



TO: Councilmember Beckman

FROM: Pamela K Akin
City Attorney

SUBJECT: REH, Inc.

DATE: May 20, 2019

You have asked for clarification of the relationship between Ruth Eckerd Hall and the city. Specifically: Is REH an entity/a building/an organization (non-profit)? Who owns land? Who owns the building? Who manages? Who makes decisions? Who receives profits/pays taxes? Who supports/subsidizes? What accountability does REH have to the city and council? To respond to her questions, we have reviewed the documents which reflect our legal relationship and the history. Additionally, I have attached a summary from REH which provides more detailed information the history of REH.

Ruth Eckerd Hall, Inc.

1. Is REH an entity, building, organization (non-profit)? Who manages and makes decisions?

Ruth Eckerd Hall, Inc. ("REH") is a 501(c)(3) Not for Profit Corporation/organization as registered with the Florida Division of Corporations and the Internal Revenue Service. Ruth Eckerd Hall, Richard B. Baumgardner Center for the Performing Arts ("REH PAC") is the physical building within which REH offers performing arts performances and educational experiences. REH, Inc. also manages the following venues: 1) Bilheimer Capitol Theatre; 2) Marcia Hoffman School of the Arts at Ruth Eckerd Hall; 3) Murray Theatre at Ruth Eckerd Hall; and 4) Ruth Eckerd Hall on the Road. All venues are located within the REH PAC except for the Capitol Theatre and On the Road performances. Decisions on the operation of REH are made by the Board of Trustees.

2. Who owns the land and the buildings (excluding Capitol Theater)?

Currently, the City is the owner of the entire parcel – including the performing arts facility, the parking lot, entry roads, and other associated properties pertaining to the performing arts center.

The history of ownership is outlined below.

In November 1977, the City of Clearwater was given approximately forty (40) acres of undeveloped property off of McMullen Booth Road, the REH site (Land), by the Kapok Tree Corporation (the Baumgardner family) with the provision that it be used for construction of a performing arts center and that development commence within two (2) years of January 1978.

(See City of Clearwater Resolution No. 77-133 and deeds dated December 27, 1977 and December 28, 1977 attached thereto.)

Historical Context – Legal Agreements

1979

After acceptance of the Land by the Clearwater City Commission, members of the Clearwater community formed a non-profit corporation, the Performing Arts Center and Theater, Inc. (PACT, Inc.) to organize and direct a private fundraising campaign to help finance the cost of building a performing arts center. The Commission (n/k/a "Council") committed to lease to PACT, Inc., (PACT) the forty (40) acre tract donated by the Kapok Tree Corporation for a fifteen (15) year term (initially) at a nominal rate, conditioned on PACT obtaining financing for construction of a performing arts center. (See Resolution No. 78-127.)

The City and PACT entered into a Ground Lease pursuant to Resolution 78-127 on March 14, 1979, reflecting a lease term from January 1, 1979 through December 31, 1993, with a renewal provision for an additional fifteen (15) years, with a maximum lease extension of fifty (50) years. The lease was subsequently canceled due to financing and construction of the performing arts facilities. A portion of the Land was sold to PACT (Building Parcel) subject to a right of reverter to the City upon payment of the bond indebtedness connected to the construction and financing. The balance of the Land remained in City ownership (Parking/Access Parcel) subject to an easement authorizing PACT to construct parking, lighting installation and signage on the remaining land. (See Easement Agreement at O.R. Book 5199, Page 1813, Public Records of Pinellas County, Florida.)

1981

By June 1, 1981, a Facility Use Agreement was entered into whereby the city was to pay Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three cents (\$33,333.33) per month in exchange for use of the facility by community groups. The Agreement also set forth PACT's obligations for operation and maintenance.

A *Property Agreement* was entered into by the City and PACT, providing that upon full payment of the financing Note, PACT would convey fee simple title of the Building Parcel along with all improvements to the City.

1982, 1983, 1988, 1993 & 1998

The City and PACT enter into an agreement for the construction of the parking on the City owned property adjacent to the Arts Center site on June 4, 1982. A Parking Use Agreement is entered into on November 1, 1983 providing for the City's maintenance of the parking lots as part of its parking system for a fee. The parties agree to maintain said area under Debt Service Reimbursement Agreements dated September 28, 1988 and December 1, 1993. Under the 1988 and 1993 Agreements, the City financed an entry road and parking lot with the issuance of Parking revenue Bonds in the face amount of \$950,000.00, and PACT made monthly reimbursement for the debt and operating costs thereunder. Lastly, the City and PACT entered into a Maintenance and Operation Agreement related to the parking lot, entranceway, and landscaping and lighting. PACT pays the City operating costs for the parking system parking lots located therein in the amount of \$2,205.00 to be adjusted annually at City's determination.

