Review of Broward County Civic Arena Operating Agreement

May 3, 2010 Report No. 10-11

Office of the County Auditor
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Executive Summary

This report presents the results of our review of the Civic Arena Operating Agreement between Broward County (County) and the Arena Operating Company, Ltd. (AOC), owned by Panthers Hockey LLLP, a.k.a. Sunrise Sports & Entertainment (SSE). SSE also owns the Florida Panthers Hockey Club, Ltd. (Panthers). Our objectives were to assess AOC's compliance with the Agreement and evaluate the financial results of operations for the 10 years ended September 30, 2008.

We found distributions to the Panthers exceeded the amount authorized under the operating agreement by approximately $8.4 million; this reduces AOC's cash reserves and its ability to meet their County obligations, therefore creating additional risk to the County.

We also noted during the 10 year period of our review:

- the AOC has consistently generated sufficient cash flow to pay its obligations including the County Preferred Revenue Obligation,

- the Panthers have received substantial financial support from Arena operations; the Panthers received approximately $98.3 million in distributions from the AOC, and

- the County paid a net of approximately $86 million for Arena construction debt service.

Notwithstanding AOC's history of significant cash flows, on July 27, 2009, SSE requested the County loan the AOC $3.9 million to pay AOC's Preferred Revenue Obligation due in August 2009. The SSE representatives cited significant cash flow issues to justify their request. Ultimately, on August 31, 2009, the AOC paid the Preferred Revenue Obligation without the requested financial aid.

We recommend the Board of County Commissioners direct the County Administrator to request the AOC obtain reimbursement for the approximate $8.4 million in excess distributions made to the Panthers as of September 30, 2008. The AOC should also reconcile Fiscal Year 2009 distributions to the Panthers with the final audited results of operations and obtain any additional excess distribution which may have occurred during that period.

Purpose and Scope

The objectives of this review were to assess AOC compliance with the Civic Arena Operating Agreement and evaluate the results of operations. The scope of the review was the 10 years ended September 30, 2008.

Methodology

To accomplish our objectives, we:

- Interviewed County Finance and Administrative Services and AOC staff
- Toured the Arena
- Reviewed:
    - The Operating Agreement between Broward County and AOC dated June 4, 1996,
    - The Licensing Agreement between the County, AOC and Panthers, dated June 4, 1996,
    - Official Statements, debt service schedules, and Agenda items relative to Arena bond issuances and refinancing, and
    - AOC accounting, event and attendance records and selected transactions
    - The AOC Audited Financial Statements for each of the 10 years ended September 30, 2008.
- Consulted with County Attorney's Office and Arena Bond Counsel

Background

The Arena

The Broward County Civic Arena (Arena), which commenced operations in the fall of 1998, is a County owned multi-purpose entertainment complex located in Broward County. It is currently named the BankAtlantic Center under a sponsorship agreement.

The Arena is located on a 139 acre site in western Broward County within the City of Sunrise. The facility has a seating capacity of up to 22,000[1] and is home to the Florida Panthers Hockey Team (Panthers). Approximately 41 hockey and 70-100 non-hockey events are held in the Arena each year with total annual attendance approximating one million.

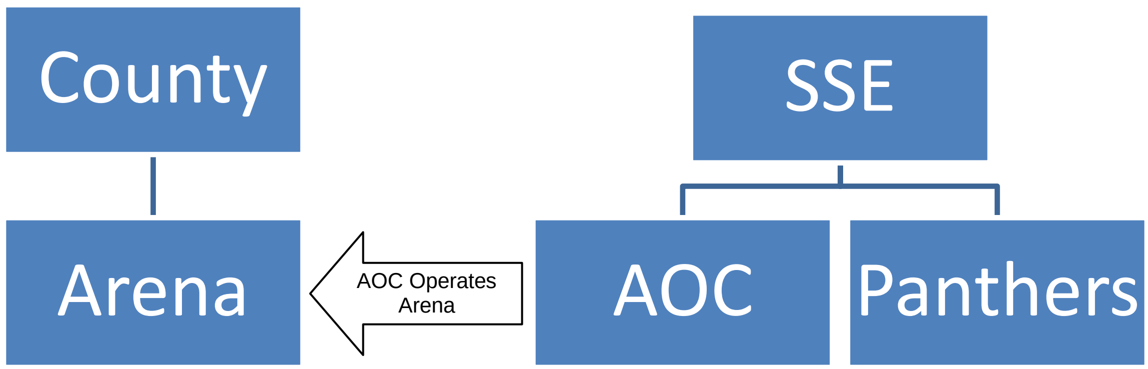
To finance the $191 million construction cost of the Arena, the County issued Bonds supported by Tourist Development Taxes (TDT), sales tax rebates and income from Arena operations.

