

04.20.2011  
CDA1108

ADOPTED

**TOWN OF RIVERHEAD  
Community Development Agency**

**Resolution # 8**

**AUTHORIZES THE EXECUTION OF AN AGREEMENT WITH THE  
COUNTY OF SUFFOLK**

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

**WHEREAS**, the Town Riverhead Community Development Agency (CDA) is the owner of the remaining land of approximately 1900 acres known as Enterprise Park (EPCAL), Calverton, New York (hereinafter referred to as the "Property"); and

**WHEREAS**, County of Suffolk and the Suffolk County Police Department (hereafter "Suffolk") advised the CDA that it desires to use a portion of the Park for motorcycle training purposes; and

**WHEREAS**, the CDA and Suffolk have agreed to terms under which Suffolk will be granted the use of a portion of the Park for said motorcycle training purposes.

**NOW, THEREFORE, it is hereby**

**RESOLVED**, that the CDA be and hereby, authorizes Chairman Sean Walter to execute the attached License Agreement with Suffolk for use of the westerly runway; and be it further

**RESOLVED**, that the CDA Chairman was and is hereby authorized to execute the with Suffolk for use of use of a portion of the Park for said motorcycle training purposes; and be it further

**RESOLVED**, that the Town Clerk is hereby directed to forward a copy of this resolution to County of Suffolk, Suffolk County Police Department, the Office of the Town Attorney, the Community Development Director and the Town Financial Administrator.

**THE VOTE**

Giglio  Yes  No      Gabrielsen  Yes  No  
Wooten  Yes  No      Dunleavy  Yes  No  
Walter  Yes  No

The Resolution Was  Thereupon Duly Declared Adopted

## **LICENSE AGREEMENT**

This Agreement is made and entered into as of this \_\_\_\_ day of April, 2011, by and between the Riverhead Community Development Agency, a public instrumentality of the Town of Riverhead, County of Suffolk and State of New York, with a mailing address of 200 Howell Avenue, Riverhead, New York 11901 (“CDA”), and the County of Suffolk, a municipal corporation existing by virtue of the laws of the State of New York, with a principal place of business located at the H. Lee Dennison Building, 100 Veterans Memorial Highway, Hauppauge, New York 11788-0099 and the Suffolk County Police Department, a department formed and controlled by the County of Suffolk, with a principal place of business located at 30 Yaphank Avenue, Yaphank, New York 11980, (hereinafter jointly referred to as “Suffolk”):

**WHEREAS**, the CDA controls approximately 1900 acres of land in Calverton, New York, commonly known as Calverton Enterprise Park, which land is more particularly described on Exhibit “A” attached hereto (the “Park”); and

**WHEREAS**, Suffolk desires to use a portion of the Park for motorcycle training purposes; and

**WHEREAS**, the CDA and Suffolk have agreed to terms under which Suffolk will be granted the use of a portion of the Park for said motorcycle training purposes.

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

1. ***Use of Property***: CDA hereby grants Suffolk a License providing Suffolk with the use of that portion of the Park depicted on the attached Exhibit A for

motorcycle training purposes (the "Property") upon the terms and conditions set forth hereunder. This License will provide Suffolk and its employees, representatives, agents and invitees the use of the Property one (1) days in the spring; namely May 3, 2011 (the "License Period") for said motorcycle training purposes. Suffolk shall notify the CDA in writing fourteen (14) days prior to the two (2) days it wishes to use the Property in the spring and fourteen (14) days prior to the two (2) days it wishes to use the Property in the fall so as to allow the CDA sufficient time coordinate the use of the Property. In the event that Suffolk desires to use the Property for motorcycle training purposes on any additional days during the License Period it shall request such in writing at least twenty four (24) hours prior to such date so as to allow the CDA sufficient time to coordinate the use of the Property. Such twenty four (24) hour notice will be sent by Suffolk via FAX to the Riverhead Town Police Department at 631-727-8630 and the Town Attorney's Office at 631-727-6152.

Suffolk acknowledges and understands that since the dates that it desires to use the Property are not currently known it is difficult for the CDA to know in advance if the Property will be available on the dates requested by Suffolk. Suffolk further acknowledges that it does not have exclusive use of the Property during the License Period except for the dates that it has been granted permission to use the Property by the CDA. The CDA represents that it will endeavor to accommodate any dates requested by Suffolk in regard to the use of the Property and notify Suffolk in writing as soon as possible if the Property is unavailable on any particular date requested, whereby Suffolk will need to choose a different date.

It is understood and agreed by the parties that Town of Riverhead officials shall be permitted onto the Property without prior notice to Suffolk at any time during the license period.

