

September 24, 2025

WHEREAS, in the 2003 Bond Program, the voters of Dallas approved Propositions Nos. 5 and 12, which approved funding for the City portion of the Dallas Center for the Performing Arts Foundation, Inc. (DCPAF) development; and

WHEREAS, on September 28, 2005, Resolution No. 05-2859 authorized the Performing Arts Center Development and Use Agreements with (the “Development Agreement” and the “Use Agreement”) DCPAF; and

WHEREAS, on October 8, 2008, Resolution No. 08-2793 authorized the First Amendment to the Development Agreement with DCPAF for the design, construction and development of the Municipal Performance Hall underground parking garage and also authorized the First Amendment to the Use Agreement with DCPAF for the long-term possession, operation, maintenance and use of the Municipal Performance Hall (as defined in the Use Agreement and Development Agreement and the First Amendments thereto) underground parking garage; and

WHEREAS, on December 10, 2008, Resolution No. 08-3432 authorized the Second Amendment to the Development Agreement with DCPAF for the design and construction of the Annette Strauss Artist Square and also authorized the Second Amendment to the Use Agreement with DCPAF for the operation and use of the Annette Strauss Artist Square; and

WHEREAS, on October 26, 2016, Resolution 16-1750 authorized the Third Amendment to the Use Agreement with DCPAF for the promotion and support of nonprofit arts and cultural organizations; and

WHEREAS, on October 28, 2020, Resolution 20-1699 authorized the Fourth Amendment to the Use Agreement to revise the Booking Agreement (as defined in the Fourth Amendment) to incorporate annual scheduling agreement changes as set forth therein; and

WHEREAS, DCPAF has been instrumental in helping complete the vision behind the creation and completion of the Dallas Arts District, which has proved to be a cultural incubator, transformative economic and cultural tourism driver, helping attract corporate relocations, a generator of tax revenue, and is now recognized as one of the top arts and cultural districts in the United States; and

WHEREAS, DCPAF, as part of its ongoing stewardship of the Center (as defined in the Use Agreement), has already utilized more than \$7M of DCPAF’s own resources in just the past two years on major maintenance, capital repairs and updates to the Center; and

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WHEREAS, on February 14, 2024, through Council Resolution No. 24-0280, the City Council authorized Ordinance No. 32491, ordering a May 2024 Bond Election to fund a variety of capital improvement projects citywide; and

WHEREAS, on May 4, 2024, Dallas voters approved Proposition E, of the 2024 General Obligation Bond Program (the “2024 Bond Program”) in the amount of \$75,200,000 for funding of the planning, design, construction, renovation, repair, replacement, and or improvements to the City’s Cultural and Performing Arts Facilities with \$13,078,381 allocated by the City Council for improvements to the Center on August 21, 2024; and

WHEREAS, On May 15, 2024, through Council Resolution No. 24-0695, the City Council approved and adopted the canvassing committee’s Bond Election, certifying the election results and declaring that a majority of voters supported all bond propositions, as set forth in Ordinance No. 32658; and

WHEREAS, on October 19, 2024, DCPAF celebrated its 15th Anniversary of serving the community by supporting DCPAF’s five resident companies and presenting partners, which all combined, present a diverse range of arts and cultural programming that draws over 350,000-400,000 visits a year from both Dallas residents and cultural tourists to its iconic venues and campus, including 25,000-30,000 Dallas students and families yearly through arts education and community programs on its campus and across the community; and

WHEREAS, it is now desirable for the parties to enter into this Fifth Amendment to the Use Agreement (the “Fifth Amendment”) to enable the parties to undertake planning, design, construction, renovation, repair, replacement, and/or improvements to the Center, utilizing 2024 bond funds, as listed and described on Attachments I and II (individually, the “Project,” and collectively, the “2024 Bond Program Center Project(s)”; and

