

May 13, 2013

**Proposed
Term Sheet for
Reorganization of Walton Arts Center**

Currently: Walton Arts Center Council, Inc. (“**COUNCIL**”)

Walton Arts Center Foundation (“**Foundation**”)

Steps

1. Restructure Walton Arts Center Council

- New WAC Council purpose is to provide oversight of Fayetteville Campus.
- The Council will consist of 5 City appointed, 5 University appointed, and one AEF appointed members.
- Enters into new 25 year lease agreement with AEF for Walton Arts Center campus including the Nadine Baum Studios building and property.
- Council will oversee the physical property of Fayetteville Campus including maintenance and care, improvements and renovations. Responsibility for this will be delegated to AEF through a 25 year lease.
- The Council could be a co-signature to the new lease agreement between AEF and the City/UA.
- Original monies from City/UA may be transferred to new WAC Council.
- Oversight/approval of WAC Council budget would be removed from City/UA.

2. Restructure Walton Arts Center Foundation.

- The Board is proposed as 3 City appointed and 3 University appointed members plus adding 6 at large members.
- Foundation may hold operating endowment funds and disburse funds as requested by Council for their use and benefit or Foundation may return endowment principal of \$1.5 million to City and UA respectively
- On occasion, Foundation will receive and hold (public) funds on behalf of AEF and Council and disburse as requested.
- Future endowments, unless specifically ear-marked, will be administered by AEF.
- Oversight/approval of WAC budget would be removed from its duties and responsibilities

3. Organize Arts and Entertainment Foundation of NWA (“AEF”)

- 501(c)(3) organization
- Mission: To bring great performing artists and entertainers from around the world to Northwest Arkansas, connecting and engaging people through inspiring arts experiences.
- Construct and/or operate venues
- 20 member Governing Board to be self-appointed with initial board to be selected by the Council’s Nominating Committee. The Board may have 1 ex-officio member each from the City of Fayetteville and the University of Arkansas. Other ex-officio members may be appointed (for example: representatives from Bentonville, Rogers, the Governor’s Office, at large, etc.)
- Members of the WAC Council may serve on the AEF Board and vice versa.
- The Fayetteville City Council and UA Board of Trustees must approve the creation of AEF.
- Council transfers administrative management team, intellectual property (logo), mailing lists, computers, financial assets etc. to AEF. In return, AEF commits to raise \$20 million for the renovation of City/UA owned campus and venue.
- AEF enters into a new 25 year lease with City/UA to use the Fayetteville Campus, and Nadine Baum Studios along with the transferred assets and personnel exclusively for the benefit of AEF to:
 - Manage venues
 - Book and promote arts and cultural events
 - Fund-raise
 - Manage and operate AMP
 - Employ administrative staff – CEO, COO, CFO
 - Provide education and programming assurances that would satisfy the terms of the new lease
- Future endowments, unless specifically ear-marked, will be administered by AEF.

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Governance 2013

What do we want to do?

WAC needs a new lease along with changes to our governing documents

Why?

We need a new lease and changes to our governance documents to assure continued success to meet the growth needs of NW Arkansas.

Our current lease expires shortly and our governance documents have not kept pace with our growth. Our business model is dependent on a regional strategy with multiple campuses. A multi campus performing arts organization helps to maintain our competitive advantage and allows us to serve the growing needs and changing demands of NW Arkansas. A vibrant regional organization means more culture, more arts, more people and more educational programs for our region.

Why a new lease?

1. **We plan to invest over \$20.6M in the campus over the next 2-3 years and our 25 year lease expires in 48 months.** Before we can raise and invest significant private money into this facility, we need a long term lease to assure donors and investors that the WAC organization will be able to steward their gifts and continue to manage the facility consistent with the donors' intent.
2. **The site for the new City parking structure is currently under lease with Walton Arts Center and the new parking deck will change the terms.** WAC holds a lease on the land that includes overseeing all activities on the current property including maintenance of the grounds, oversight of existing parking, up-keep and improvements to all buildings, etc. This will change with the new parking deck and we need a lease that reflects the shift of these responsibilities.

Why a new Governance model?

