

TOWN OF RIVERHEAD
COMMUNITY DEVELOPMENT AGENCY
Resolution # 4

4719/0971

At a special meeting of the Members of the Town of Riverhead Community Development Agency, Town of Riverhead, Suffolk County, New York, held at the Town of Riverhead Town Hall, 200 Howell Avenue, in Riverhead, New York, in said Town, on August 2, 1994, at 7:00 o'clock P.M., Prevailing Time.

The meeting was called to order by Member Stark, and upon roll being called, the following were

PRESENT:

Member James R. Stark
Member Victor J. Prusinowski
Member Frank W. Creighton
Member Harriet A. Gilliam

ABSENT:

Chairman Joseph F. Janoski

The following resolution was offered by Member Prusinowski, who moved its adoption, seconded by Member Stark, to-wit:

RESOLUTION DATED AUGUST 2, 1994.

A RESOLUTION DETERMINING THE CONSTRUCTION OF AN APPROXIMATELY 82,000 SQUARE FOOT AQUARIUM AND MARINE MAMMAL/SEA TURTLE RESCUE, REHABILITATION AND EDUCATION CENTER AND THE ACQUISITION OF LAND LOCATED ON EAST MAIN STREET, IN RIVERHEAD, NEW YORK, INCLUDING ORIGINAL FURNISHINGS, EQUIPMENT, MACHINERY, APPARATUS, APPURTENANCES AND INCIDENTAL IMPROVEMENTS AND EXPENSES IN CONNECTION THEREWITH, TO BE A DEMONSTRATION PROJECT, DESIGNATING THE OKEANOS RESEARCH FOUNDATION, INC. AS THE SPONSOR THEREOF, TAKING OFFICIAL ACTION TOWARDS THE ISSUANCE OF REVENUE BONDS TO PAY COSTS THEREOF AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND OKEANOS WITH RESPECT THERETO.

WHEREAS, by Articles 15 and 15-A, and Section 680-c of Article 15-B, of the General Municipal Law of the State of New York, as amended (collectively, the "Act"), the Town of Riverhead Community Development Agency (the "Agency") was created with the authority and power to, among other things, acquire, construct, reconstruct and equip certain projects in accordance with the Act and to issue its revenue bonds to pay costs of such projects;

WHEREAS, there has been submitted to the Agency a proposal for, and the Agency is considering, (i) the construction of an approximately 82,000 square foot aquarium and marine mammal/sea turtle rescue, rehabilitation and education center and the acquisition of land located on East Main Street, in Riverhead, New York, including original furnishings, equipment, machinery, apparatus, appurtenances and incidental improvements and expenses in connection therewith (the "Facility"), (ii) authorizing the issuance of not exceeding \$58,000,000 bonds of the Agency (the "Bonds") to provide financing to pay costs of the Facility and capitalized interest and a debt service reserve fund on the Bonds and certain costs of issuance thereof, (iii) designating the

Okeanos Ocean Research Foundation, Inc., a New York not-for-profit corporation, the "qualified and eligible sponsor", pursuant to Sections 556(2) and 507(2)(c) of the General Municipal Law and in accordance with established rules and procedures prescribed by the Agency (the "Sponsor"), of the Facility and (iv) entering into a sale agreement by and between the Agency and Okeanos pursuant to which Okeanos will occupy the Facility and will acquire the Facility from the Agency after the Bonds have been paid; and

WHEREAS, the Town of Riverhead (the "Town"), on October 19, 1993, adopted the East Main Street Urban Renewal Plan (the "Plan"), which Plan includes the construction of the Facility in the Central Business District Urban Renewal Area of the Town (the "Area"); and

WHEREAS, the construction of the Facility will arrest and prevent conditions of deterioration or blight in the portion of the Area in which the same is proposed to be located and is necessary for the overall redevelopment of the Area, which entire Area, including the portion in which the Facility is proposed to be located, has been determined in the Plan to be vastly under utilized; and

