

**DALLAS PERFORMING ARTS CULTURAL FACILITIES  
CORPORATION – RESOLUTION APPROVING  
CREATION OF CORPORATION AND APPOINTMENT OF  
BOARD OF DIRECTORS**

**Finance, Audit and Accountability Committee**

**January 23, 2006**

## **DISCUSSION MATERIALS**

### **Purpose**

- Discuss :
  - 1 Authorizing and approving creation of the Dallas Performing Arts Cultural Facilities Corporation
  - 2 Approving the Articles of Incorporation and By-Laws
  - 3 Approving the initial Board of Directors

### **BACKGROUND**

- On May 25, 2005, City Council authorized the City Manager to negotiate a comprehensive agreement with the Dallas Center for the Performing Arts Foundation (the “Foundation”) for the development and operation of the Dallas Center for the Performing Arts (the “Center”).
- On September 28, 2005, City Council authorized the City Manager to execute a development agreement (the “Development Agreement”) setting forth the terms and conditions pursuant to which the parties will undertake the design, development, construction, maintenance, management, use and operation of the Center.
- The Center will be owned by the City, managed and operated by the Foundation and consist generally of the approximately 2,200-seat Winspear Opera House, the approximately 600-seat Wyly Theatre, the Grand Plaza, an approximately 600-car underground parking garage, a redesigned Annette Strauss Artist Square, and related infrastructure.
- The project cost for the Center is approximately \$275 million. The Foundation is responsible for all construction costs and expenses in excess of the City’s construction contribution of \$17.779 million.
- The Foundation anticipates funding its portion of the construction with private contributions and the proceeds of tax-exempt bonds.
- Under the Development Agreement the City agreed to cooperate with the Foundation to facilitate the issuance of tax-exempt bonds to finance the costs of the Center, including the sponsorship of a conduit issuer of such bonds.
- Article 1528m, Revised Civil Statutes, authorizes cities to authorize and approve the creation of a cultural facilities corporation that is authorized to issue tax-exempt bonds for the purposes of financing cultural facilities such as the Center.

- Any bonds issued by the corporation would require the approval of City Council. However, such bonds would not be obligations of the City nor would the City be in any way responsible for repayment of the bonds. Repayment of the bonds would be solely the obligation of the Foundation.
- The Corporation would not have any operating, management or other responsibilities with respect to the Center. Its sole purpose is to be the conduit issuer of the tax-exempt bonds used to provide financing for the Center.
- The initial Board of Directors would be Assistant City Manager Ramon Miguez, Chief Financial Officer Dave Cook and Office of Cultural Affairs Director Maria Munoz-Blanco.

### **RECOMMENDATION**

City Council approve a February 8, 2006 Resolution authorizing and approving the creation of the Dallas Performing Arts Cultural Facilities Corporation; approving the Articles of Incorporation and By-Laws of the Corporation; and appointing the Initial Directors.

**ARTICLES OF INCORPORATION  
OF  
DALLAS PERFORMING ARTS CULTURAL FACILITIES CORPORATION**

We, the undersigned natural persons, each of whom is of the age of 18 years or more and a resident of the City of Dallas, Texas, acting as incorporators of a Cultural Education Facilities Finance Corporation under the Cultural Education Facilities Finance Corporation Act, art. 1528m, Vernon's Tex. Rev. Civ. Stat., as amended (the "Act"), with the approval of the City Council (the "City Council") of the City of Dallas, Texas (the "City"), evidenced by its resolution filed in connection herewith approving these Articles of Incorporation, do hereby adopt the following Articles of Incorporation for such corporation.

**ARTICLE ONE**

The name of the corporation is Dallas Performing Arts Cultural Facilities Corporation (the "Corporation").

**ARTICLE TWO**

The Corporation is a nonprofit public corporation.

**ARTICLE THREE**

The period of duration of the Corporation is perpetual.