1. **In order to meet the growth needs of our community, we need clarity in our governance documents to operate multiple venues in the region.** Given the economic realities of national and global touring arts and entertainment, Walton Arts Center is competing with cities throughout the mid-south (Kansas City, Dallas, Tulsa, Champagne/Urbana) for top talent (Broadway, popular attractions and world class arts programs). We need multiple sized venues to do this (an upgraded 1,200 Fayetteville hall and a new 2,000 seat hall in Bentonville). Our current governing documents (by-laws, articles of incorporation and inter-local agreement) are confusing and conflicting. They

need to be updated to specifically allow for the building and operating of venues in and outside of Fayetteville.

- 2. The confusion in our governing documents hinders our ability to mount a successful capital campaign.** Our documents indicate we are both an agency of the City of Fayetteville and an independent 501c(3) nonprofit. These conflicting classifications have raised legal questions about Walton Arts Center's ability to execute its vision. Our mission and vision is clear - we are a regional organization serving NW Arkansas. Helen Walton believed this firmly. In fact, she was instrumental in helping to add 10 new at-large Board seats to the WAC's initial Board of 3 UA / 3 City appointees. Yet the language that remains in the documents regarding "agency" of the City creates ambiguity. We won't be successful with either our fundraising for the \$20.6M expansion of Fayetteville or our proposed new facility in Bentonville without clarifying this issue once and for all. We owe this to our stakeholders.

In fact, our largest stakeholders have requested changes in our governance that clearly outlines WAC's ability to operate independently of the City/UA. Today 95% of WAC's operating revenues come from private sources and yet the Mayor of Fayetteville and the UA Chancellor approve our operating budget. Given our multi campus plans - the potential for a veto of the budget by a future Mayor or Chancellor is unacceptable. Walton Arts Center relies on the generosity of the community with 50% of our operating budget coming from nearly 1000 donors. (80% of donations and 52% of our audiences come from outside Washington County) Our largest donor – who contributes more than 20% of our total annual support – has asked that our governance be addressed before any consideration for future Capital support. We can't be successful in our renovation of the Fayetteville campus or be assured of their long term support for our programs - without their continued support.

- 3. The lack of clarity within our governing documents presents an unfair expectation for appointed board members regarding their fiduciary duties.** In his recent opinion on an *unrelated issue* (FOIA), the Attorney General's office confirmed that the WAC governing documents are ambiguous and can be construed in multiple ways relative to the relationship between the WAC organization, the City, and the UA. For all board members to function effectively and guide on-going policy – especially during a fundraising campaign – the Board must have a clear understanding of their primary fiduciary role to the organization. Appointed members should not have confusion on whom they represent. We owe it to the organization and our stakeholders to have these roles and issues clear.

What are we proposing?

1. **Obtain a new 25 year lease.** Our current lease runs out in 48 months and we need another long term lease for our Fayetteville campus. We want a lease similar to the one we have now and are proposing additional programming language - to help satisfy Fayetteville residents' concerns about program intentions when there are multiple venues.
2. **Creating a new Foundation that becomes the operating organization.** A new Arts and Entertainment Foundation (Razorback type Foundation) – is envisioned to oversee all fundraising, programming and operations of the organization. The new Foundation will be a 501(c)3 and have all governance, fiduciary and strategic responsibilities for the organization. It would have a Board of 20 regional members with additional ex-officio representatives– including an ex-officio role for the UA Chancellor and the Fayetteville Mayor. All of the staff and assets (WAC brand, computers, equipment, and working capital) would be transferred into this new Foundation. A new lease would be created between the new Arts and Entertainment Foundation and the City/UA.
3. **Changing the WAC Council to an oversight Board specifically for the Fayetteville Campus.** The role of the new WAC council would evolve into an oversight Board for the Fayetteville Campus. The new WAC Council would have responsibility for the Fayetteville campus including the improvements, capital needs and the maintenance plans –administered through a new lease with the Arts and Entertainment Foundation. The new WAC Council would continue to have 5 appointees from the City and 5 appointees from the UA with only 1 at-large member. The name of the new WAC Council could change to the WAC Fayetteville Campus Board.
4. **The WAC Foundation continues** – but would potentially hold only those funds restricted for the Fayetteville Campus for maintenance and operations. Any new endowment funds raised or those restricted for other programs would likely be put in the new Arts and Entertainment Foundation. The City funds (\$1.5MM) may be transferred to the new WAC Council if they desire. The structure of the WAC Foundation may evolve pending further input from the City/UA.

