



**ACTION SHEET**  
**CITY COUNCIL COMMITTEE MEETING OF 02/11/15**  
**ITEM FROM FINANCE COMMITTEE MEETING OF 02/02/15**

**ISSUE:**

17. Request for Approval of a Resolution Authorizing the Continuation of the Additional One Dollar (\$1.00) Parking Fee at the Sandoval Parking Garage on All Users after 6:00 P.M. on Those Evenings When the Lensic Performing Arts Center has Events; and Dedicating the Additional Funds for the Support of Educating Local Youth About the Performing Arts. (Councilor Lindell) (Sevastian Gurule)

**Committee Review:**

Public Works Committee (approved)

01/26/15

City Council (scheduled)

02/11/15

Fiscal Impact – Yes

**FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM**

**FUNDING SOURCE:**

**SPECIAL CONDITIONS OR AMENDMENTS**

**STAFF FOLLOW-UP:**

<b>VOTE</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

**ACTION SHEET  
ITEM FROM THE  
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING  
OF  
MONDAY, JANUARY 26, 2015**

**ITEM 13**

REQUEST FOR APPROVAL OF A RESOLUTION AUTHORIZING THE CONTINUATION OF THE ADDITIONAL ONE DOLLAR (\$1.00) PARKING FEE AT THE SANDOVAL PARKING GARAGE ON ALL USERS AFTER 6:00 P.M. ON THOSE EVENINGS WHEN THE LENSIC PERFORMING ARTS CENTER HAS EVENTS; AND DEDICATING THE ASSITIONAL FUNDS FOR THE SUPPORT OF EDUCATING LOCAL YOUTH ABOUT THE PERFORMING ARTS (COUNCILOR LINDELL)(SEVASTIAN GURULE)

**PUBLIC WORKS COMMITTEE ACTION: APPROVED**

**FUNDING SOURCE:**

**SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP:**

<b>VOTE</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
<b>CHAIRPERSON TRUJILLO</b>	<b>X</b>		
<b>COUNCILOR BUSHEE</b>	<b>EXCUSED</b>		
<b>COUNCILOR DIMAS</b>	<b>X</b>		
<b>COUNCILOR DOMINGUEZ</b>	<b>X</b>		
<b>COUNCILOR RIVERA</b>	<b>X</b>		

# City of Santa Fe, New Mexico

## LEGISLATIVE SUMMARY

Resolution No. 2015-\_\_\_\_

Lensic Parking

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**SPONSOR(S):** Councilor Lindell

**SUMMARY:** The proposed resolution authorizes the continuation of the additional one dollar (\$1.00) parking fee at the Sandoval Parking Garage on all users after 6:00 p.m. on those evenings when the Lensic Performing Arts Center has events; and dedicating the additional funds for the support of educating local youth about the performing arts.

**PREPARED BY:** Rebecca Seligman, Legislative Liaison Assistant

**FISCAL IMPACT:** Yes

**DATE:** January 15, 2015

**ATTACHMENTS:** Resolution  
FIR

1 CITY OF SANTA FE, NEW MEXICO

2 RESOLUTION NO. 2015 - \_\_\_\_

3 INTRODUCED BY:

4  
5 Councilor Signe Lindell

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9  
10 A RESOLUTION

11 AUTHORIZING THE CONTINUATION OF THE ADDITIONAL ONE DOLLAR (\$1.00)  
12 PARKING FEE AT THE SANDOVAL PARKING GARAGE ON ALL USERS AFTER 6:00  
13 P.M. ON THOSE EVENINGS WHEN THE LENSIC PERFORMING ARTS CENTER HAS  
14 EVENTS; AND DEDICATING THE ADDITIONAL FUNDS FOR THE SUPPORT OF  
15 EDUCATING LOCAL YOUTH ABOUT THE PERFORMING ARTS.