**ARTICLE FOUR**

The Corporation is organized and operated to perform one or more essential governmental functions on behalf of the City of Dallas, and specifically, to acquire, construct, provide, improve, finance and refinance cultural facilities consisting of a performing arts center (the "Performing Arts Center") to be owned by the City, and to make loans and advances to or for the benefit of the Dallas Center for the Performing Arts Foundation, Inc., a non-profit charitable foundation, as the "User" (as defined in the Act) of the Performing Arts Center, for the purpose of financing all or a portion of the User's share of the costs thereof.

The Performing Arts Center is to be located within the Downtown Arts District of the City and is to be comprised of buildings, improvements, equipment, furnishings, land or other property to be used for public purposes, including, but not limited to, supporting and promoting the performing arts, providing a first-class venue or venues for opera, theater, and other cultural and entertainment events and the promotion of and education about the performing, dramatic, visual and literary arts, and facilities incidental, subordinate, or related to or appropriate in connection thereto, all to be done to promote the general welfare of the citizens of and visitors to the City and the State of Texas, all as specified in and permitted by the Act.

The Corporation shall be operated exclusively for such purpose without profit. No part of the net earnings of the Corporation shall inure to the benefit of any private shareholder or individual.

ARTICLE FIVE

The Corporation has no members and is a nonstock corporation.

ARTICLE SIX

The Corporation shall not issue any bonds, notes or other obligations for the purpose of paying all or any part of the costs of the Performing Arts Center or for the purpose of making loans to the User unless, at least 15 days prior to the issuance of such bonds, notes or other obligations, the Corporation has filed with the City Council, a full and complete description of the bonds, notes, or other obligations to be issued, and the City Council, by resolution, has approved the same.

ARTICLE SEVEN

The street address of the initial registered office of the Corporation is Dallas City Hall, 1500 Marilla Street, Dallas, Texas 75201-4318, and the name of the initial registered agent at such address is \_\_\_\_\_.

ARTICLE EIGHT

The affairs of the Corporation shall be managed by a board of directors composed of such number of natural persons (not less than three) as may be fixed by the bylaws; provided that the City Council may, in its sole discretion and at any time, alter the structure, organization, programs or activities of the Corporation by amending the bylaws, subject only to any limitation provided by the constitution and laws of the State of Texas and of the City relating to the impairment of contracts entered into by the Corporation. Directors shall be appointed by the City Council for a term of no more than \_\_\_\_\_ years. Until changed by the bylaws the original number of directors shall be three (3). The names and addresses of the persons who shall serve as initial directors of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
_____	1500 Marilla Street Dallas, Texas 75201-4318
_____	1500 Marilla Street Dallas, Texas 75201-4318
_____	1500 Marilla Street Dallas, Texas 75201-4318

Each director shall hold office for the term for which the director is appointed and until a successor shall have been appointed and qualified unless sooner removed. The City Council may remove a director for cause or at any time without cause. Directors shall serve as such without compensation except that directors may be reimbursed for their actual expenses incurred in the performance of their duties under the Act.

ARTICLE NINE

The names and street address of each incorporator is as follows:

<u>Name</u>	<u>Address</u>
_____	1500 Marilla Street Dallas, Texas 75201-4318
_____	1500 Marilla Street Dallas, Texas 75201-4318
_____	1500 Marilla Street Dallas, Texas 75201-4318

ARTICLE TEN

The sponsoring entity of the Corporation is the City of Dallas, whose City Hall is located at 1500 Marilla Street, Dallas, Texas 75201-4318.

ARTICLE ELEVEN

Upon the dissolution of the Corporation, the Corporation's assets remaining after payment (or provision for payment) of the Corporation's liabilities shall be distributed to the City of Dallas, Texas. The amount of any distribution made under this ARTICLE ELEVEN shall be determined by the board of directors.

ARTICLE TWELVE

On \_\_\_\_\_, the City Council duly adopted a resolution specifically authorizing the Corporation to act on behalf of the City to further the public purpose set forth in these Articles of Incorporation, and approving these Articles of Incorporation.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_,  
2006.

