



Stratford Arts Commission Public Forum
April 2, 2009

On March 30, 2009, Town Attorney Richard Burturla presented the Town Council with a draft contract for the Shakespeare Theatre

Mr. Burturla stated that the contract represented developer William Hanney's "final contract offer"

This public forum was called to provide the public with a more thorough understanding of the contents of the proposal

- Part One of the public forum is dedicated to a review of key aspects of the proposal
- Part Two of the public forum is dedicated to comments from both members of the Arts Commission and the general public

Town Use of Facility and Theater Grounds

2.3 Town Use of Facility and Theater Grounds. Notwithstanding the foregoing, during the Term, the Town and Related Town Entities shall have the absolute right to utilize all or any part of the Facility and Theater Grounds for community and municipal purposes provided, however, that such use shall not unreasonably interfere with scheduled CDG Performances. CDG shall cooperate with the Town to accommodate the Town's use of the Facility and Theater Grounds for other municipal and community purposes. Additionally, the Theatre Grounds shall be available for use by the Town of Stratford Art's Commission, or other such Related Town Entities, for an annual arts and theatre festival (the "Stratford Arts Festival") for a period of three (3) weeks (hereinafter, the "Stratford Arts Festival Period"). The Stratford Arts Festival Period shall include three weekends, i.e., three (3) Saturdays and Sundays, commencing on 12:01 am on Monday through 11:59 pm on the Sunday three (3) weeks subsequent and unless otherwise specifically agreed to by the Town in writing, the Stratford Arts Festival Period shall be scheduled during the months of June, July, August and September of each calendar year of the Term

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- Mr. Hanney has removed the facility from usage by the Arts Commission for the annual festival
- Exclusive use of the grounds has been removed, along with the use of the grounds for consecutive weeks

Cost Estimate: Guaranteed Maximum Price

A Guaranteed Maximum Price, as defined below, to be paid by the Town for the cost of completion of the Approved Plan and Work shall be established prior to the start of construction, but in no event shall the sum of the cost of the Work, defined below, exceed the amount of THREE MILLION AND 00/100'S DOLLARS (\$3,000,000.00). Such maximum sum of THREE MILLION AND 00/100'S DOLLARS (\$3,000,000.00) is referred to herein as the "Guaranteed Maximum Price".

Costs for the Approved Plan and Work over and above the Guaranteed Maximum Price or which would cause the Guaranteed Maximum Price to be exceeded, shall be paid by CDG and shall be the sole responsibility of CDG without reimbursement by the Town.

Construction Management Costs

3.6.1.2 Construction Management Costs

3.6.1.2.1 CDG's onsite and home office support services including all burdened wages and salaries of CDG's supervisory and administrative personnel and support cost items listed in Sections 3.6.1.5.1, 3.6.1.5.2, 3.6.1.5.3, 3.6.1.5.4, and 3.6.1.5.5. CDG will be required to provide the Town with a detailed description and itemized costs of the various components that are to be included in CDG's monthly invoices. At the option of the Town, the costs for the items in this Section may be converted to a lump sum payable in equal monthly installments.

3.6.1.2.2 CDG shall be entitled to reimbursement for wages and salaries of CDG's supervisory or administrative or clerical personnel engaged at CDG's principal offices, factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with prior approval of the Town. Such wages and salaries shall be billed at hourly rates agreed upon by the Town in advance plus reimbursement for any travel or out of pocket expenses at cost.

3.6.1.5.6 Accounting fees and other professional fees incurred by CDG in order to comply with prevailing wage statute, C.G.S. Section 31-52, et seq., as well as comply with reporting requirements and other responsibilities of CDG as required herein.

Bidding, Subcontractors and Suppliers

3.3 Bidding, Subcontractors and Suppliers

Although CDG shall not be required to solicit any bids for the performance of the Work, CDG shall be responsible for planning and administering the bidding process if it undertakes to solicit bids for the Work. Planning activities performed by CDG should include recommendations to the Town on the phasing of the work and breakdown of the bid documents into specific bid packages. It shall be the responsibility of CDG to assemble and prepare the bid packages utilizing the completed Construction Documents in accordance with municipal, state and federal regulations and laws regarding public construction projects on municipally owned property, including the payment of prevailing wages in accordance with Connecticut General Statutes Section 31-52, *et seq.* **CDG shall provide a list of potential bid packages for the Town's review and approval prior to bidding. Additionally, the Town shall have the absolute right and discretion to reject any bid.**

- Gives the developer sole authority to conduct the bidding process for contractors, but does not require the developer to solicit any bids

Improvements and Work Products

3.15 Improvements and Work Products. All improvements, installations and fixtures, installed at or on the Facility and/or the Theatre Grounds at any time during the Term, except for theatrical equipment, lighting, sound systems, box office computers or equipment purchased or leased by CDG, together with all of the Work, shall be and become the property of the Town.

