

ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 04/09/14
ITEM FROM FINANCE COMMITTEE MEETING OF 03/31/14

ISSUE:

10. Request for Approval of Amendment No. 1 to Lease Agreement – Incorporating Additional Requirements of Lessee Regarding Services Provided in Lieu of Rent and Better Collaboration with City Staff to Provide Services to the Public at 201 W. Marcy Street by Aggie Damron-Garner, Managing Director; Lensic Performing Arts Center D/B/A Tickets Santa Fe Box Office. (Edward Vigil)

FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM

Requested approval of amendment no. 1 to lease agreement for incorporating additional requirements of Lessee regarding services provided in lieu of rent and better collaboration with city staff to provide services to the public at 201 W. Marcy Street by Aggie Damron-Garner, Managing Director with Lensic Performing Arts Center d/b/a Tickets Santa Fe Box Office.

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

3-17/14/FCIssue

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, MARCH 24, 2014**

ITEM 9

REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO LEASE AGREEMENT WITH THE LENSIC PERFORMING ARTS CENTER D/B/A TICKETS SANTA FE BOX OFFICE INCORPORATING ADDITIONAL REQUIREMENTS OF LESSEE REGARDING SERVICES PROVIDED IN LIEU OF RENT AND BETTER COLLABORATION WITH CITY STAFF TO PROVIDE SERVICES TO THE PUBLIC AT 201 W. MARCY ST. BY AGGIE DAMRON-GARNER, MANAGING DIRECTOR **(EDWARD VIGIL)**

PUBLIC WORKS COMMITTEE ACTION: Approved on Consent

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR LINDELL	Excused		
COUNCILOR RIVERA	X		

MEMO

DATE: March 13, 2014 for March 24, 2014
TO: Public Works, CIP and Land Use Committee
VIA: Matthew O'Reilly, P.E., Land Use Department Director *MSO*
FROM: Edward J. Vigil, Property Manager Land Use Department *EV*

ITEM & ISSUE:

Request for approval of Amendment No. 1 to Lease Agreement with the Lensic Performing Arts Center d/b/a Tickets Santa Fe Box Office incorporating additional requirements of Lessee regarding services provided in lieu of rent and better collaboration with City staff to provide services to the public at 201 W. Marcy St. by Aggie Damron-Garner, Managing Director

BACKGROUND & SUMMARY:

The City entered into Lease Agreement No. 10-0926 with the Lensic Performing Arts Center d/b/a Tickets Santa Fe Box Office (Lentic) on September 15, 2010 to provide the patrons of the Santa Fe Community Convention Center and the citizens of Santa Fe with a satellite ticket office for local events. The Lentic has now requested to amend the referenced lease to allow for an upgrade in the ticketing system and reconfiguration of the space to allow for a full time employee to be located therein. City staff has reviewed the agreement and concurs that an amendment to the agreement would be in the best interest of the parties to better account for the services provided which will now serve as a basis for the lease payments. The amendment also serves the purpose of reallocating fair share costs of utilities and services which are appurtenant to the space, the reconfiguration of the space was allowed by provisions of the existing Lease Agreement. This amendment No. 1 will benefit the City of SF by better providing services to the patrons of the Santa Fe Community Convention Center and the citizens of Santa Fe by now having full time service, better collaboration with City staff and will reduce utility costs for the facility to the City.

ACTION:

This request is being presented for your consideration and direction. If approved the request shall be forwarded to the Finance Committee and thereafter City Council.

- Exhibits: A – Proposed Amendment No. 1
 B - Lease Agreement bearing Item No. 10-0926
 C – Request by Lensic Performing Arts Center

51100.460150
BUSINESS UNIT/LINE ITEM

**AMENDMENT NO. 1 TO LEASE AGREEMENT BY AND BETWEEN
THE CITY OF SANTA FE, A MUNICIPAL CORPORATION AND THE LENSIC
PERFORMING ARTS CENTER D/B/A TICKETS SANTA FE BOX OFFICE**

Amendment No. 1 to the Lease Agreement is entered into by and between the City of Santa Fe, a Municipal Corporation (herein "Lessor") and the Lensic Performing Arts Center d/b/a Tickets Santa Fe Box Office (herein "Lessee"). The date of this amendment shall be the date when executed by the City.