2. ***Compliance With Laws:*** Suffolk shall at all times comply with all applicable federal, state, county and municipal laws, regulations, ordinances, codes, restrictions and regulations for the activities it is conducting upon the Property.
3. ***Compensation:*** It is agreed between the parties that the License set forth above for the use of the Property for motorcycle training Suffolk shall be at no cost to Suffolk.
4. ***Responsibilities of Suffolk:*** Buildings, facilities and grounds will be kept clean and free of clutter and debris. Suffolk will remove all refuse, rubble, garbage and debris created by its activities at the Property and dispose of the same at an appropriate waste facility.
5. ***Insurance and Indemnification:*** Suffolk will be responsible for providing Comprehensive General Liability insurance including Terrorism coverage in an amount not less than \$2,000,000 with a company reasonably satisfactory to the CDA. On or before April 27, 2011, Suffolk shall provide the certificate for the foregoing insurance, showing the CDA and the Town of Riverhead as additional insureds.

In addition, Suffolk agrees to indemnify and hold harmless the CDA, the Town of Riverhead and their respective officers, employees, agents, representatives and officials from any and all loss or liability associated with Suffolk's use of the Property 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 Suffolk and its employees, agents, representatives and invitees, of the Property, excepting liability solely caused by the negligence or willful misconduct of the CDA, the Town of Riverhead or their respective officers, employees, agents, representatives or officials. With respect to any suit or claim by the CDA whether under this indemnification provision or otherwise, Suffolk, 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 attorneys fees incurred by the CDA securing compliance with the provision of this indemnification agreement.

Such duty to defend and protect the CDA, the Town of Riverhead and their respective officers, employees, agents, representatives and officials shall include without limitation investigation and the cost of defense and settlement, including reasonable attorney's fees, up through final appeal of a trial court judgment or arbitration. The CDA and the Town of Riverhead respectfully reserves the right to participate in its defense with counsel of its own choosing.

6. ***Miscellaneous Responsibilities of Suffolk:*** Suffolk will take all actions necessary to restore the Property to its condition existing prior to its use under this License Agreement.

7. ***Representations of CDA:*** The CDA warrants and represents that (a) it has the full right, power and authority to enter into this License Agreement and to grant the License, and (b) the Property is in compliance with all applicable laws, rules and regulations.

8. ***Representations of Suffolk:*** Suffolk acknowledges that it has examined the Property, that it is aware of all existing conditions on the Property, and that the Property is suitable for the purposes of this License Agreement.

9. ***Notices:*** Any notices hereunder shall be sent to the addresses set forth above by (a) certified mail, return receipt requested (deemed received four days following the date mailed, postage paid) or (b) nationally recognized overnight carrier (deemed received one day following the date sent), *except* for the twenty four (24) hour notice set forth in paragraph "1" above which will be sent via FAX.

10. ***Assignment:*** Nothing herein shall be deemed to permit the assignment of this

License Agreement by either party without the express written consent of the other party.

11. **Entire Agreement:** This License Agreement 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.

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

**In Witness Whereof,** Suffolk has caused this instrument to be signed in its corporate name by \_\_\_\_\_, on behalf of the County of Suffolk and \_\_\_\_\_ on behalf of the Suffolk County Police Department, hereunto duly authorized, and Town of Riverhead Community Development Agency has caused this instrument to be signed in its corporate name by Sean Walter, its Chairman, hereunto duly authorized, as of the day and the year first above written.

COUNTY OF SUFFOLK

By: \_\_\_\_\_

SUFFOLK COUNTY POLICE DEPARTMENT

By: \_\_\_\_\_

RIVERHEAD COMMUNITY DEVELOPMENT AGENCY

By: \_\_\_\_\_

**TOWN OF RIVERHEAD  
Community Development Agency**

**Resolution # 9**

**AUTHORIZES AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH  
DUNN ENGINEERING ASSOCIATES, P.C. TO PROCEED WITH CALVERTON  
RAIL CONSTRUCTION ADMINISTRATION FOR CHANGE ORDER No. 6**

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Gabrielsen

**WHEREAS**, the New York State Department of Transportation (NYS DOT) Calverton Industrial Enterprise Park Freight Rail Access Rehabilitation (PIN #0935.61) Economic Recovery Project in the Town of Riverhead, in Suffolk County, (hereinafter "the Municipality/Sponsor") is eligible for and has been awarded funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs of such program to be borne at the ratio of 100% Federal funds and 0% non-federal funds to support, among other things, important infrastructure projects that help attract businesses, improve commerce and revitalize local economies; and