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Incorporator

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Incorporator

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Incorporator

THE STATE OF TEXAS     §  
  §  
COUNTY OF DALLAS     §

I, the undersigned, a Notary Public of the State of Texas, do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2006, personally appeared before me \_\_\_\_\_, who, being by me first duly sworn, declared that he is the person who signed the foregoing document as an incorporator and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date and year above written.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

(SEAL)

THE STATE OF TEXAS     §  
  §  
COUNTY OF DALLAS     §

I, the undersigned, a Notary Public of the State of Texas, do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2006, personally appeared before me \_\_\_\_\_, who, being by me first duly sworn, declared that he is the person who signed the foregoing document as an incorporator and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date and year above written.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

(SEAL)

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  §  
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IN WITNESS WHEREOF, I have hereunto set my hand and seal the date and year above written.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

(SEAL)

**BYLAWS  
OF  
DALLAS PERFORMING ARTS CULTURAL FACILITIES CORPORATION**

**ARTICLE I**

**NAME, PURPOSE AND POWERS**

Section 1.1 Name. The name of the corporation is Dallas Performing Arts Cultural Facilities Corporation (the "Corporation").

Section 1.2 Purpose. (a) The Corporation is organized and operated to perform one or more essential governmental functions on behalf of the City of Dallas, and specifically, to acquire, construct, provide, improve, finance and refinance cultural facilities consisting of a performing arts center (the "Performing Arts Center") to be owned by the City of Dallas, Texas (the "City"), and to make loans and advances to or for the benefit of the Dallas Center for the Performing Arts Foundation, Inc., a non-profit charitable foundation, as the "User" (as defined in the Act) of the Performing Arts Center, for the purpose of financing all or a portion of the User's share of the costs thereof, all as provided in and subject to the terms and provisions of agreements between the City and the User.

(b) The Performing Arts Center is to be located within the Downtown Arts District of the City and is to be comprised of buildings, improvements, equipment, furnishings, land or other property to be used for public purposes, including, but not limited to, supporting and promoting the performing arts, providing a first-class venue or venues for opera, theater, and other cultural and entertainment events and the promotion of and education about the performing, dramatic, visual and literary arts, and facilities incidental, subordinate, or related to or appropriate in connection thereto, all to be done to promote the general welfare of the citizens of and visitors to the City and the State of Texas, all as specified in and permitted by the Act.

(c) As permitted by Section 4A(a) of the Act, the Corporation is not authorized to finance, or to make loans with respect to, any properties or facilities that are not described in paragraphs (a) and (b) of this Section 1.2 and are not authorized to make loans or advances to any person other than to or for the benefit of the User.

Section 1.3 The Corporation shall be operated exclusively for such purpose without profit. No part of the net earnings of the Corporation shall inure to the benefit of any private shareholder or individual.

Section 1.4 Local Regulations. The Corporation, by action of the board of directors, with approval of the City Council (the "City Council") of the City, shall be authorized to

prescribe fees to be paid by the User in amounts reasonably estimated to pay the out-of-pocket ministerial and staff costs and expenses of the Corporation and/or the City.

Section 1.5 Staff Functions. Staff functions for the Corporation shall be performed by the City as directed by the City Council, and the Corporation, from fees collected by it, shall pay the amount of costs for such services as from time to time shall be billed to the Corporation by the City.

## ARTICLE II

### BOARD OF DIRECTORS

Section 2.1 Number, Appointment and Tenure. The affairs of the Corporation shall be managed by a board of directors which shall consist of three (3) natural persons who are employees of the City. Each director shall be appointed by the City Council, and shall hold office for a term of \_\_\_\_\_ years. Each director appointed to fill a vacancy created by the resignation or removal of a director prior to the expiration of his term shall serve for the balance of the unexpired term. Each director may be removed at will by the City Council. Each director shall hold office for the term for which the director is appointed and until a successor shall have been appointed and qualified unless sooner removed.

