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From the Director of DAS, Requesting 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, by recommending adoption of the following:

**A RESOLUTION**

WHEREAS, in 2016, the Milwaukee County Board of Supervisors (County Board) and County Executive adopted a Contribution Agreement (File No. 16-214) that committed Milwaukee County (the County) to ten years of capital support (2017-2026) for the Marcus Center for Performing Arts (MCPA); and

WHEREAS, in July 2018, the County Board and County Executive adopted File No. 18-544, that reduced the 2026 capital support amount to reflect half of the incremental costs from the County advance refunding all outstanding tax-exempt debt associated with the MCPA; and

WHEREAS, in August 2018, the County entered a Lease (Current Lease) with the MCPA; and

WHEREAS, the Current Lease includes the following:

- 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 Americans with Disabilities Act conditions
- Capital Reserve: MCPA is required to maintain a Capital Reserve of at least \$500,000

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; and

WHEREAS, the proposed 2<sup>nd</sup> Amendment to the Current Lease includes the following items:

- **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.
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- **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.
  - **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 Lease<sup>1</sup>. 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.

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<sup>1</sup> The Current Lease amount includes the change to the 2026 capital support amount as directed in County Board Resolution 18-544

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- **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 percent**
    - Residential Hiring Goal: Total project hours for County residents: **40 percent**
    - Apprenticeship and Training Opportunity Goal: Total project hours for apprenticeships/job training **10 percent**
  
  - **Change to the Available Reserve:** 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.
- 100 ; and

WHEREAS, the Committee on Finance, at its meeting of July 21, 2022, recommended adoption of File No. 22-850 (vote 7-0); now, therefore,

BE IT RESOLVED, the Milwaukee County Board of Supervisors hereby authorizes the County Executive, the Department of Administrative Services, the Office of the Comptroller (Comptroller), the County Clerk, Corporation Counsel, Office of Corporation Counsel, and any other Milwaukee County official deemed necessary to prepare and execute all documents, instruments, agreements, or otherwise, including without limitation one or more amendments to the Contribution Agreement attached to the Second Amendment to the Lease Agreement as Addendum I, and to perform all actions necessary to effectuate changes to the project list attached to the Contribution Agreement and align such projects to the applicable accounting units; and

BE IT FURTHER RESOLVED, the Comptroller, and the Office of Strategy Budget, and Performance are authorized and directed to process an administrative appropriation to lapse \$773,000 of expenditure authority and general obligation bond budget from Capital 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

121 Org. Unit 9960 General County Debt Service to pay debt service expenses, and allocate  
122 \$750,000 of levy from Org. Unit 9960 to the Phased Building Electrical Service project.

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