Why this model?

Our proposed governance model mirrors the structure of other top tiered city/county owned performing arts facilities. Many City owned venues are managed and operated by an independent nonprofit organization through a long term lease. The respective City owns the building and leases the facility to the non-profit that is charged with programming and operating the facility. (Municipalities do not have the expertise to manage and program the facility, take the risk on presenting shows or fund raise)

The city may have a representative(s) on the board (often ex-officio) but not up to 50% of the total seats on the Board.

Organizations that have a lease with city or county

- AT&T Performing Arts Center (Dallas, TX)
 - 90 year lease agreement with City
 - No city representation on board
 - City provides about \$2 million of support annually
- EPCOR Centre for the Performing Arts (Calgary, AB, Canada)
 - 40 year lease with City; \$1/yr.
 - 21-seat board (currently 17 filled); bylaws allow for a city appointment but it is not used. City thought it would be important in the beginning, but now they aren't using it as they are happy with the way the facility is being run.
 - City provides operating grant of approximately 10% annually. City provides some funding for maintenance, but most done by the non-profit. City requires an annual public meeting that accounts for spending of city funds. City has given a second piece of land across the street.
- Mann Center for the Performing Arts (Philadelphia, PA)
 - 25 year lease for \$1/yr
 - 35 member Board with 2 ex officio seats (Mayor and one from City Council)
 - City provided \$250K /yr for first 20 years
 - City Cultural fund provides small operating grant / City supported recent expansion
 - Lease renewed for additional 20+ years
- Long Center (Austin, TX)
 - 75 year lease with City; \$1/yr.
 - 39 members and 7 of those are denoted as City of Austin Appointees
 - Center received approximately \$150k from hotel/motel "bed tax" fund.
- Gallo Center for the Arts (Modesto, CA)
 - 40 year lease from County, with option for additional 40 years. \$1/yr. County also owns parking garage; they give it to Gallo on weekends, and Gallo charges patrons \$5 per car. Organization is responsible for repairs and maintenance of venue.
 - 20-seat board; 1 county official serves on board, with voting rights
- Des Moines Performing Arts (Des Moines, IA)
 - Operates Des Moines Civic Center & Temple Theater
 - 99 year lease with City for the Civic Center; \$1/yr.
 - 27-seat board; 3 seats for City nominees (only 2 filled currently), with voting rights

When do we want to do this? Immediately – so we can move forward with our Expansion plans.

What is needed to accomplish this?

1. The City and WAC need to meet under the Mayor's leadership and agree on terms for a new lease - along with the UA. This should take about a few months. We expect that once we get agreement on the outline of the lease terms, we can get a new lease in place

rather quickly. We expect some back and forth on new items not currently in the lease such as programming assurances. Final approval of a lease will need to be with the City Council, The UA and WAC.

2. Governance Changes – We need City Council and the UA Board of Trustees to approve creation of a new operating entity (Arts & Entertainment Foundation) and to transfer assets to that entity (WAC Brand, computers, equipment, and working capital). They also need to approve changes to the WAC Council. City Council and the UA Board of Trustees may need to approve amended by-laws, articles of incorporation, inter-local agreement and revised Foundation governance documents. (please find attached outline of terms for the proposed Governance)

What's at Stake? The WAC as we know it.

- Our business model depends on continued growth in the region and the expansion of our central facility, the Fayetteville Campus
 - The expansion and impact on the Arts will be tremendous
 - We can remain competitive for Broadway and great shows
 - We can add new programs – we can't now do
 - We can serve more arts organizations – small and large spaces
 - We can expand our services to schools
 - Serve more folks w/ rental events
 - We can drive economic growth

What happens if we don't do anything? We jeopardize our business model.

As always, please feel free to call me with questions.