

Attachment F
Summary of Development Agreement and Use/Operating Agreement
[December 9, 2015 revisions]

Initial Capital Contributions by HRA and Operator, and Long-Term HRA Ownership

The HRA will construct and own a project budgeted to cost \$14,660,000, including acquisition, demolition, environmental abatement, structural reinforcement, new roof, masonry repairs, contingency, and all new mechanical, electrical and plumbing systems, to create a municipal auditorium that will serve as a venue for a broad range of entertainment activities, including music by local and traveling artists. McGough Construction has been retained as the construction manager. The design, plans, and specifications for the project are part of the Development Agreement. Two bid packages have been issued for various subcontractors and several bids were accepted. To date the work that has been performed at the Theater consists of architecture, engineering, life and safety installation, environmental abatement, demolition, structural testing, structural reinforcement, roof replacement, initial electrical work, scaffolding design and installation, and initial electrical work.

The HRA and the Operator will enter into a Use Agreement for a duration based on the State of Minnesota's limit not to exceed ½ of the building's useful life. Based on the architect's estimate of a 30 year useful life, the initial term of the Use Agreement will be 15 years. The HRA will retain ownership of the Theatre.

The Operator will provide an appropriate sound system, theatrical light system, and point-of-sale system, and will be responsible for initial supplies, inventory, personal property, and working capital. (*note: valued by the Operator at \$2+ million*).

The sources of funds for the project are a \$5 million grant from the State of Minnesota, a \$9,360,000 loan from the City to the HRA, and \$300,000 of sprinkler assessment funds from the City.

Operating Fee, Capital Improvement Fund

The Operator will pay to the HRA a fee equal to \$1.75 per ticket for the first 100,000 tickets, plus an additional \$0.25 charge for every 25,000 additional tickets sold with a cap of \$2.75 per ticket sold. This fee shall increase every 5 years based on CPI increases or an increase of 10%, based on a 2% increase per year, whichever is less. This fee begins in the third year of the term. The HRA shall use the fee solely to pay the principal and interest on the City loan, and once the City loan is paid in full, payment of this fee terminates.

The Operator will additionally pay, beginning in the third year of the term, the sum of \$30,000 for the purpose of funding capital improvements of the Theatre. The HRA will pay for the costs of capital improvements over the funds available in this capital improvement reserve fund.

Benchmark Performance Standards and HRA's Right to Terminate

The Operating Agreement will have three specific benchmark performance standards for minimum number of concerts and tickets sold, and the Operator's performance will be reviewed annually. These standards begin in year three. Failure to meet any one of these performance standards will allow the HRA to terminate the Use Agreement. The three levels of performance standards are:

1. Minimum of 25 concerts or 35,000 tickets sold in every year. If either one of these minimum standards are not met, then the HRA has the right to terminate the Use Agreement. As an example, if in year three, the Operator conducts 28 concerts and sells 31,000 tickets, the Operator has failed to sell the minimum number of 35,000 tickets, entitling the HRA the right to terminate the Use Agreement.
2. Minimum of 35 concerts and 50,000 tickets sold for any two consecutive years. Operator must fail to meet both minimums for any two consecutive years before the HRA has the right to terminate the Use Agreement. As an example, if in year five, the Operator holds 33 concerts and sells 45,000 tickets, and in year six the Operator holds

31 concerts and sells 41,000 tickets the HRA can terminate the Use Agreement. No right to buy up to minimum number of tickets sold as provided in the next section 3.

3. Minimum number of concerts and tickets sold for two consecutive years for the following years :

Year	Concerts	Tickets sold
4	37	54,000
5	39	58,000
6	41	62,000
7	43	66,000
8	45	70,000
9-15	45	74,000

Under this third performance standard, the Operator has the right to cure a failure to meet both the required number of concerts and number of tickets sold for two consecutive years by “buying up” the second year tickets to the required level by paying an amount equal to the following: Number of required tickets to be sold less actual number of tickets sold multiplied by the then applicable operating fee plus \$.25/ticket.

Further, under this third performance standard, the Operator has the right to carry forward up to 4 concerts and up to 10,000 tickets of the excess actually realized in any Year over the above standards for up to 2 years to satisfy this standard.

As an example if in year 7 the Operator holds 42 concerts and sells 65,000 tickets, and in year 8 holds 44 concerts and sells 65,000 tickets and the applicable ticket fee is \$1.75/ticket, the Operator can “buy up” the failure to meet these standards by making a payment to the HRA calculated as follows: $70,000 - 65,000 = 5,000 \times \$2.00 = \$10,000$.

Operator Shall Bear All Operating Risk, and Revenue

Under the Use Agreement, Operator shall have authority over and responsibility for the operations for the auditorium, and will be responsible for all costs associated with the ongoing operation, including: utilities; operating permits/licenses; ordinary repairs and maintenance; all sales, real, personal property and other taxes. Subject to revenue sharing, the Operator is to receive all revenue generated by the Theatre including naming rights, advertising, concessions,

ticket fees, etc. The Operator will annually prepare an operating plan and operating budget as required by the State of Minnesota. The Operator's failure to perform these obligations, after notice and a cure period, will result in a default entitling the HRA to contractual remedies including the right to terminate the Use Agreement.

Bathrooms on lower level and additional points of sale

The Operator has asked to have the first floor bathrooms moved to the lower level and additional points-of-sale (POS) added, and the HRA is willing to do so provided that the Operator will pay for the costs of such items. The terms of payment by the Operator are as follows:

Actual cost of bathroom switch and added POS (after full expenditure of \$1.3 million contingency) will determine the additional ticket fee needed. The amount will be paid off during initial 15-year term, and once paid off, payment of additional ticket fee ends. Capped at \$.40/ticket and will go down if actual costs are less than \$400,000.

Public Use of Theatre

The HRA will receive defined access and scheduling rights for public uses at no costs other than the Operator's reasonable and necessary out-of-pocket operating expenses, provided that these uses have no substantial negative impacts on the Operator's ongoing operations. The Operator is required to allow each Saint Paul high school the use of the Theatre for an event each school year, and use good faith efforts to annually attract 10 community events (including the high school events).

Revenue Sharing

The Operator will be required to make an annual revenue sharing payment to the HRA commencing with the first year of the term in an amount equal to 5% of annual net theatre income over \$300,000. This payment will be applied to the HRA debt to the City.

Renewal Term

By State law the HRA is permitted, but cannot be required, to grant a renewal term of 15 years to the Operator if the HRA Board of Commissioners makes the decision to continue with the purposes of the Theatre. Provided if the HRA Board decides to continue with the Theatre and

does not extend an offer to the Operator to stay on, then the Operator is entitled to remove its own property from the Theatre and receive a payment equal to the cost of capital improvements, less depreciation as defined by accepted accounting standards, made to the Theatre by the Operator out of its own funds during the first term. In the event of a 15-year renewal with the Operator, the same terms of the Use Agreement will apply except for the revenue sharing which is changed to:

<u>Annual Net Theatre Income</u>	<u>Revenue Sharing Percent</u>
\$0 to and including \$300,000	0%
Over \$300,000 to and including \$400,000	5%
Over \$400,000 to and including \$500,000	7.5%
Over \$500,000	10%