

3/20/01minutes

Minutes of a Community Development Agency meeting held by the Town Board of the Town of Riverhead, at Town Hall, 200 Howell Avenue, Riverhead, New York, on Tuesday, March 20, 2001, at 2:00 P.M.

Present:

Robert Kozakiewicz,	Chairman
James Lull,	Member
Edward Densieski,	Member
Philip Cardinale,	Member
Christopher Kent,	Member

Also Present:

Barbara Grattan,	Town Clerk
Dawn Thomas, Esq.	Town Attorney

Chairman Kozakiewicz called the meeting to order at 2:51 p.m.

Chairman Kozakiewicz: "Open the Community Development Agency meeting to take up Resolution #7."

Barbara Grattan: "Eight."

Chairman Kozakiewicz: "Eight?"

Member Kent: "Eight, is it eight?"

Chairman Kozakiewicz: "You told me seven."

Member Densieski: "Yeah, I've got seven right here."

Barbara Grattan: "Eight."

Chairman Kozakiewicz: "Okay. Andrea?"

Resolution #8

Andrea Lohneiss: "CDA Resolution #8 authorizes the Supervisor or the Chairman to execute a contract between the CDA and Great Northeast Productions. That would be for a concert on September 1st - "

Chairman Kozakiewicz: "I think that's the latest."

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Andrea Lohneiss: "Of probably with a day of set up and a day of undoing of the set, etc., a contract to be executed- to be drafted by the Town Attorney substantially in the form attached."

Chairman Kozakiewicz: "Okay, is there a motion?"

Member Densieski: "Motion."

Member Lull: "Second."

Chairman Kozakiewicz: "Moved and seconded."

The Vote: "Densieski, yes; Cardinale, yes; Kent, yes; Lull, yes; Kozakiewicz, yes."

Chairman Kozakiewicz: "Any further business of this evening?"

Andrea Lohneiss: "No."

Chairman Kozakiewicz: "Okay, adjourn, the time being 2:52."

Meeting adjourned: 2:52 p.m.

Barbara Scatton
Town Clerk

3/20/01

Adopted

TOWN OF RIVERHEAD

CDA Resolution # 8

AUTHORIZES THE SUPERVISOR TO EXECUTE CONTRACT BETWEEN RIVERHEAD COMMUNITY DEVELOPMENT AGENCY AND GREAT NORTHEAST PRODUCTIONS, INC. ("GNP")

COUNCILMAN DENSIESKI

_____ offered the following resolution, was seconded by

COUNCILMAN LULL

WHEREAS, GNP is in the business of organizing and promoting entertainment events and concerts for the general public; and

WHEREAS, GNP desires to stage and promote an outdoor concert on lands of the Calverton Enterprise Park.

NOW THEREFORE BE IT HEREBY RESOLVED, that the Supervisor is hereby authorized to execute a contract between the Riverhead Community Development Agency and GNP, in a form to be approved by the Town Attorney, in connection with an outdoor concert to be held at the Calverton Enterprise Park; and be it further

RESOLVED, that the Town Clerk is hereby directed to forward a certified copy of this resolution to GNP, Attn: David Werlin, President, P.O. Box 1010, Townsend, Massachusetts, 01469; Andrea Lohneiss, CDA Director; the Office of the Supervisor and the Office of Town Attorney.

CONTRACT FOR OUTDOOR EVENT

This Contract is made and entered into as of this ____ day of ~~February~~ March, 2001, by and between Riverhead Community Development Agency, an public instrumentality of the Town of Riverhead, County of Suffolk, New York _____ corporation ("CDA"), and **Great Northeast Productions, Inc.**, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and having a principal place of business in Townsend, Massachusetts ("GNP");

WHEREAS, GNP is in the business of organizing and promoting entertainment events and concerts for the general public; and

WHEREAS, RDCDA controls approximately _____2.900 acres of land in Calverton, New York, commonly known as Calverton Enterprise Park, which land includes _____ (collectively sometimes referred to as the "Property" and being depicted on the attached Exhibit A); and

WHEREAS, GNP desires to stage and promote an outdoor dance event on the Property on September 15 _____ and 16, ,2001 (the "Event"); and

WHEREAS, GNP and RDCDA have agreed to terms under which GNP will be granted the use of certain land, buildings, facilities and/or equipment at the Property;

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

1. Use of Property: RDCDA hereby grants GNP a License providing GNP with exclusive temporary use of the Property depicted on the attached Exhibit A (including buildings, facilities and equipment, if any, as described in said Exhibit A), upon the terms and conditions set forth hereunder.

This License will provide GNP and its employees, representatives, agents and concessionaires with

exclusive access to the Property from ~~September 5, 2001~~ _____, 2001 to the earlier of ~~September 10~~ _____, 2001 or the completion of garbage and rubbish cleanup actions required for all land and facilities under paragraph 4 below for the purpose of preparing the grounds for the Event to be staged hereunder, including the construction and installation of an outdoor stages, event venue enclosure, medical facilities, ticket booths, concession stands for food, beverages and merchandise, and other temporary structures and facilities necessary, appropriate or incidental to the staging of the Event.

