

December, 2019

MEMORANDUM OF UNDERSTANDING

The following is a memorandum of understanding between The Woodlands Township (The Township) and the Center for the Performing Arts at The Woodlands (The Pavilion) regarding the development and operation of new performing arts center (the Project). This is a non-binding MOU for the purpose of developing studies and information for consideration of a final binding agreement between the parties. During the term of this initial MOU, the Township will fund the costs associated with the Gensler architecture team and Webb Management Services.

DESCRIPTION OF THE PROJECT

The Project refers to the development of new performing arts facilities in The Township, close to the facilities of The Pavilion. The current plan is to develop a center that includes the following components:

- * A 1500-seat theater performing arts facility
- * A 200 to 400 seat multi-purpose venue
- * Rehearsal, classroom, and practice spaces
- * Public gallery space
- * Outdoor space to accommodate receptions
- * Additional public and support spaces
- * Facility size estimated at approximately 100,000 gross sf
- * Facility project cost estimated at \$71 million

PAVILION GOALS

The Pavilion has set the following goals regarding its role in the development and operation of new performing arts facilities:

- * To increase performing arts offerings in The Woodlands area
- * To provide enhanced facilities that support the Pavilion's mission of cultural education
- * To provide smaller indoor venue facilities for performance and musical offerings, allowing for year-round operations

TOWNSHIP GOALS

The Township wishes to partner with the Pavilion on this project in order to:

- * Support attraction of musical, touring arts (local, region and national) and entertainment to The Woodlands area as an economic driver

- * Contribute to the economic vitality of The Woodlands and the wider region with active facilities that drive economic and community development.
- * Provide facilities that can also be used to support conventions, meetings and trade shows
- * Enhance access to performance, rehearsal, and support spaces to local and regional artists and arts organizations

PERFORMING ARTS FACILITY VISION

The parties to this agreement agree to develop the Project as a facility that provides for a broad and diverse array of performance, music and cultural events. These facilities will be operated by the Pavilion in a professional and competent manner that is consistent with the standards of the parties, utilizing a sustainable business model primarily driven by earned income.

OWNERSHIP

The performing arts facility will be owned by The Township and will be leased to the Pavilion at a nominal lease rate (lease term to be determined)

OPERATION

The performing arts facilities are to be operated by the Pavilion as a turnkey operation. Their responsibilities will include, but are not limited to:

- * Operations and Maintenance
- * Programming and Scheduling
- * Technical Theater Support
- * Box Office and Front of House
- * Security
- * Food Service

ACCESS TO FACILITIES

The facility will be operated solely by the Pavilion. An agreement will be developed to provide for the terms and conditions of when the performing arts facility is used for Convention Center purposes. The parties will negotiate booking horizons, setting up a system whereby all key users of the performing arts facility are able to confirm dates far enough in advance to fit with the booking calendars of both the Pavilion and Convention Center.

The Pavilion will also strive to make new facilities available for rent by a range of local and regional nonprofit arts organizations in addition to other community and commercial groups.

COST OF ACCESS

The operating success of new facilities will be based primarily on the Pavilion's ability to earn revenues from operations. The Pavilion will determine the rents to be charged for use of the facilities. The rents to be paid by the Convention Center for use of the performing arts facility venues and the booking system used to determine availability for the use of the space for convention purposes, will be negotiated as part of a final agreement.

The Pavilion will develop rental rates and associated fees for new programmable spaces that will allow for affordable access to proposed local and arts organizations to an extent agreed with the Township.

DUE DILIGENCE REVIEWS

Operational due diligence – Shall be completed by the Pavilion prior to the creation of a fundraising foundation. This due diligence review period shall be completed within 120 days from initiation of the MOU. The Pavilion may cancel the MOU at any time during the due diligence period.

Parking replacement due diligence – The use of the Gold Lot for the construction of a performing arts facility may eliminate to 84 surface parking spaces used by the Pavilion. The parties agree as part of this initial MOU to have a review of the existing elevated parking structure immediately adjacent to the site to determine the feasibility and cost of adding additional parking on this structure.

Traffic flow due diligence – The Township agrees to have a preliminary traffic study completed during the initial MOU phase to determine the impact that the proposed facility would have on existing traffic conditions on Lake Robbins Drive and Six Pines and to determine any suggested improvements should this project move forward.