WHEREAS, the parties agree the 2024 Bond Program Center Projects are not intended to create an affirmative obligation on either party to complete each Project and may be amended subject to available funding and approved specifications and shall be undertaken only upon approval and direction and oversight of the City’s Office of Bond and Construction Management (the “Bond Office”); and

WHEREAS, DCPAF at its sole cost and expense, and exercising commercially reasonable efforts, shall be responsible for the planning, design and development of necessary construction documents by September 1, 2027 (collectively, any such planning, design, and construction documents being referred to herein as “Bond Program Documents”), which shall be gifted to the City for use in the 2024 Bond Program Center Project(s); and

WHEREAS, the City, upon acceptance of each set of Bond Program Documents, shall be responsible for procurement of all applicable construction contracts; and

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WHEREAS, the City's representative for the 2024 Bond Program Center Projects shall be the Director of the Office of Bond and Construction Management or his or her designee (the "Director"); and

WHEREAS, DCPAF shall be responsible for any cost overruns related to any assigned 2024 Bond Program Center Projects construction contracts; and

WHEREAS, the City shall not be obligated to provide Bond funds for the projects if DCPAF has failed to deliver the required design and constructions documents for City's public advertisement by September 1, 2028 or such later date as the Director may determine; and

WHEREAS, on June 25, 2025 by Resolution 25-1055 the City Council authorized a construction services contract for one of the 2024 Bond Program Center Projects, namely the removal and replacement of two cooling towers at the Winspear Opera House utilizing a portion of the City's Cultural and Performing Arts Facilities 2024 bond allocation of \$13,078,381 in an amount not to exceed \$1,108,969; and

WHEREAS, it is now desirable for the parties to authorize the Fifth Amendment to enable the parties to undertake planning, design, construction, renovation, repair, replacement, and/or improvements to the Center, as further described in the Fifth Amendment.

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 Fifth Amendment to the Use Agreement ("the Fifth Amendment") between the City of Dallas and Dallas Center for the Performing Arts Foundation, Inc. (DCPAF) to enable the parties to undertake planning, design, construction, renovation, repair, replacement, and/or improvements to the Center, as further described in the Fifth Amendment, approved as to form by the City's Attorney's Office.

SECTION 2. That the salient terms of the Fifth Amendment are as follows:

- (a) City's representative for the 2024 Bond Program Center Projects shall be the Director of the Office of Bond and Construction Management ("Director"); and
- (b) the 2024 Bond Program Center Projects may be amended subject to available funding and approved specifications and shall be undertaken only upon approval and direction and oversight of the Director; and
- (c) DCPAF at its sole cost and expense, and exercising commercially reasonable efforts, shall be responsible for the development of the Bond Program Center Documents, which shall be gifted to the City for use in the 2024 Bond Program Center Project(s); and

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- (d) the City shall not be obligated to provide Bond funds for the 2024 Bond Program Center Projects if DCPAF has failed to deliver the required Bond Program Center Documents for City's public advertisement by September 1, 2028 or such later date as the Director may determine; and
- (e) City, upon acceptance of each set of Bond Program Documents, shall be responsible for procurement of all applicable construction contracts; and
- (f) City shall, at Director's election, assign construction contracts to DCPAF; and
- (g) DCPAF shall be responsible for any cost overruns related to any assigned 2024 Bond Program Center Projects construction contracts; and
- (h) City shall have no obligation to allocate more than \$13,077,806 towards the 2024 Bond Program Center Projects, inclusive of the \$1,108,969 previous awarded by City Council for the cooling towers for the Winspear Opera House on June 25, 2025 by Resolution No. 25-1055; and
- (i) City, through Director, shall make final determination regarding which costs are eligible for bond funding; and
- (j) DCPAF shall be responsible for providing Payment and Performance Bonds in accordance with the requirements of the Use Agreement; and
- (k) All other terms approved as necessary by the City Attorney's Office; and
- (l) All other terms, provisions, conditions, and obligations of the Use Agreement shall remain in full force and effect.

SECTION 3. 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.