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CITY SECRETARY  
DALLAS, TEXAS

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

THIS FOURTH AMENDMENT TO THE PERFORMING ARTS CENTER USE AGREEMENT (this “Fourth Amendment”) is dated effective March 30, 202<sup>1</sup> and is entered between CITY OF DALLAS, a municipal corporation of the State of Texas (“City”) and the DALLAS CENTER FOR THE PERFORMING ARTS FOUNDATION, INC., a Texas nonprofit corporation (the “DCPAF”).

**RECITALS:**

A. City and the DCPAF are parties to that certain Use Agreement dated December 15, 2005 (the “Performing Arts Center Use Agreement”), as amended, for the occupancy and use by the DCPAF of a multi-venue performing arts complex (and related infrastructure including, among other components, the Winspear Opera House, the Wyly Theatre and Annette Strauss Artist Square (“Strauss Square” and collectively, the “Premises”); located in the city of Dallas, Dallas County, Texas.

B. In addition to providing for the DCPAF’s occupancy and use of the Premises, pursuant to that certain Second Amendment to the Performing Arts Center Use Agreement dated December 10, 2008, City and the DCPAF amended the Performing Arts Center Use Agreement to provide, in part, for the adoption of a plan (therein defined as the “Booking Agreement”) for joint scheduling that includes amplified sound events at Strauss Square.

C. The Dallas Symphony Association (the “DSA”) is responsible for operating and managing the Morton H. Meyerson Symphony Center (the “Meyerson”) located in close proximity to Strauss Square.

D. City and the DCPAF desire to enter into this Fourth Amendment to amend the Performing Arts Center Use Agreement to revise the Booking Agreement, attached thereto as Exhibit B, to incorporate annual scheduling agreement changes as set forth below:

**AGREEMENT:**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1) Incorporation of Recitals. The recitals set forth above are incorporated herein and made a part of this Fourth Amendment to the same extent as if set forth herein in full.
- 2) Capitalized Terms. All capitalized terms in this Fourth Amendment shall have the same meanings as in the Performing Arts Center Use Agreement unless expressly provided otherwise herein. As used herein and in the Performing Arts Center Use Agreement, the term “Performing Arts Center Use Agreement” hereafter shall mean the Performing Arts Center Use Agreement as modified by this Fourth Amendment.

3) Amendments. City and the DCPAF hereby amend Exhibit B of the Performing Arts Center Use Agreement to include the following at the end of Exhibit B:

“Notwithstanding any of the foregoing, the DCPAF agrees that when the DSA submits the DSA’s calendar of initial confirmed booking periods no later than September 30 of each year in accordance with the Booking Agreement, that calendar may include booked weddings at the Meyerson as follows:

- A maximum of one booked wedding per month at the Meyerson, except as agreed to by both parties with the exception of those dates already booked prior to this agreement, with the exception of December, January, and February. During those three months, the DSA may book an unlimited number of weddings at the Meyerson.
- The DSA agrees that after the City’s calendar of initial use periods has been loaded in (no later than October 31 each year in accordance with the Booking Agreement), the DCPAF may book amplified events in Strauss Square on all scheduled Dallas Symphony Presents and Pops dates; amplified performances are not permissible for classical concerts, Dallas Symphony Orchestra League Debutante Ball or the DSA Gala unless otherwise approved in advance by the DSA.
- The DSA and the DCPAF agree that after the DCPAF submits the DCPAF’s calendar of booked events, and up to 25 Strauss Square Hold Periods (no later than December 15 each year in accordance with the Booking Agreement), the DSA and the DCPAF will continue to collaborate and coordinate on booking Strauss Square according to the terms of the Booking Agreement, each party using commercially reasonable efforts to enable DCPAF to maximize its use of Strauss Square and the DSA to maximize its use of the Meyerson.
- During or before September, 2022, the DCPAF will review with the DSA the Booking Agreement, as hereby amended, to evaluate and determine in mutual good faith if any adjustments should be made for the 2023/2024 season.”

4) Limited Amendment. Except as specifically set forth in this Fourth Amendment, the Performing Arts Center Use Agreement shall continue in effect according to its terms.

5) Governing Law. This Fourth Amendment shall be construed and enforced in accordance with the laws of the State of Texas.

6) Entire Agreement. The parties hereto agree and understand that no oral agreements, or understandings, shall be binding, unless reduced to a writing which is signed by said parties. The parties hereto agree and understand that this Fourth Amendment shall be binding on them and their respective successors and assigns.

7) Severability. If any one or more of the provisions in this Fourth Amendment are invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions of this Fourth Amendment shall not in any way be affected or impaired, and

that invalidity, illegality, or unenforceability in one jurisdiction shall not affect the validity, legality, or enforceability in any other jurisdiction.

