

WHEREAS, on September 28, 2005, Resolution No. 05-2859 authorized a Performing Arts Center Development and Use Agreement between the City of Dallas and Dallas Center for the Performing Arts Foundation, Inc. for the construction, development, and for the long-term possession of a first-class, multi-venue performing arts complex consisting of the Winspear Opera House, the Wyly Theater, the Grand Plaza, a 600-space garage, Annette Strauss Artist Square and supporting infrastructure; and,

WHEREAS, on October 8, 2008, Resolution No. 08-2793 authorized the First Amendment to the Performing Arts Center Use Agreement with Dallas Center for the Performing Arts Foundation, Inc. for the long-term possession, operation, maintenance and use of the City Performance Hall underground parking garage; and,

WHEREAS, on December 10, 2008, Resolution No. 08-3432 authorized the Second Amendment to the Performing Arts Center Use Agreement with Dallas Center for the Performing Arts Foundation, Inc. for the operation and use of the Annette Strauss Artist Square; and,

WHEREAS, it is now desirable to authorize the Third Amendment to the Performing Arts Center Use Agreement with Dallas Center for the Performing Arts Foundation, Inc. for the promotion and support of nonprofit arts and cultural organizations, and

WHEREAS, the City recognizes the public purpose of supporting smaller and ethnically and culturally specific arts organizations, and

WHEREAS, the Dallas Center for the Performing Arts Foundation, Inc. has the capacity and desire to promote such organizations and the business systems to provide additional services, and

WHEREAS, as a material inducement to the City for entering into the Third Amendment, Dallas Center for the Performing Arts Foundation, Inc. represents and warrants to the City that it has entered into debt restructuring agreements with its creditors; and

WHEREAS, Dallas Center for the Performing Arts Foundation, Inc. agrees to the terms and conditions related to additional funding and the additional benefits it will provide the City in connection with such additional funding.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. That the City Manager is hereby authorized to execute, upon approval as to form by the City Attorney, the Third Amendment to the Performing Arts Center Use Agreement with Dallas Center for the Performing Arts Foundation, Inc. for the promotion and support of nonprofit arts and cultural organizations.

Section 2. That the Chief Financial Officer is hereby authorized to disburse, in periodic payments to the Dallas Center for the Performing Arts Foundation, Inc. (VS0000004959), an amount not to exceed \$4,000,000 (subject to annual appropriations) from Fund 0001, Department OCA, Unit 4903, Object 3099.

Section 3. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas and it is accordingly so resolved.

APPROVED BY
CITY COUNCIL

OCT 26 2016

Lucas A. Pires
City Secretary

THIRD AMENDMENT
TO THE
PERFORMING ARTS CENTER USE AGREEMENT
between
THE CITY OF DALLAS
and
DALLAS CENTER FOR THE PERFORMING ARTS FOUNDATION, INC.
Dated as of October 26, 2016

**THIRD AMENDMENT
TO THE
PERFORMING ARTS CENTER USE AGREEMENT**

THIS THIRD AMENDMENT TO THE USE AGREEMENT (this "Amendment") is entered into as of October 26, 2016, by and between the City of Dallas, Texas, a municipal corporation of the State of Texas and a home rule city (the "City"), and Dallas Center for the Performing Arts Foundation, Inc., a Texas non-profit corporation d/b/a The AT&T Performing Arts Center (the "DCPAF").

RECITALS

A. The City and the DCPAF are parties to that certain Use Agreement dated as of December 15, 2005, as heretofore amended (the "Use Agreement") concerning the management, maintenance, use and operation of certain improvements in the area commonly known as the Dallas Arts District. This Amendment is an amendment to the Use Agreement. Capitalized terms used but not defined in this Amendment shall have the meanings assigned to such terms in the Use Agreement. The Parties acknowledge that no notices of default have been provided pursuant to Article 15 of the Use Agreement, and agree that any remedy for performance or non-performance occurring prior to the execution of this Amendment is waived.