A. Under a certain A Lease Agreement dated September 15, 2010 ("Lease Agreement"), Lessor has leased certain real property described herein to Lessee for the purpose of maintaining and operating a satellite Tickets Santa Fe Box Office.

B. Lessee has been permitted by Lessor to improve its ticketing system contained within leased Premises and has renovated the Premises and has paid for all costs associated with the installation and maintenance of said system, including a new DSL line and service.

C. Lessor desires a future commitment from Lessee regarding the operation of the satellite Tickets Santa Fe Box Office and improved collaboration with City staff to better service the public and for sharing data from ticketing system.

D. Pursuant to Article 22 of the Lease Agreement, and in consideration of the mutual covenants and agreements hereinafter contained.

Now therefore the parties hereto agree as follows:

1. OBLIGATIONS OF LESSEE

Article 3. OBLIGATIONS OF LESSEE, is amended to include the following additional provisions, Article 3. I. and Article 3. J.:

I. Lessee is solely responsible for renovations to the Premises and for all costs associated with the installation and maintenance of a new ticketing system, including a new DSL line and service.

J. In lieu of a cash payment to the Lessor of fair market rental value of the Premises in the amount of \$15,406.65 (219 square feet at \$70.35 per square foot), Lessee hereby agrees to provide the following ticketing and related services to the City, to promote tourism in the City, which equals or exceeds the fair market rental value of the Premises: a) ticketing services for all Santa Fe theatre, music, dance, and cultural events, including but not limited to, marketing the availability of ticketing services and charging and collecting reasonable ticketing fees for those services; b) increased ticketing services hours to a minimum of 4 hours per day, 4 days per week

with City staff on planned events within SFCCC in order to better serve the public and to share data.

2. LEASE AMOUNT

Article 5. LEASE AMOUNT is deleted and new Article 5. is inserted to read:

Lessee is obligated to pay the fair market rental value of \$15,406.65 per calendar year as rental for the space. This rental amount shall be fulfilled by the Lessee by providing the services detailed in Article 3. J. of this Amendment No.1 to the Amended Lease Agreement in lieu of all or part cash. By December 15th of each calendar year, the Lessee shall provide a monthly accounting of total hours of ticketing services provided to Lessor in accordance with Article 3.J. herein. If, in the Lessor determines that the Lessee has not performed sufficient services to equal the full fair market rental value of at least \$15,406.65 by December 15th of any calendar, the Lessor shall be entitled to the full cash rental value minus the value of the services the Lessee had performed in that calendar year, such cash payment to be made by Lessee to Lessor no later than December 31st of that calendar year. There shall be no credit permitted, for future calendar years, for extra services rendered by the Lessee in any given calendar year.

3. UTILITIES

Article 8. UTILITIES and Exhibit B are deleted and new Article 8. and new Exhibit B1 are inserted to read:

Lessee shall pay a "fair share" of all utility and other charges of any kind, including but not limited to, internet charges and charges for electrical, gas, garbage, water, sewer, telephone, security, heating and cooling, and other services, which may be incurred in connection with Lessee's use of the Premises. See Exhibit B1, attached hereto and incorporated herein by reference, for Lessee's fair share of the charges set forth in this Article 8.

AGREEMENT IN FULL FORCE

Except as specifically provided in this Amendment, the Amended Lease Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Lease Agreement between the City of Santa Fe, a Municipal Corporation and Lensic Performing Arts Center on the date set forth below.

Convention Center	Lensic Box Office				Monthly Utility Cost														
Electric																			
Lighting	Fixtures	Bulbs	Rating	Ballast Rating	Hours	Days	kWhs	Cost/kWh	Demand in KW	Cost									
	4	3	32	0.95	4	28	40.9	\$0.11	\$2.62	\$7.11									
Natural Gas	Room Area ft ²	Total Building Area ft ²	% Area					\$6,000.00		Cost									
	216	72500	0.003					17.87586		\$17.88									

Cost per Month for Heating Season

Nov - April Sum \$24.99
Total for 6 months \$149.94

12 x 1.94x

Convention Center	Lensic Box Office				Monthly Utility Cost														
Electric																			
Lighting	Fixtures	Bulbs	Rating	Ballast Rating	Hours	Days	kWhs	Cost/kWh	Demand in KW	Cost									
	4	3	32	0.95	4	28	40.9	\$0.11	\$2.62	\$7.11									
HVAC	Room Area ft ²	Total Building Area ft ²	% Area					\$4,300.00	Demand in KW	Cost									
	216	72500	0.003					12.81103	\$6.00	\$18.81									

