

Item # 24

**City of Carson City  
Agenda Report**

**Date Submitted:** May 26, 2009

**Agenda Date Requested:** June 4, 2009

**To:** Redevelopment Authority

**Time Requested:** 5 minutes

**From:** Joe McCarthy, Office of Business Development

**Subject Title:** Action to approve the Summer Concert Series 2009, Friday's at Third Agreement for Assignment of Vending Space for Mom and Pops Diner, Doug Cramer, Owner.

**Staff Summary:** The action requested is to approve the Agreement with Mom and Pops Diner, a business along 3<sup>rd</sup> Street for the assignment of vender space in conjunction with the Summer Concert Series.

**Type of Action Requested:** (check one)  
 Resolution  Ordinance  
 Formal Action/Motion  Other (Specify) - None

**Does This Action Require A Business Impact Statement:**  Yes  No

**Recommended Board Action:** I move to approve the Summer Concert Series 2009, Friday's at Third Agreement for Assignment of Vending Space for Mom and Pops Diner, Doug Cramer, Owner.

**Explanation for Recommended Board Action:** See staff summary

**Applicable Statue, Code, Policy, Rule or Regulation:** NRS 279

**Fiscal Impact:** N/A

**Explanation of Impact:** N/A

**Funding Source:** N/A

**Alternatives:** Not approve the Agreement, modify the agreement.

**Supporting Material:** Friday's at Third – Summer Concert Series, 2009 Agreement for Assignment of Vending Space for Mom and Pops Diner, Doug Cramer, Owner.

**Prepared By:** Eva Chwalisz, Management Assistant



Friday's at Third – Summer Concert Series, 2009  
Agreement for Assignment of Vending Space

This Agreement by and between the Carson City Redevelopment Authority, a redevelopment agency established pursuant to chapter 279 of NRS, (hereinafter referred to as "RDA") and Mom and Pops Diner, Inc., (hereinafter referred to as "PRESENTER").

WHEREAS, on March 19, 2009, the RDA, with the approval of the Carson City Board of Supervisors, approved the expenditure of \$30,000 from the Revolving Fund for the Redevelopment Agency, to support and promote the Summer Concert Series for Summer 2009;

WHEREAS, the RDA will obtain a special event permit for the purpose of promoting and conducting the Summer Concert Series of Summer 2009;

WHEREAS, at this time, the RDA anticipates the Summer Concert Series of Summer 2009 to occur over a period of 14 weeks and anticipate, but can not guarantee, the following performers to participate in the Concert Series on the following days:

June 5th Sol Jibe – World Music  
June 12<sup>th</sup> – Mark Castro Band – Classic Rock  
June 20th (Saturday- Taste of Downtown) –Road Daddy - Rock  
July 3<sup>rd</sup> – Shane Dwight - Blues  
July 10<sup>th</sup> – Bad Intent - Rock  
July 17<sup>th</sup> – The Jackals – Classic Rock  
August 7<sup>th</sup> – Nevada Hazzurd Band – Country/Rock  
August 21<sup>st</sup> - Kaweh – Latin Alternative  
August 28 – Jason Boland and The Stragglers - Country

WHEREAS, the PRESENTER wishes to be assigned a location at the Summer Concert Series for Summer 2009 for the purpose of selling goods and services to the general public,

NOW, THEREFORE the RDA and PRESENTER agree to the following:

RDA RESPONSIBILITIES

RDA agrees to:

1. Provide, installation and removal of staging, lighting and branded "get down" crowd control hardware elements.
2. Provide on site event support of two uniformed personnel.
3. Provide suitable portable restroom facilities.

4. Provide event liability umbrella insurance coverage to the extent permitted under the RDA's liability insurance coverage contract.
5. Provide risk management assessment and troubleshooting.
6. Provide trash receptacles and street and business frontage clean up support and trash removal from common area.
7. Provide professional program coordination, to include, without limitation, permitting, artist procurement/contracting, sound requirements, artist lodging and rider requirements (exclusive of meals to be provided by presenters) and all support related to the musical presentation.
8. Provide marketing support via: media relations, web calendar links to [www.downtowncarsoncity.com](http://www.downtowncarsoncity.com), [www.visitcarsoncity.com](http://www.visitcarsoncity.com), [www.downtownanswers.com](http://www.downtownanswers.com), posters, rack cards, broad brand advertising, event signage and cross promotional efforts between other downtown businesses and community partners.
9. Assign vending space to PRESENTER, based on the discretion of the event site coordinator including but not limited to, safety, crowd capacity, emergency vehicle access, City ordinances and City issued event permit that supersede any or all event rules and regulations.
10. Provide notification to any entities whose business might be impacted by the Summer Concert Series for Summer 2009, as part of the application for the Special Use Permit, and to provide a full schedule outlining event dates and times to any such affected entities.