[1] Seating capacity for hockey events is approximately 19,000. Seating capacity for non-hockey events is dependent upon event type. For example, seating capacity for concerts "in the round" is approximately 22,000 whereas other "end stage" layouts result in capacities ranging from 15,000 – 21,000.

The Arena Operating Company

The County contracts with the Arena Operating Company, Ltd. (AOC) to manage the Arena under the terms of a 30-year operating agreement expiring on July 28, 2028. The AOC is owned by Panthers Hockey LLLP a.k.a. Sunrise Sports & Entertainment (SSE). SSE also owns the Florida Panthers Hockey Club, Ltd. (Panthers). Figure 1 below shows the relationships between the AOC, the Panthers, and the County.

Figure 1: The County contracts with the AOC to operate the Arena.



Source: Office of the County Auditor summary of Operating Agreement and SSE Organizational Structure Chart.

The AOC is the exclusive operator of the Arena with responsibility and full control and discretion in the operation and management of the Arena and its staff. Its responsibilities include the following:

- collection of the Arena operating revenue,
- staffing and supervising of Arena personnel,
- payment of Arena related expenses,
- procurement and maintenance of materials, tools, machinery, equipment and supplies necessary for operation of the Arena,
- maintenance of all necessary licenses, permits, and authorizations for the operation of the Arena,
- procurement and negotiation of contracts with concessionaire(s), and
- issuance of credentials for events at the Arena

Financial Results of Arena Operations

The AOC generates revenues from Arena operations from both hockey and non-hockey events and is responsible for all related expenses. Table 1 on the next page summarizes the financial results of operations, in accordance with the Operating Agreement, for the 10 years ended September 30, 2008. Each line item is explained in the sections following the table.

Table 1: AOC Income Statement Summary for fiscal years 1999 – 2008 (thousands, $)

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Total
Operating Revenues	31,632	31,345	31,683	28,312	27,063	28,377	21,580	38,028	39,789	38,239	316,048
Operating Expenses	14,093	13,727	14,421	15,936	16,926	16,793	15,469	24,042	26,671	24,931	183,009
Operating Income Before County Obligations	**17,539**	**17,618**	**17,262**	**12,376**	**10,137**	**11,584**	**6,111**	**13,986**	**13,118**	**13,308**	**133,039**
Tourism Promotion Payment	500	500	500	500	500	500	500	500	500	500	5,000
Preferred Revenue Allocation	1,383	4,444	4,457	4,489	4,489	4,587	4,587	1,776	3,042	4,551	37,805
Participation in Net Income	331	-	-	-	-	-	-	-	-	-	331
Net Income	**15,325**	**12,674**	**12,305**	**7,387**	**5,148**	**6,497**	**1,024**	**11,710**	**9,576**	**8,257**	**89,903**

Source: Office of the County Auditor compilation of AOC Audited Financial Statements and Preferred Revenue Allocation payments.

Operating Revenues and Expenses

The AOC generates revenues by renting the Arena for both hockey and non-hockey events. Operating and Licensing agreements between the County, AOC, and Panthers stipulate the terms and conditions of the rental of the Arena to the Panthers. For non-hockey events the AOC negotiates fees with event promoters for use of the facility. These fees typically include base rental fees and reimbursement of certain AOC expenses incurred during events.