- All theatrical equipment including lighting and sound systems would be retained by CDG

Length of Term

4. **Term.** The term of CDG's use and management of the Facility and Theater Grounds in accordance with this Agreement shall commence upon a date that the Work is Substantially Complete (the "Commencement Date") and terminate ten (10) years thereafter (the "Initial Term"), unless earlier terminated or renewed as provided herein. Provided that CDG is not in default of any of the terms, conditions and covenants of this Agreement, CDG shall have the option to extend the Initial Term for an additional period of ten (10) years (the "First Renewal Term"), upon all of the same terms, covenants, conditions and provisions herein. Thereafter, provided that CDG is not in default of any of the terms, conditions and covenants of this Agreement, CDG shall have the option to extend the Term for an additional period of ten (10) years (the "Second Renewal Term"), upon all of the same terms, covenants, conditions and provisions herein. Thereafter, provided that CDG is not in default of any of the terms, conditions and covenants of this Agreement, CDG shall have the option to extend the Term for an additional period of ten (10) years (the "Third Renewal Term"), upon all of the same terms, covenants, conditions and provisions herein. The First Renewal Term, the Second Renewal Term and the Third Renewal Term hereafter, each individually and together collectively, referred to as a "Renewal Term". The Initial Term and each Renewal Term shall be collectively referred to herein as the "Term".

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- CDG rejected the town's proposal to require payments by the developer in lieu of taxes and rent (PILOT payments)
- The total length of the term will be 40 years, with 1 initial term of 10 years and 3 renewal terms at 10 years each

Fees

5. **Fees.** During the Initial Term, CDG shall pay the sum of FIFTY THOUSAND AND 00/100'S DOLLARS (\$50,000.00) per year (the "Initial Term Annual Fee") to the Town in arrears on the annual anniversary of the Commencement Date. During the First Renewal Term, CDG shall pay the sum of SIXTY THOUSAND AND 00/100'S DOLLARS (\$60,000.00) per year (the "First Renewal Term Annual Fee") to the Town in arrears on the annual anniversary of the Commencement Date. During the Second Renewal Term Term, CDG shall pay the sum of SEVENTY THOUSAND AND 00/100'S DOLLARS (\$70,000.00) per year (the "Second Renewal Term Annual Fee") to the Town in arrears on the annual anniversary of the Commencement Date. During the Third Renewal Term, CDG shall pay the sum of EIGHTY THOUSAND AND 00/100'S DOLLARS (\$80,000.00) per year (the "Third Renewal Term Annual Fee") to the Town in arrears on the annual anniversary of the Commencement Date. The Initial Term Annual Fee, the First Renewal Term Annual Fee, the Second Renewal Term Annual Fee and the Third Renewal Term Annual Fee hereafter, each individually and together collectively, referred to as an "Annual Fee". CDG shall be entitled to a credit against the Annual Fee for the actual costs and expenses incurred and paid by CDG to repair and maintain the Facility and the Theater Grounds during that year of the Term. CDG shall be responsible for all such costs.

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- The total fees collected over the life of the term will be approximately \$2.6M
- CDG will be entitled to a credit against the annual fee for actual costs and expenses incurred and paid by CDG to repair and maintain the Facility and Theater Grounds

Fees

Except as otherwise set forth herein, including but not limited to, those revenues derived from community events conducted by the Town or Related Town Entities as permitted under Section 2.2 of this Agreement, CDG shall retain all revenue and sums earned by it through the operation of the Facility, including but not limited to the sale of tickets, admissions, fees, income from television, film sales, licensing of products to and goodwill associated with the name “American Shakespeare Theatre” or “American Festival Theatre” or “American Shakespeare Festival Theatre”, productions or outreach programs, merchandise, concessions, food, clothing and other monies collected

- CDG will retain all revenue earned through operation of the facility, including licensing of products and goodwill associated with the name “American Shakespeare Theatre” or “American Festival Theatre” or “American Shakespeare Theatre Festival”

Theater Operations

7. **Theater Operations.** For purposes of this Agreement, the term "Production" shall mean a live event separate and distinct from the number of times a a production is performed; and the term "Performance" shall mean a single staging of a production before a live audience, not including rehearsals, technical rehearsals. Commencing on the Commencement Date and continuing throughout the Term, CDG shall operate the Facility as a theater exhibiting a minimum of thirty (30) live Performances each year for years two through ten, and a minimum of fifty (50) performances each year during the first renewal term of this Agreement, a minimum of seventy five (75) performances per year during the second renewal term of this Agreement and a minimum of one hundred (100) Performances during the final renewal terms of this Agreement. Without limiting or restricting the foregoing, CDG shall include during each year of the Term the works of William Shakespeare among the works presented at the Theater, including a minimum of one (1) Production. CDG also agrees to make the Facility available for and to provide the Shakespearian production available to students attending schools in the Town of Stratford and other scholastic jurisdictions. Except as otherwise provided herein, CDG shall have the responsibility and authority to make decisions with respect to the day-to day operations of the Facility. Without limiting the foregoing, CDG shall have the following rights and authority:

- 30 performances per year for Initial term
- 50 performances per year for First Renewal Term