#### PRESENTER RESPONSIBILITIES

PRESENTER agrees to:

1. Adequate and timely install and remove any equipment, installations or other items at the vending space assigned to the PRESENTER to comply with event permit starting and ending times and dates.
2. Comply with all City and State laws, ordinances and regulations including, but not limited to, laws, ordinances and regulations regarding food and beverage sales.
3. Obtain any and all permits, licenses or certificates required of PRESENTER by the Carson City Departments or Divisions of Health, Planning, Fire, Engineering, Sheriff, Business License, Animal Control and State of Nevada Department of Taxation.
4. Obtain the approval and consent of RDA for any goods or services to be sold at the assigned vending space.

5. Provide proper and adequate trash receptacles within the vending space.
6. Thorough clean up the vending space assigned to the PRESENTER and complete and thorough disposal of all trash and debris.
7. Obtain approval from the event site coordinator of any electrical cords and the manner of securing of electrical cords so as to not create any hazards.
8. Only conduct vending in the assigned vending area.
9. Fully support and participate in RDA sponsored cross promotional efforts.
10. Provide meals and beverages to performers as per rider.
11. Promptly pay to site coordinator or designee as per the terms of the attached approved budget and site coordinator roles and responsibilities hereto attached as an integral part of this agreement.
12. Pay to RDA, or its authorized agent at the direction of RDA, a total of SEVEN THOUSAND DOLLARS (\$7,000) payable in FIVE HUNDRED DOLLAR (\$500) equal installments that are each due on or before the following dates: May 27, 2009, June 3, 2009, June 10, 2009, June 17, 2009, June 24, 2009, July 1, 2009, July 8, 2009, July 15, 2009, July 22, 2009, July 29, 2009, August 5, 2009, August 12, 2009, August 19, 2009 and August 26, 2009.
13. Not occupy the vending space assigned to the PRESENTER or provide any sale of goods or services to the general public outside of the business location of the PRESENTER during a performance of the Summer Concert Series for Summer 2009 if the PRESENTER breeches any provision of this Agreement, including, but not limited to, failing to pay the installment payment required pursuant to paragraph 11.

#### MUTUAL AGREEMENTS

RDA and PRESENTER mutually agree that:

1. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by e-mail, by telephonic facsimile, or by certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified below.

Notice to RDA shall be addressed to:

Carson City Office of Business Development  
201 North Carson Street  
Carson City, NV 89701  
(775) 887-2101

Notice to PRESENTER shall be addressed to:

2. This Agreement may be terminated by any party with or without cause by giving the other party thirty (30) calendar days written notice of the intent to terminate and specifying the date upon which the termination will be effective.
3. Nevada Revised Statute 360.800 (1) (a) provides for the termination if the governing body fails to appropriate money for the ensuing fiscal year for payment of the amounts then due. RDA may terminate this Agreement, and PRESENTER waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the funding is not appropriated or is withdrawn, limited, or impaired.
4. A default or breach may be declared with or without termination. This Agreement may be terminated by any party upon thirty (30) calendar days written notice of default or breach to the other party as follows: (1) If PRESENTER fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Agreement within the time requirements specified in this Agreement or within any granted extension of those time requirements; or (2) If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by PRESENTER to provide the goods or services required by this Agreement is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or (3) If PRESENTER becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or (4) If RDA materially breaches any material duty under this Agreement and any such breach impairs PRESENTER's ability to perform; or (5) If it is found by RDA that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by PRESENTER, or any agent or representative of PRESENTER, to any officer or employee of RDA with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or (6) If it is found by RDA that PRESENTER has failed to disclose any material conflict of interest relative to the performance of this Agreement.
5. Termination upon a declared default or breach pursuant to paragraph 4 may be exercised only after service of formal thirty (30) calendar days written notice, and the subsequent failure of the defaulting party within fifteen (15)

calendar days of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

6. In the event of termination of this award for any reason, the parties agree that the provisions of this paragraph survive termination: (1) the parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this award. No party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination; (2) PRESENTER shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by RDA; (3) PRESENTER shall execute any documents and take any actions necessary to effectuate an assignment of this award if so requested by RDA.

7. Except as otherwise provided for by law or this Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. The parties agree that, in the event a lawsuit is filed and a party is awarded attorney's fees by the court, for any reason, the amount of recoverable attorney's fees shall not exceed the rate of \$125 per hour. RDA may set off consideration against any unpaid obligation of PRESENTER to RDA.

