

**COUNTY OF MILWAUKEE
INTER-OFFICE COMMUNICATION**

DATE : June 24, 2022

TO : Marcelia Nicholson, Chairwoman, County Board of Supervisors

FROM : Aaron Hertzberg, Director, Department of Administrative Services

SUBJECT : Approval to Modify Contribution Agreement and process Appropriation Transfers
Associated with the 2nd Amendment to the Lease between Milwaukee County and the
Marcus Center for Performing Arts

REQUEST

The Department of Administrative Services is requesting the approval of the attached resolution (“Resolution”). The Resolution includes actions necessary to be approved in accordance with the Second Amendment to the Lease between the Marcus Center for Performing Arts, Inc. (“MCPA”) and Milwaukee County. The 2nd Amendment to the Lease does not require County Board approval.

The attached resolution authorizes changes to the Contribution Agreement and the approval of an administrative appropriation transfer to:

- Lapse \$773,000 of expenditure authority and general obligation bond budget from Project WO054101 Pedestrian Pavement Replacement – 2022.
- Create \$750,000 of expenditure authority for a new capital project Phased Building Electrical Service.
- Allocate \$750,000 of cash from the Debt Service Reserve to Org Unit 9960 General County Debt Service to pay debt service expenses. Allocate \$750,00 of levy from Org. Unit 9960 to the Phased Building Electrical Service project.

BACKGROUND

History

In 1969, the second building of the Milwaukee County War Memorial Project, later renamed the Marcus Center for the Performing Arts (“MCPA”) was built with private funds as a living memorial to all who gave their lives in the service of our country and deeded to the County as a public trust for the preservation and enrichment of the performing arts. The County and the War Memorial Corporation operated the MCPA under the 1954 War Memorial Agreement and two memorandums of understanding (1993 and 1999) until 2013.

In 2016, the County Board and County Executive adopted a Contribution Agreement (CB File 16-214) that among other things committed the County to ten years of operating support (2016-2025) and ten years of capital support (2017-2026). The capital support was based conceptual estimates for project plans. The County is responsible for completing these projects and the County is responsible for any cost overruns. The list of projects included in the Contribution Agreement is included below.

Appendix A (2022-2026*)		
Project	Budget	Target Completion
Pedestrian Pavement Replacement	\$773,000	2022
Pedestrian Pavement Replacement	\$860,000	2023
Pedestrian Pavement Replacement	\$780,000	2024
Todd Wehr Theatre Entrance	\$500,000	2025
Exterior Fountain	\$568,270	2026
Total	\$3,481,270	
*County Board Resolution 18-544 Resolution reduced the 2026 amount by half the incremental costs of Advances Refunding the outstanding tax-exempt debt issued for the facility.		

In July 2018, the County adopted resolution 18-544, which modified the 2026 capital support amount of the Contribution Agreement. The 2026 amount was reduced by \$181,730 to reflect half of the incremental costs from the County advance refunding all outstanding tax-exempt debt associated with the MCPA.

In August 2018, the County entered a Lease (“Lease” or “Current Lease”) with the MCPA.

Summary of the Current Lease¹

- Term: The initial term of the Lease is through 2066. The MCPA may extend term to 2115.
- Maintenance: MCPA agrees to take on the maintenance and repair costs of the building, except for the
 - Utilities outside the building
 - The Riverwalk
 - Work required by the 2016 Contribution Agreement
 - Any pre-existing ADA conditions
- Capital Reserve: MCPA is required to maintain a Capital Reserve of at least \$500,000

¹ Summary information from File 18-557 “From the Director, Department of Administrative Services, providing an informational report regarding the proposed lease for the Marcus Center for the Performing Arts.”

- **Future Capital Expenses:** The Current Lease includes a mechanism for future capital expenses that if such expenses cannot be covered by MCPA, then MCPA may request the required funds from the County Board, and if approved will be repaid as Additional Rent. If request is denied, then MCPA may use the Lease as collateral with a bank to borrow the funds.
- **Other Provisions:** The Current Lease includes other standard provisions protecting the County including, permitted uses, limitations on material alterations, limitation on assignment, limitation on encumbrances, insurance requirements, environmental compliance, indemnification, default, right to audit, nondiscrimination, conflicts of interest, and public records.
- **Contribution Agreement:** The 2016 Contribution Agreement is included as an addendum to the Current Lease.

