



**MILWAUKEE COUNTY EXECUTIVE CHRIS ABELE**

**Department of Administrative Services**  
Teig Whaley-Smith, Director

February 4, 2019

**By email to [pmathews@marcuscenter.org](mailto:pmathews@marcuscenter.org)**

Mr. Paul Mathews  
President and Chief Executive Officer  
Marcus Center for the Performing Arts  
929 N. Water Street  
Milwaukee, Wisconsin 53202

**Re: Consent to Alterations;  
Lease Agreement dated as of January 1, 2017 between Marcus Center for the  
Performing Arts, Inc. and Milwaukee County for the Premises Commonly  
Known as 929 N. Water Street in Milwaukee (the "Lease")**

Paul,

Milwaukee County (the "**County**") has received from Marcus Center for the Performing Arts ("**Marcus**") a summary document entitled "Marcus Center for the Performing Arts, Masterplan Phase 1" prepared by HGA (the "**Phase 1 Overview**"). This Phase I Overview, together with additional data (as contemplated under the Lease) provided through the assistance of Dick Hecht, constitutes, for purposes of this letter, Marcus's submittal of "**Preliminary Plans**" to alter the Premises (as defined in the Lease).

As you know, Section 10.B of the Lease provides that Marcus, as Tenant under the Lease, "shall make no additions, installations, improvements, replacements and/or alterations in or to the Premises" until Marcus shall have delivered the Preliminary Plans to the County for its review. In addition, in the instance of additions, installations, improvements, replacements and/or alterations in or to the Premises projected to cost in excess of \$100,000 (referred to in the Lease as "**Material Alterations**"), Marcus must also secure "the prior written consent of Landlord, which consent shall be granted or withheld in Landlord's reasonable discretion."

Having reviewed the Preliminary Plans, the County hereby grants its consent to Marcus's undertaking and completing the proposed Material Alterations to the Premises. In addition, the County hereby notifies Marcus that, pursuant to Section 10.B.ii.b of the Lease, Marcus shall not be obligated to remove any of the proposed Alterations at the Expiration Date.

Because these proposed alterations in or to the Premises is projected to cost in excess of \$100,000, this consent is expressly conditioned on Marcus's observing all relevant terms and conditions regarding the submittal of final plans and specifications as follows:

- **Final Plans and Specifications.** The Final Plans and Specifications for the Project will be prepared in accordance with Preliminary Plans, as the same may be modified in

response to County objections or comments, and shall include information regarding aesthetics, public health and life safety standards, ADA accessibility and general building code compliance, cost, integration of the Project into the existing facility, siting, landscaping, design, equipment, plans, specifications and construction. The Final Plans and Specifications shall be submitted to the County Project Architect for review, comment, recommendation and approval based on compliance with the Project scope of work in the Preliminary Plans. The County Project Architect shall recommend approval within ten (10) business days of submission, or the County shall within such ten (10) business days provide Marcus with specific objections in writing. Any modifications of the Final Plans and Specifications in response to the County's objections shall be resubmitted and approved in the same manner above. In the event of a dispute over the content or interpretation of the Final Plans and Specifications, the County and Marcus shall mutually select and pay for a third-party registered architect to settle such dispute and the decision of such third-party architect shall be final. In the event that the County and Marcus cannot agree upon a third-party architect, then the County and Marcus shall each designate a third-party architect and those architects shall select a third architect who shall settle such dispute.

- **County Project Architect.** The County representative conducting the review of the Preliminary Plans and the Final Plans and Specifications will be William Banach ("County Project Architect"). In addition, the County Project Architect shall conduct monthly observation visits to inspect for general compliance with the Final Plans and Specifications and general compliance with building codes and public health and safety standards. The building codes and public health and safety standards shall be enforced by the City of Milwaukee building inspectors.
- **Changes.** No significant changes in the Final Plans and Specifications shall be made except upon a written consent executed by both the County and Marcus.

This consent is also expressly conditioned on Marcus's observing all relevant terms and conditions of the Lease, including the following requirements set forth in Section 10 of the same:

- All Alterations shall be commenced promptly, shall be completed in a good and workmanlike manner, and shall, once commenced, be diligently prosecuted to completion in compliance with applicable Legal Requirements (as defined in the Lease). Any Alterations to any Building Systems (as defined in the Lease), or to or affecting the roof or any other structural part of the Building, shall be performed only by contractor(s) approved by the County, which approval shall not be unreasonably withheld, conditioned, or delayed.
- All approved Alterations shall become part of the Premises immediately upon completion.

- If Marcus's proposed Alterations to the Premises require relocation of any utilities, Marcus shall bear all costs for relocation of any affected utilities, as may be reasonably required by the County.
- Marcus, at its expense, shall obtain (and furnish true and complete copies to the County of) all necessary governmental permits and certificates for the performance of Alterations and for final approval thereof upon completion, and shall cause Alterations to be performed in compliance therewith, and with all Legal Requirements, and with the Preliminary Plans. Alterations shall be performed in such manner as not to impose any additional expense upon the County in the construction, maintenance, repair, or operation of the Building, and if any such additional expense shall be incurred by the County as a result of Marcus's performance of Alterations, Marcus shall reimburse the County promptly upon demand.
- Marcus shall promptly upon the completion of the permitted Alterations deliver to the County final "as-built" drawings of the same, certified by Marcus's architect.
- Marcus shall cause all contractors performing Alterations, and all suppliers supplying materials for Alterations, to be paid in full, so that the Premises and the Building shall at all times be free of liens for labor and materials supplied or claimed to have been supplied. Accordingly, the County shall have the right at all times to post and maintain upon the Premises such notices as may be necessary or desirable to keep the Premises and the County free of lien from any mechanic, laborer, materialman, supplier, or vendor. Any mechanic's lien filed against the Premises for work claimed to have been done for Marcus, or for materials claimed to have been furnished to Marcus, shall be discharged by Marcus within fifteen (15) Business Days after such filing, by payment, filing of the bond required by Legal Requirements or otherwise, and Marcus shall provide satisfactory proof of such discharge to the County. If Marcus fails to do so, the County may, upon ten (10) Business Days prior notice to Marcus (or on such shorter notice if deemed necessary by the County), discharge any such mechanic's lien, by bond, payment, or otherwise, and the cost thereof shall be paid by Marcus to the County within ten (10) Business Days after demand.

Notice is hereby given that the County shall not be liable for any labor or materials furnished or to be furnished to Marcus upon credit, and that no mechanic's lien or other lien for any such labor or materials shall attach to or affect the reversion or other estate or interest of the County in and to the Premises.

Please advise of any questions.

Sincerely,



Teig-Whaley-Smith, Esq.  
Director

cc: Paul Kuglitsch, Esq.  
Mr. Richard Hecht, Vice President and Chief Operating Officer  
Michael Ostermeyer