16  
17 WHEREAS, through the adoption of Resolution #2011-3, the Governing Body authorized  
18 the City of Santa Fe to assess an additional one dollar (\$1.00) parking fee at the Sandoval parking  
19 garage on all users after 6:00 p.m. on those evenings when the Lentic Performing Arts Center had  
20 events and to dedicate the additional funds for the support of the performing arts through a  
21 professional services agreement with the Lentic Performing Arts Center; and

22 WHEREAS, the city's parking facility, known as the Sandoval parking garage, is located in  
23 close proximity to the Lentic Performing Arts Center and the Lentic's evening performances are  
24 responsible for a significant portion of the year-round after 6:00 p.m. revenue generated by the  
25 Sandoval parking garage; and

1           **WHEREAS**, the Lensic is an important contributor to arts education for the public schools  
2 by providing up to 15,000 elementary school children, each year, with the opportunity to enjoy free  
3 performances and artist interactions at the Lensic in conjunction with curricula developed by their  
4 teachers through the Santa Fe Public School District's Performing Arts for Student Success (PASS)  
5 Program; and

6           **WHEREAS**, the PASS Program provides an essential introduction to the performing arts for  
7 many young people; and

8           **WHEREAS**, as students progress through grade levels, they see a different event each year,  
9 exposing them to a wide variety of performances such as classical music concerts, theater and dance  
10 productions, poetry slams, local folk music and opera; and

11           **WHEREAS**, as a result, Santa Fe's school children benefit socially, educationally and  
12 culturally through access to performances such as Nuestra Música, the Santa Fe Symphony Orchestra  
13 and Chorus, Santa Fe Pro Musica, Circus Luminous, Aspen Santa Fe Ballet, and others; and

14           **WHEREAS**, due to the national and local economic downturn, the availability and  
15 continuance of these children's educational performing arts programs provided at the current levels  
16 by the Lensic are at risk due to lack of funding; and

17           **WHEREAS**, due to the unique location of the Sandoval parking garage being in such close  
18 proximity to the Lensic Performing Arts Center and the Lensic's dedication to continue programs that  
19 provide Santa Fe's public school children with access to learning about and appreciating the  
20 performing arts, it is appropriate to enter into a professional services agreement with the Lensic for  
21 the purpose of continuing programs that educate local youth about the performing arts and to fund the  
22 agreement with an increase in parking fees at the garage.

23           **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
24 **CITY OF SANTA FE** that the City of Santa Fe is authorized to continue the additional one dollar  
25 (\$1.00) parking fee at the Sandoval parking garage on all users after 6:00 p.m. on those evenings

1 when the Lensic Performing Arts Center has events; and to dedicate the additional funds for the  
2 support of the performing arts through a professional services agreement with the Lensic Performing  
3 Arts Center.

4 **BE IT FURTHER RESOLVED** that the professional services agreement, which shall be  
5 reviewed by the Governing Body, shall ensure the continuation of those programs and performances  
6 attended by Santa Fe's public school students included in the PASS Program. The professional  
7 services agreement shall be for a term of four years, after which time this resolution and the  
8 agreement may be reevaluated by the Governing Body.

9 **BE IT FURTHER RESOLVED** that the Lensic shall provide an annual report to the city on  
10 December 31<sup>st</sup> of each calendar year of the programs and performances funded by the professional  
11 services agreement, including numbers of students attending free performances and the total value of  
12 the Lensic's provision of these performances.

13 **BE IT FURTHER RESOLVED** that the Governing Body desires to continue the  
14 professional services agreement and shall review the information from the Lensic, on an annual basis,  
15 regarding the effect of the increase in parking fees on the Lensic's ticket sales and other effects of the  
16 increase in parking fees at the Sandoval parking garage.

17 PASSED, APPROVED, and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

18  
19 \_\_\_\_\_  
20 JAVIER M. GONZALES, MAYOR

21 ATTEST:

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23 \_\_\_\_\_  
24 YOLANDA Y. VIGIL, CITY CLERK

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APPROVED AS TO FORM:



KELLEY A. BRENNAN, CITY ATTORNEY

### City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

**Section A. General Information**

(Check) Bill: \_\_\_\_\_ Resolution:   X    
(A single FIR may be used for related bills and/or resolutions)

Short Title(s): **A RESOLUTION AUTHORIZING THE CONTINUATION OF THE ADDITIONAL ONE DOLLAR (\$1.00) PARKING FEE AT THE SANDOVAL PARKING GARAGE ON ALL USERS AFTER 6:00 P.M. ON THOSE EVENINGS WHEN THE LENSIC PERFORMING ARTS CENTER HAS EVENTS; AND DEDICATING THE ADDITIONAL FUNDS FOR THE SUPPORT OF EDUCATING LOCAL YOUTH ABOUT THE PERFORMING ARTS.**