2. Compliance With Laws: GNP will at all times comply with all applicable federal, state, county and municipal laws, regulations, ordinances, codes and restrictions, including, without limitation, compliance with Article 28 of the New York State Tax Law and applicable regulations thereunder, and will secure any and all permits or licenses required for its activities and operations carried out at the Property. Without limiting the generality of the foregoing, to the extent required by law GNP will secure a Mass Gathering Permit from the Commissioner of the appropriate County Department of Health prior to holding the Event. ~~RDCDA~~ agrees to provide information at its disposal and otherwise cooperate with GNP in pursuing its application for any such permit(s) or license(s).

3. Compensation: In exchange for License set forth above for the use of the Property, GNP will pay ~~RDCDA~~ as follows:

(i) ~~RDCDA~~ shall receive \$1.00 per Event ticket sold, as certified by authorized ticket sales agents, but in no event less than \$20,000.00.

(ii) GNP will make a non-refundable advance payment in the amount of \$_____ 20,000.00 to ~~RDCDA~~, to be credited against the amount otherwise payable to ~~RDCDA~~ on account of ticket sales pursuant to Item (i) above. For example, if _____ tickets are sold for the Event, GNP will pay ~~RDCDA~~ $\$1.00 \times \text{_____} = \_____ , less a credit for the \$_____ already paid = \$_____. In this example, total payments to County will be \$_____, consisting of the initial payment of \$_____ plus the \$_____ as calculated in the preceding sentence. The \$_____ advance payment will be paid in installments, as follows: \$_____ upon execution

of this contract: \$ _____ on or before ~~September~~ _____, 2001.

All sums payable by GNP to RDCDA under this Agreement shall be made on or before ~~September~~ _____, 2001.

4. Responsibilities of GNP: Subject to the terms of this Agreement, GNP will be responsible for carrying out and shall have exclusive control of all operations associated with the Event and related activities, including without limitation. all food and beverage concessions, merchandising, parking, any video or audio filming or taping of the Event, security for the Event, provision of emergency medical services, lay-out and administration, and operation of sanitary facilities. Following the Event, GNP will promptly commence garbage and rubbish removal and cleanup (hereafter, the Acleanup@) and shall diligently and continuously engage in such cleanup efforts so that the cleanup will be accomplished as soon as reasonably practicable (but in no event later than ~~September~~ _____ - _____. 2001). Buildings, facilities and grounds (~~including any removed runway lights or other removed structures~~) will be restored to the condition that existed prior to the Event (hereafter, the "restoration") and be ~~reasonably~~ clean and free of clutter and debris. GNP will remove all refuse, rubble, garbage and debris created by the Event or GNP's activities at the Property and dispose of the same in at an appropriate waste facility.

In order to provide assurance that there will be sufficient resources to complete the cleanup and the restoration as set forth in the preceding paragraph, GNP will deposit the sum of \$ _____ (the "Escrow Funds") with _____, which Escrow Funds will be disbursed by the Escrow Agent in accordance with this Agreement. The Escrow Funds shall be deposited by GNP as provided above on or before ~~September~~ _____, 2001. The Escrow Funds shall be disbursed as directed jointly by the parties hereto, except as otherwise provided herein. RDCDA and GNP agree that the Escrow Funds shall be disbursed in satisfaction of costs associated with the cleanup and the restoration until the same are completed to the reasonable satisfaction of RDCDA. The sum of \$ _____ shall be earmarked for the cleanup and the sum of \$ _____ shall be earmarked for the restoration; provided, however, that funds earmarked but unexpended for one use may be applied to

expenditures for the other use, as necessary. RDCDA agrees that Escrow Funds will be released against invoices for cleanup services and restoration services submitted by GNP and approved by RDCDA, which approval will not be unreasonably withheld. Upon completion of all cleanup and restoration work hereunder by GNP to the reasonable satisfaction of RDCDA, any unexpended balance of the Escrow Funds will be returned to GNP. In the event that GNP and RDCDA cannot agree whether a reasonable cleanup and/or restoration standard has been accomplished, such dispute shall be resolved in accordance with the dispute resolution provisions of this Agreement. In the event that GNP fails for any reason (other than a disagreement as to whether the cleanup standard has been met) to complete its cleanup and restoration work hereunder to the reasonable satisfaction of RDCDA, ~~the CountyDA~~ shall have the right, after notice to GNP, to apply any unexpended balance of the Escrow Funds toward the reasonable costs and expenses of completing such cleanup and/or restoration work; provided that any remaining unexpended Escrow Funds after the completion of such work by RDCDA will be returned to GNP.

