

Memorandum



CITY OF DALLAS

DATE May 17, 2019

TO Honorable Mayor and Members of the City Council

SUBJECT **May 22, 2019 Agenda Item 22 – Lease of the Meyerson Symphony Center**

On May 22, 2019, City Council will consider a ninety-nine year lease agreement with the Dallas Symphony Association, Inc. (DSA) for the Morton H. Meyerson Symphony Center, located at 2301 Flora Street, subject to a reverter and other requirements pursuant to Section 253.011 of the Texas Local Government Code. As requested by the Quality of Life, Arts and Culture Committee, this memorandum clarifies the rationale for the 99-year term, and termination provisions, should it become necessary during the lease term.

While some cultural facility management and lease agreements are for 40-year durations, each of those agreements place operation and maintenance expenses and responsibilities on the City. The proposed DSA agreement is structured to relieve the City of ongoing operation and maintenance costs and responsibilities, while allowing the DSA to more fully program cultural events in the facility. As consideration for the 99-year term, the DSA will assume all operating and maintenance obligations of the facility for the duration of the agreement, following an initial six-year wind down of City financial support for such costs. Savings to the City are projected in excess of \$60 million over the duration of the existing use agreement, which expires in 2049. The current agreement also provides for four automatic 10-year renewal terms following the current 2049 expiration.

Section 253.011 of the Texas Local Government Code (Public Purpose Statute), provides that the City is permitted to lease real property to a 501(c)(3) non-profit organization without following typical governmental notice and bidding requirements provided the lessee use the real property in a manner that promotes the public purpose of the City as set forth in the lease. In this case, the DSA agrees to use the Meyerson in a manner that primarily promotes orchestral music-related and other musical and cultural events as further outlined below. Should the DSA fail to serve this public purpose, Section 253.011 provides that the real property interest will automatically revert to the City.

Additionally, the lease may be terminated by the City for failure of the DSA to comply with any other material term, covenant, or provision of the lease agreement, and the failure by the DSA to commence action to cure the failure within 45-days after the City notifies them in writing of the failure to comply, and their failure to complete the cure (or to make significant progress towards completion of the cure of the failure, as determined by the City) 180-days after the City's written notice. The DSA may terminate the lease by giving the City written notice twelve months or more in advance of the termination date.

DATE May 17, 2019
SUBJECT May 22, 2019 Agenda Item 22 – Lease of the Meyerson Symphony Center

Key material provisions of the agreement include among other things, the following terms and conditions:

- A. Total rent payable to the City by the DSA for its lease of the entire Meyerson premises during the term shall be \$1.00 per year payable on or before January 2 of each lease year; and
- B. DSA shall be responsible, at its sole cost and expense, for operation, management, maintenance of the Meyerson premise; subject to City's support commitment set forth in subparagraph C below and City's commitment to expend bond proceeds currently appropriated for the Meyerson to perform various deferred capital improvement and maintenance projects; and
- C. City will continue to provide financial support to the DSA for the operation and maintenance of the Meyerson for the initial six-year period of the term, subject to annual appropriations, as follows:
 - Year 1: \$3,000,000.00;
 - Year 2: \$3,000,000.00;
 - Year 3: \$2,500,000.00;
 - Year 4: \$1,500,000.00;
 - Year 5: \$ 750,000.00;
 - Year 6: \$ 750,000.00; and
- D. All Public Art in the Meyerson premises will not be conveyed as part of the leasehold under the Agreement but will remain City owned property and will continue to be on display at the Meyerson under the oversight of the City's Office of Cultural Affairs; and
- E. Regarding use of the Annette Strauss Artists Square, the DSA and City will continue to honor and follow the terms of the Booking Rights Agreement between the DSA and the Dallas Center for the Performing Arts Foundation, which agreement shall be incorporated as part of the Agreement for all the purposes set forth therein; and
- F. DSA shall be responsible to raise cash or pledges in the amount of \$5 million during the period of DSA fiscal years 2020-2025, which will be earmarked for capital improvements to the Meyerson, and shall expend those funds for such purpose by 2029; and

DATE May 17, 2019
SUBJECT May 22, 2019 Agenda Item 22 – Lease of the Meyerson Symphony Center

- G. DSA and its musicians will perform no less than 150 concerts per year; and
- H. Existing City bookings for 2019 and 2020 will be honored by the DSA; and
- I. Events for Grandfathered Users, which shall be defined to mean the Greater Dallas Youth Orchestra, Children’s Chorus of Greater Dallas, Dallas Winds, Dallas Bach Society, Fine Arts Chamber Players, Turtle Creek Chorale, The Black Academy of Arts and Letters (for its annual MLK Celebration), and Dallas-based public independent school districts (high school graduations), shall be at preferred rent rates through May 31, 2029, based on 2018 rent rates through 2029, plus no more than 2.5% annual increases after 2029. In addition, the Grandfathered User will be responsible for all direct costs, e.g., utilities, personnel, security, ticketing services, etc.; and
- J. DSA will comply with monthly and annual reporting consistent with the requirements of Cultural Organizations Program administered through the Office of Cultural Affairs; and
- K. DSA will provide up to six City event dates annually, and for up to an additional ten event dates annually for community-oriented events requested by the City; and
- L. DSA shall provide City of Dallas independent school districts’ students with complimentary tickets based on availability for no less than 50 concerts selected by the DSA; and
- M. Bookings for mayoral and city council inaugurations take priority over all other uses of the Meyerson; and
- N. DSA shall provide City with a copy of a financial guaranty agreement between the DSA and a private foundation or donor, evidencing the foundation or donor’s guarantee of the DSA obligations for the benefit of the Meyerson, namely guaranteeing DSA’s commitment to raise the \$5 million in cash or pledges described in subparagraph F above. The foundation or donor’s guaranty shall be attached to the Agreement and shall be incorporated thereto for the purposes set forth therein; and
- O. If the DSA fails to use the Meyerson for the City’s public purpose, in violation of the requirements of Section 253.011 of the Texas Local Government Code, then the Agreement shall terminate, and the leasehold estate granted in the Agreement shall automatically revert to the City.

DATE May 17, 2019
SUBJECT May 22, 2019 Agenda Item 22 – Lease of the Meyerson Symphony Center

Furthermore, upon commencement of the agreement and continuing for the first six-years of the lease (while the City is providing annual financial support), the DSA will submit to the City a monthly report detailing uses and activities in the building. This report will then be due annually following year six for the remaining duration of the agreement. Following year six, the DSA will become eligible for cultural support funding through the Cultural Organizations Program (COP) administered by the Office of Cultural Affairs (OCA). This program requires monthly reports related to each organization’s activities, which will allow for OCA to continue closely monitoring activities at the Meyerson.

In addition to the monthly and annual reports, the lease agreement provides that the City may review any and all DSA services and records related to the performance of the agreement. Finally, any grandfathered user groups experiencing issues with the DSA related to bookings or rates may direct concerns to OCA for review and assistance. Upon City Council approval of the proposed agreement, staff in the OCA and the Office of Ethics and Compliance will develop written work instructions and procedures to ensure all performance terms stated in the contract are sufficiently monitored and documented.

If you have further questions, please contact me at (972) 922-7218 or Jennifer Scripps, Director of Cultural Affairs, at jennifer.scripps@dallascityhall.com or 214-671-2828.



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