The AOC also generates revenues through advertising / sponsorship[2] agreements as well as parking,[3] food/merchandise concession, and seat use fees and charges. Although revenue from general ticket sales is usually retained by the event promoter and/or the Panthers, the AOC generates income from the sales of suite and club seats.[4]

Operating expenses generally consist of event staffing, administrative personnel, repair and maintenance, utilities, and administrative expenses. Expenses directly associated with hockey events such as player salaries, announcers, scorekeepers, etc. and non-hockey events such as talent fees,[5] stage crews, etc. are generally the responsibility of the team/promoter and not included in the operating expenses of the AOC.

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[2] The Panthers retain advertising revenue generated solely during hockey games such as sponsorship announcements and displays on LED message boards, video boards, and temporary signage around the rink.
[3] Parking Fees for Hockey events are $3 per ticket and are included in the Hockey ticket price.
[4] This excludes revenue from club seats for non-hockey events which are generally retained by promoters.
[5] Fees paid to performers

As shown in Table 1 on page 4, the AOC reported Operating Revenue of approximately $316 million for the 10 years ended September 30, 2008. For the same time period, Operating Expenses totaled approximately $183 million, which resulted in Operating Income before County Obligations of approximately $133 million.

Tourism Promotion Payment

As provided by the Operating Agreement, the AOC is required to pay the County a Tourism Promotion Payment of $500,000 annually. Tourism Promotion Payments to the County were $5 million for the 10 years ended September 30, 2008, as shown in Table 1 on page 4.

Preferred Revenue Allocation

As further provided by the Operating Agreement, the AOC is required to pay annual Preferred Revenue Allocations to the County. In accordance with Section 1.27 and 5.2.1 of the Operating Agreement (See Appendix I), the County Preferred Revenue Allocation is based on a portion of "the actual amount of the County's annual debt service obligation" and "in accordance with the annual debt service payments on the bonds" for construction of the Arena.[6] Preferred Revenue Allocation payments to the County were approximately $37.8 million for the ten years ended September 30, 2008 as shown in Table 1 on page 4.

County Participation in Net Income

The Operating Agreement with the AOC provides profit sharing with the County in any fiscal year in which net income exceeds $14 million. All amounts in excess of $14 million are split 20%/80% between the County and Panthers, respectively. As shown in Table 1 on page 4, 1999 was the only year in which net income resulted in profit-sharing. The County was paid approximately $331,000.

Following all expenses, including County obligations, the AOC had a Net Income of approximately $89.9 million for the ten years ended September 30 2008.

Financial Impact to Broward County

The Arena was constructed at a cost of approximately $191 million. On August 20, 1996, the Board of County Commissioners (Board) approved construction financing of $184.7 and construction occurred over the next 26 months in preparation for the fall

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[6] The Operating Agreement states "County Preferred Revenue Allocation means an annual amount equal to the difference between (a) the actual amount of the County's annual debt service obligation on the Bonds [issued for the construction of the Arena] fixed at the time the initial Bonds are sold and (b) $10,000,000. The County Preferred Revenue Allocation also includes an "Incremental County Preferred Revenue Allocation" which is equivalent to total debt service payments on bonds subsequently issued to pay for cost overruns of the Arena.

1998 hockey season. Due to cost overruns of the Arena, the Board approved an additional completion financing debt of $6.7 million on June 8, 1999.

The County's scheduled debt service payments on the construction and completion debts total approximately $14.5 million annually. To meet this obligation, the County receives approximately $4.5 million annually from the AOC as a Preferred Revenue Allocation payment.[7] The remaining $10 million is funded as follows: $2 million from sales tax rebates[8] and $8 million from tourist development taxes.

As shown in Table 2 below, the County paid debt service of approximately $129.1 million[9] and received approximately $37.8 of Preferred Revenue Allocation, $5 million in Tourism Promotion Payment, and $300,000 in profit sharing, resulting in a net payment of approximately $86 million during the 10 year period ended September 30, 2008.

