

## MEMORANDUM

**TO:** Tom Harmer, Town Manager

**FROM:** Isaac Brownman, Public Works Director

**DATE:** March 26, 2019

**SUBJECT:** Town of Longboat Key Arts, Culture and Education Center  
Pre-Construction Agreement Between the Town of Longboat Key and  
Ringling College of Art & Design

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### **Recommended Action**

Approval of the Pre-Construction Agreement between the Town of Longboat Key and Ringling College of Art & Design.

### **Background**

An initial Pre-Construction Agreement between the Town of Longboat Key (Town) and Ringling College of Art & Design (Ringling) was executed on February 21, 2017. Subsequently, the Town Commission approved a Conceptual Design and Programming Plan and an amendment to the initial pre-construction agreement on March 5, 2018.

Since that time, Ringling hired a fundraising strategist to assess the ability to raise funds to support the full program, estimated to be approximately \$18 million. The assessment determined that the initial approved program would not likely be supported by fundraising efforts. This information was shared with the Town Commission on January 22, 2019.

As a result, on February 19, 2019, the Town Commission and Ringling discussed options to reduce program elements while maintaining the intent of a community asset. The Commission agreed to modify the concept plan to reduce the cost of the initial project, but still require a large multiuse meeting, presentation, and performance space. Phase 1 now includes many of the original program elements along with a multi-purpose presentation/ performance/ gallery space of approximately 3,000 square feet. Depending on the fundraising response there were discussions that a full black box theater could be added back into the plan or included in a 2<sup>nd</sup> Phase. The new Phase 1 planning level cost estimate is approximately \$11.3 million. Ringling College has advised the Town Commission that they believed that the funds can be raised for this amount.

Ringling is working with the Town, the Longboat Key Foundation, and Community Foundation of Sarasota, for their support in fundraising efforts based on this phased program, and the Phase 1 project amount of \$11.3 million. The original and amended Pre-Construction agreements have expired. The attached Pre-Construction agreement memorializes this current phased plan and is placed on the April 1, 2019 Regular Meeting for Commission review and approval.

This agreement emphasizes that both parties shall mutually and timely review and approve architectural design(s) for the facility and infrastructure related to the site. The design is expected to advance as the initial fundraising progresses.

There are still a number of details that must be worked out between the Town and Ringling. The Pre-Construction Agreement references the obligation of the Town and Ringling to negotiate and execute relevant agreements to facilitate transfer of ownership, operation and maintenance responsibilities, and outline Ringling's primary role as operator of the facility while allowing for agreed upon public uses at the Center.

**Staff Recommendation**

Approve the Pre-Construction Agreement between the Town of Longboat Key and Ringling College of Art & Design.

**Attachments**

Pre-Construction Agreement between the Town of Longboat Key and Ringling College of Art & Design

**PRE-CONSTRUCTION AGREEMENT BETWEEN THE TOWN OF LONGBOAT KEY  
AND RINGLING COLLEGE OF ART AND DESIGN**

This Pre-Construction Agreement between the Town of Longboat Key and Ringling College of Art and Design (hereinafter referred to as the “Agreement”) is made on the 1<sup>st</sup> day of April, 2019, by and between the Town of Longboat Key, Florida, a municipal corporation of the State of Florida located at 501 Bay Isles Road, Longboat Key, FL 34228 (hereinafter referred to as the “Town”), and Ringling College of Art and Design, a private, not-for-profit college, located at 2700 N. Tamiami Trail, Sarasota, FL 34234 (hereinafter referred to as “Ringling”).

**WHEREAS**, the Town and Ringling are mutually interested in achieving various aims and objectives relating to the establishment and maintenance of a Longboat Key Arts, Culture, and Educational Center (hereinafter referred to as the “Center”) located within the area of the anticipated Town Center located within the Town; and

**WHEREAS**, the Town and Ringling desire to enter into this Agreement in which will memorialize an approach to further the potential development of the Center; and

**WHEREAS**, a Conceptual Design and Programming Plan was presented by Ringling and approved by the Town on March 5, 2018, which plan forms the basis for a Phased project approach to be implemented through philanthropic funding.

**WHEREAS**, the Town acknowledges that Ringling will coordinate fundraising efforts with the Longboat Key Foundation and the Community Foundation of Sarasota County.

**WHEREAS**, the Town and Ringling are desirous to enter into this Agreement to set out the working arrangements that the parties agree are necessary to develop the Center.

**NOW THEREFORE**, in consideration of the mutual covenants and obligations contained herein, it is agreed as follows:

**Section 1 – Recitals**

The above recitals are true and correct and are hereby incorporated fully by referenced.

**Section 2 – Effective Date**

This Agreement shall become effective upon the date of execution by the last party hereto (hereinafter referred to as the “Effective Date”).

