

MEMORANDUM OF UNDERSTANDING
BETWEEN
PERFORMING ARTS CENTER EASTSIDE ("PACE")
AND
THE CITY OF BELLEVUE, WASHINGTON

This memorandum of understanding, effective as of the _____ day of _____, 2014 is between the Performing Arts Center Eastside and the City of Bellevue, Washington to advance public and private efforts to secure a major performing arts facility, the Tateuchi Center, in Bellevue for the benefit of the community and the entire Eastside. It is entered into for the purposes of agreeing upon a process whereby the parties will cooperate in considering options for the financing and operation of a performing arts center to be located in the City of Bellevue, Washington. For and in consideration of the mutual covenants contained herein, The Performing Arts Center Eastside and the City do hereby agree as follows regarding the Tateuchi Center, the proposed performing arts center.

RECITALS

WHEREAS, the City and PACE believe that the Tateuchi Center would be a positive, possibly transformational, addition to the region's arts and cultural landscape;

WHEREAS, the City believes the path forward to realizing that vision is one of regional partnership, including with King County, the other Eastside Cities, the private sector, the broader arts and cultural community, and the Board of Directors of PACE;

WHEREAS, the City believes it will be in the public interest to encourage and support the development of the arts and cultural landscape, in balance with the other obligations of the City Council;

WHEREAS, PACE has renewed its commitment to securing the Tateuchi Center for the benefit of residents in Bellevue and the Eastside by funding the continuation of its fundraising campaign for the Tateuchi Center; and

WHEREAS, City support could renew and energize PACE's private fundraising campaign;

NOW THEREFORE, in consideration of mutual promises and covenants contained herein, the Parties agree to the terms and conditions as follows:

1.0 Definitions

For purposes of this Memorandum of Understanding, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the context requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

- 1.1 Memorandum of Understanding. "Memorandum of Understanding" or "MOU," means the Memorandum of Understanding approved by appropriate action of the City and the Performing Arts Center Eastside, doing business as the Tateuchi Center (hereinafter "PACE"), contemporaneously with this Agreement.
- 1.2 City. "City" means the City of Bellevue and any successor or assignee following an assignment that is permitted under this MOU.
- 1.3 Liability. "Liability" means all loss, damage, cost, expense (including costs of investigation and attorneys' fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), claims and demands of whatever kind or nature (including those arising under the Federal Employers Liability Act), arising out or relating to this MOU or occurring on or relating to the performing arts center described herein.
- 1.4 PACE. "PACE" means the Performing Arts Center Eastside, doing business as the Tateuchi Center.
- 1.5 Parties. "Parties" means the City of Bellevue and PACE.
- 1.6 Project. "Project" means the construction and operation of the Tateuchi Center, a facility for presentation of live performances including but not limited to orchestras, bands, choirs, choruses, individual singers as well as dramatic or comedic performances and arts lectures and education, and other cultural events.

2.0 Cooperation and Good Faith Effort

The Parties understand and agree that the process described in this MOU depends upon timely and open communication and cooperation between the Parties. In this regard, communication of issues, changes, or problems that arise in the performance of terms of this MOU should occur as early as possible in the process, and not wait for explicit due dates or deadlines. Each party agrees to work

cooperatively and in good faith toward resolution of any such issues in a manner that ensures adequate time for the parties to work towards a satisfactory resolution.

3.0 City Actions

- 3.1 The City will fully investigate and give due consideration to public and private funding options to assist in completion of the Tateuchi Center. This consideration will include: ensuring the basis for the City making a potential funding commitment to a cultural organization is consistent with the City's established funding principles, attached hereto as Exhibit "A"; engagement of other public agencies such as eastside cities, King County and the state of Washington as potential partners in the Project to construct and maintain the Tateuchi Center; understanding the direct and indirect economic benefits of the Tateuchi Center; analysis of legal requirements and limitations for use of public funding sources; and exploration of various management, governance and ownership models associated with use of any public funds.
- 3.2 The City will cooperate with PACE in analyzing impacts of code updates on the Tateuchi Center Design and exploring all options regarding PACE building permits.
- 3.3 The City will assist in promotion of Tateuchi Center in accordance with the laws of the state of Washington, including but not limited to those laws relating to public finance and political campaigns through a process for engaging members of the public to build awareness of the Tateuchi Center, its proposed mission and its benefits. This process will include: education of the public throughout the Eastside regarding the demand for and public benefit provided by performing arts venues including Tateuchi Center, the options for private and public financial investment in the performing arts center, and the implications of the various models of management, governance and ownership associated with the use of any public funding sources. Through this process of citizen engagement the City will seek feedback on whether and how the City should invest funds in the Tateuchi Center. The City of Bellevue will utilize the City of Bellevue Arts Commission for its primary vehicle for citizen engagement in these efforts. City staff and other city representatives involved in citizen engagement will coordinate with the Arts Commission in these efforts. The Commission will collaborate with PACE on behalf of the City in citizen engagement efforts and provide City Council with regular updates on its efforts.
- 3.4 The City will provide a Council-appointed liaison plus adequate staffing to support this as a priority initiative.