PROJECT FINANCIAL SUPPORT

From the Township – (Subject to the Township Board of Directors review and approval)

- * The Township estimates that the maximum capital funding that can be extended to the project through room tax backed bonding is approximately \$35 million. This amount is subject to review and approval by the Township Board of Directors.
- * The Township will provide the land (Gold Lot) for the project.
- * Annual operating support for the project is not proposed to be provided by the Township through traditional Township sources or through room tax collections
- * The Township Board of Directors may give consideration to the following as requested by Pavilion staff:

- Provide the Township's current events admissions tax funding from Pavilion ticket sales (10% of total event admissions collections) to offset any incurred operating deficits at proposed facility.
- Provide the events admissions tax collected from the performing arts venue sales to offset any incurred operating deficits at a proposed facility.
- Extend the term of the existing Pavilion event admissions tax funding agreement (initial term was 20 years)
- Consider amending the agreement on the adjacent parking structure. The initial 20-year parking facility agreement terminates in 2022 and parking revenues are shared in the second 20-year lease term.

From the Pavilion – (Subject to the Pavilion Board review and approval)

- * The facility will be operated by the Pavilion.
- * Operating support for the performing arts facility will come from use fees, sales, allocated taxes and contributions.

From both parties together -

- * The Pavilion and the Township (in a final agreement) will work together to form a 501(c)(3) corporation to solicit private capital contributions to fund project capital construction costs. The two parties will share the costs of developing and sustaining this organization, and will dedicate the time and energy of their leadership teams in the design and execution of the capital campaign for the project.

DEVELOPMENT OF FINAL AGREEMENT (based on successful due diligence review)

The development of a final agreement would be completed following the completion of a successful due diligence review by the Pavilion. The final agreement shall formally address matters contained in the initial MOU and also include the creation of a Project 501(c)(3) Foundation and Project Fundraising Committee.

- * Project 501(c)(3) Foundation - The Township and the Pavilion agree to form a 501(c)(3) foundation (Board of Directors) that will manage fundraising for the project. Representatives of the Township and Pavilion would have representation on the Board of Directors.
- * The 501(c)(3) Foundation Board will create a Fundraising Committee to organize the raising of funds for the development of the project. The Committee will organize and execute the capital campaign to raise funds for the construction of the Project.
- * Develop details of funding plan for sharing of development costs in final definitive agreement.

PROJECT CALENDAR

The parties agree that a final development agreement will not be implemented until the estimated capital funding for the project has been committed.

Development of the Initial non-binding MOU

- * Due Diligence Reviews – up to 120 days following MOU approval.

Development of Final agreement – Township and Pavilion including

- * Creation of 501(c)(3) – following completion of Due Diligence Review
- * Update of Architectural Drawing for Capital Campaign Committee
- * Execution of capital campaign

Following the capital campaign (if successful)

- * Initiate the process for issuance of room tax backed bonds
- * Complete agreement on operational aspects / convention center and pavilion
- * Initiate final design process
- * Bid the project
- * Initiate construction
- * Finalize the construction

MISCELLANEOUS

Announcements. No announcement shall be made regarding a pending or completed transaction or agreement between the parties without the prior written consent of both parties.

Binding Agreement. The parties agree that no definitive agreement or meeting of the minds regarding the transactions contemplated in this MOU has been reached, and that this MOU is a statement of intention only and is not to be interpreted as a commitment by either party.

Multiple Counterparts. The parties to this MOU agree that it may be executed in multiple originals, each of which will be considered an original for all purposes.

Intending that the foregoing terms and conditions are acceptable to the respective Boards as the basis upon which The Woodlands Township and The Center for the Performing Arts wish to proceed, the parties hereto executed this Memorandum of Understanding as of the date set forth below.

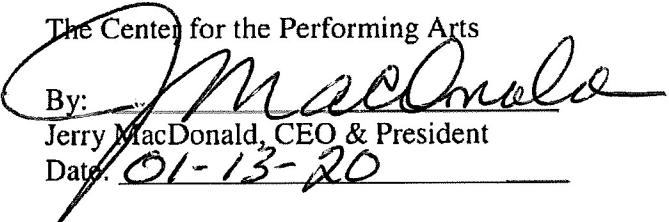
The Woodlands Township

By: 

Don Norrell, President/General Manager

Date: 12-13-19

The Center for the Performing Arts

By: 

Jerry MacDonald, CEO & President

Date: 01-13-20