8) **No Third-Party Beneficiaries.** This Fourth Amendment is solely for the benefit of the parties hereto and their successors and assigns permitted under the Performing Arts Center Use Agreement, and no provisions of this Fourth Amendment shall be deemed to confer upon any other person any remedy, claim, liability, reimbursement, cause of action or other right.

9) **Counterparts.** This Fourth Amendment may be executed, including via certified electronic or facsimile signatures, in any number of counterparts and shall be effective and binding on the parties when all signatories have each fully executed a counterpart and returned a copy to the other party, notwithstanding that the signatories may have executed different counterparts. Counterparts may be compiled, duplicate pages discarded and the remainder assembled as a complete document binding the parties.

*[Remainder of page intentionally left blank. Signature pages follow.]*

EXECUTED as of the 30 day of March, 2021, by the CITY OF DALLAS, signing by its City Manager, authorized by Resolution No. 20-1699, approved on October 28, 2020, and by the DALLAS CENTER FOR THE PERFORMING ARTS FOUNDATION, INC., signing by its authorized officer.

CITY OF DALLAS  
T.C. BROADNAX, City Manager

APPROVED AS TO FORM:  
Christopher J. Caso, City Attorney


By   
Joey Zapata (Mar 29, 2021 18:28 EDT)

Consuelo R Tankersley  
Consuelo R Tankersley (Mar 30, 2021 11:10 CDT)

Assistant City Manager

Assistant City Attorney 

ATTEST:

  
City Secretary

RECOMMENDED BY  
DIRECTOR OF ARTS AND CULTURE

THE DALLAS CENTER FOR THE  
PERFORMING ARTS FOUNDATION, INC.

BY:   
Jennifer Scripps (Mar 29, 2021 16:34 CDT)  
Director

By Debbie Storey  
Debbie Storey (Mar 29, 2021 17:29 EDT)  
Name: Debbie Storey  
Title: President & CEO

201699

October 28, 2020

**WHEREAS**, the City (the "City") and the Dallas Center for the Performing Arts Foundation ("DCPAF") are parties to a Development and Use Agreement dated September 28, 2005 (the "Performing Arts Center Use Agreement"), as amended, for the construction, development, and long-term possession of a first-class, multi-venue performing arts complex consisting of the Winspear Opera House, the Wylie Theater, the Grand Plaza, a 600-space garage, Annette Strauss Artist Square ("Strauss Square") and supporting infrastructure; and

**WHEREAS**, the City and the Dallas Symphony Association, Inc. ("DSA") were parties to a Use Agreement for the Meyerson dated September 18, 1985 (the "Meyerson Use Agreement"), as amended, which provided for the terms and conditions under which the DSA was the priority user and primary tenant to occupy certain portions of the Meyerson while City had sole responsibility for the operation and management of the entire Meyerson premises; and

**WHEREAS**, on December 10, 2008, City Council authorized the Second Amendment to the Performing Arts Center Use Agreement for the operation and use of the Strauss Square, and provided, in part, for the adoption of a plan for scheduling (the "Booking Rights Agreement") at the Meyerson and Strauss Square by Resolution No. 08-3432; and

**WHEREAS**, on April 22, 2009, City Council authorized the Fourth Amendment to the Meyerson Use Agreement that provided, in part, for the adoption of the Booking Rights Agreement by Resolution No. 09-1105; and

**WHEREAS**, on May 22, 2019, City Council authorized the Amended and Restated Use Agreement for the Meyerson between the City and DSA, to amend the Meyerson Use Agreement to enable the DSA to solely lease, occupy, manage, and operate the entire Morton H. Meyerson Symphony Center premises for a ninety-nine year term, subject to reverter and other requirements of Section 253.011 of the Texas Local Government Code by Resolution No. 19-0774; and

**WHEREAS**, the Amended and Restated Use Agreement for the Meyerson incorporated and maintained the Booking Rights Agreement; and

**WHEREAS**, the DSA and DCPAF have mutually agreed to revise the Booking Rights Agreement and are desirous of the City and DCPAF's concurrent adoption of said revised Booking Rights Agreement as part of the Performing Arts Center Use Agreement; and

**WHEREAS**, it is now desirable to authorize the Fourth Amendment to the Performing Arts Center Use Agreement with DCPAF to incorporate the adoption of a revised Booking Rights Agreement to provide a new plan for scheduling at the Meyerson and Strauss Square, with said revised Booking Rights Agreement being jointly negotiated with the DSA and DCPAF.

20-1699

201699

October 28, 2020

**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 the Fourth Amendment to the Performing Arts Center with the Dallas Center for the Performing Arts Foundation, Inc., approved as to form by the City Attorney, to incorporate a revised Booking Rights Agreement, as jointly negotiated with the DSA and DCPAF.

**SECTION 2.** 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.