2000

A Pennies for Pinellas funding commitment was entered into on October 31, 2000 to fund an educational wing of the Arts Facility in the amount of \$2,000,000.00.

2001

On May 18, 2001, after having constructed the performing arts facilities, PACT paid off all of the underlying bond indebtedness (consistent with the original bond issue and agreements, which resulted in the reverter of the property formerly conveyed to PACT, and therefore, the City became owner of the entire parcel – including the performing arts facility, the parking lot, entry roads, and other associated properties pertaining the performing arts center.

PACT desired to continue to operate the Arts Facility and solicit funds, maintain and otherwise use and develop said premises and improvements, subject to the City entering a long-term lease with PACT as described below.

The current Lease as amended

The property was declared surplus and a lease was entered into between the City and PACT (Lease). The Lease is the current, effective lease agreement between the City and PACT today.

The term of the lease runs from May 18, 2001 through May 17, 2031. If PACT is not in default at the expiration of the initial term (as described above), PACT shall have the right to extend the term for an additional thirty (30) years.

Key provisions of the Lease are as follows:

- The City owns the underlying lands. (See deed from PACT to City dated May 17, 2001 at O.R. Book 11377, Page 2082, Public records of Pinellas County, Florida.)
- Ownership of the real property and improvements made thereto, and fixtures placed thereon shall remain with the City, subject to the terms of the Lease.
- Ownership of intangible personal property, cash, objects or articles of art or other personal property, acquired by or donated to PACT shall be the sole property of PACT.
- PACT is to maintain, restore, replace and operate the Arts Facility in accordance with the Lease requirements.
- In addition to One Hundred Dollars (\$100.00) in 'rent' payments, the consideration given by PACT to the City under the Lease includes services consistent with the original donation of the property, and the construction, maintenance and operation of the project.
- Use by PACT includes purposes established by the Grantors of the property, in addition to maintenance, repair, replacement, and expansion of the facilities. The operation of the Arts Facility includes activities customarily associated with a performing arts center, including, but not limited to, the booking, promoting, and holding of professional performing arts and educational events, collection of admission charges, provisions for concessions and parking services for a fee, rental of the facilities to local community groups consistent with the intent of the donors, to cultivate public and professional knowledge and appreciation of all such arts, to provide banquet, restaurant concession and other food and beverage activities, and to provide ancillary services for performing or visual artists or educators or students or the theater-going public generally, including publication and dissemination of any and all media materials related to the foregoing.
- PACT retains administrative and artistic control over events and activities.
- PACT pays for all charges for heat, gas, electricity and other utilities.
- PACT is responsible for all maintenance including interior and exterior (landscaping, open areas, drives, parking), structural repairs, roof, electrical and plumbing systems, heating and cooling systems.
- PACT may make alterations and additions at its expense and shall not cause the City's ownership interest to be subject to mechanics or construction liens. Title to such alterations, additions, or improvements shall remain with the City, subject to PACTS use and occupancy under the Lease.
- PACT is required to maintain proper insurance.
- PACT indemnifies the City for liability.
- PACT is responsible for damage or destruction of the Premises and repair/rebuild.
- The Lease is not assignable.
- PACT may mortgage its Leasehold interest (subject to certain restrictions).
- Taxes are not paid by the City or PACT as tax-exempt organizations. However, if taxes are ever assessed against the property, PACT is responsible for such taxes.

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Facility Use Agreement

In line with the reversion of the Building Parcel/Arts Facility property and Quit Claim deed referenced above, which resulted in the City holding fee ownership of the entire property, the City and PACT entered into a Facility Use Agreement under which PACT agreed to make the Arts center available for use to the City, the Clearwater Chorus, Clearwater City Players and other City funded organizations as designated by the City. In exchange for the benefit to Clearwater residents and community groups, the City commits to annual funding in the initial amount of \$412,000.00, with limitations and conditions. While the agreement contains an annual escalator, in 2008, the City reduced its funding back to \$412,00.00 under the process provided for in the Agreement. Currently the City continues to make an annual appropriation of this amount pursuant to the agreement.