Cost per Month for Cooling Season

May - Oct Sum \$25.93
Total for 6 months \$155.55

Annual Costs: \$305.49

ITEM # 10-0926

**LEASE AGREEMENT
BETWEEN
THE CITY OF SANTA FE
AND THE LENSIC PERFORMING ARTS CENTER D/B/A
TICKETS SANTA FE BOX OFFICE**

This LEASE AGREEMENT (hereinafter "Lease") is made and entered into this 15th day of September, 2010, by and between the City of Santa Fe, a municipal corporation (hereinafter "Lessor") and The Lensic Performing Arts Center d/b/a Tickets Santa Fe Box Office (hereinafter "Lessee").

WITNESSETH:

In consideration of the mutual convenience and agreement hereinafter contained, the parties hereto agree as follows:

1. PREMISES

Lessor does hereby lease to Lessee a 12' x 18'3" room designated "Ticket Office" with one lockable door and built-in cabinets located within the Santa Fe Community Convention Center (hereinafter "SFCCC"), at 201 W. Marcy Street, Santa Fe, NM. The room presently has a glass pass thru to the hallway and a large non-operable window to the street side (hereinafter the "Premises").

Lessee accepts the Premises in its present state and agrees that it is in good condition, without any representation or warranty by Lessor as to the condition of the Premises or as to the use, which may be made thereof.

2. USE OF THE PREMISES

Lessee shall use the Premises solely for the purpose of maintaining an operating a satellite Tickets Santa Fe Box Office.

3. OBLIGATIONS OF LESSEE.

A. Lessee shall sell tickets during all "Citywide" events during the hours scheduled for the event. "Citywide" is defined as "an event for which an entity reserves more than two hotels with a minimum of 250 room nights."

B. For all events occurring at the SFCCC for which Lessee sells tickets, Lessee shall operate from 2 p.m. until scheduled event time for "will call" ticket pick up.

C. Lessee shall sell tickets for any event that is on the "Tickets Santa Fe Pro Venue Elite" system, via walk up sales at the SFCCC, including events at the SFCCC that have contracted with Lessee.

D. Lessee shall have the option to contract with groups that are presenting ticketed events at the SFCCC. In such instance, a separate agreement will be drawn up between the Lessee and interested party, that will exist separate and apart from this Lease Agreement.

E. Lessee agrees to waive all box-office set up fees for organizations presenting events at the SFCCC.

F. Lessee shall be responsible for the security and maintenance of the rented Premises, including its computers, office supplies and for the cleaning of the Premises.

G. Lessee and Lensic staff will be the only persons that will have access to the Premise, with the exception of terms stated in Paragraph 12 of this Lease Agreement.

H. Lessee is solely responsible for its own staffing and shall be the only authorized persons to use the ticketing system and to represent itself.

4. OBLIGATIONS OF THE LESSOR:

Lessor shall provide Lessee with a phone system owned by the City at the Premises, as shown in Exhibit A attached hereto and incorporated herein by reference.

5. LEASE AMOUNT.

A. Lessee shall pay to Lessor the sum of ten dollars (\$10.00) per year as rental for the space.

B. Payment shall be made upon the signing of this Agreement and without notice or demand and without deduction or offset for any cause whatsoever. Lessee shall make all payments of rent each year before anniversary date to the Lessor's Cashier Office, Room 114, 200 Lincoln Ave., Santa Fe, NM.

6. LEASE TERM

The term of this Lease shall commence on November 1st, 2010 and shall terminate on October 31st, 2020, unless sooner terminated or unless extended for an additional term, all as provided herein. Either party may, upon 30 days notice, terminate this Lease.

In the event Lessee shall remain in possession of the Premises after the expiration of the initial term of this Lease, without exercising its option to extend, or after the expiration of any extended term, such possession may, at the sole option of Lessor, be continued as a month-to-month tenancy. During any such month-to-month tenancy, the assessment fee shall be payable on a monthly basis in the same manner as that in effect during the preceding term and the terms and conditions of this Lease shall be applicable.

