



**Date:** April 2, 2013

**To:** Thomas J. Bonfield, City Manager

**Through:** W. Bowman Ferguson, Deputy City Manager

**From:** Joel V. Reitzer, Jr., Director, General Services Department

**Subject:** Lease Agreement between City of Durham and The Durham Bulls Baseball Club, Inc. for the Durham Bulls Athletic Park (DBAP) and Development Agreement between City of Durham and The Durham Bulls Baseball Club, Inc.

**Professional Services Agreement between Roughton, Nickelson, DeLuca, PA, and City of Durham for design of repairs and renovations to the DBAP and Construction Manager at Risk Contract with Lend Lease (US) Construction, Inc. for preconstruction and construction services.**

### **Executive Summary**

In September, 1992 the City of Durham (City) entered into an agreement with the Durham Bulls Baseball Club, Inc. (Club) to lease the Durham Bulls Athletic Park (DBAP). The lease was subsequently amended several times and is currently scheduled to expire in 2015. The Club proposes to enter into a new initial 20-year lease agreement, restructuring the financial obligations of the parties, beginning January 1, 2014 and extending the lease to December 31, 2033 with two additional 5 year options to renew beyond the initial lease term. In connection with the terms and conditions of the new lease, \$12 million of deferred maintenance and capital project new improvements are contemplated. As a result of the renegotiated lease terms, the City is expected to save approximately \$7.4 million (gross cashflow) over the life of the lease. Contemporaneously with approval of the new lease terms, the Club proposes to enter into a development agreement defining each parties' responsibility regarding required deferred maintenance, (including ADA work), and new improvements to be constructed at the DBAP. It is proposed that the City enter into a professional services contract with Roughton, Nickelson, DeLuca, PA (RND) and a Construction Manager at Risk Contract with Lend Lease (US) Construction, Inc. (Lend Lease) for deferred maintenance and new improvements design and construction, with the City's total contribution capped at \$12 million. Any costs in excess of \$12 million will be borne by the Club.

## **Recommendation:**

That the City Council:

1. Adopt the resolution that authorizes the City Manager to advertise for upset bids in accordance with G.S. 160A-269 for the lease of the Durham Bulls Athletic Park located at 409 Blackwell Street and provides that if no upset bids are received, the City Manager may accept the offer from The Durham Bulls Baseball Club, Inc. to lease the Durham Bulls Athletic Park located at 409 Blackwell Street for an initial term of 20 years effective January 1, 2014, with options to renew for two additional 5-year terms at a rate subject to adjustment according to the contract;
2. Authorize the City Manager to execute the Lease Agreement for the Durham Bulls Athletic Park located at 409 Blackwell Street with The Durham Bulls Baseball Club, Inc., if no upset bid is received, for an initial term of 20 years effective January 1, 2014, with options to renew for two additional 5-year terms at a rate subject to adjustment according to the contract.
3. Authorize the City Manager to execute a development agreement with The Durham Bulls Baseball Club, Inc. for deferred maintenance and new improvements at the Durham Bulls Athletic Park with the City's contribution capped at \$12 million, pursuant to the terms and conditions outlined in the development agreement.
4. Approve the resolution exempting the Durham Bulls Athletic Park project from G.S. 143-64.31.
5. Authorize the City Manager to negotiate and execute a professional services contract with Roughton, Nickelson, DeLuca, PA for the design of repairs and renovations for the Durham Bulls Athletic Park in an amount not to exceed \$725,580.00.
6. Authorize the City Manager to negotiate and execute a CMAR contract with Lend Lease (US) Construction, Inc. for preconstruction and construction services, (including early bid packages) so long as the City's total financial obligation under the CMAR contract, plus architectural services contract, plus direct City purchases does not exceed 12 million.

## **Background**

Durham Bulls Athletic Park, also known as DBAP, is located at 409 Blackwell Street in Durham, NC. The ballpark has been leased to the Club pursuant to an agreement entered into in 1992, and subsequently amended in 1995 and 1996 when the Club transitioned from a MiLB "A" "AAA" affiliation of the Tampa Bay Rays. The current lease agreement expires in 2015. The Club and City initiated discussions to extend the lease, modify its terms and conditions, and provide for capital improvements to address a variety of deferred maintenance and revenue enhancement new improvement capital projects. The current lease agreement provides a financial structure in which the City is paid a base rent of \$150,000 for the ballpark and \$85,000 for office space along a revenue sharing formula. Under the current lease agreement, the City is responsible for the operating costs of the facility. Over the last six years the City's operating costs in excess of revenues, has averaged \$447,500 per year.