Section 2.2 Meetings. After issuance of the certificate of incorporation and at the call of a majority of the incorporators, the board of directors shall hold an organizational meeting at a location within the State of Texas to adopt these bylaws and to elect officers and any other purposes. The incorporators shall mail notice, postage prepaid, to each director of the time and place of the meeting, not later than the sixth day before the date of the meeting. The board of directors shall not meet regularly, but shall assemble at such special meetings as shall be necessary or advisable to give effect to the purposes for which the Corporation is organized. The board of directors shall assemble at such special meetings in person or by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting by use of such conference telephone or similar communications equipment shall constitute presence in person at such meeting. Special meetings of the board of directors shall be held at the call of the secretary of the Corporation upon the direction of the president of the Corporation or upon written request of any two directors. Notice of each special meeting shall be given by the secretary to each director, either personally or by mail or telegram, not less than three days prior to the meeting unless the president or any two directors declare an emergency, in which case personal notice to each director given not less than two hours prior to the meeting shall be satisfactory. Mailed notice shall be considered given at the earlier of (1) delivery at the address of the director, or (2) the expiration of four days after deposit into the United States mail, first class, postage prepaid. Special meetings of the board of directors shall be held at such location within the State of Texas as shall be specified in the notice of the meeting given by the secretary. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. A waiver in writing by any director of notice of a special meeting, whether such waiver be given before or after the time of the special meeting stated in such notice, shall be the equivalent to the giving of such notice. Neither the business to

be transacted at nor the purpose of any meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, except as provided in Section 7.1 of these bylaws.

Section 2.3 Quorum. The presence of two (2) directors shall be necessary and sufficient for the transaction of business at each meeting of the board of directors. If a quorum shall not be present at any meeting of the board of directors, the directors present may recess the meeting from time to time without notice other than announcement at the meeting, until a quorum shall be present. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the vote of a greater number is required by law, the Articles of Incorporation, or these Bylaws.

A director who is present at a meeting of the board of directors at which any corporate action is taken shall be presumed to have assented to such action unless that director's dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of the action.

Section 2.4 Unanimous Consent of Directors. Any action required to be taken at a meeting of the board of directors or which may be taken at a meeting of the board of directors or any committee may be taken without a meeting if a consent or consents in writing, setting forth the action to be taken, shall be signed by all directors or all of the members of the committee, as the case may be. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or documents filed with the Secretary of State under the Act or otherwise executed and delivered by any officer of the Corporation.

Section 2.5 Committees. The board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees which, to the extent provided in such resolution, shall have and exercise the authority of the board of directors in the management of the Corporation. Each such committee shall consist of two (2) or more persons, all of whom shall be directors. Other committees not having and exercising the authority of the board of directors in the management of the Corporation may be designated and appointed by a resolution adopted by a majority of the directors at a meeting at which a quorum is present or by the president. Membership on such committees may, but need not be, limited to directors.

Section 2.6 Compensation of Directors. Each director shall serve as such without compensation, but shall be reimbursed by the Corporation from legally available funds for actual expenses incurred in the performance of duties.

### ARTICLE III

#### OFFICERS

Section 3.1 Officers. The officers of the Corporation shall consist of a president, a vice president, a secretary, an assistant secretary, and a treasurer. The vice president may also be an assistant secretary. The vice president and the secretary may also be the treasurer. The board of directors shall elect the officers of the Corporation at its first meeting; at the first meeting

following each anniversary date of the initial issuance of certificates of incorporation of the Corporation by the Secretary of State; and, in the case of an election to fill any vacant office, at the first meeting following the vacating of such office. Each officer shall hold office for a period of one (1) year. Each officer elected to fill a vacancy which occurs prior to the expiration of the term of such office shall serve for the balance of the unexpired term. Each officer shall hold office for the term for which he is elected and until his successor is elected and qualified. Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the Corporation will be served thereby.

Section 3.2 President. The president shall preside at all meetings of the board of directors. The president shall be the chief executive officer of the Corporation, and, subject to the control of the board of directors, shall have general charge and supervision of the management of the affairs of the Corporation. The president shall see that all orders and resolutions of the board of directors are carried into effect. The president shall sign and execute all legal documents and instruments in the name of the Corporation when authorized to do so by the board of directors, except when the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the Corporation.