B. Pursuant to that certain Performing Arts Center Development Agreement dated as of December 15, 2005, the DCPAF raised private donations in excess of \$330,000,000, which the DCPAF used to design, construct and commence operations at multiple performing arts venues and related improvements in the Dallas Arts District.

C. The DCPAF's historic efforts have greatly advanced the City's efforts to complete the Dallas Arts District for the benefit of community members and the many performing arts organizations that provide programming in the Dallas Arts District.

D. The DCPAF has requested that the City provide certain additional funding to the DCPAF to ensure the DCPAF is able to continue performing its central role in supporting the performing arts in Dallas. The City and the DCPAF desire to agree on terms and conditions related to such additional funding and the additional benefits the DCPAF will provide the City in connection with such additional funding.

E. On October 26, 2016, the City Council of the City approved Resolution No. 16-1750, authorizing the City Manager to execute this Amendment on behalf of and as the official act of the City.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual terms, conditions, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed by each of the parties to this Amendment, the parties have agreed and do hereby agree as follows:

1. Article 6 of the Use Agreement is amended by adding the following new Section 6.15:

“6.15 DCPAF Collaboration with City’s Office of Cultural Affairs. Beginning on or before November 1, 2016, and continuing for each year during which the City pays to the DCPAF the Annual Payment described in Section 8.1 of this Agreement, the DCPAF will assist the City’s efforts to promote and support nonprofit arts and cultural organizations in the City. DCPAF agrees to work collaboratively with the City’s Office of Cultural Affairs to identify additional services most needed by local arts and cultural organizations and agrees to provide those services, subject to mutual approval by the Director of Cultural Affairs (the “Director”) and the DCPAF (the “Programs”). The Programs shall be described in a document substantially in the form of Exhibit A-1 to this Amendment. Each year during which the DCPAF provides the Programs, the DCPAF and the Director (or successor officer) will consult (a) at least twice annually to evaluate participation in the Programs by targeted organizations along with their future needs, and (b) on an annual basis to determine appropriate and necessary adjustments to the Programs and consider additional charges or fees on the DCPAF campus, as mutually agreed between the City Manager and the DCPAF, which adjustments shall not require a formal amendment to this Use Agreement. The value of the services provided in the Programs shall be credited each year against the City’s Annual Payment in the amount approved at the reasonable discretion of the Director; provided, that if the value of the services, as determined in the reasonable discretion of the Director, exceeds \$1,500,000 in any year, the Director may apply up to \$300,000 of such excess value to the DCPAF’s obligation to provide services under the Programs in the following year; provided, further, that if the value of the services for any year, as determined in the reasonable discretion of the Director, is less than \$1,500,000 due to the DCPAF’s failure to perform in any material respect the services to be provided by the DCPAF as described in the Programs for such year, the Director may require the DCPAF to furnish up to \$300,000 of additional services in the Programs for the following year.”

2. Section 8.1 of the Use Agreement is amended by adding the following sentences at the end of Section 8.1:

“In addition to the Annual City Operating Expenses, in consideration of the DCPAF’s ongoing work in operating the Center for the benefit of the performing arts in Dallas, in consideration of the Center’s offering and implementing the Programs as described in Section 6.15 hereof, and in consideration of the other benefits to the City as provided in this Agreement (as amended), the City shall pay to the DCPAF, on or before November 1 of each year beginning on November 1, 2016, and continuing through and including November 1, 2025, an annual amount equal to \$1,500,000 (the “Annual Payment”); provided, that beginning with the Annual Payment to be paid on or before November 1, 2017, the City’s obligation to make each such Annual Payment shall be subject to the conditions set forth in Section 8.6 of this Agreement. The DCPAF may use the Annual Payment funds for any operating expenses related to the Center. The Annual Payment

shall be in addition to the Initial Annual Cap set forth in Section 8.2, but shall not be subject to adjustment as part of the Baseline Utility Cost or Baseline Other Operating Cost set forth in Section 8.2.”