5. Septic Waste. GNP will be responsible for the handling, storage, processing (i.e., screening of foreign objects), treatment and disposal of all waste from portable toilets generated in connection with the Event and related activities. The parties shall cooperate in identifying and specifying methods of handling, storing, processing, treating and disposing of the waste.

6. Security. GNP will provide all security services reasonably necessary to protect the health and safety of the concert goers as well as the general public, and generally to protect against damage to or loss of property, including the land, buildings, equipment and/or facilities provided by RDCDA hereunder for use in connection with the Event. GNP will undertake all necessary coordination with state, county and local law enforcement agencies and will pay any costs, fees or expenses associated with acquiring necessary services from such law enforcement agencies, including, without limitation, the fees or expenses associated with such law enforcement services.

7. Insurance and Indemnification: GNP will be responsible for providing comprehensive general liability insurance in the amount of not less than \$10,000,000 with a company or companies reasonably satisfactory to CDA. [In addition, GNP will provide casualty insurance on the buildings, structures,

equipment and facilities within the Property at their full replacement cost.] GNP shall provide certificates of the foregoing insurance, showing RDCDA as an additional insured to the extent of its interest. Finally, GNP agrees to indemnify and hold RDCDA, the Town of Riverhead and their respective officers, employees, agents, representatives and officials ~~identify other appropriate parties, if any~~ of and from any and all loss or liability associated with the Event and related activities described herein, including liability for damages to property or for injuries or death to persons which may arise from, or be attributable or incident to the use by GNP and its employees, agents, representatives and concessionaires, or any concert attendee, of the Property, excepting liability solely caused by the gross negligence of RDCDA or its employees, agents or representatives. Without limiting the generality of the foregoing, GNP agrees to indemnify and hold RDCDA harmless from any lien claimed or asserted for labor, materials or services furnished to GNP in connection with the concerts or related events. With respect to any suit or claim by RDCDA, whether under this indemnification provision or otherwise, GNP, for itself, its agents, employees and representatives, hereby expressly waives any defense which might preclude or limit either enforcement of this indemnification clause or any reasonable attorney's fees incurred by RDCDA in securing compliance with the provision of this indemnification agreement.

8. Miscellaneous Responsibilities of GNP: Except with respect to any specific services, equipment and facilities to be provided by RDCDA under this Agreement, GNP will be responsible for acquiring all services and materials and otherwise for carrying out all actions necessary for the Event and related activities to take place, including, but not limited to, all planning, marketing, promotions, sponsorship, operations, concessions, garbage removal, cleanup, construction and demolition or removal of all temporary structures, development and removal of systems to deliver adequate supplies of potable water, portable toilets, systems for removal of wastewater, ticketing, security, emergency medical service, traffic control, electrical power and communications. GNP will obtain all necessary licenses, permits and approvals required for the Event and for construction of any temporary structure or system to be used at the Property in connection with the Event or related activities. In addition, GNP will take all actions necessary to restore the property to its condition existing prior to the commencement of operations under this agreement, including, without limiting the generality of the foregoing, the removal of all temporary structures and systems.

9. Successors and Assigns. This agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties; provided, however, that nothing herein shall be deemed to permit the assignment of this Agreement by either party without the express written consent of the other party.

10. Entire Agreement. This contract constitutes the entire agreement between the parties and no further agreement, express or implied, written or oral, exists with respect to the subject matter of this document.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

12. Dispute Resolution. The parties to this Agreement will submit any controversy or claim arising out of or relating to this Agreement which cannot be resolved by mutual agreement to binding arbitration under the rules of the American Arbitration Association. Such arbitration shall be conducted by an arbitrator experienced in arbitrating disputes of similar size and complexity as shall be jointly selected by the parties, or failing such joint selection within seven (7) days of the assertion of the controversy or claim, as shall be appointed by the President of the American Arbitration Association in the City of Albany, New York. Arbitration shall commence upon appointment of the arbitrator. All costs of arbitration shall be shared equally by the parties. The parties shall be responsible for the costs of their respective attorneys and the expenses of witnesses that they may call. Notwithstanding any other provision of law, any arbitration process held pursuant to this Agreement shall be deemed confidential and no statements made therein shall be used in any other proceeding. The decision of the arbitrator shall be delivered in writing to the parties within seven (7) calendar days of the closing of the arbitration proceedings. The decision of the arbitrator shall be binding upon the parties.

13. Additional County Services. [Identify services, if any, to be provided by RDCDA and price of same]

In Witness Whereof, Great Northeast Productions, Inc. has caused this instrument to be signed in its corporate name by David J. Werlin, its President, hereunto duly authorized, and Riverhead Community Development Corporation ~~Agency~~ has caused this instrument to be signed in its corporate name by _____, its _____, hereunto duly authorized, as of the day and the year first above written.

GREAT NORTHEAST PRODUCTIONS, INC.

By: _____
David J. Werlin, President

RIVERHEAD COMMUNITY DEVELOPMENT
CORPORATION AGENCY

By: _____
Name:
Title: