



Date: May 1, 2013

To: Mayor and City Council
From: Thomas J. Bonfield, City Manager
Subject: Follow-up DPAC Information

Executive Summary

At the April 18, 2013 work session a revision and extension of the operating agreement between the City and Durham Performing Arts LLC, JN America LLC, and Professional Facilities Management for the Purpose of Operating the Durham Performing Arts Center (“Operating Agreement”) was recommended by City Administration. During the consideration of the revised Operating Agreement questions were raised regarding a proposed modification to the revenue sharing formula that would provide the operator a “bonus” of \$120,000 equaling the City share of operating income between \$2,000,000-\$2,300,000. While the recommended enhanced share of operating income was designed to encourage the operator to meet financial performance standards for City revenue needed to assure revenues to support capital upgrades and major capital repair and replacement over the life of the extended life of the agreement, some felt that the “bonus” threshold was set too low based on the financial performance of the DPAC over the last three years.

Recommendation

As a result of these discussions and feedback city administration revisited the proposed revenue sharing formula. Based on these discussions the parties have agreed to a revised recommendation on operating profit sharing formula. The comparisons between the originally recommended and revised recommended formula is as follows:

<u>Operating Net Operating Income</u>	<u>Original Proposed</u>		<u>Revised</u>	
	<u>Operator</u>	<u>City</u>	<u>Operator</u>	<u>City</u>
\$0 - \$2,000,000	60%	40%	60%	40%
\$2,000,000-\$2,300,000	100%	0%	70%	30%
\$2,300,000-\$3,000,000	60%	40%	60%	40%
Above \$3,000,000	70%	30%	80%	20%

Based on projections though the term(s) of the agreement this revised operating income distribution formula would provide the City an additional \$300,000 toward the capital improvement schedule.

As a part of the negotiations associated with the new revenue sharing formula an additional five-lease option for the term of the agreement is also recommended.

During the work session, discussion also occurred regarding the possibility of more specificity of companies and/or activities to be considered for naming rights or sponsorship rights since the operator will now be responsible for securing future rights of this nature. The language in Section 4.9 was modified so that the "Prohibited List" may include identified individuals and entity names in addition to goods and services from whom the Operator should not solicit any naming rights sponsorships (including Major Components and Minor Components).