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To: Rochester City Council

From: Rochester Outside Agency Oversight Committee [OAOC]

Re: Rochester Civic Theatre (RCT) 2019 Performance & 2020 Recommendations

Date: February 12, 2020

The Rochester OAOC recommends the Rochester City Council accept this report, place it on file and adopt all recommended actions.

Summary:

The OAOC finds the 2019 performance of RCT Board under the leadership of President Kay Hocker to be **poor**, and **will require significant improvements**.

The OAOC finds the 2019 performance of RCT under the leadership of Executive Director Kevin Miller to be **poor**, and **will require significant improvements**.

The OAOC finds the 2019 performance of the City of Rochester as it pertains to outside agencies **needs improvement**.

Findings:

- The RCT Director of Operations Sinead Chick and 2020 RCT Board President Jeff Haynes have been forthcoming in providing information related to 2019 RCT Financial, Organizational, and Board Performance.
- The City of Rochester has not seen audited financial statements since the July 31, 2018 statements.
- RCT operating reliance on the City of Rochester funding has increased in the last year.
- RCT does not have enough current assets to cover current liabilities.
- City of Rochester is not obligated to provide direct funding to RCT.
- In 2019, the RCT Board did not remove board members who failed to act appropriately and expeditiously once they had knowledge of the sexual harassment under the previous director. Nor did they remove board members for inappropriate handling of the complaints including subjecting a victim to additional contact with the previous executive director.

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- Neither the City of Rochester nor RCT membership have a mechanism to remove board members.
- The RCT Search committee who hired Kevin Miller consisted of Ginger Roberts Carlson, Diana Parks, Becca Stiles-Nogosek, Ari Kolas, Greg Gentling.
- The RCT Executive committee which most closely supervised the performance of the organization and executive director consisted of: Jeff Haynes, Chad Campbell, Kay Hocker, and Ari Kolas.
- RCT board and staff are not at liberty to discuss Kevin Miller's resignation.
- The RCT Board failed to properly vet incoming ED Kevin Miller and account for a previous job separation where he had provided false information in regard to his qualifications.
- The RCT Board failed to have proper financial controls and review in place; and oversee the business operations of RCT.
- The RCT Board failed to honestly communicate the severity of the 2019 financial situation to the City of Rochester and materially misrepresented the condition of the organization at public meetings in 2019.
- The RCT Board and executive director failed to notify the City of Rochester when RCT approved taking on an unsecured \$300k loan to provide cash to fund operations. When informed by other staff that the City of Rochester needed to be notified, he continued to withhold this information from the City of Rochester.
- The RCT Board failed to notify the City of Rochester when City of Rochester facilities were being used as illegal lodging for ED Kevin Miller.
- The RCT Board failed to have a conflict of interest policy available for review. Board members are actively engaging in a conflict of interest by having made loans to the organization.
- The RCT failed to control spending in 2019.
- The RCT failed to properly use grant money in 2019, failed to return that funding on request and is not barred from receiving additional state funding for 1 year.
- The RCT failed to properly pay vendors, including the City of Rochester, IRS, Minnesota Revenue, Minnesota Unemployment Insurance, Minnesota Energy, and Smith Schaffer (2018 auditor).
- The RCT failed to pay payroll taxes.

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- The RCT was unable to provide timely and correct financial statements.
- The RCT initially showed reports ending January 2020 which was misleading because they included the full City of Rochester 2020 Payment.
- The RCT was unable to maintain qualified staff to handle bookkeeping and accounting duties.
- The RCT December Accounts Payable indicates unpaid balances to board members. This is a conflict of interest.
- The RCT December Accounts Payable balances are not the same on the Accounts Payable and Balance Sheet documents.
- The RCT December Balance Sheet shows Liabilities exceeding Assets by \$475k
- The RCT 2019 Statement of Cash Flows indicates that employees were not paid in November.
- The RCT 2019 Statement of Cash Flows states that a net of \$320k in long term liabilities were taken on in 2019 to fund operations.
- The RCT 2019 Statement of Cash Flows seems to consistently misstate interest expenses.
- The RCT executive director improperly or incorrectly modified budget documents thereby providing incorrect income and expense figures.
- The RCT executive director commenced the hiring of professional actors without the means to pay for them. This amounted to an unfunded expense of about \$250k in 2019.
- The City of Rochester faces risk that our 2020 contributions will be used to pay 2019 obligations and unpaid invoices tied to the City owned facility could be placed on the City in the event of an insolvent RCT.
- The City of Rochester issued the full 2020 payment without proper due diligence and a signed agreement to ensure obligations would be responsibly met.

Recommendations:

1. Notify RCT of the City's intent to terminate all agreements in a manner that balances the existing RCT production schedule (which goes through 5/17/20) with the City's goal to implement a new, collaborative community performing arts model.
2. Direct the City Administrator to initiate a transition to a collaborative performing arts model with the following goals:

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- a. Open and transparent process
 - b. Incorporate into the new Mayo Civic Center operations and governance model with the same expectations
 - i. Alignment in focus
 - ii. Accountability
 - iii. Clear goals and objectives
 - iv. Service delivery
 - v. Deliver results
 - c. Collaborative use to enhance community access and program diversity
 - i. Civic Music
 - ii. Community performing arts organization
 - iii. Experience Rochester
 - d. Determine appropriate balance of space for public performance and rehearsals.
 - e. The City will maintain the current level of funding for facility maintenance.
 - f. Initiate the process by holding a “listening session” with existing Rochester performing arts organizations.
 - g. Return no later than May 4 with an update on progress and recommended next steps
3. City of Rochester to establish a policy for outside funding distributions
 - a. Distributions shall be quarterly or monthly
 - b. No distributions shall occur until financial statements from the proceeding December are considered final.

Respectfully submitted;

Michael Wojcik

Rochester Outside Agency Oversight Committee Secretary