

**DURHAM, NORTH CAROLINA
MONDAY, FEBRUARY 7, 2011
12 NOON**

Pursuant to the proper notification, the Durham City Council and Durham County Board Commissioners held a joint meeting on the above date and time in the County Commissioners' Chambers located at 200 East Main Street.

Present: Mayor William V. "Bill" Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Farad Ali, Eugene Brown, Diane Catotti, Howard Clement, III and Mike Woodard.

Present: Vice Chair Ellen Reckhow and County Commissioners Joe Bowser, Becky Heron and Brenda Howerton. Absent: Chairman Michael Page.

Also in attendance: City Manager Thomas Bonfield, County Manager Mike Ruffin, City Attorney Patrick Baker, County Attorney Lowell Siler, City Clerk D. Ann Gray and Clerk to the County Commissioners Michelle Parker-Evans.

Mayor Bell called the meeting to order.

SUBJECT: DURHAM CONVENTION CENTER AGREEMENTS WITH GLOBAL SPECTRUM, L.P.

The City Council and Board of County Commissioners are requested to consider and approve the agreements between the City, County and Global Spectrum, LP for the Management of the Durham Convention Center.

Assistant County Manager Drew Cummings gave a brief summary of the project. Two contracts were being considered. One contract was the consulting contract for the construction period, and the other contract was a 5-year management contract that was a 3-year contract with a 2-year renewal option. Budgets for each of the options were included. Staff presented the changes to the contract.

Joel Reitzer, Director of the City's General Services Department, indicated that the incentive fee on management performance had been revised since earlier presentations. 75 percent of the performance measure was reduced to 70 percent. The qualitative measure has been revised from 25 percent to 30 percent. The contract is weighted heavily on qualitative and financial performance. Performance measures would be judged by the Convention Center Authority during its monthly Board meetings.

An additional change involved the reduction in investment of dollars for the kitchen furniture and expenses by Global Spectrum. Up to \$250,000 was originally proposed for the upfitting of the kitchen, but has been revised to \$150,000. Mr. Reitzer stated that we may not need up to \$150,000 after further review. All furniture, fixtures and equipment belong to the City and County.

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Mayor Bell asked for clarification on why there is a need for an incentive bid for the Global Spectrum contract since they are already receiving \$100,000 in management fees.

Mr. Reitzer replied that of 27 convention center contracts that Global Spectrum has, 26 of them have incentive contract clauses. This is the model used by publicly-owned convention centers around the country, especially where there are IRS provisions that are impacted. If there was no incentive fee, the management fees could be substantially higher.

There was further discussion regarding the incentive fee. Drew Cummings, Assistant County Manager explained that Global Spectrum would be eligible to earn the fee in the first year, however, there would be no funds released until the next fiscal year. The fees would not be paid until the figures were audited for both qualitative and quantitative performance.

Vice Chair Reckhow concurred with the Mayor's concerns regarding the incentive fees.

Sherry Rosenthal, Senior Assistant City Attorney, explained that Article 3, Section 3.3 of the contract specified the payment schedule and stated that payment shall be made 30 days after the owners' approval of the independent auditor's report. The auditors have 90 days to review and approve the audit. Attorney Rosenthal clarified that the language applied to both qualitative and quantitative performance.

Mr. Cummings reiterated that the City and County had additional protection because of the early termination clause if Global missed their proposed budget over a certain amount.

Councilmember Brown asked for an explanation of the legal reason for the reduction in the kitchen budget. Attorney Rosenthal referenced IRS Code 9713 and responded that the IRS regulations require that at the end of the third year, the owner needs to have the right to terminate the contract without penalty. To avoid the question of a possibly penalty in the event of early termination, the contract requires the payment to be made in the first three years.

Commissioner Bowser commented that he would like to see a ceiling on the contract.

Councilmember Ali inquired about the budget development and presentation. Mr. Reitzer replied that the management company would propose a budget and staff would audit and review the budget prior to submitting to the City Council and Board of County Commissioners for approval.

Mr. Reitzer stated that Shaner has been paid to manage the convention center on a six-month extension.

Vice Chair Reckhow inquired about the role of the Convention Center Authority in the budget review. Mr. Cummings replied that the Authority would make budget recommendations. Anything that involves the appropriation of monies has to come in as a recommendation for the governing bodies.

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Mayor Bell questioned the ratios. "If revenues grow and expenses don't grow, is there anything we can do about it?"

Attorney Rosenthal responded that IRS Code 9713 makes it very clear that you can base incentives on revenues or expenses, but not both. The risks or awards of operating the facility must remain with the owners. She offered to further research the IRS laws.

Commissioner Howerton inquired about the "air lease?" Attorney Rosenthal explained that the "air lease" was a separate legal document from the operating contract. Those relationships are being separated between Shaner and Global Spectrum. The item will come back before the governing bodies for some clarifications.

Mayor Pro Tem Cole-McFadden asked who would be responsible for the ensuring compliance of M/WBE. Mr. Cummings replied that it would be the contractors, General Services and the City.

Regarding use of space by nonprofits, Mr. Reitzer explained that there were no distinguishable provisions. Section 5.4 addresses the owners' use of the space.

Mayor Bell requested an explanation of what the City or County would do in order to use the facility. Mr. Cummings responded that the City and County managers would decide which three non-profit events could take place each year. The owners would absorb the direct costs of having the event.

Mayor Bell called for a motion by the City.

Motion by Council Member Woodard seconded by Council Member Brown to approve the transition period consultation agreement and management agreement with Global Spectrum to manage the Convention Center was approved by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Vice Chair Reckhow called for a motion by the County.

Motion by Commissioner Heron seconded by Commissioner Howerton to approve the transition period consultation agreement and management agreement with Global Spectrum to manage the Convention Center was approved by the following vote: Ayes: Vice Chair Reckhow and County Commissioners Bowser, Heron and Howerton. Noes: None. Absent: Chairman Page.

There being no further business, the meeting adjourned at 1:15 p.m.

D. Ann Gray, MMC
City Clerk