The ballpark has undergone various repairs and enhancements since the completion of its construction. In 2005, General Obligation bonds were approved for renovations at the DBAP, arising out of the 2003 Carter Burgess Facility Condition Assessment and the 2005 Settlement Agreement with the DOJ. Additional funding was allocated in 2008 and 2009. City Council authorized construction through two phases in 2009 and 2010. The scope of work included waterproofing of repairs to the main seating area, fireproofing, painting of metal roof deck, ADA improvements, and waterproofing repairs to the exterior masonry and concourses. Additionally, in 2012, a portion of the seats were repaired and replaced. The most recently completed projects were designed by RND. Although significant deferred maintenance repairs have been completed to date, not all required deferred maintenance (including ADA) issues have been addressed. In order to assure that the DBAP facility can continue to operate as a premier professional ballpark, certain investments and improvements are required.

The cost estimate to complete remaining deferred maintenance items is approximately \$6 million. The deferred maintenance items remaining to be completed are identified on Exhibit A of the Development Agreement. Further, additional new improvements have been identified as required to enhance the facility and generate additional revenue. The new improvements and enhancements to be completed are identified on Exhibit B of the Development Agreement and are estimated to cost between \$7 - \$8 million. Preliminary deferred maintenance and new improvements design services have been provided by RND in furtherance of the project and pursuant to an agreement with the Club. The Club received qualifications and proposals from two CMAR firms and recommends Lend Lease as CMAR for the project. Lend Lease has provided preliminary preconstruction services for the project pursuant to an agreement with the Club.

### **Issues and Analysis:**

The Durham Bulls Athletic Park and the presence of the Durham Bulls Baseball Club has become synonymous with the success and resurgence of downtown Durham. During the baseball season, the Durham Bulls baseball team attracts approximately 500,000 people to downtown with a vibrancy that extends well beyond the boundaries of the ballpark itself.

### **Lease Agreement:**

The proposed new lease agreement, effective January 1, 2014, would expire in December, 2033 and contains a revised financial operating model. Under the new model, the operating costs and expenses would become the responsibility of the Club. The revenues received will generate a revenue stream to provide for debt service and capital improvements so that City general funds will no longer be required to support the ballpark day-to-day operations and the City's obligations for future capital repairs and upgrades will be reduced. The proposed attached lease details the responsibilities between the parties. Specific lease terms include:

- Club will pay the City \$125,000 per year as base rent; which is adjusted annually in accordance with CPI, subject to a cap of 3%.
- Club will pay additional rent to the City, in accordance with the attached lease as follows:
  - For Club Home Games, Club shall pay to the city 3% of any gross revenues that exceed the annual breakpoint of \$10,750,000 dollars. For Special events, Club shall pay to the City 1.25% of gross revenues. For third party events, Club shall pay 1.25% of

any revenues actually received by Club from the Third Party Event.

In accordance with the lease agreement, the Club is responsible for all operation of the Ballpark and the City will have no operational responsibilities associated with the Ballpark. The Club will arrange for all utility service required to operate the Ballpark and will pay for all utility costs generated by the Ballpark. Club will be responsible for implementation of a preventative maintenance program and all costs associated with specified repair and maintenance up to an annual cap of \$200,000. Club is not responsible for repairing or replacing structural components of the Ballpark, for replacing the HVAC chiller units when such units have outlived their useful lives, for the roof, for waterproofing the concrete of the seating bowl or of the grandstand structure.

**Development Agreement-Capital Improvements (Deferred Maintenance and New Improvements):**

Currently unfunded are approximately \$6 million of deferred maintenance (including ADA) items at the ballpark. The deferred maintenance items are detailed in Exhibit A. Under the proposed agreements and financial model, the City will be responsible for funding 100% of the cost of these deferred maintenance items. In an effort to “refresh” the ball park, improve fan experience and create new revenue generating opportunities, the Club has identified approximately \$8 million of new improvement capital projects. The new improvements are detailed in Exhibit B. Under the financial model, the cost of the deferred maintenance and new improvements in excess of \$12 million will be borne by the Club.

In order to expedite the completion of the deferred maintenance and new improvements, will little or no interruption during the baseball season (April –August), the Club will oversee the design and construction of the deferred maintenance and new improvements capital projects. The construction is expected to begin in early September, at the close of the 2013 season and be completed before April, the beginning of the 2014 season.

The proposed attached “Agreement for the Redevelopment and Renovation of the Durham Bulls Athletic Park” details the responsibilities between the City and the Club regarding the Deferred Maintenance scope of work and the New Improvements scope of work.

Deferred Maintenance:

Pursuant to the Agreement, the City is responsible for contributing \$6 million dollars toward the cost of the deferred maintenance (Exhibit A). If the cost of the deferred maintenance scope of work is less than \$6 million, the City will contribute the Deferred Maintenance savings to the New Improvements scope of work.