2003

Amendment to Lease

The Lease was amended on November 25, 2003, releasing a portion of the Lease Premises to allow City to complete a Habitat Restoration and Mitigation Project.

2005

First Amendment to Facility Use Agreement

Dated November 8, 2005 – This Amendment established a resident program for the Clearwater Community Chorus as a part of the Marcia P. Hoffman Performing Arts Institute (MPHI). MPHI provides administrative and artistic management support and rehearsal space for the Chorus and guarantees a minimum of 2 performances a year. In exchange, the City paid initial funding of \$20,000 in the first year with PACT to submit a request for a funding subsidy annually.

3. Who supports/subsidizes?

80% of the revenue of REH is earned income. 20% are donations and grants from foundations, individuals, and governmental entities. In addition to the City' annual funding above, the City, the County and the State have given grants for capital improvements to the facilities.

4. What accountability does REH have to the city and council?

In addition to providing an annual report (the most recent will be provided), typically REH gives an annual presentation and oral report to Council. This year's presentation did not occur because of Covid 19 restrictions. Under the Operating Agreement for Capitol Theatre, REH provides a quarterly report.

Capitol Theatre History

- On December 9, 2008, the City and REH entered into an MOU (memorandum of understanding) regarding the purchase, rehabilitation, operation and maintenance of the then Royalty Theatre and Pat Lokey building.
- The City purchased the buildings and entered into a 30-year Operating Agreement with REH, commencing September 21, 2012 and ending September 21, 2042 unless terminated earlier.
- The Operating Agreement provided that:
 - REH would design, plan, permit, demolish, repair and construct certain improvements.

- REH would be responsible for the payment of all costs for the design and the performance and completion of the project in excess of the City Funds.
 - the city committed to paying costs not to exceed \$7,112,209. Of that amount, \$168,000 was reserved for alley and parking lot improvements to the County parking lot behind the theater. After that, REH could request reimbursement for their costs to the city up to the remaining amount.
 - REH would operate the facility as a performing arts center.
 - REH would prepare and submit to the City Manager at least 60 days before the start of the fiscal year a proposed Operating Budget and Capital Improvement budget. The City Manager would approve or disapprove the budget within 30 days of receipt. Not later than 30 days after the start of each fiscal year, REH would deliver the final budget to the City Manager.
 - The City has certain rights to use the Capitol Theater as outlined in the agreement.
 - REH must meet the performance measures set forth in the agreement.
 - REH must submit the following reports to the City: Quarterly reports summarizing revenues and expenses for the preceding quarter; an annual report summarizing revenues and expenditures for the preceding Fiscal Year.
 - City has right to periodic maintenance inspections.
 - REH shall maintain all books and records in accordance with Chapter 119.
 - REH shall pay all utilities.
 - REH shall maintain the facility in accordance to standards established.
 - The City shall create and administer, and REH shall fund an Operating Reserve Fund.
- The operating reserve fund language was amended several times, to ultimately reduce the required amount in the fund to \$1,500,000.
 - In Amendment 7 to the Operating Agreement, REH agreed to annually budget, maintain, and fund a separate Capitol Theater Capital Improvements Projects Fund in the amount of \$99,665 annually until 2036.
 - In 2016 the Reserve Fund was transferred to Raymond James Trust Company to be held in an investment account in the name of REH.
 - The Reserve Fund account balance must be a minimum of \$1,250,000 and a maximum of \$1,500,000. If funds are below that, REH must contribute enough to be equal to or in excess of the minimum. If there are excess funds, REH may withdraw any in excess of maximum amount.
 - Reserve Fund monies are to be used exclusively for Operation and Maintenance of the facility and to pay for City approved Capital Improvements.

- REH may request a withdrawal from the Reserve Fund at the end of each Fiscal Year quarter.
- At termination of the agreement, City will make an assessment of the condition of the facility and shall use the funds on deposit in the Reserve Fund to restore the facility and inventory to the condition it was in upon the initial completion of the project. If terminated prior to end of term, the City may also use funds to pay the ongoing cost of operation and maintenance until a successor operator has entered into an operating agreement with the City. Any remaining funds may then be released to REH.

In addition to the above information, I have asked I have asked Finance to provide a spread sheet of funding provided to REH by the City. Parks and recreation will provide a copy of the Capitol Theatre quarterly report. These will be provided separately.

cc: William B. Horne, II, City Manager

PKA/gd