4.0 PACE Actions

- 4.1 PACE will provide support to and active participation in the City's public process, including outreach to citizens throughout the Eastside as well as to other public agencies.
- 4.2 PACE will supply all existing relevant information regarding facility design and construction feasibility and will collaborate with gathering additional information as needed at the request of the City.

- 4.4 PACE will give active and timely consideration to any potential changes in construction, ownership, and governance models that could be legally required as a result of public funding.
- 4.5 PACE will reinvigorate its capital campaign, building on the \$64 million in gifts and pledges already secured by (1) funding campaign operations for the next year with at least \$600,000 in new cash contributions from its Directors, (2) recruiting high-profile, high net worth individuals as leaders of its resurgent private sector campaign, and (3) actively soliciting major new naming gifts and pledges.

5.0 Mutual Activities

- 5.1 The Parties hereto expressly acknowledge joint responsibility for meeting with representatives of other public agencies, including but not limited to other Eastside cities, King County and the state of Washington to explore public funding options for the Project. The parties will agree on a clear, transparent protocol for participating in such meetings.
- 5.2 The Parties will jointly explore the establishment of an Eastside arts and cultural consortium that would involve a collaboration of Eastside cities jointly pursuing the Project. The Parties hereby expressly acknowledge that such a consortium may also include other arts facilities and programs in addition to a major performing arts facility.
- 5.3 The Parties hereby expressly agree to establish points of contact, a regular meeting schedule, and a schedule for providing reports to boards and the City Council, as well as any other participating public agency that requests such progress reports regarding the Project, public funding, or the Eastside arts consortium.
- 5.4 The Parties hereby agree to establish and finalize a timeline and deliverables for the activities described in this MOU, a draft of which is attached hereto as Exhibit "B". The timeline and schedule of deliverables may be amended from time to time administratively by the Parties as may be necessary and desirable to accommodate new or unseen conditions or events and to accomplish the work contemplated by this MOU. Agreement to such administrative amendments shall not be unreasonably withheld by either Party.

6.0 Future Agreements

- 6.1 The parties hereby expressly acknowledge that no commitments have been made to date regarding the outcome of the process to be undertaken under the terms of this MOU.

7.0 General Provisions

- 7.1 The Parties shall not unreasonably withhold requests for information, approvals or consents provided for in this MOU; provided, however, that approvals or consents required to be given by vote of the Bellevue City Council are recognized to be legislative actions. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this MOU provided, however, that where such actions or documents required must be first approved by vote of the Bellevue City Council, such

actions are recognized to be legislative actions. The City and PACE agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this MOU. The parties agree that the good faith efforts of both parties to perform their obligations under this MOU are acceptable and sufficient.

- 7.2 This MOU shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this MOU shall be King County, Washington.
- 7.3 This MOU shall be binding upon and inure to the benefit of the successors and assigns of the City and PACE.
- 7.4 Time is of the essence in every provision of this MOU. Unless otherwise set forth in this MOU, the reference to "days" shall mean calendar days. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.
- 7.5 This MOU is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this MOU.
- 7.6 No joint venture or partnership is formed as a result of this MOU. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other party.
- 7.7 This MOU has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this MOU. The Parties intend this MOU to be interpreted to the full extent authorized by applicable law.
- 7.8 Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this MOU, unless otherwise agreed in writing by the Parties.
- 7.9 The Parties shall not be deemed in default with provisions of this MOU where performance was rendered impossible by war or riots, civil disturbances, floods or other natural catastrophes beyond its control; the unforeseeable unavailability of labor or materials; or labor stoppages or slow-downs, or power outages exceeding back-up power supplies. This MOU shall not be revoked or a party penalized for such noncompliance, provided that such party takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of both parties' employees or property, or the health, safety, and integrity of the public, Public Right-of-Way, public property, or private property.
- 7.10 This MOU may be amended only by a written instrument executed by each of the Parties hereto.