Sponsor(s): Councilor Lindell

Reviewing Department(s): Transportation/Parking

Persons Completing FIR: PJ Griego Date: 01/26/15 Phone: 955-6857

Reviewed by City Attorney: *Kelley A. Brennan* Date: 1/26/15  
(Signature)

Reviewed by Finance Director: *[Signature]* Date: 1-27-2015  
(Signature)

**Section B. Summary**

Briefly explain the purpose and major provisions of the bill/resolution:  
**The Parking Division will charge an additional \$1.00 parking fee on all users after 6:00 p.m. on those evenings when the Lensic Performing Arts Center has events. The additional revenue will be paid to the Lensic in order to help defray the cost of providing free performances for elementary children.**

**Section C. Fiscal Impact**

**Note:** Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)\*

**I. Projected Expenditures:**

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs  
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs  
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Finance Director: \_\_\_\_\_

\_\_\_\_\_ Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY 14/15	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY 15/16	"A" Costs Absorbed or "N" New Budget Required	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

Personnel*	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Fringe**	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Capital Outlay	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Land/ Building	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Professional Services	\$5,500	A	R	\$11,000	A	R		05150
All Other Operating Costs	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Total:	\$5,500			\$11,000				

\* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. \*\*For fringe benefits contact the Finance Dept.

**2. Revenue Sources:**

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY 14/15 (January thru June only)	"R" Costs Recurring or "NR" Non-recurring	FY 15/16	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

Sales	\$5,500	R	\$11,000	R	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
Total:	\$5,500		\$11,000			

**3. Expenditure/Revenue Narrative:**

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

Revenue: Sales revenue from Sandoval Parking Garage – 3 year average = \$11,000 per FY, per below table:

FY 2011-12	\$ 11,102.81
FY 2012-13	\$ 11,677.40
FY 2013-14	\$ 10,061.45
3 yr. average	\$ 10,947.22

Expenditure: These additional funds will be dedicated to the support of the performing arts through a professional services agreement with the Lensic Performing Arts Center.

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**Section D. General Narrative**

**1. Conflicts:** Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

No - This will be a renewal of Resolution #2011-3

**2. Consequences of Not Enacting This Bill/Resolution:**

Are there consequences of not enacting this bill/resolution? If so, describe.

None

**3. Technical Issues:**

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

None

**4. Community Impact:**

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

Elementary children in the Santa Fe community will benefit by attending performing arts events free of cost.

Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08



## Lensic Performing Arts Center-Education Outreach

### Students attend performances at the Lensic:

#### 2011

Events for students to attend	16
Number of students attended	9,476
Ages K-12	
Number of local schools	25

#### 2012

Events for students to attend	20
Number of students attended	11,600
Ages K-12	
Number of local schools	25

#### 2013

Events for students to attend	21
Number of students attended	10,562
Ages K-12	
Number of local schools	25

### Future Voices of New Mexico Film & Photo Project:

#### 2011

Statewide schools	35
Number of students participating	487
Award money given	\$4,600
Ages 13-18	

#### 2012

Statewide schools	29
Number of students participating	453
Award money given	\$4,600
Ages 13-18	

#### 2013

Statewide schools	23
Number of students participating	791
Award money given	\$4,600
Ages 13-18	



### **Education Programs at The Lensic**

**Introducing the Performing Arts:** Each year, more than 10,500 public school students ride buses to The Lensic for free live performances of classical music, opera, dance, theater, local folk music and poetry slams. As students progress through grade levels, they see a different event each year, exposing them to a wide variety of performance genres. The Lensic collaborates with the Santa Fe Public Schools PASS Program (Performing Arts for Students Success), and ArtWorks, which provides professional development for teachers to prepare them and their classes for the best possible experience from each performance.

**Performing Arts Workshops:** Professional directors, filmmakers, photographers, performers and writers visit high school classes to conduct workshops on singing, writing, acting and dancing. Students are then given free tickets to see the live show at The Lensic featuring the workshop leader.

**Student Performances:** Students from local high schools are invited to perform with their choruses and orchestras on The Lensic stage. The students work with The Lensic's professional technical staff to rehearse and produce the show for a public performance, as well as one for local elementary school students.

