



Date: December 6, 2011

To: Thomas Bonfield, City Manager

Through: Keith Chadwell, Deputy City Manager

From: Kevin Dick, Director, Office of Economic and Workforce Development (OEWD)

Subject: Assignment Agreement for the Durham Athletic Park (DAP) Operating Agreement

Executive Summary

This item is to recommend approval and execution of an assignment agreement with the Durham Bulls Baseball Club, Inc. (“Durham Bulls”) for the DAP Operating Agreement between the City of Durham and Minor League Baseball, Inc. (MiLB). The assignment agreement will allow the City to approve a request from MiLB to assign their responsibilities under the DAP Operating Agreement to the Durham Bulls, effective January 1, 2012 through August 31, 2012.

Recommendation

City staff recommends that City Council authorize the City Manager to execute the Assignment Agreement for the DAP Operating Agreement with the Durham Bulls and authorize the City Manager to execute an associated consent and release agreement with Minor League Baseball, Inc.

Background

MiLB approached the City in early 2007 with an interest in operating the Durham Athletic Park and establishing a Minor League Baseball Museum adjacent to the Durham Athletic Park. An operating agreement between the City and MiLB was approved by Council on August 8, 2007, and established responsibilities for the operations of the Durham Athletic Park. One of the conditions of the Operating Agreement was for it to take effect when MiLB signed an Acceptance Certificate and thereby assumed responsibility for the day to day operations of the DAP. The certificate was signed on August 1, 2009.

The term of the operating agreement was to be no longer than three years from the date that the acceptance certificate was signed. Connected with the Operating Agreement was an agreement between North Carolina Central University (NCCU) and MiLB that involved NCCU making use of the facility for its home baseball games through August of each year. Hence, although the Operating Agreement was to be in effect through July 31, 2012, in order for the time frame for usage by NCCU

that was stipulated in that agreement to remain viable, staff is recommending that the Assignment Agreement have a term of January 1, 2012 through August 31, 2012.

On October 30, 2009, an amendment to the agreement was executed with provisions related to certain day to day operations.

On September 1, 2011, MiLB conveyed its intentions to not renew the operating agreement beyond August 2012. On November 28, MiLB sent a letter to the City requesting City approval to assign the operating agreement to the Durham Bulls Baseball Club.

Issues/Analysis

Since assuming day to day operations of the DAP, MiLB has suffered substantial operating losses during each year it has served as the sole and exclusive manager of events at the DAP. As such, they requested the ability to assign the agreement to the Durham Bulls Baseball Club in September.

Discussions with the representatives of the Durham Bulls have indicated that they are willing to assume responsibility for day to day operations on a provisional basis from January 1, 2012 through August 31, 2012. While the recommended assignment of the agreement does not imply approval or endorsement of an Operating Agreement with the Durham Bulls Baseball Club beyond August 31, 2012, the facts that the Durham Bulls have a familiarity with the local market for events as well as the maintenance requirements for a baseball stadium that meets NCAA Division 1 standards (two key aspects of DAP operations), causes staff to recommend that the agreement be assigned on a short term basis.

The proposed Assignment Agreement contains the following three (3) tenets and revisions from previous agreements:

- The Bulls are not required to share Operating Profit, if any, with the City. Section 10.6 of the DAP Operating Agreement shall be null and void as of the Effective Date.

- The Bulls shall not be required to report to the City any certified or Audited information concerning the financial performance of the DAP, including but not limited to information concerning Expenses, Gross Revenues or any component of Gross Revenues, Operating Deficit, or Operating Profit (City administration and the Bulls will establish a mechanism by which financial information concerning the operations of the DAP can be ascertained by the City). Sections 3.9, 3.11, 10.4, 10.5, and 23.1 of the DAP Operating Agreement shall be null and void as of the Effective Date. Further, the Bulls shall not be required to provide to the City the Operating Budget as required by Section 10.3 of the DAP Operating Agreement.
- FF&E. The parties acknowledge that in several sections the DAP Operating Agreement anticipates that the Operator will or has provided certain equipment or FF&E. The City acknowledges that the Bulls will not provide any equipment or FFE other than the equipment necessary to keep and maintain the playing field in a good, first-class condition suitable for baseball games as provided in Section 15.1.1 of the DAP Operating Agreement. The City will provide all other required equipment or FF&E, including a suitable covering for the playing field during inclement weather.

Notwithstanding the foregoing, the Bulls shall report the following information to the City upon request:

- an accounting of Capital Expenditures and the costs for Repairs and Maintenance; an accounting of the amounts charged users of the DAP for Facility Rental Chargebacks, Facility Rental Fees, Net Service Charges, and Ticket Fees; and the information concerning the schedule of Events required by Section 3.10 and Article 9.0 of the DAP Operating Agreement. The Bulls shall not be liable for any Expenses or Capital Expenditures incurred by MiLB or the City prior to the Effective Date.
- The Bulls' responsibility to pay for Repairs and Maintenance, repair to FF&E, or for the maintenance of equipment provided in Article 15 of the DAP Operating Agreement shall be limited to a cap of Six Thousand, Six Hundred, Sixty-Seven and No/100 Dollars (\$6,667.00) (the "Repairs and Maintenance Cap"). The City shall reimburse the Bulls for any amounts greater than the Repairs and Maintenance Cap incurred by the Bulls during the Term.

Alternatives

City Council can choose to not approve the Assignment Agreement. This would leave MiLB with day to day operational control of the facility. Given their financial position, this may not be a viable alternative for MiLB.

Financial Impact

There are no additional financial impacts.

SDBE Summary

SDBE provisions are contained in the operating agreement.