3. Section 8.2 of the Use Agreement is amended by deleting the introductory phrase: “Notwithstanding anything to the contrary” from the first sentence of Section 8.2

4. Section 8.4 of the Use Agreement is amended by adding the phrase: “the Annual Payment provided in this Article,” to the first sentence of Section 8.4, after the word “Article” and before the phrase “the Capital Maintenance expense”.

5. Article 8 of the Use Agreement is amended by adding the following new Section 8.5:

“8.5 Certificate of Redemption. On or before December 31 of each year beginning on December 31, 2016, and continuing through December 31, 2025, the Center will notify the City Manager in writing in substantially the form of Exhibit B-1 (a “Certificate of Redemption”) certifying the total amount (in dollars) of bonds redeemed under the amended Letter of Credit Reimbursement Agreements between the DCPAF and each of JPMorgan Chase Bank, N.A. and Bank of America, N.A. (together, the “Banks” and such agreements, the “Debt Restructuring Agreements”) during the preceding twelve-month period.”

6. Article 8 of the Use Agreement is amended by adding the following new Section 8.6:

“8.6 Condition to Future Annual Payments. On or before July 1 of each year beginning on July 1, 2017, and continuing through July 1, 2025, the Center will notify the City Manager in writing in substantially the form of Exhibit C-1 (a “Request Notice”) whether the Center is requesting that the City pay to the Center the Annual Payment to be paid on or before the following November 1. On or before August 1 of each year beginning on August 1, 2017, and continuing through August 1, 2025, the Center will notify the City Manager in writing in substantially the form of Exhibit D-1 (a “Compliance Notice”) whether an “Event of Default” has occurred under the Debt Restructuring Agreements and, if so, whether such Event of Default has been cured by the DCPAF or waived by the Banks on or before the date of such Compliance Notice. Beginning with the Annual Payment to be made on or before November 1, 2017, the City’s commitment to make each Annual Payment shall be excused for any year during which (a) the Center does not deliver a Request Notice, or (b) the Center does not deliver a Compliance Notice confirming to the City that either (i) no Event of Default has occurred under the Debt Restructuring Agreements, or (ii) an Event of Default (if any) has been cured by the DCPAF or waived by the Banks, or (c) the Director is not reasonably satisfied with the Programs proposed to be delivered in the next year.

7. As a material inducement to the City for entering into this Amendment, the DCPAF hereby represents and warrants to the City that the DCPAF has entered into the Debt Restructuring Agreements, which are in full force and effect. Under the Debt Restructuring Agreements, the DCPAF has agreed to pay a total of \$76.0 million (including an initial \$26.0 million payment) to redeem such bonds and the Banks have agreed to pay an aggregate amount equal to \$45.0 million to redeem such bonds. The Banks are obligated under the Debt Restructuring Agreements to pay the Banks' portion of the overall contribution over time, commencing in 2019 and in an annual amount equal to a portion of the DCPAF's bond redemption during the previous year. Upon the DCPAF's full performance of its obligations under the Debt Restructuring Agreements, the existing indebtedness incurred in connection with construction of the Center will be fully extinguished. DCPAF shall promptly notify the Director of any amendments to, or events of default under, the Debt Restructuring Agreements.

8. Section 15.2 of the Use Agreement is amended by adding the following provision to the end of Section 15.2:

"In addition to the foregoing, during the period from October 26, 2016, through November 1, 2025, the City may terminate the City's obligation to make Annual Payments pursuant to Section 8.1 if the DCPAF (a) amends the Debt Restructuring Agreements (as in effect on October 26, 2016) to have the effect of not extinguishing, upon full performance of the terms of such Debt Restructuring Agreements, all the indebtedness incurred in connection with construction of the Center, or (b) incurs additional indebtedness for purposes of new capital expenditures at the Center (excluding any capital maintenance the DCPAF chooses to fund upon any failure by the City to perform the City's capital maintenance obligations under this Use Agreement)."