Table 2 – Broward County incurred net costs of $86 million for the 10 years ended September 30, 2008 (millions)

Total Debt Service Obligations	**$129.1**
Less Preferred Revenue Allocation	(37.8)
County Portion of Debt Service	**91.3**
Less Tourism Promotion Payment	(5.0)
Less Participation in Net Income	(0.3)
Net County Expenditures	**86.0**

Source: Office of the County Auditor compilation of Arena debt service schedules, AOC Audited Financial Statements, and Preferred Revenue Allocation payments.

[7] With the exception of fiscal years 1999, 2006, and 2007, County debt service costs ranged between $14.4 and $14.6 million per year of which approximately $4.4 to $4.6 million were funded by the AOC Preferred Revenue Allocation. Fiscal year 1999 was the first year of debt service payments and the County paid approximately $11.4 million of which approximately $1.4 million was funded by the AOC Preferred Revenue Allocation. Fiscal year 2006 and 2007 debt service payments were reduced as the result of refinancing transactions and the County's debt service costs were approximately $10 and $12 million, respectively, of which approximately $1.8 and $3 million were funded by the AOC Preferred Revenue Allocation, respectively.

[8] The sales tax rebate is not available in the final two years of the debt service payments- fiscal years 2027 and 2028.

[9] Actual debt service payments were $135.1 million less $5.9 million in upfront cash proceeds received as the result of debt re-financing in fiscal year 2004.

Finding

Distributions to the Panthers exceeded the amount authorized under the operating agreement by approximately $8.4 million.

The Operating Agreement specifies that net income is retained by the AOC and may be distributed to the Panthers. Any distributions in excess of net income are to be reimbursed to the AOC at the end of each fiscal year.

As shown in Table 3 below, the AOC generated approximately $89.9 million in net operating income as defined by the contract and distributed approximately $98.3 million to the Panthers, resulting in approximately $8.4 million in distributions to the Panthers in excess of those authorized by the Operating Agreement.

Table 3– Distributions to Panthers during 10 years ended September 30, 2008 (thousands, $)

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Total
Net Income	15,325	12,674	12,305	7,387	5,148	6,497	1,024	11,710	9,576	8,257	89,903
Distributions to Panthers	14,000	13,625	12,974	7,805	4,504	6,131	10,071	13,710	11,900	3,570	98,290
Difference	1,325	(951)	(669)	(418)	644	366	(9,047)	(2,000)	(2,324)	4,687	(8,387)

Source: Office of the County Auditor Analysis

Unallowable distributions reduce AOC's cash reserves which are required to meet their County obligations and create additional risk to the County. This risk was highlighted on July 27, 2009 when SSE requested the County loan the AOC $3.9 million to pay its Preferred Revenue Obligation due in August 2010. In the subsequent weeks, SSE stated the AOC may not make the required upcoming Preferred Revenue Obligation payment. Had this occurred, the County would have been required to fund AOC's $3.9 million portion of the debt service payment.

Recommendation

We recommend the Board of County Commissioners direct the County Administrator to request the AOC obtain reimbursement for the approximately $8.4 million in excess distributions made to the Panthers as of September 30, 2008. The AOC should also reconcile Fiscal Year 2009 distributions to the Panthers with the final audited results of operations and obtain any additional excess distribution which may have occurred during that period.

Section 1.27	"County Preferred Revenue Allocation means an annual amount equal to the difference between (a) the actual amount of the County's annual debt service obligation on the Bonds fixed at the time the initial Bonds are sold and (b) $10,000,000. However unless otherwise agreed to by the Parties, if an acceptable combination of tax-exempt and taxable financing is not achieved in accordance with the Plan of Finance attached as Exhibit C to the Development Agreement, then the initial County Preferred Revenue Allocation (determined in accordance with the foregoing) shall not exceed Five Million Dollars ($5,000,000). The County Preferred Revenue Allocation shall be payable only for as long as the Bonds or any refunding bonds issued to refinance the Bonds are outstanding. In addition, the County Preferred Revenue Allocation shall be increased by the amount of the Incremental County Preferred Revenue Allocation (if any) pursuant to Section 8.2 hereof. The County Preferred Revenue Allocation shall be adjusted on the interest conversion date (and fixed on such date) in the event of the sale of any refunding Bonds unless mutually agreed upon otherwise."