7. OPTION TO RENEW

The term of this Lease, if then in full force and effect, may be extended at the option of the Lessor for an additional period of ten (10) years unless sooner terminated as provided herein. The option shall be exercised by the Lessee, notifying Lessor in writing at least 30 days prior to the expiration date of this lease of its election to exercise the option.

8. UTILITIES

Lessee shall pay a "fair share" of all utility and other charges of whatsoever kind and nature, including but not limited to, charges for electrical, gas, garbage, water, sewage, telephone, and other services, which may be incurred in connection with Lessee's use of the Premises. See Exhibit B for Lessee's fair share attached hereto and incorporated herein by reference.

9. ALTERATIONS AND IMPROVEMENTS

Lessee shall make no alteration, addition or improvement to the Premises without the prior, written consent of Lessor. Any alteration, addition or improvement made by Lessee after such consent shall have been given, and any fixtures installed as part thereof, shall become the property of Lessor upon the termination of this Lease, unless Lessee elects to remove them and restore the Premises to the condition existing prior to the installation of such fixtures, ordinary wear and use excepted; provided, however, that Lessor shall have the right to require Lessee to remove such fixtures at Lessee's expense, upon the termination of this Lease.

10. INDEMNIFICATION

Lessee agrees to defend, indemnify and hold Lessor harmless for all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claims, actions or demands whatsoever resulting from Lessee's actions or inactions as a result of this Lease.

11. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with the Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. Seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

12. REPAIR AND MAINTENANCE

Lessee hereby agrees to maintain the property surrounding the Premises. Lessee shall not cause or permit any waste, damage or injury to the Premises. Lessee shall keep and maintain the Premises in good condition and good working order (reasonable wear and tear excepted).

At all reasonable times during the term of this Lease, Lessor, or its duly authorized representatives, shall have the right to enter upon the Premises to inspect the Premises, perform any work under this Lease, or to make any improvements, alterations, and additions that Lessor may elect to make.

13. PERSONAL PROPERTY INSURANCE

Lessee, at Lessee's sole expense, shall insure Lessee's personal property with an insurance policy and shall insure all of Lessee's personal property, including but not limited to, contents and equipment kept by the Lessee on the Premises. It is understood by Lessee that Lessor shall not insure Lessee's personal property. Any and all damage to Lessee's personal property shall be the sole responsibility of the Lessee. Lessee shall furnish the City with proof of its insurance policy as a condition to this Lease Agreement.

14. RECORDING - SHORT FORM MEMO

This Lease shall not be recorded in its entirety. If desired by either party, both parties shall execute in recordable form a short form memorandum of this Lease which may be placed of record.

15. NOTICE

Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) five (5) days after the same are deposited in the United States mail, postage prepaid, registered or certified mail, return receipt

requested, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party:

To Lessor: City of Santa Fe
 City Manager
 P. O. Box 909
 Santa Fe, NM 87504-0909

To Lessee: The Lensic Performing Arts Center
 d/b/a Tickets Santa Fe Box Office
 211 W. San Francisco St.
 Santa Fe, NM 87501

16. CAPTIONS

Any captions to or headings of the paragraphs of this Lease are solely for the convenience of the parties, are not a part of this Lease and shall not be used for the interpretation or determination of validity of this Lease or any provisions hereof.

17. SEVERABILITY

In case any one or more of the provisions contained in this Lease or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

18. APPLICABLE LAW

This Lease shall be construed, enforced and interpreted in accordance with and governed by the laws of the state of New Mexico.

19. GENDER

Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter.

20. ASSIGNMENT AND SUBLEASE

Lessee shall not have the right to transfer and assign, in whole or in part, its rights and obligations under this Lease and in the Premises. Lessee shall not assign this Lease or sublet all or any part of the Premises.