**High School and College Technical Theater Internships:** The Lensic selects 17 interns each year from the numerous applications submitted from students at regional high schools. From October to May, interns study every aspect of technical theater from lighting and sound to basic rigging, welding and stage management. Upon graduation, some interns are selected for a two-week paid summer internship, where they work shoulder-to-shoulder with The Lensic technical staff. The Lensic also offers one paid summer internship for a college junior or senior majoring in technical theater. The intern works as a crew member on all shows, shadows the professional crew, attends weekly production meetings, and helps with ongoing maintenance projects. Each year The Lensic awards as many as two \$2,500 Melville Hankins Family Foundation Technical Theater College Scholarships to high school seniors and college freshmen who are current or former Lensic technical theater interns.

**Future Voices of New Mexico:** In partnership with Santa Fe Photographic Workshops, Future Voices of New Mexico gives middle and high school students throughout the state a chance to become filmmakers and photographers. Each year a theme is chosen for students to consider in their project; this year's theme is water. After basic instruction from local professionals, students create and submit three-minute films or documentary/artistic photographs then judged by a panel of photographers and filmmakers. The Lensic hosts an April awards ceremony at which the winning entries are screened for an audience of over 450 students and professionals in film and photography.

**Student Nights:** This program provides free tickets to current educators, high school students and college students for select Lensic Presents events. The program goal is to foster interest in the performing arts among the younger generation to be cultivated with the assistance of their teachers.

CITY OF SANTA FE

PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between the CITY OF SANTA FE, hereinafter referred to as the "CITY," and Lensic Performing Arts Center, hereinafter referred to as the "Lensic" or the "Contractor," and is effective as of the date set forth below upon which it is executed by the CITY and the Contractor whichever occurs last..

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

The Contractor shall perform the following work for the CITY:

A. The Lensic shall continue administering the Santa Fe Public School District's Performing Arts for Student Success (PASS) Program. The PASS Program provides an essential introduction to the performing arts for many young people. The PASS Program is a program whereby the Lensic subsidizes a theatre programs for public school students by covering the cost of theatre events for public school students for no cost to the students.

B. The Lensic shall continue cover the cost of theatre events for public school students, free of charge to the students, to educate public school students, as follows: (i) see different theatrical events each school year; (ii) expose them to a wide variety of performances such as classical music concerts, theater and dance productions, poetry slams, local folk music and opera; (iii) interact with artists and performers; (iv) continue providing the PASS Program which benefits Santa Fe's public school children socially, educationally and culturally through access to performances such as Nuestra Música, the Santa Fe Symphony Orchestra and Chorus, Santa Fe Pro Musica, Circus Luminous, Aspen Santa Fe Ballet, and others and (v) the opportunity to enjoy free performances and artist interactions at the Lensic.

2. **Compensation.**

A. The City, to fund this Agreement, has passed Resolution 2015-\_\_, to assess an additional one dollar (\$1.00) parking fee at the Sandoval parking garage on all users after 6:00 p.m. on those evenings when the Lensic Performing Arts Center has events and to dedicate the additional funds for the support of the performing arts through the PASS Program. It is the intention of the parties, that the total amount collected by the City due to the additional \$1.00 parking fee at the Sandoval parking garage on all users after 6:00 p.m. on those evenings when the Lensic has events, minus the 5% deduction in gross receipts tax that the City is required to pay the State, will go towards funding this Agreement because the value of the services rendered under this Agreement greatly exceeds the amount that will be collected based upon past history.

(1) The CITY shall pay to the Contractor in full payment for services satisfactorily performed, for the initial calendar year term for calendar year 2015 as follows.

B. Within fifteen (15) days of the end of each calendar quarter:

- (1) The City shall provide to the Lensic a written accounting of the total amount of parking fees collected pursuant to Resolution 2015-, minus 5% in State gross receipts tax, for the previous quarter; and
- (2) The Lensic shall provide to the City a written accounting of the total amount of expenditures made and value of services rendered in performance of this Agreement.

C. Within fifteen (15) days of receipt of the City's written accounting of the total amount of parking fees collected pursuant to Resolution 2015-, minus 5% in State gross receipts tax, for each calendar quarter, the Lensic shall:

- (1) Invoice the City for expenditures made and value of services rendered in performance of this Agreement, *at an amount not to exceed the total amount of parking fees collected pursuant to Resolution 2015-, minus 5% in State gross receipts tax, for the previous calendar quarter*, and,
- (2) All invoices MUST BE received by the CITY no later than thirty (30) days after the end of the termination of the calendar quarter in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

D. Within fifteen (15) days of receipt of the Lensic's invoice for each calendar quarter, the City shall:

- (1) Only be obligated to pay the Lensic *an amount not to exceed the total amount of parking fees collected pursuant to Resolution 2015-, minus 5% in State gross receipts tax, for each calendar quarter*; and
- (2) If the CITY finds that the services rendered or expenses incurred are not acceptable, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the CITY that the defect or objection has been resolved and the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked; and
- (3) Notwithstanding the foregoing, the CITY shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

E. The subsequent three calendar years' compensation amount and extension of term shall be added by signed amendment between the City and the Contractor on a calendar year basis.