**WHEREAS**, the New York State Empire State Development Corporation awarded an additional \$650,000 in Downstate Revitalization funding to support, among other things, important infrastructure projects that help attract businesses, improve commerce and revitalize local economies towards the Calverton Industrial Enterprise Park Freight Rail Access Rehabilitation; and

**WHEREAS**, the Town of Riverhead Community Development Agency (CDA) Board desires to foster the continued development of infrastructure at the Calverton Enterprise Park site to encourage continued economic development at the site consistent with the comprehensive plans; and

**WHEREAS**, on February 11, 2010, the CDA Board adopted Resolution No. 2 entitled, "Awards Calverton Rail Access Rehabilitation Contract" that awarded the construction bid for the above mentioned project to Railroad Construction Co., Inc.; and

**WHEREAS**, use of a construction inspection consultant from the pre-approved Suffolk County of Transportation LDSA list expedited the delivery of the project and Dunn Engineering Associates, P.C. was on such list; and

**WHEREAS**, on April 6, 2010, the CDA Board adopted adopted Resolution No. 6 entitled, "Authorizes Dunn Engineering Associates, P.C. to Proceed with Calverton Rail

Construction Administration”, that authorized Dunn Engineering to proceed with construction inspection for the contract; and

**WHEREAS**, on October 5, 2010, the CDA Board adopted Resolution No. 17 entitled “Authorizes Optimized Reconstruction of the Calverton Rail Spur” to request the remaining ARRA funding certified for the Calverton Rail project to enhance the design and provide more efficient trackage that accommodates modern freight rail cars to eliminate the obsolete runaround track and relocate said runaround track to include an approximately 1800’ long runaround track, creates a better functioning spur that will provide more efficient service; and

**WHEREAS**, on March 15, 2011, the CDA Board adopted Resolution #6 titled “Authorizes Change Order for Optimized Reconstruction of Calverton Rail Spur”

**WHEREAS**, Dunn Engineering Associates, P.C. has submitted the attached proposal to perform the construction administration services associated with Change Order No. 6 for the reconstruction of the Calverton Rail Spur.

**NOW, THEREFORE, BE IT RESOLVED**, Dunn Engineering Associates, P.C. be and is hereby authorized to proceed subject to “Notice to Proceed” in the form of a Town of Riverhead Purchase Order with the attached construction administration services proposal not to exceed \$175,070; and

**BE IT FURTHER RESOLVED**, that the CDA Board be and does hereby authorize the Accounting Department to issue a Town of Riverhead Purchase Order in the amount listed above; and

**BE IT FURTHER RESOLVED**, that the CDA Board be and does hereby authorize the Chairman to enter into a Town of Riverhead Consultant/Professional Services Agreement/Amendment with Dunn Engineering Associates, P.C. subject to review and approval by the Town Attorney; and

**BE IT FURTHER RESOLVED**, that the Town Clerk forward copies of this resolution to the Accounting Department, the Engineering Department and the Community Development Department; and

**BE IT FURTHER RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

**THE VOTE**

Giglio Yes No      Gabrielsen Yes No  
Wooten Yes No      Dunleavy Yes No  
Walter Yes No

The Resolution Was  Thereupon Duly Declared Adopted

On a motion of Councilman Dunleavy, seconded by Councilman Wooten the resolution was taken OFF THE FLOOR

THE VOTE:

Yes – 5 Giglio, yes; Gabrielsen, yes; Wooten, yes; Dunleavy, yes; Walter, yes

NO - 0

**RAIL TRANSPORT  
DESIGN, PLANNING AND SUPPORT**

**SUMMARY OF ESTIMATED PROJECT COSTS FOR CONSTRUCTION INSPECTION AND CONSTRUCTION  
SUPPORT**

April 12, 2011

**TOWN OF RIVERHEAD RAIL REHABILITATION PROJECT  
CALVERTON INDUSTRIAL PARK**

**ASSUMED WORK SCOPE AND SCHEDULE: CONTRACT EXTENSION 8 WEEKS THROUGH COMPLETION**

<b>COMBINED ENGINEERING FEE SUMMARY</b>		
<b>ITEMS</b>	<b>DEA/HDR</b>	<b>TOTAL COST</b>
Task 1 Project Administration		\$21,981
Task 2 Construction Inspection		\$129,028
Task 3 Construction Support		\$14,540
Out of Pocket		\$2,521
Subconsultant Saratoga Engineering		\$4,500
Testing		\$2,500
<b>TOTAL ESTIMATED COMBINED FEE</b>		<b>\$175,070</b>