9. Article 15 of the Use Agreement is amended by adding the following provisions:

15.3 "(d) any failure by the City to pay the Annual Payment described in Article 8.1 of the Use Agreement shall not constitute an Event of Default under the Use Agreement, nor shall such failure entitle DCPAF to the remedies described in Article 15.5 of the Use Agreement"

15.5 "(b)(5) all of the City's out-of-pocket expenses paid under the Use Agreement.

10. All other terms, covenants, conditions and obligations of the Use Agreement between the City and the DCPAF shall remain in full force and effect and the Use Agreement, as previously amended, and this Amendment shall be construed together as a single contractual agreement.

* * * * *

This Amendment has been executed and delivered as of the date first written above. The City, signing by and through its City Manager, is duly authorized to execute this Amendment by Resolution No. 16-1750, adopted by the City Council on October 26, 2016.

CITY OF DALLAS

By: *A.C. Gonzalez*, *Asst. City Manager*
A.C. Gonzalez
City Manager

APPROVED AS TO FORM:

By: *Barbara Montes*, *Asst. City Attorney*
LARRY E. CASTO
City Attorney

THE DALLAS CENTER FOR THE PERFORMING ARTS FOUNDATION, INC.

By: *Douglas T. Curtis*
Douglas T. Curtis
President and CEO

161750

EXHIBIT A-1

The Programs

SERVICES: ESTIMATED ANNUAL VALUE

Category	Services	Description	Rate	Estimated Services Value	Estimated Additional Variable Usage Value			Value Metrics	Notes
					10% OCA Participation	25% OCA Participation	50% OCA Participation		
Marketing Services	E-Blasts & OCA Culture Calendar	Center to coordinate, content manage and execute monthly e-blast of OCA cultural listings for 65 OCA supported cultural organizations to Center's database of 170,000+. Creating and maintaining an OCA Culture Calendar on the Center's homepage. Includes staffing, contracting website functionality, content management and feed fees.	65 Eligible OCA Groups - COP (Tiers 1, 2 and 3) and CPP.	\$ 26,693	\$ 178,830	\$ 408,755	\$ 843,058	Google analytics reports for e-blasts and OCA Culture Calendar visits. List of participating organizations; timesheets; invoices from web-development/maintenance company. Patron zip codes when possible.	
Community Services	Dallas Arts Month	Working with the Mayor's Office, Office of Cultural Affairs and arts organizations. Center will provide consulting expertise and marketing and ticketing services to support Dallas Arts Month.	Annual event	\$ 31,604				Ticketing contract; Google analytics for e-blasts; timesheets for pr, marketing, creative services and social media	
	DPD Let's Talk	Providing up to \$10K in labor, resources and services for DPD's Let's Talk Program on an annual basis. \$25,200 in rent waived under use agreement. DPD to cover additional costs.	Annual event	\$ 10,000				Invoice with waived direct costs	
	OCA Rush Tickets	Last minute, reduced cost tickets to artists and employees of OCA supported cultural organizations for Broadway, TITAS Presents and Center Presents shows (as available). Includes creation and maintenance of official artist list, email alerts and box office support. Target price: \$25. Does not include tickets of resident company, rental or private productions.	Estimated at \$75 a ticket with \$50 saving each. Estimated at 34 shows, 800 tickets.	\$ 40,000				Box office reports. Value is the difference between true ticket cost and cost paid, waived ticketing fees.	OCA Rush Tickets made available but not claimed shall not be credited against City's Annual Payment
	Donated Tickets	Tickets provided to community through the Center's Community Partners, Open Stages (education) and nonprofit ticket programs. Averages vary per program.	Estimated 3,063 tickets for 2016-2017. Value varies per program.	\$ 131,420				Box office reports. Value is the true ticket cost and waived fees. For donated tickets, average value is estimated at \$75.	Metrics on utilization of donated tickets shall be provided to the City annually.
Performance Space	Community Stage	Providing performance space for the top student performing arts ensembles in North Texas. May include public, private and charter schools as well as student ensembles of nonprofit arts groups with preference given to Dallas-based schools and groups. Performances will take place before Broadway, TITAS Presents and Center Presents shows in the Winspear Opera House. Curation standards to be set in consultation with Office of Cultural Affairs.	10 Performances Minimum.	\$ 39,325				Invoice of direct costs and human resources.	Events and programs not open to the general public shall not be credited against City's Annual Payment. Credit against City's Annual Payment may be made if performance space is reserved, but subsequently cancelled within 45 days of event. Events cancelled more than 45 days in advance of event shall not be credited against City's Annual Payment. This service is provided in addition to City's right to use and occupy the Center, or parts thereof, as provided in Section 6.14 of the Use Agreement. City's use of Center as provided in Section 6.14 of the Use Agreement shall not be credited against City's Annual Payment, unless additional services are provided as stated herein and approved by the Director.
