



ORANGE COUNTY MAYOR
TERESA JACOBS

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April 22, 2011

The Honorable Buddy Dyer
Orlando City Hall
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Dear Mayor Dyer:

In response to your letter dated April 19, 2011, we have carefully evaluated your request to amend the Interlocal Agreement in order to accelerate TDT funding for the performing arts center (PAC). Unfortunately, due to the reasons outlined in this letter, I cannot support your request. Further, I feel it is important to review the events that have transpired and led us to this point.

Soon after I was elected, I learned that the Dr. Phillips Performing Arts Center (DPAC) had a funding shortfall of \$61 million. DPAC was proposing to close this funding gap through a \$31 million bridge loan from the City and by requesting a \$30 million bridge loan from the County.

In January of this year, when you asked for additional support, I assumed that every reasonable effort had been made to identify project savings to close the funding gap. That was not the case. Based on that assumption, we discussed several options including your request for a reset of the TDT Base Amounts. I did not commit to a reset; however, I did agree to evaluate the impact of a *temporary* reset on the County's current TDT obligations and priorities such as tourism promotion and the Convention Center, both of which provide positive economic impacts to this region and ensure the sustainability of TDT revenues.

As you are aware, the County and the Comptroller's Office conducted a preliminary review of the finances and construction management of this project. Out of that effort, you received some detailed evaluations of several aspects of the financing, construction and operating plans for the PAC. I expressed concerns that this public building was not being developed in a fiscally prudent, open and transparent manner. Shortly thereafter, the City and DPAC proposed to establish the Orlando Community Construction Corporation (OCCC) to address our concerns and to oversee the construction of the PAC. I agreed with the proposed plan and was optimistic that we would work together in a

cooperative manner to address the concerns in our preliminary evaluation and move the project forward in a highly transparent and accountable manner.

My optimism, however, has recently faded as the City and DPAC seem to be focused on expediting the GMP and contract approval by early May rather than pursuing value engineering opportunities, addressing construction and bidding concerns, and developing a financially feasible long-term operating plan. This is contrary to the understanding I thought we had reached in February. For example, PCL, the new owner's representative has been allotted three weeks to complete many difficult and complicated tasks such as reviewing and renegotiating the construction manager's contract, re-evaluating all 81 bid packages to ensure the integrity of the procurement process and recommending re-bidding where appropriate, and identifying a list of value engineering opportunities for additional project cost savings and rebidding contracts where appropriate to include the OCCC's accepted value engineering alternatives.

Further, the City and DPAC publicly stated they have already lost funding because of this due-diligence process and that any delay beyond May will lead to additional increases in project costs. While this dilemma is most unfortunate, contrary to recent public statements, Orange County did not create the problems associated with this project. We became aware of them only after we were asked for additional support above that which we committed in 2007. We attempted to find cost savings but were initially denied access to contract documents. When we did receive them, we shared our concerns promptly with you in a series of meetings and then provided them to you and the DPAC Board in writing on February 10th.

As you know, we have significant concerns about the Hines contract. When the OCCC was created, there was agreement that Hines was not effective as the owner's rep on this project and would assume a diminished role "working for and reporting to" the new owners' rep. Therefore, I am perplexed as to how Hines, in this new diminished role, is projected to earn more in the future than PCL, the new owners' rep.

In addition, we agreed that it was crucial that arts supporters, donors, the DPAC Board, the media and the community be informed that Phase II, which includes the symphony hall so cherished by the arts community, was not likely to be built anytime soon. Contrary to this understanding, in the last DPAC meeting Ms. Ramsberger added to the confusion surrounding the status of Phase II by stating a reset of the TDT Base Amounts was necessary to construct Phase II. To be clear, Phase II was to be funded through bonds backed by the Downtown CRA. Phase II cannot move forward due to the City's lack of adequate debt capacity in the CRA. Thus, Phase II's construction is not likely in the immediate future.