F. The amount of funding for calendar year 2015 is the total amount of parking fees collected pursuant to Resolution 2015- for calendar year 2015, minus 5% in State gross receipts tax and this amount is a maximum. In no event will the Contractor be paid for services provided or expenses incurred in excess of this amount without this Agreement being amended in writing prior to those services in excess of this amount being provided.

G. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from calendar year to calendar year pursuant to Paragraph 1, Scope of Work, and to approval by the CITY.

H. Payments in the initial calendar year term and the subsequent three calendar year terms is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the CITY.

3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY and the Contractor, whichever occurs last. This initial calendar year term Agreement shall terminate on December 31, 2015, unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). This Agreement may be extended for three (3) subsequent calendar year terms, from January 1<sup>st</sup> to December 31<sup>st</sup>, by amendment extending the term and providing funding for the next calendar year. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

A. **Termination.** This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the CITY's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the CITY is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the CITY or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of CITY funds or due to the Appropriations paragraph herein. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

B. **Termination Management.** Immediately upon receipt by either the CITY or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the CITY; 2) comply with all directives issued by the CITY in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the CITY shall direct for the protection, preservation, retention or transfer of all property titled to the CITY and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the CITY upon termination and shall be submitted to the CITY as soon as practicable.

**5. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the CITY Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the CITY to the Contractor. The CITY's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the CITY proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the CITY and are not employees of the CITY. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of CITY vehicles, or any other benefits afforded to employees of the CITY as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the CITY unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the CITY.

**8. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the CITY.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the CITY, its officers and employees, and the CITY from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the CITY.

**11. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the CITY and shall be delivered to the CITY no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**12. Conflict of Interest; Governmental Conduct Act.**

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or CITY employee or former CITY employee have been followed.

**13. Amendment.**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the CITY proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**14. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. Penalties for violation of law.**

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and CITY laws and rules and regulations, and executive orders of the Governor of the State, pertaining to equal employment opportunity. In accordance with all such laws of the State, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

The laws of the State of New Mexico and the ordinances of the CITY shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the CITY, the Department of Finance and Administration and the CITY Auditor. The CITY shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the CITY to recover excessive or illegal payments

**19. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the CITY from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the CITY by certified mail.

**20. New Mexico Employees Health Coverage.**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the CITY exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the CITY.

C. Contractor agrees to advise all employees of the availability of CITY publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwmxico.CITY.nm.us/>.

**21. Employee Pay Equity Reporting**

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or,

if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the CITY employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the CITY Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

**22. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**23. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**24. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the CITY:  
Victor Noel Pinto Correia, Parking Division Director  
P.O. Box 909  
200 Lincoln Ave.  
Santa Fe, New Mexico 87504-0909  
[npcorreia@ci.santa-fe.nm.us](mailto:npcorreia@ci.santa-fe.nm.us)

To the Contractor:  
Aggie Damron-Garner  
Director of Finance & Administration

The Lensic Performing Arts Center  
211 W. San Francisco Street  
Santa Fe, NM 87501  
988-7050 ext-202  
[www.aggiedg@lensic.org](http://www.aggiedg@lensic.org)

**25. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**26. Insurance.**

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

**27. New Mexico Tort Claims Act.**

Any liability incurred by the City of Santa Fe in connection with this 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.

**28. Third Party Beneficiaries.**

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

**IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.**

Contract ID# \_\_\_\_\_

CITY OF SANTA FE:

CONTRACTOR:  
LENSIC, LTD.

\_\_\_\_\_  
BRIAN K. SNYDER, CITY MANAGER

\_\_\_\_\_  
NAME & TITLE

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_  
CRS#02-3894300  
City of Santa Fe Business  
# \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED

\_\_\_\_\_  
OSCAR RODRIGUEZ, FINANCE DIRECTOR

**DRAFT**