**Section 3 – Purpose**

The purpose of this Agreement is to set forth certain obligations between the Town and Ringling regarding the potential future development of the Center.

#### **Section 4 – Obligations of Town and Ringling**

The obligations under this Agreement, respectively or jointly as specified, for Ringling and the Town, for the potential development of the Center shall include but not be limited to the following:

1. Activities to be conducted by Ringling include the following:
  - a. Coordinate with the Longboat Key Foundation and Community Foundation of Sarasota County to implement the fundraising strategy to support a phased Center project
  - b. Oversee the selection and services of design and construction professionals to complete architectural plans and construction of the facility and associated infrastructure within an established and funded budget; and
  - c. Completion of the legal transfer of the Center to Town ownership once construction is fully completed and mutually accepted by both the Town and Ringling.
  
2. Activities to be conducted by the Town include the following:
  - a. The Town will complete site design and construction of an outdoor venue at the location of the proposed Center to begin activating the site for community events.
  - b. The Town will timely pursue necessary land use approvals related to the design and construction of the Center.
  - c. The Town will continue to own the lands related to the proposed Center. The Town will further own infrastructure and facilities to be constructed on the subject lands that are associated with the Center. The Town will enter into an agreement with Ringling to operate the facility.
  
3. Activities to be conducted jointly by the Town and Ringling include:
  - a. Maintain mutual agreement as to the programming content and estimated costs of a phased project approach. Phase 1 currently includes four classrooms, one 20-seat computer lab, two teaching studios, office spaces, one 15-person conference room, and multipurpose presentation, performance, and gallery space. Phase 1 planning level cost estimate is approximately \$11.3 million

- b. The Town and Ringling shall mutually and timely review and approve architectural design(s) for the facility and infrastructure related to the site.
- c. Prior to construction, the parties will negotiate and execute relevant agreements to accommodate facility transfer of ownership, operation and maintenance responsibilities, and outline Ringling's primary role as operator of the facility while allowing for agreed upon public uses at the Center.

### **Section 5 – Understanding**

It is mutually agreed upon and understood by and amongst the parties of this agreement that:

1. In no way does this Agreement restrict the parties from participating in similar agreements with other public or private agencies, organizations, or individuals to accomplish goals outside of the goals of the Center.
2. This Agreement is not intended to and does not create any right, benefit, or trust responsibility.
3. Either party may terminate this Agreement by providing ninety (90) days written notice to the other party.

### **Section 6 – Communication Strategy**

The parties acknowledge and agree that public statements regarding the vision for the Center project should be consistent with the aims of the project and only undertaken with the full agreement of both parties. Coordinated communications should be made with external organizations to elicit their support and further the aims of the Center project.

### **Section 7 – Liability**

No liability will arise or be assumed between the Town and Ringling as a result of this Agreement.

### **Section 8 – Dispute Resolution**

In the event of a dispute between the Town and Ringling regarding any activities or obligations provided for under this Agreement, any such dispute will be resolved by the President of Ringling and the Town Manager.

### **Section 9 – Term**

The term of this Agreement shall remain in place until superseded by a subsequent agreement(s) or unless terminated in accordance with Section 5.

**Section 10 – Notice**

Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing. When designating such notice or communication, if to the Town, notice should be directed to the Town Manager; if to Ringling, notice should be directed to the President of Ringling.

**Section 11 – Governing Law**

This Agreement shall be construed in accordance with the laws of the State of Florida.

**Section 12 – Assignment**

Neither party may assign or transfer the responsibilities, obligations, or agreements made herein without the prior written consent of both parties.

**Section 13 – Force Majeure**

Neither party shall be deemed to be in breach of this Agreement if unable to timely perform due to labor dispute, act of God, or any event beyond the control of the parties. Upon occurrence of any such event, written notice shall be timely given regarding the affected party's inability to perform and the parties shall discuss in good faith revisions to the schedules provided for herein.

**Section 14 – Entire Agreement**

This Agreement represents the entire understanding of the respective parties hereto and there is no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

**Section 15 – Amendment**

This Agreement may be amended or supplemented in writing if approved by both parties.

**Section 16 – Severability**

If any provision of this Agreement may be found to be invalid or unenforceable for any reason, such invalidity shall not affect the other remaining provisions which can be given effect without the invalid provision(s).

{Remainder of page intentionally left blank}

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement between the Town of Longboat Key and Ringling College of Art and Design on the dates indicated below.

**TOWN OF LONGBOAT KEY, FLORIDA**

By: \_\_\_\_\_

Tom Harmer, Town Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Trish Shinkle, Town Clerk

Approved as to form and correctness:

\_\_\_\_\_

Town Attorney

**RINGLING COLLEGE OF ART AND DESIGN**

By: \_\_\_\_\_

Larry R. Thompson, President

Date: \_\_\_\_\_

Witness:

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(Signature)

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(Printed Name)

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(Date)



**End of Agenda Item**