Proposed 2nd Amendment to Lease

The proposed 2nd Amendment to Lease (“Proposed Lease”) includes the following changes:

- **Change to the 2022-2026 Projects:** The pedestrian pavement replacement projects scheduled for 2022-2024, the Todd Wehr Theatre Entrance project, and the exterior fountain project scheduled for 2026 would be removed from the list of projects (“Premises Work”). These projects would be replaced by Phased Building Electrical Service and Phased Building Exterior Stone Cladding Restoration. The MCPA would be responsible for any future repair/maintenance associated with the projects being removed.

Premises Work (Revised 2022-2026 project list)

Proposed Lease Premises Work (2022-2026)		
Project	Budget	Target Completion
Phased Building Electrical Service	\$750,000	2022
Phased Building Electrical Service	\$762,181	2023
Phased Building Exterior Stone Cladding	\$757,852	2024
Phased Building Exterior Stone Cladding	\$713,430	2025
Phased Building Exterior Stone Cladding	\$757,295	2026
Total	\$3,740,758	

- **Project Financial Liability Changes:** The Proposed Lease would modify the budget amounts to reflect the new projects. In total the 2022-2026 budget amounts would increase by \$259,488 from \$3,481,270 to \$3,740,758 compared to the Current Lease². The Proposed Lease would change the party responsible for overages from the County to the MCPA. Conversely should the total costs for these projects be less than the \$3,740,758 then the County would provide the surplus amount to the MCPA after all projects are completed. The MCPA would use the surplus funds to perform capital improvement work on the facility as it sees fit.

² The Current Lease amount includes the change to the 2026 capital support amount as directed in County Board Resolution 18-544

- **Project Management Changes:** The Proposed Lease would make the MCPA (rather than the County) responsible for managing the projects. The County would still review/approve schematic plans and/or mechanical drawings, verify work completed associated with payment applications, and verify work has been substantially completed. The County would reimburse MCPA for work based on invoices from their general contractor(s) for amounts of work completed as of the stated invoice date.
 - The MCPA will exercise reasonable and good faith efforts to assure that the Targeted Business Enterprise (“TBE”) goals below are achieved.
 - TBE Participation: Construction project costs (including architecture and engineering): **30%**
 - Residential Hiring Goal: Total project hours for Milwaukee County residents: **40%**
 - Apprenticeship and Training Opportunity Goal: Total project hours for apprenticeships/job training **10%**
- **Change to the Available Reserve³:** The Proposed Lease would decrease the Available Reserve needing to be maintained by the MCPA for capital improvements by \$400,000 from \$500,000 to \$100,000. The Available Reserve provides a financing source for the MCPA perform maintenance of the facility.

Appropriation Transfers Included in Resolution

The attached resolution includes an administrative appropriation transfer to modify budgets to reflect the 2022 changes included in the Proposed Lease for capital support. The administrative appropriation transfer will lapse \$773,000 of expenditure authority and general obligation bond budget related to WO054101 Pedestrian Pavement Replacement – 2022. The administrative appropriation transfer will also allocate \$750,000 of cash from the Debt Service Reserve to Org. Unit 9960 General County Debt Service to replace tax levy and pay debt service expenses. Finally, the administrative appropriation transfer will move \$750,000 of tax levy from Org. Unit 9960 to create \$750,000 of expenditure authority for the Phased Building Electrical Service-2022 project.

³ The reserve requirement is effective only during the Advance Term (expires December 31, 2026) of the lease. During the Advance Term, should maintenance requirements exceed the amount in the Available Reserve, the MCPA may seek a loan (“Landlord Advance”) from the County of an amount not to exceed \$5 million.

RECOMMENDATION

The Department of Administrative Services requests that the Finance Committee approve and recommend approval by the full County Board of the attached resolution. The attached resolution authorizes the modification of the Contribution Agreement and the approval of an administrative appropriation transfer to:

- Lapse \$773,000 of expenditure authority and general obligation bond budget from Project WO054101 Pedestrian Pavement Replacement – 2022.
- Create \$750,000 of expenditure authority for a new capital project Phased Building Electrical Service - 2022.
- Allocate \$750,000 of cash from the Debt Service Reserve to Org Unit 9960 General County Debt Service to pay debt service expenses. Allocate \$750,00 of levy from Org. Unit 9960 to the Phased Building Electrical Service project.

Aaron Hertzberg

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Director, Department of Administrative Services

cc: David Crowley, County Executive
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