



June 15, 2016

**TO:** Mayor Bell and City Council Members

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

**SUBJECT:** Amendment to Building and Services Agreement Between City of Durham and the Carolina Theatre of Durham, Inc.

### **EXECUTIVE SUMMARY**

In late 2015, the Carolina Theatre of Durham, Inc. (CTD), the nonprofit operator of the city-owned Carolina Theatre, reported to the City of Durham that the CTD had a deficit of just over \$1 million. The CTD reported the deficit was a result of accounting and bookkeeping errors. The CTD requested financial assistance from the City through a one-time appropriation, in partnership with matching private donations, which would enable the Carolina Theatre to continue, uninterrupted, as a going concern. After a series of meetings between City staff and CTD board members and staff as well as the analysis of CTD financial data, the City advanced the CTD funds to sustain the operation as the City evaluated the request, and the City and CTD explored the possibility of a more comprehensive plan.

The City and the CTD did develop a plan to be memorialized in an Amendment to the City's Building and Services Agreement with the CTD. The Amendment provides for a one-time amount not to exceed \$600,000 to be disbursed to the CTD as the CTD raised private donations on a 1:1 basis. The CTD has until June 30, 2017, to raise the funds to be matched as the City's obligation to provide matching funds expires at that time. This amount is in addition to the CTD's annual fee which the City will continue as specified in the original Agreement. The Amendment also provides for the City to have three additional seats on the CTD's Board of Trustees in addition the current one City Council member, for a total of four seats. The Amendment also requires the CTD to provide periodic reports on the on-going financial condition of the CTD as directed by the City's Finance Director. A provision also requires the CTD to retain a consultant acceptable to the City to advise the President and Board as needed on the operation of the Carolina Theatre.

### **RECOMMENDATION**

The Administration recommends that the City Council:

Approve an amendment to the Building and Services Agreement between the City of Durham and the Carolina Theatre of Durham, Inc.; and

Authorize the City Manager to execute an amendment to the Building and Services Agreement between the City of Durham and the Carolina Theatre of Durham, Inc.

## **BACKGROUND**

The City contracts with the Carolina Theatre of Durham, Inc., a non-profit organization, to operate the city-owned Carolina Theatre. Since the mid-1990s the CTD has operated the Carolina Theatre. In 2014, the City and the CTD renegotiated the agreement for a term of ten years, until 2024, with a renewal option for two five-year renewal terms. Through the Building and Services Agreement, CTD provides professional management and programming services, and operates the Carolina Theatre for the benefit of the City and the general public. In exchange for those services, the City provides an annual facility maintenance fee, disbursed quarterly to the CTD. In FY 2016, the total annual fee amounted to \$654,000. The fee is reviewed annually during the City's budget process and adjusted within a specified range determined by the City Manager based upon the Agreement's performance measures and the City's overall budget position. A City Council member is a member of the CTD Board of Trustees.

In late 2015, the Carolina Theatre of Durham, Inc. (CTD), the nonprofit operator of the city-owned Carolina Theatre, reported to the City of Durham that the CTD had a deficit of just over \$1 million. The CTD requested financial assistance from the City. After receiving the request, the City Manager and City staff held a series of meetings with CTD board chair and board members along with the CTD staff to ascertain and better understand the deficit. The City Manager and City staff also met with CTD's Finance Committee, and City staff also met with CTD's accounting firm to acquire financial data and operation information. Based upon those discussions and financial data, the City Manager and the CTD developed a plan to keep the Carolina Theatre open and provide the CTD with additional financial assistance to stabilize its operation.

## **ISSUES AND ANALYSIS**

The Amendment provides one-time funding to the CTD of an amount not to exceed \$600,000. This amount combined with the CTD fundraising is expected to place the CTD in a financially sustainable position. The Amendment specifies that the Carolina Theatre of Durham, Inc. shall raise their matching amount by June 30, 2017 as the City obligation to match expires at that time. Because the CTD is expected to develop and enhance its own fundraising capabilities, all funds raised by the CTD do not qualify to be matched by the City. The only funds that qualify are those raised for debt reduction or those raised as part of the 90<sup>th</sup> Anniversary Campaign. Furthermore, the City is only obligated to match the donations if the funding is necessary to stabilize CTD's operations should cash flow from other sources not be sufficient to provide for CTD's financial needs.

## **ALTERNATIVES**

As of June 15, 2016, the City has disbursed \$356,133.00 to the Carolina Theatre of Durham, Inc. that has been matched with funds raised by the CTD. If this amendment is not approved, the City will discontinue providing matching funding to the CTD which may hinder the CTD's capacity to sustain the operation of the Carolina Theatre.

The City Council may seek to terminate the agreement with the CTD. The City would then have to identify another operator, operate the Carolina Theatre directly with city forces, or close the Theatre.

**FINANCIAL IMPACT**

As of June 15, 2016, the City has provided \$356,133.00 to the CTD from the City General Fund Account- Contributions to Other Agencies. (Org/Object Code - 0Z330404/728803). The \$600,000.00 amount has been encumbered within that account.

**SDBE SUMMARY**

The SDBE Summary is not applicable.

C: David Boyd, Director, Finance  
Reginald J. Johnson, Director, Community Development