Section 1.58	"Net Operating Income means, as to each Fiscal Year during the Term, the net of Facility Operating Revenue for such Fiscal Year less Facility Operating Expenses for such Fiscal Year and less the County Preferred Revenue Allocation distributed by Operator pursuant to Section 5.2"

Section 5.2	"Distribution of Funds from Operating Fund. The Operator shall distribute funds from the Operating Fund in the following order of priority, and at the following times:
5.2.1	Operator shall reserve certain Facility Operating Revenue so that it can make payments of the County Preferred Revenue Allocation on or before the debt service payment dates of the Bonds. Such payments shall be made to County within seven (7) days prior to the date of any debt service payment on the Bonds. County shall deliver to the Operator, within thirty (30) days after issuance of the Bonds, a schedule detailing the dates of such debt service payments. Such payments shall be in equal installments in accordance with the annual debt service payment on the Bonds. Making provision for the County Preferred Revenue Allocation shall be first use of Facility Operating Revenue.
5.2.7	To the extent there are any remaining funds in the Operating Fund, then to the payment of the Net Operating Income as set forth in Section 5.3."

Section 5.3	"Distribution of Net Operating Income other Funds. Commencing on the date hereof and continuing through the remainder of the Term, the following payments, distributions and allowances shall be made and the following provisions shall be complied with:
5.3.1	Within thirty (30) days after the end of each operating quarter (starting with the second quarter after the commencement of the Term), and to the extent cash available in the Operating Fund exceeds the projected cash requirements reasonably anticipated by Operator for the following quarter, Operator shall cause any Net Operating Income and other funds remaining in the Operating Fund received during such operating quarter to be distributed as follows: (i) First, to the extent of the first $14,000,000 of Net Operating Income earned during such Fiscal Year (if any) or other funds remaining in the Operating Fund, Operator shall pay Team 100% of such Net Operating Income or other funds remaining in the Operating Fund; (ii) Second, to the extent that Net Operating Income or other funds remaining in the Operating Fund exceeds $14,000,000 during such Fiscal Year (if any), Operator shall pay Team eighty percent (80%) and County twenty percent (20%) of such Net Operating Income or other funds remaining in the Operating Fund."
5.3.2	"Within ninety (90) days after the end of each Fiscal Year, Operator shall reconcile Net Operating Income with the cumulative distributions made pursuant to Section 5.3 and if Net Operating Income for such Fiscal Year is greater than the cumulative distributions made to the Team (and County, if applicable) Operator shall distribute the remainder of such (i) amounts to Team (and County, if applicable), in accordance with this Section 5.3; (ii) if Net Operating Income for such Fiscal Year is less than the cumulative distributions made to Team (and County, if applicable), Team (and County, if applicable), shall reimburse Operator for the respective amounts received in excess of their shares of Net Operating Income within thirty (30) days upon notification from Operator."

First Amendment Section 8	"Net Refinancing Proceeds - Not Deemed Facility Operating Revenue. The Net Refinancing Proceeds distributable to County or Operator shall not be deemed or treated as Facility Operating Revenue nor shall such Net Refinancing Proceeds be deposited into the Operating Fund nor shall such proceeds be used to pay Facility Operating Expenses other than as specifically set forth herein. Accordingly, the Net Refinancing Proceeds shall not be used in calculating Net Operating Income. In addition, any upfront Transaction Costs paid by Operator in connection with this Bond refinancing transaction shall not be deemed Facility Operating Expenses and shall not be used in calculating Net Operating Income."