- 7.11 This MOU constitutes the entire agreement of the Parties with respect to the subject matters of this MOU, and supersedes any and all prior negotiations (oral and written), understandings and agreements with respect hereto.
- 7.12 Section headings are intended as information only, and shall not be construed with the substance of the section they caption.
- 7.13 In construction of this MOU, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.
- 7.14 This MOU may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.

8.0 Severability

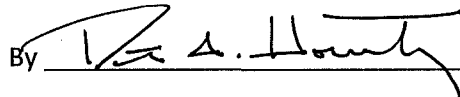
- 8.1 In case any term of this MOU shall be held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this MOU shall in any way be affected thereby.

IN WITNESS WHEREOF, each of the parties has executed this MOU by having its authorized representative affix his/her name in the appropriate space below:

City of Bellevue, Washington

Performing Arts Center Eastside, DBA Tateuchi Center

By _____

By  _____

Brad Miyake,
City Manager

Investment Principles:

These principles were adopted by City Council in 2006 to evaluate major requests for funding from cultural organizations. Organizations seeking funding from City Council must demonstrate the following.

- Must have a sustainable long-term financial model, including strong private sector financial commitment
- Must clearly define public benefit to be received in exchange for investment (for example, ownership interest in an asset, scholarships, public access to the facility at low or no cost to low-income and disabled persons)
- Should provide for City involvement in financial oversight
- Must be an investment in a facility, or for support of the operation of the facility. Cannot fund fund-raising activities.

Timeframe and Deliverables

Through April, 2014

City Activities:

- Explore all options regarding PACE building permits
- Develop public awareness program
- Continue research on financial options
- Continue research on legal issues
- Identify City Council liaison plus adequate staffing to support this as a priority initiative
- Establish points of contact, regular meetings, reports to boards and Council

PACE Activities

- Secure board agreement to participate in the partnership

Both:

- Finalize and sign MOU
- Collaborate on outreach plans for fundraising (PACE) and awareness-raising (City) to maximize efficiency and impact

May to July

City Activities:

- Implement public awareness process
- Complete research on legal issues
- Explore City funding options
- Establish principles for any City financial contribution
- Identify governance options triggered by City participation

PACE Activities:

- Develop “reinvigorated” funding campaign plan
- Develop strategy for recruiting high-profile, high net worth individuals as leaders of its resurgent private sector campaign
- Share information on facility feasibility and collaborate with gathering additional information as needed
- Prepare to adopt any necessary changes/adjustments to governance legally triggered by City participation
- As a high priority, recruit new leaders for private sector campaign
- Launch resurgent private sector campaign, soliciting major new naming gifts and pledges

Both:

- Identify funding sources including federal, state, county and regional and, if appropriate, initiate application process
- Discuss and reach agreement on how to address any legal issues
- Complete first round of briefings to Eastside legislators
- Explore an Eastside arts consortium that would involve a collaboration of Eastside Cities, first to jointly pursue securing the Tateuchi Center and setting the foundation for future collaboration on securing arts facilities throughout the Eastside.

July - October

City Activities:

- Fully investigate and identify leading alternatives for financing options

PACE Activities:

- Complete new board member recruitment
- Continue implementing major and naming gifts campaign

Both:

- Complete Round two of meetings with County, regional, state and federal representatives to explore public funding options

October - December

City Activities:

- Complete process for identifying financing options
- Complete awareness campaign, evaluate and decide on next steps
- Assemble a package of options the City can commit to for supporting the Tateuchi Center
- Present options to City Council with recommendation and seek direction from Council.

PACE Activities:

- Continue implementing major and naming gifts campaign.

Both:

- Continue to collaborate on efforts to secure funding from federal, state, county and other regional sources
- Develop a framework for proceeding into 2015.