance information is due but has not been provided. Any liquidated damages collected by the Town shall be used solely to support

training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

C. Additional Enforcement Mechanisms. Provisions of this Policy, including liquidated damages/penalties provisions, may be enforced by the Town through any legal means, including, but not limited to, obtaining injunctive relief, orders of specific performance, and/or imposition of a lien on property on which a Covered Project is located. In addition, if the Covered Project is being constructed or is operational pursuant to site plan approval, then non-compliance with this Policy may be subject to enforcement action by the Town. Collection of liquidated damages/penalties or other monetary damages or assessments does not derogate from other contractual or legal remedies the Town may have for failure to comply with this Policy. Entities that repeatedly violate this Policy may be debarred from future Town contracts. Entities found to have violated this Policy shall reimburse the Town for costs of enforcement actions, including reasonable costs and attorney's fees.

IX. MISCELLANEOUS.

A. Subcontracts and Subleases. Each entity entering into a contract that includes this Policy shall itself include compliance with this Policy as a material term of any subcontract, sublease, or other agreement under which Covered Contracts may be awarded. If an entity enters into a contract in violation of this Section VI.A., then upon request from the Town it shall either amend that contract to include all requirements of this Policy, or terminate that contract. To ensure Prime Contractor compliance in every Covered Contract, each Covered Contract must contain the following provision ("Mandatory Provision"):

Mandatory Provision

"Notwithstanding anything to contrary contained in this Covered Contract, it is hereby agreed by the Parties to this Covered Contract that the provisions of the Construction Jobs Policy, the Operations Jobs Policy and the Local Contracting Jobs Policy (all attached hereto and made a part hereof, respectively as Attachment A, Attachment B and Attachment C), shall be applicable to this Covered Contract. If any conflict arises between this Covered Contract and any of the aforementioned Attachments A, B and C, the provisions of Attachments A, B and C shall govern."

If a Prime Contractor enters into a Covered Contract that does not contain the Mandatory Provision or is in violation of this subsection A., then upon request from the Town the Prime Contractor shall either amend the Covered Contract to include the Mandatory Provision as well as any other violations of this subsection A., terminate that Covered Contract or be subject to additional enforcement mechanisms described in IV.D. above.

B. Assurance Regarding Preexisting Contracts. Each entity agreeing to comply with this Policy warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the Project or the project Area that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, an entity that has agreed to comply with this Policy has entered into a contract in violation of this Section VI.B, then upon request from the Town it shall either

amend that contract to include the provisions required by this Policy, or terminate that contract.

C. Funding Restrictions. For any portions of a Covered Project on which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements described above, the Town will work collaboratively with the funding agency to adapt the above requirements to the restrictions imposed by the funding agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, the adapted requirements agreed to by the Town and the funding agency shall be applied to portions of the Covered Project in question, and shall automatically become terms of this Policy, to which all Employers agree.

D. Third Party Beneficiaries. Each entity that agrees to comply with this Policy agrees that, with regard to the terms of this Policy, the Town is an intended third-party beneficiary of any contract that incorporates this Policy, and that such intended beneficiary has the right to enforce terms of this Policy directly against entities that have agreed to comply with this Policy.

E. Material Term. This Policy is a material term of any contract into which it is incorporated. Violation of this Policy constitutes a violation of and material default under the term of any lease or contract into which it is incorporated.

F. Severability. If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy.

G. Applicable Law and Compliance with Law. This Policy shall be governed by and construed in accordance with the laws of the State of New York and the United States and shall be enforced only to the extent that it is consistent with those laws. Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law; that it may be enforced in a court of competent jurisdiction, with venue in Suffolk County.

H. Successors. This Policy shall be binding upon and inure to the benefit of any successors and/or assigns of any party to a contract incorporating this Policy. References in this Policy to any entity shall be deemed to apply to any successor of that entity. Awarding Entity, Prime Contractor and/or Subcontractor shall be responsible for requiring Successor to execute a written Assumption Agreement in the Form of Attachment D.

I. Town Policies and Guidance. The Town may adopt policies and guidance regarding interpretation, implementation and modification of this Policy, in order to establish clear requirements over time. Any such policies and guidance are incorporated by reference into this policy. Such policies and guidance must be consistent with the intent of this Policy.

J. Warranties and Representation. Each entity that agrees to comply with this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding; has had the opportunity to consult counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this

Policy. This Policy shall not be strictly construed against any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.

Attachment D

Form of Assumption Agreement

ASSUMPTION AGREEMENT

THIS ASSUMPTION AGREEMENT ("Confirmation") is made

by _____, a _____ company ("Successor").

On _____ *[insert Party currently subject to Community Benefit Policies]* ("Current Covered Party") was legally required to comply with the Community Benefit Policies, as described and referenced in that certain Community Benefits Agreement dated as of _____, 2014, in connection with local construction jobs, local operations jobs and/or local contracting opportunities, as applicable, on the property described as _____, Huntington Station, New York ("Covered Project").

This Confirmation is being executed pursuant to, and is a material term of, that certain _____ *[insert title of applicable agreement, e.g., purchase agreement, joint venture agreement, lease agreement, sublease agreement, assignment agreement or other agreement between Covered Party and Successor]* dated as of _____, pursuant to which *[insert simple description of transaction,; e.g.: Current Covered Party sells to Successors a portion of real property within the Covered Project; Current Covered Party and Successor engage in a joint venture for development of Covered Project; Current Covered Party contracts or subcontracts with Successor, Current Covered Party leases or subleases all or a portion of Covered Project to Successor, etc.]*.

By executing this Confirmation and the _____ *[insert short title of main transaction document]* agreement to which it is attached, Successor agrees that it is a "Successor" to "Current Covered Party" as those terms are used in the Community Benefit Policies, and that the Community Benefit Policies are enforceable by the Town of Huntington directly against Successor. Attached hereto and incorporated herein by reference are the Community Benefit Policies, which Successor has reviewed, has had the opportunity to have same reviewed by counsel, and understands and agrees to the terms, conditions, and commitments contained therein, as applicable.

[NAME OF SUCCESSOR]

By: _____ Its: _____

Attachment E

SCHEDULE OF FEES

Land Use Category	Fee
Multi-Family Residential Rentals, Condominiums & Townhomes Fee Per Residential Unit	\$ 825.00
All Commercial Uses (Retail & Office) Fee Per Square Foot of Commercial Uses	\$ 1.35