	Curated Performance Project (currently known as Elevator Project)	Curating presentations in performance spaces on the Center's campus. Strong emphasis on OCA supported performance groups and artists that are: Small, emerging and/or historically marginalized, presenting new works or proposing unique use of the spaces. Includes ticketing, some marketing, operational and staff support. Subject to space availability. Name and project details still being structured. Center may explore additional unique opportunities with additional OCA supported groups, in consultation with the OCA.	Target is 5-8 project shows a year. Estimates will vary depending on space and discipline. Value to be based on the Center's annual rental pricing schedule.	\$ 122,050				Invoice of direct costs, lost opportunity costs; human resources; box office reports with patron zip codes.	Events and programs not open to the general public shall not be credited against City's Annual Payment. Credit against City's Annual Payment may be made if performance space is reserved, but subsequently cancelled within 90 days of event. Events cancelled more than 90 days in advance of event shall not be credited against City's Annual Payment. This service is provided in addition to City's right to use and occupy the Center, or parts thereof, as provided in Section 6.14 of the Use Agreement. City's use of Center as provided in Section 6.14 of the Use Agreement shall not be credited against City's Annual Payment, unless additional services are provided as stated herein and approved by the Director.
Ticketing	TicketDFW.com	Center will offer discounted ticketing services for OCA COP Tier 1 and Tier 2, and CPP groups. Includes options for free and paid e-ticketing for General Admission and Reserved seating, print-at-home, venue mapping, reporting and analytics, client manager support and marketing support with e-blasts to TicketDFW patron database of 35,000 and placement on TicketDFW web site. Ticketing is only for events and programs accessible to the public.	57 Eligible COP Tier 1 and 2, CPP groups.	\$ 13,320	\$ 288,650	\$ 721,750	\$ 1,443,650	Ticketing contracts; Google analytics for e-blasts and website visits	Events and programs not open to the general public shall not be credited against City's Annual Payment. No credit against City's Annual Payment shall be given for ticketing services for events which are subsequently cancelled prior to issuance of tickets.
	Facility Fee	Per the Center's Use Agreement: At the City's request, the Center will engage with the Center's resident companies and presenting partners to discuss price increases in the Facility Fee. Those discussions will focus on the impact to the companies and partners, the public as well as timing, price elasticity, consumer demand/supply and more. We will coordinate discussions of potential increases with Office of Cultural Affairs and the City Manager's office.	Feasibility and value to be determined.	\$ -				Cost per ticket, tracked by sales.	
City Services - Operational Support	DCPH Parking Support	10 additional spaces to DCPH to provide parking for OCA supported nonprofit organizations renting the hall.	10 spaces @ 12 months of daytime monthly rate of \$180 (+) 255 nights at evening event rate of \$17 a space.	\$ 64,950				Value of monthly parking	
	DCPH Parking Support	Complimentary parking in DCPH for City of Dallas events. Up to six events a year with 250 spaces. Pending availability, and some restrictions may apply to accommodate productions in Center venues.	6 events with 250 spaces at \$17 a space.	\$ 25,500				Track date/time of events	
	Patron Services - Analysis	Center's Front of House team will examine and analyze the patron services systems for OCA venues - DCPH, Meyerson and Majestic. Includes secret shopper, review of systems, policies and procedures, develop metrics and deliver report of findings and recommendations. Could be extended to other venues in future years at OCA request.	Estimated consultant rate 90 team (of 4) hours at going rate of \$300 per team hour.	\$ 27,000				Invoice for consulting services	
	Patron Services - Training	OCA front of house staff and volunteers participate in AT&T Performing Arts Center Patron Relations Training. Training every two years.	Estimated at 56 current staff @ \$302.50 cost per trainee (includes materials). Staffed trained on a 2-year rotation.	\$ 8,470				Cost per trainee	
				\$ 540,332	\$ 467,480	\$ 1,130,505	\$ 2,286,708		