8. RDA will not waive and intends to assert available Nevada Revised Statutes Chapter 41 liability limitations in all cases. Contract liability of all parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any RDA breach shall never exceed the amount of funds appropriated for conducting the Summer Concert Series for Summer 2009. PRESENTER's tort liability shall not be limited.

9. No party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the award after the intervening cause ceases.

10. To the extent permitted by law, including, but not limited to, the provisions of Nevada Revised Statutes Chapter 41, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other party from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the indemnifying party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of the indemnity which would otherwise exist as to any party or person described in this

paragraph.

Except as otherwise provided below, the indemnifying party shall not be obligated to provide a legal defense to the indemnified party, nor reimburse the indemnified party for the same, for any period occurring before the indemnified party provides written notice of the pending claim(s) or cause(s) of action to the indemnifying party, along with: a written request for a legal defense for such pending claim(s) or cause(s) of action; and a detailed explanation of the basis upon which the indemnified party believes that the claim or cause of action asserted against the indemnified party implicates the culpable conduct of the indemnifying party, its officers, employees, and/or agents.

After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall not be obligated to fund or reimburse any fees or costs provided by any additional counsel for the indemnified party, including counsel through which the indemnified party might voluntarily choose to participate in its defense of the same matter.

After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall be obligated to reimburse the reasonable attorney's fees and costs incurred by the indemnified party during the initial thirty (30) day period of the claim or cause of action, if any, incurred by separate counsel.

11. An independent contractor is a natural person, firm or corporation who agrees to perform services for a fixed price according to his or its own methods and without subjection to the supervision or control of the other contracting party, except as to the results of the work, and not as to the means by which the services are accomplished.

It is mutually agreed that PRESENTER is associated with RDA only for the purposes and to the extent specified in this Agreement, and in respect to performance of the contracted services pursuant to this Agreement. PRESENTER is and shall be an independent contractor and, subject only to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for RDA whatsoever with respect to the indebtedness, liabilities, and obligations of PRESENTER or any other party.

PRESENTER shall indemnify and hold RDA harmless from, and defend RDA against, any and all losses, damages, claims, costs, penalties, liabilities, expenses arising out of or incurred in any way because of, but not limited to, PRESENTER's obligations or legal duties regarding any taxes, fees, assessments, benefits, entitlements, notice of benefits, employee's eligibility to work, to any third party, subcontractor, employee, state, local or federal



governmental entity.

Neither PRESENTER nor its employees, agents, or representatives shall be considered employees, agents, or representatives of RDA.

12. PRESENTER shall provide a copy of his Carson City business license to RDA.

13. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

14. If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

15. To the extent that any assignment of any right under this Agreement changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Agreement, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment RDA, such offending portion of the assignment shall be void, and shall be a breach of this Agreement. PRESENTER shall neither assign, transfer nor delegate any rights, obligations or duties under this Agreement without the prior written approval of RDA

16. As provided in Nevada Revised Statute 239.010, information or documents received from PRESENTER may be open to public inspection and copying. RDA will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. PRESENTER may clearly label individual documents as a "trade secret" or "confidential" in accordance with Nevada Revised Statute 332.061, provided that PRESENTER thereby agrees to indemnify and defend RDA for honoring such a designation. The failure to so label any document that is released by RDA shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

17. PRESENTER shall keep confidential all information, in whatever form, produced, prepared, observed or received by PRESENTER to the extent that such information is confidential by law or otherwise required by this Agreement.

18. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement. Presenter acknowledges that this award is effective only after approval by RDA and only for the period of time specified in the Agreement. Any services performed by Presenter before this award is effective or after it ceases to be effective are performed at the sole risk of PRESENTER.

19. Any controversy of claims arising out of or relating to this Agreement, or the breach thereof, provided all parties agree, may be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

20. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. PRESENTER consents and agrees to the jurisdiction of the courts of the State of Nevada located in Carson City, Nevada for enforcement of this Agreement.

21. This Agreement constitutes the entire Agreement between RDA and PRESENTER and is intended as a complete and exclusive statement of the promises, representations, negotiations, and discussions that may have been made.

\_\_\_\_\_  
Doug Cramer  
Mom & Pop's Diner, Inc.

Date\_\_\_\_\_

\_\_\_\_\_  
Carson City Redevelopment Authority  
By: Robin Williamson, Chairwoman of RDA

Date\_\_\_\_\_

Attest:

\_\_\_\_\_  
Alan Glover, Clerk-Recorder

Date\_\_\_\_\_

As to legality and form:

\_\_\_\_\_  
Neil A. Rombardo, District Attorney  
By: Deputy District Attorney

Date\_\_\_\_\_