21. NO WAIVER

No waiver of a breach of any of the covenants contained in this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

22. ENTIRE LEASE

The foregoing constitutes the entire agreement between Lessor and Lessee, represents their entire understanding and defines all of their respective rights, title and interest as well as all of their duties, responsibilities and obligations. Any and all prior agreements and understandings between the parties are merged herein. This Lease shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

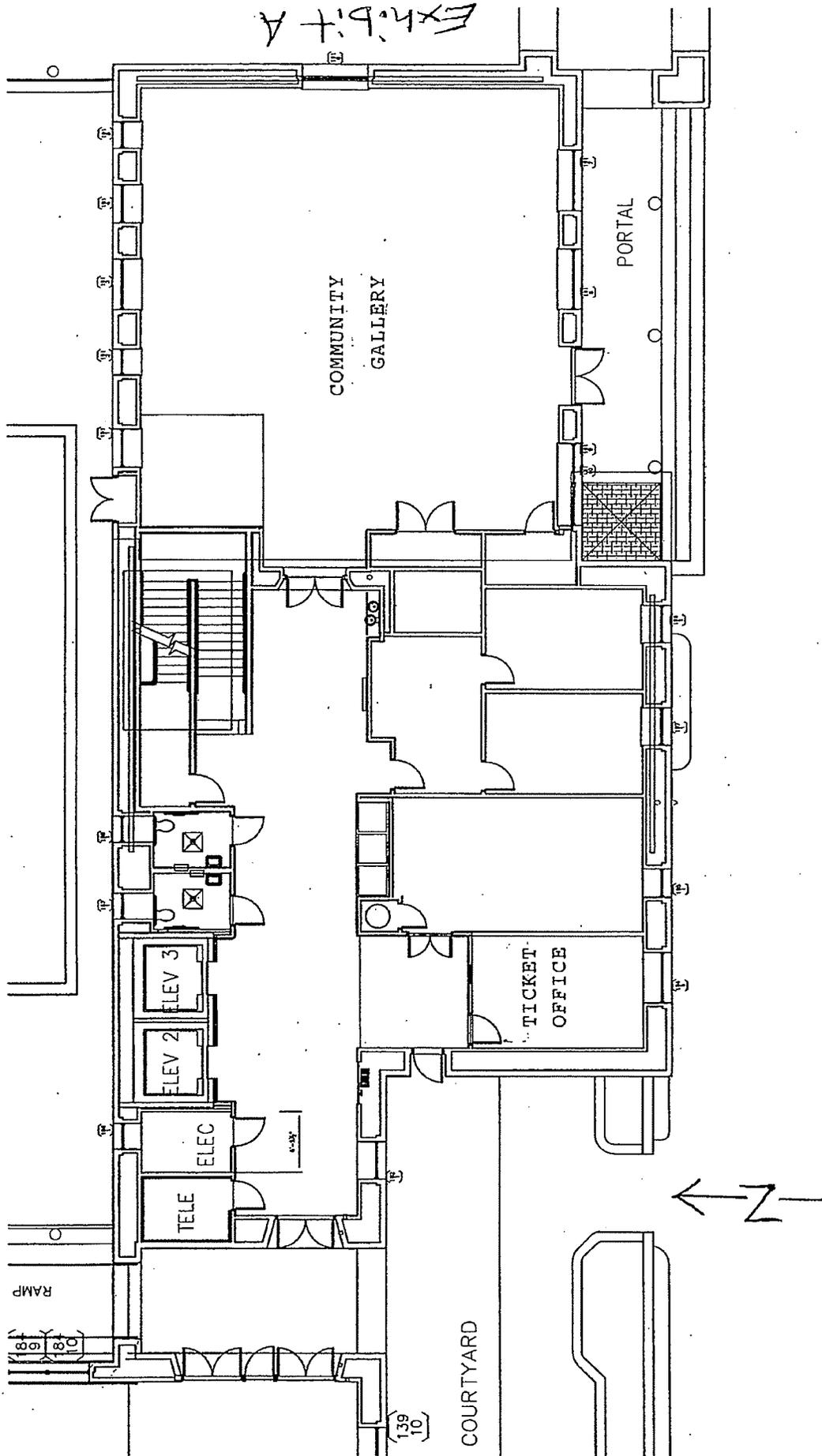
23. BINDING EFFECT

This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and is specifically enforceable.

24. LITIGATION EXPENSE

In the event of litigation between the parties, the Lessee shall pay any necessary costs, including reasonable attorney's fees, expenses and other costs of collection or otherwise, which the Lessor shall incur in enforcing this Lease or in recovering any and all damages caused to the Premises by Lessee, or Lessee's agents, employees or permitted assigns.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first written above.