Procurement:

Pursuant to the Agreement, the City will contract directly for purchase of stadium lights estimated at \$697,000 and stadium seats estimated at \$440,000 (items identified on Exhibit A). The City has determined that the required seat replacement and stadium lighting upgrades qualify as a sole-source exception and that the product is available from only one source of supply, or standardization and compatibility are overriding considerations in procuring these goods and services. These contracts will be brought forward for approval by Council and will count toward the City’s \$6 million deferred maintenance contribution referenced above.

New Improvements:

The City will contribute up to \$6 million dollars toward the cost of the New Improvements scope of work (Exhibit B). The Club will contribute \$1 million dollars toward the cost of the new Improvements scope of work. If the total cost of the Improvements is less than \$7 million, the City and Club will reduce each party's respective contributions to the Improvements in accordance with their Improvements percentage. If the Cost of the Improvements is greater than \$7 million dollars, and IF, Deferred Maintenance savings exist, then the City and Club will jointly contribute to any costs that exceed \$7 million in accordance with their improvements percentage until such time as the Deferred Maintenance Savings is exhausted. Club will pay for any costs of Improvements that exceed the Adjusted Improvements Budget, as defined in the agreement. The City will not be required to contribute any funds in excess of \$6 Million to the Cost of the Improvements except to the extent of Deferred Maintenance savings. In any event, the City's total contribution is capped at \$12 million dollars for the deferred maintenance and new improvements capital projects.

Club work:

Club intends to perform certain improvements to the ballpark at the same time as the City intends to perform the Deferred Maintenance and New Improvements scope of work. Club intends to purchase and install signage in the outfield area and to procure and install concessions and retail facilities equipment in several areas of the ballpark. Club expects the cost of these items to be between \$1 Million and \$2 Million dollars. Club will pay for all costs of the Club work. Club will execute its own construction and procurement contract for these items.

Club- Minimum Private Investment:

Club will make a minimum private investment of at least \$2 million dollars and upon completion of the Project, Club will provide evidence of its costs and investment as described in the Development Agreement.

Architect Contract:

RND has provided design services pursuant to agreement with the Club. Pursuant to the Development Agreement, the City will execute the attached Architect Contract with RND for project design services in an amount not to exceed \$725,580.00.

CMAR Contract:

Lend Lease has provided preliminary preconstruction services pursuant to agreement with the Club and proposes to perform required preconstruction and construction management at risk services. Pursuant to the Development Agreement, the City will execute the attached CMAR agreement with Lend Lease for preconstruction and construction services. The CMAR contract shall be capped at an amount that will not cause the City to exceed its total financial obligations for the deferred maintenance and new improvements pursuant to the Development Agreement.

Project Management Oversight:

The Club shall have a designated Project Manager responsible for oversight of both the Architect and CMAR during the Project. The City will designate a General Services Project Manager to serve as the primary City contact for oversight and review of the CMAR services and Architectural services, working with the Club's Project Manager for coordination.

**Alternatives**

The City could allow the existing lease to continue until its expiration in 2015 or negotiate a variety of alternate terms; however, it is unlikely that more favorable terms would result.

**Financial Impact**

Bonds will be issued in an amount sufficient to fund the \$12 million in deferred maintenance and new improvements. The bonds will be paid back with revenues generated from the lease of the ballpark as well as other General Fund revenues. The debt service is estimated to be approximately \$970,000.00 per year. The financial model for ballpark costs has contemplated the repayment of this debt in connection with other changes in the DBAP lease agreement. The Finance Department estimates that over the life of the lease the financial model developed in conjunction with the proposed lease will result in positive gross cash flow to the City of \$7,380,000 (PV (present value) \$4,063,650) when compared to a cash flow under the existing financial model. (see Financial Model attachment)

**SDBE Summary**

A draft SDBE strategic plan has been developed between Lend Lease and the City's Department of Equal Opportunity/Equity Assurance.

**Attachments:**

1. Resolution authorizing City Manager to advertise for upset bids in accordance with G.S. 160A-269 for the lease of the Durham Bulls Athletic Park located at 409 Blackwell Street
2. Resolution Exempting the Durham Bulls Athletic Park Project from G.S. 143-64.31
3. Proposed lease
4. Financial Model
5. Proposed Development Agreement and Exhibits:
  - a. Exhibit A-Deferred Maintenance scope of work
  - b. Exhibit B-New Improvements scope of work
  - c. Exhibit C- Schedule
  - d. Exhibit D-Minimum Club Investment
  - e. Exhibit E-Subcontractor Record of Payment Report
6. Proposed architectural contract
7. Proposed CMAR contract