WHEREAS, the Town, pursuant to Article 8 of the Environmental Conservation Law and the regulations promulgated thereunder by the State Department of Environmental Conservation ("SEQRA") declared itself "lead agency" for acquisition, construction, equipping and financing of the Facility, and the Town has concluded its SEQRA analysis with respect to the Facility and has adopted its SEQRA "findings" with respect to the Facility; and

WHEREAS, the Agency has designated itself "lead agency" for its financing of the Facility, has declared that the "Action" is a "Type I" Action, has prepared and filed an Environmental Assessment Form with respect to its financing of the Facility and has determined that such financing, as proposed, will not result in any significant environmental effects; and

WHEREAS, pursuant to Section 556(2) and 507(2)(c) of the General Municipal Law, the Agency, on August 2, 1994, at the Town of Riverhead Town Hall, 200 Howell Avenue, in Riverhead, New York, held a public hearing in connection with designating Okeanos the Sponsor of the Facility; and

WHEREAS, prior to contacting the Agency, Okeanos submitted an application for financial assistance for the Facility to the Suffolk County Industrial Development Agency, which Agency, on April 20, 1993, adopted a Preliminary Inducement Resolution for a tax-exempt civic facility bond in the amount of \$20,000,000; and

WHEREAS, based upon information provided to the Agency by Okeanos, the Plan, the Town's SEQRA analysis and findings, the Agency's SEQRA negative declaration and the information provided at the public hearing, (collectively, the "Review") the Agency now desires to determine the Facility to be a "demonstration project" of the Agency, pursuant to Section 554 of the General Municipal Law (a "Demonstration Project"), designate Okeanos the Sponsor of the Facility, take official action towards the issuance of the Bonds and authorize the execution and delivery of an Agreement between the Agency and Okeanos with respect to the Facility;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon the Review, the Agency hereby finds and determines that the Facility, as proposed, will arrest and prevent conditions of deterioration or blight in the portion of the Area in which it is proposed to be located, is necessary for the overall redevelopment of the Area, will demonstrate the creative reuse of a portion of the Town's Central Business District, and of the waterfront in particular, from a vastly under utilized use as a lumber yard to a highly productive use as a tourist destination and nationally known marine mammal/sea turtle rehabilitation and education center and is a Demonstration Project.

Section 2. Based upon the Review, the Agency hereby designates Okeanos the Sponsor of the Facility.

Section 3. Subject to the conditions set forth in Section 4 of this Resolution, the Agency will issue the Bonds in such principal amount not exceeding \$58,000,000 and with such maturities, interest rate or rates, redemption terms and other terms and provisions as shall be determined by a further resolution of the Agency, and secure the Bonds in such manner as the Agency, Okeanos and the purchaser(s) of the Bonds mutually shall deem appropriate.

Section 4. The issuance of the Bonds shall be subject to, among other things, (i) agreement by the Agency, Okeanos and the purchaser(s) of the Bonds upon mutually acceptable terms for the

Bonds, including terms and conditions relating to security for the payment thereof, and for the sale and delivery thereof, and (ii) the issuance of the approving opinion by Willkie Farr & Gallagher as bond counsel to the Agency, in form and substance satisfactory to the Agency and to the purchaser(s) of the Bonds.

Section 5. Subject to the execution and delivery by Okeanos of the agreement referred to in Section 7 hereof, Okeanos is appointed the true and lawful agent of the Agency (i) to acquire, construct and equip the Facility and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings or instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the acquisition, construction and equipping of the Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

Section 6. Okeanos may proceed with the acquisition, construction and equipping of the Facility and advance such of its own funds as may be necessary to accomplish such purposes and, to the extent permitted by law, the Agency agrees to reimburse Okeanos therefor out of the proceeds of the Bonds.

Section 7. The form and substance of the proposed agreement (in substantially the form presented to this meeting and attached hereto as Exhibit A) between the Agency and Okeanos setting forth the undertakings of the Agency and Okeanos with respect to the issuance of the Bonds and the providing of the Facility (the "Agreement") are hereby approved. The Chairman of the Agency is

hereby authorized, on behalf of the Agency, to execute and deliver the Agreement in substantially the form presented to this meeting, with such changes in terms and form as the Chairman shall approve. The execution thereof by the Chairman shall constitute conclusive evidence of such approval.