I am also concerned about the lack of transparency and cooperation from DPAC. For example, I have made numerous requests dating back to early February to obtain a copy of the backup information that was used to develop the operating pro-forma given to the

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County in response to our December questions. I still have not received this information. The County/City Interlocal Agreement is clear that the City will not request operating assistance from the County. Therefore, it is essential for DPAC to have a reasonable plan to fund projected operating deficits and a contingency plan to deal with higher than expected deficits. I understand, based upon Ms. Ramsberger's most recent e-mail, that a new plan is being developed and reviewed by the Orlando Magic, Disney World, and Universal Studios. While we are fortunate to have such civic-minded community partners and I have much confidence in their business acumen, DPAC's unwillingness to share existing information in a timely fashion raises questions about the quality and accuracy of the original operating plan. Of perhaps even greater concern, these documents are very likely public records. Even if DPAC is not subject to the Sunshine Law, public dollars and public venues should be operated in a highly transparent manner. Any citizen, including funding "partners," should have access to these documents. Although the philanthropy of many members of the DPAC board is unquestionably laudable, it does not absolve the City and the County of its responsibility to ensure accountability in the process of building and operating this public facility.

It has also been suggested that Orange County is not "living up to" the commitments outlined in the Community Venues Agreement. Those allegations are untrue and counterproductive. In 2006, the Board of County Commissioners enacted an additional penny of TDT (6th cent) and allocated 50% of that revenue to the City so they could build the Amway Center. Without the County's \$270 million contribution, this project would never have been built. The County also agreed to provide TDT collections (from the first five pennies) that exceed defined Base Amounts in each year to the City so it could finance up to \$130 million to construct the PAC and up to \$140 million to make major renovations to the Citrus Bowl. Under this provision, Orange County has provided the City with \$9.6 million to date for the PAC and current projections of TDT growth now show that the City could receive \$45 to \$60 million over the next five years. It is also worth noting that the County has contributed over \$103 million of County property taxes to the Downtown CRA, which is the major funding source for the City's contribution to the three Community Venues.

The Venues Agreement established the framework wherein the County would provide the City with contract TDT revenues under certain conditions, and the City would bear the risk of revenue volatility. The City approved the Community Venues Agreement with the full knowledge of the risks.

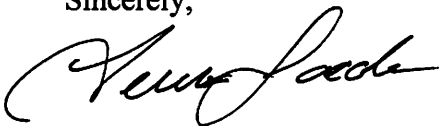
I understand the recent economic downturn has affected our collective abilities to accomplish many goals we've established for our community including the goals set out in the 2007 Venues Agreement. I also realize the recession and loss of revenues led DPAC to divide the project in two phases, just as it curtailed the ability of the City to issue CRA backed debt. Similarly, the County had to put on hold much needed capital improvements at the Convention Center and took other budget cutting measures to deal with the downturn in TDT revenues.

So while I understand your reasons for asking to lower the TDT Base Amount, it runs contrary to the intent of the original Interlocal Agreement. That agreement was designed to protect the Orange County Convention Center and tourism marketing budget, both of which are critical to our economic health and the sustainability of our TDT revenues. The need for fiscal prudence is especially important as we face record breaking gas prices and the stresses they may place on tourism. Accordingly, I do not support a reset.

Further, while I have outlined our concerns, it would appear that neither the City nor many members of the DPAC Board share our level of concern. As evidence of DPAC Board members' confidence, during the April 7th DPAC meeting, the option of a private bridge loan to make up the remaining shortfall was discussed and seemed to garner much support. Should the City decide to move forward using this approach, Section 7.1.4 of the Interlocal Agreement should allow the City Council to move forward without additional support from Orange County. Further, with current projections, the City should receive between \$45 and \$60 million in TDT contract revenues over the next five years, enough to cover most, if not all, of the contemplated bridge loans.

In conclusion, while I believe there are still issues that can and should be addressed with the PAC project, I recognize that Orange County entered into an agreement with the City of Orlando in 2007, therefore, we have and will continue to honor that Agreement.

Sincerely,



Teresa Jacobs

c: Board of County Commissioners
Martha O. Haynie, County Comptroller
Orlando City Council
OCCC Board Members
DPAC Board Members
Kathy Ramsberger, President, DPAC