Summer Season

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During the Term, CDG shall be obligated to stage Productions, defined below, at the Facility during the Summer Season, which for the purposes of this Agreement shall mean May 1st through September 30th (the "Summer Season") as follows: (i) during the first two (2) years of the Term two (2) Productions, consisting of no fewer than ten (10) Performances each during each Summer Season; (ii) during the third (3rd) and fourth (4th) years of the Term, three (3) Productions consisting of no fewer than fifteen (15) Performances each during each ... [1]

- Contractual obligation for a Summer Season was deleted by CDG

Annual Performance Schedule

9.1 Annual Performance Schedule. The Town shall provide to the CDG for review and approval an annual performance schedule setting forth dates, times and the title of any proposed performance no later than November 1 of the preceding year, which such schedule shall be subject to change due to artist unavailability or other conflict. Said Annual Performance Schedule shall include the annual Stratford Arts Festival which date shall be during the Stratford Annual Arts Festival Period and shall be established in consultation with the Stratford Arts Commission. As bookings become finalized, CDG shall provide to the Town for review a performance schedule setting forth dates, times and title of any proposed performance as bookings become finalized. Upon reasonable notice, CDG may add other performance dates to the calendar as the year progresses; provided, however, that such date does not conflict with the annual Stratford Arts Festival or a community use by the Town that has been scheduled for the Facility after the presentation of the Annual Performance Schedule to the Town and prior to the consideration of the additional event.

- Town must provide performance schedule to CDG by November 1

Sponsorship of the Theater

11. **Sponsorship of the Theater.** CDG and the Town desire to obtain a corporate sponsor for the Theater and agree to consult with each other with respect to this matter. The granting of any corporate sponsorship, or the right to name the Theater and the Facility and to change any such name thereafter, shall be exercised solely by the CDG. Any and all payments or other benefits received in exchange for the right to name or sponsor the Theater shall be retained by CDG and may be used for any purposes. In the event that the Town is the recipient of a grant for the operation of the Facility, or for any educational or community outreach programs to occur at the Facility, the Town shall apply such payments or benefits to the Facility or the Theater Grounds as allowed by the provisions of such grant and all applicable law.

- CDG retains the right to name the Theater
- CDG retains any and all payments or other benefits received in exchange for the right to name or sponsor the theater

Taxes and Surcharges

12. Taxes and Surcharges. Except for real estate property taxes which shall be waived by the Town, CDG shall pay all taxes, if any imposed as a result CDG's use and operation of the Theater or the business conducted by CDG at the Facility and Theater

- Town waives all real estate property taxes

Taxes and Surcharges

- CDG rejected the assessment of any ticket surcharge

Deleted: Additionally, commencing on the third anniversary of the Commencement Date, the Town shall have the right, but not the obligation, to assess a ticket surcharge not to exceed \$1.25 per ticket during the Initial Term; not to exceed \$2.00 per ticket during the First Renewal Term; not to exceed \$2.50 per ticket during the Second Renewal Term; and not to exceed \$3.00 per ticket during the Third Renewal Term. All such revenues derived from such surcharge may be deposited into a Town fund to be utilized a) pay the bonds issued by the Town to renovate the Facility; b) to pay for economic development and other activities to promote and maintain the Facility and the Theater Grounds; and c) the surplus of such funds shall be expended in the Town's sole and absolute discretion.

Improvements

13.4 Improvements. During the Term, CDG may determine that it is necessary and/or desirable to construct certain improvements at the Property, including but not limited to a restaurant/banquet facility and/or a multi-unit residential dwelling building for employees and/or actors at the Facility. Any such facilities, buildings or other improvements shall be subject to any and all real property and other taxes which may be assessed by and payable to the Town.

CDG may renovate the existing garage to the right of the driveway as you enter the premises to a residential apartment to be occupied by one or more of the employees of CDG and the Town hereby grants permission for that modification as part consideration hereof, subject to municipal regulatory approval.

- CDG would have the right to construct living quarters or retail facilities on the property
- CDG would have the right to renovate the garage into a residential apartment

Short Recess



Shakespeare theater plan dead again

By Richard Weizel

STAFF WRITERPosted: 03/30/2009 10:44:19 PM EDT

Town Attorney Richard Buturla recommended Monday night to the Town Council that it reject what he called theater producer Bill Hanney's "final contract offer" changed at the last minute by Hanney to exclude key provisions that protects the town, and adds language that puts the town at serious financial risk.

"There are serious changes in what Mr. Hanney and Mr. Knott (attorney for Hanney Barry Knott) indicate is their final contract proposal that would put the town in great jeopardy."

"This theater is an iconic landmark and very worthy of saving," Hanney said recently. "When I made my proposal to the council last March it was pretty simple. I said, rent me the theater for 50 years, rent free, and let me renovate it for \$2.5 million. Anything over that I would pay for and also provide a wide array of entertainment, including Broadway shows, Shakespeare, concerts, ballet, film and other kinds of shows."

Town Council Chairman Michael Henrick, R-10, said he is "very disappointed" by Hanney's final offer, but hopes that "somehow a deal can still be salvaged."