Total with 10% Variable	Total with 25% Variable	Total with 50% Variable
\$ 1,007,812	\$ 1,670,837	\$ 2,827,040

EXHIBIT B-1**Form of Certificate of Redemption**

December __, 20__

City of Dallas
 1500 Marilla
 Dallas, TX 75201
 Attn: City Manager

Re: AT&T Performing Arts Center

Reference is made to that certain Use Agreement, as amended (the "Use Agreement"), between the City of Dallas (the "City") and the Dallas Center for the Performing Arts Foundation, Inc. (the "Center"). This is a Certificate of Redemption as provided in Section 8.5 of the Use Agreement.

The Center is pleased to report to the City that during the period from _____, 20__ to the date of this Certificate of Redemption, the Center and the Banks (as defined in the Use Agreement) collectively have redeemed \$_____ of the bonds issued in connection with the construction of the Center's venues and facilities.

The Center is deeply grateful for the opportunity to serve the City and the community and for the City's continued support of the Center.

The Dallas Center for the Performing Arts Foundation, Inc.

By: _____
 Name: _____
 Title: _____

EXHIBIT C-1

Form of Request Notice

June __, 20__

City of Dallas
1500 Marilla
Dallas, TX 75201
Attn: City Manager

Re: AT&T Performing Arts Center

Reference is made to that certain Use Agreement, as amended (the "Use Agreement"), between the City of Dallas (the "City") and the Dallas Center for the Performing Arts Foundation, Inc. (the "Center"). This is a Request Notice as provided in Section 8.6 of the Use Agreement.

The Center hereby requests that the City pay to the Center the Annual Payment (as defined in the Use Agreement) for 20__, as provided in the Use Agreement.

The Center is deeply grateful for the opportunity to serve the City and the community and for the City's continued support of the Center.

The Dallas Center for the Performing Arts Foundation, Inc.

By: _____
Name: _____
Title: _____

EXHIBIT D-1

Form of Compliance Notice

July __, 20__

City of Dallas
1500 Marilla
Dallas, TX 75201
Attn: City Manager

Re: AT&T Performing Arts Center

Reference is made to that certain Use Agreement, as amended (the "Use Agreement"), between the City of Dallas (the "City") and the Dallas Center for the Performing Arts Foundation, Inc. (the "Center"). This is a Compliance Notice as provided in Section 8.6 of the Use Agreement.

During the period from _____, 20__, to the date of this Compliance Notice, the Debt Restructuring Agreements were not amended and no Event of Default has occurred under the Center's Debt Restructuring Agreements (as defined in the Use Agreement).

[Alternative provision: During the period from _____, 20__, to the date of this Compliance Notice, an Event of Default occurred under the Center's Debt Restructuring Agreements (as defined in the Use Agreement), but on _____, 20__, [the DCPA cured such Event of Default] [or] [the Banks (as defined in the Use Agreement) waived such Event of Default].]

The Center is deeply grateful for the opportunity to serve the City and the community and for the City's continued support of the Center.

The Dallas Center for the Performing Arts Foundation, Inc.

By: _____
Name: _____
Title: _____