Marcy Street



The
Lensic
10TH ANNIVERSARY
Preserve the Legacy

19 November 2013

Ed Vigil

Property Manager

Land Use Department

City of Santa Fe

Dear Ed,

Per your request at our meeting last week, this letter is to outline in detail the modifications we would like to make to the Tickets Santa Fe office space leased from the City of Santa Fe and located at the Santa Fe Convention Center.

Apparently there was a misunderstanding resulting in a letter from Brian Snyder indicating that we were requesting a change in the use of the space, as outlined by our lease. This is definitely not the case. Not only will the space continue to be used "solely for the purpose of maintaining and operating a satellite Tickets Santa Fe Box Office," but our plan is to office a full-time employee in the space, as well as the ticketing personnel agreed to and specified in our lease agreement.

It is our intent to continue to fulfill the terms of our lease and to increase our service to the community by providing improved community box office ticketing software and a full-time Systems Administrator to manage the new ticketing software that we are now implementing, along with Santa Fe Chamber Music Festival, Santa Fe Symphony, Santa Fe Concert Association, Santa Fe Pro Musica, and Santa Fe University of Art and Design.

Due to the configuration of the existing space, it is necessary to modify the footprint to accommodate a desk for the new Systems Administrator. We ask your approval to make the modifications outlined in the attached list. I have also attached a rough drawing of the space as it exists so you can visualize the requested modifications. All modifications, including the DSL line will be paid for solely by The Lensic Performing Arts Center.

Thank you for your attention to this matter Ed. I apologize to all concerned for the miscommunication and misunderstanding that occurred.

Sincerely,

Aggie Damron-Garner

Managing Director

The Lensic Performing Arts Center
211 West San Francisco Street · Santa Fe, NM 87501 · 505.988.7050 · www.lensic.org

SCOPE OF WORK FOR TESSITURA TICKETING SYSTEMS ADMINISTRATOR OFFICE FOR TICKETS SANTA FE AT THE LENSIC

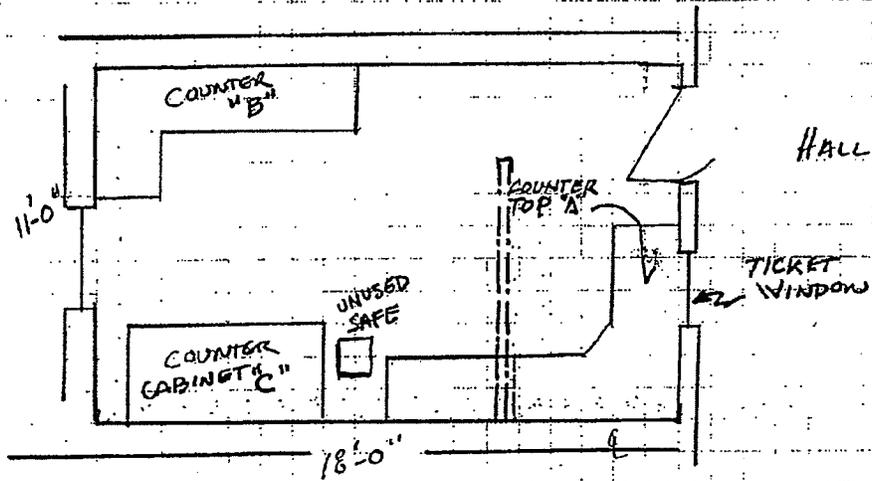
COMMUNITY CONVENTION CENTER LOCATION

- 1) Purchase at our own expense a DSL from Century Link for a secure connection for configuration of Tessitura box office software system from that location and install a router/switcher in the communications room across the hall, using existing wiring.
- 2) Relocate overhead cabinets on east wall to another location within the room.
- 3) Shorten the east leg of counter top "A" and move leg and finish end. We need to do that to make space for a desk.
- 4) Build a temporary removable privacy screen behind ticket window; install open able shade over ticket window.
- 5) Remove unused safe bolted to floor. We need to do that to make room for a desk.
- 6) Remove cabinet "C", as indicated on drawing.

PROPOSED IMPROVEMENTS

TICKETS SANTA FE

COMMUNITY CONVENTION CENTER



TICKETS SANTA FE

COMMUNITY CONVENTION CENTER