Section 8. Counsel to the Agency and Willkie Farr & Gallagher, bond counsel to the Agency, are hereby authorized to work with the purchaser(s) of the Bonds, Okeanos and others to prepare, for submission to the Agency, all documents necessary to effect the authorization, issuance and sale of the Bonds.

Section 9. The Chairman of the Agency is hereby authorized and directed to distribute copies of this Resolution to Okeanos and to do such further things and perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 10. This Resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to vote on roll call, which resulted as follows:

<u>Member Stark</u>	VOTING	_____
<u>Member Prusinowski</u>	VOTING	_____
<u>Member Creighton</u>	VOTING	_____
<u>Member Gilliam</u>	VOTING	_____
_____	VOTING	_____
_____	VOTING	_____

The resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

I, the undersigned Secretary of the Town of Riverhead Community Development Agency, Town of Riverhead, Suffolk County, New York, DO HEREBY CERTIFY:

1) That I have compared the annexed extract of the minutes of the meeting of the Members of said Agency, including the resolution contained therein, held on August 2, 1994, with the original thereof on file in my office, and that the same is a true and correct transcript therefrom and of the whole of said original so far as the same relates to the subject matters therein referred to; and

2) The Agreement annexed hereto as Exhibit A is in substantially the form presented to and approved at such meeting.

I FURTHER CERTIFY that all Members of said Agency had due notice of said meeting.

I FURTHER CERTIFY that, pursuant to Section 103 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public.

I FURTHER CERTIFY that, PRIOR to the time of said meeting, I duly caused a public notice of the time and place of said meeting to be given to the following newspapers and/or other news media as follows:

Newspaper and/or other news media

Date given

The Suffolk County Life

I FURTHER CERTIFY that PRIOR to the time of said meeting, I duly caused public notice of the time and place of said meeting to be conspicuously posted in the following designated public location(s) on the following dates:

Designated Location(s)
of posted notice

Date of Posting

Town Hall
200 Howell Avenue
Riverhead, NY 11901

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency on August 24, 1994.

Andrea Lohneiss

Secretary
ANDREA LOHNEISS

(CORPORATE
SEAL)

EXHIBIT A

AGREEMENT

THIS AGREEMENT is between the Town of Riverhead Community Development Agency (the "Agency") and Okeanos Ocean Research Foundation, Inc. ("Okeanos").

Article 1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of this Agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Articles 15 and 15-A and Section 680-c of Article 15-B of the General Municipal Law of the State of New York (the "State"), as amended, (collectively, the "Act") to issue its special obligation revenue bonds for the purpose of financing certain projects and to sell the same upon such terms and conditions as the Agency may deem advisable.

1.02. Okeanos has requested that the Agency provide for the construction of an approximately 82,000 square foot aquarium and marine mammal/sea turtle rescue, rehabilitation and education center and the acquisition of land located on East Main Street, in Riverhead, New York, including original furnishings, equipment, machinery, apparatus, appurtenances and incidental improvements and expenses in connection therewith (the "Facility"), and authorize the issuance of not exceeding \$58,000,000 bonds of the Agency (the "Bonds") to provide financing to pay costs of the Facility and capitalized interest and a debt service reserve fund on the Bonds and certain costs of issuance thereof, and sell the Facility to Okeanos after the Bonds have been paid pursuant to a sale agreement.

1.03. The Agency has determined that the Facility is a Demonstration Project, as provided in the Act, and the issuance of Bonds of the Agency and the sale of the Facility to Okeanos will promote and further the purposes of the Act.

1.04. On August 2, 1994, the Agency adopted a resolution agreeing, subject to the satisfaction of all conditions precedent set forth in such resolution, to issue and sell the Bonds.

Article 2. Undertakings on the Part of the Agency. Based upon the statements, representations and undertakings of Okeanos and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency will authorize and use its best efforts to issue, sell and deliver the Bonds, pursuant to the Act as then in effect.

2.02. The Agency will adopt such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) the authorization, issuance, sale and delivery of the Bonds, (ii) the acquisition, construction, and equipping of the Facility, and (iii) the sale of the Facility to Okeanos, all as shall be authorized by law and be mutually satisfactory to the Agency, Okeanos and the purchaser(s) of the Bonds.