Section 3.3 Vice-President. The vice-president shall, in the event of the absence or disability of the president for any cause whatever, discharge the powers and duties of the president, and the vice-president shall perform such additional duties as may be prescribed from time to time by the board of directors.

Section 3.4 Secretary. The secretary shall have charge of the records and correspondence of the Corporation under the direction of the president. The secretary shall give notice of all special meetings and attend all meetings of the board of directors and shall take and keep true minutes of and record all votes cast at such meetings. All such records, correspondence, and minutes shall be open at all times to inspection by any director and by any member or representative of the City Council. The secretary shall also discharge such other duties as shall be assigned to the secretary by the president or the board of directors at any time and from time to time.

Section 3.5 Treasurer. To the extent not otherwise provided in any resolutions of the board of directors relating to the issuance of bonds, debentures or notes of the Corporation or instruments authorized by the board of directors to provide security therefor, the treasurer shall have the custody of all the funds and securities of the Corporation; shall deposit the same to the credit of the Corporation in such banks or depositories as the board of directors shall designate; shall keep proper books of account and other records showing at all times the amount of the funds and other property belonging to the Corporation and of all receipts and disbursements of the Corporation, all of which books shall be open at all times to inspection by any director and any member or representative of the City Council; shall, under the direction of the board of directors, disburse all money and sign all checks and other instruments drawn on or payable out of the funds of the Corporation; and shall also make such transfers and alterations in the securities of the Corporation as may be ordered by the board of directors. The treasurer shall also discharge such additional duties as may be prescribed at any time and from time to time by the board of directors. The treasurer shall give bond only if required by the board of directors. The

treasurer shall render to the president and directors an account of all such person's transactions as treasurer and of the financial condition of the Corporation whenever they may request the same.

Section 3.6 Assistant Secretary. The assistant secretary shall, in the event of the absence or disability of the secretary for any cause whatever, discharge the duties of the secretary, and the assistant secretary shall perform such additional duties as may be prescribed at any time and from time to time by the board of directors.

#### ARTICLE IV

##### MISCELLANEOUS

Section 4.1 Fiscal Year. The fiscal year of the Corporation shall be the fiscal year of the City.

Section 4.2 Principal Office. The principal office of the Corporation, at which all books and records of the Corporation shall be kept, shall be the Dallas City Hall, 1500 Marilla Street, Dallas, Texas 75201-4318.

Section 4.3 Seal. The Corporation's seal, if any, shall be such as may be approved from time to time by the board of directors.

#### ARTICLE V

##### INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Corporation shall indemnify (which indemnification shall include, without limitation, advancing reasonable expenses) any person who is or was a director or officer of the Corporation and may indemnify (which indemnification may include, without limitation, advancing reasonable expenses) any person who is or was an employee or agent of the Corporation (or any person who is or was serving at the request of the Corporation as a director, officer, employee, or agent of another Corporation, partnership, joint venture, trust, or other enterprise) to the fullest extent required or permitted by applicable law. In addition, the Corporation shall have the power to indemnify (which indemnification shall include, without limitation, advancing reasonable expenses) to the fullest extent permitted by law such other persons as the board of directors may determine from time to time. The Corporation shall have the power to purchase and maintain at its expense insurance on behalf of such persons to the fullest extent permitted by applicable law, whether or not the Corporation would have the power to indemnify such person under the foregoing provisions.

Any amendment to this Article V shall be prospective and shall not reduce or eliminate the right of any person to indemnification hereunder with respect to any act or failure to act occurring on or prior to the date of any such amendment.

## ARTICLE VI

### INSURANCE

Section 6.1 Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, employee benefit plan, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Article V.

## ARTICLE VII

### AMENDMENTS

Section 7.1 Amendments. These bylaws may be altered, amended or repealed, and new bylaws may be adopted, by the affirmative vote by a majority of the directors of the Corporation present at any meeting of the board of directors at which a quorum is present, provided that notice of the proposed alteration, amendment, repeal or adoption is contained in the notice of such meeting, and provided further that each such alteration, amendment, repeal or adoption shall be subject to the approval of the City Council.

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