2.03. The Agency will enter into an agreement to sell the Facility to Okeanos (the "Financing Agreement"). The Financing Agreement shall obligate Okeanos to make aggregate basic payments in an amount at least sufficient to pay the principal of, premium, if any, and interest on the Bonds as and when the same shall become due and payable, plus such additional amounts as shall be prescribed in the Financing Agreement. Okeanos shall acquire from the Agency title to the Facility for an aggregate amount equal to the amount required to retire the Bonds, plus such additional amounts as shall be prescribed in the Financing Agreement. The Financing Agreement shall contain all provisions required by law and such other provisions as shall be mutually satisfactory to the Agency, Okeanos and the purchaser(s) of the Bonds.

2.04. Okeanos may proceed with the acquisition, construction and equipping of the Facility and advance such funds as may be necessary to accomplish such purposes and, to the extent permitted by law, the Agency agrees to reimburse Okeanos therefor from the proceeds of the Bonds.

2.05. Subject to Section 4.02 hereof, Okeanos is appointed the true and lawful agent of the Agency (i) to acquire, construct and equip the Facility and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

Article 3. Undertakings on the Part of Okeanos. Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein, Okeanos agrees as follows:

3.01. Okeanos will use all reasonable efforts to find or cause to be found one or more purchasers for the Bonds.

3.02. Contemporaneously with the delivery of the Bonds, Okeanos will enter into the Financing Agreement with the Agency

containing the terms and conditions described in Section 2.03 hereof.

3.03. (a) Okeanos shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on (i) labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition, construction and equipping of the Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of Okeanos acting as agent for the Agency pursuant to this Agreement or otherwise, or (ii) any untrue statement or alleged untrue statement of a material fact included in any written materials relating to the offering or sale of the Bonds or the omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) Okeanos shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove, any mechanics' or other liens against the Facility for labor or material furnished in connection with the acquisition, construction and equipping of the Facility.

(c) Okeanos shall indemnify and hold the Agency harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

(d) Okeanos shall purchase and maintain public liability insurance with respect to the Facility in an amount approved by the Agency and shall include the Agency as a named insured under all such public liability insurance policies obtained by Okeanos with respect to the Facility.

3.04. Okeanos agrees that, to the extent required by law, it will comply with the requirements of the Labor Law, the Executive Law and the Civil Rights Law of the State.

3.05. Okeanos will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.06. If no Bonds have been issued within one year of the date of completion of the acquisition, construction and equipping of the Facility, Okeanos will pay to the appropriate taxing jurisdiction whatever amounts would have been due with respect to the Facility if Okeanos had not been appointed agent of the Agency

pursuant to Section 2.05 hereof, including without limitation any sales taxes and any real property taxes and assessments (less any payments in lieu of taxes made by Okeanos).

Article 4. General Provisions.

4.01. This Agreement shall take effect on the date of the execution hereof by the Agency and Okeanos.

4.02. It is understood and agreed by the Agency and Okeanos that the issuance of the Bonds and the execution of the Financing Agreement and related documents are subject to (i) obtaining all necessary governmental approvals, (ii) approval by the appropriate bodies of the Agency and Okeanos and (iii) agreement by the Agency, Okeanos and the purchaser(s) of the Bonds upon mutually satisfactory terms for the Bonds and for the sale and delivery thereof and mutually satisfactory terms and conditions for the Financing Agreement.

4.03. Okeanos agrees that it will (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation, the fees and expenses of Willkie Farr & Gallagher, bond counsel to the Agency, and (ii) indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder.

4.04. This Agreement may be terminated, at the option of either party hereto, on or after one year from the date hereof upon delivery of prior written notice thereof to the other party; provided, however, that in such event Okeanos's obligations under Sections 3.03, 3.06 and 4.03 hereof shall survive any such termination.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on this ____ day of August, 1994.

TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY

By: _____ Chairman

OKEANOS OCEAN RESEARCH FOUNDATION, INC.

By: _____