

**LEASE AGREEMENT
BETWEEN THE CITY OF SANTA FE
AND LENSIC PERFORMING ARTS CENTER**

This LEASE AGREEMENT (hereinafter "Lease") is made and entered into this 1st day of September, 2018, by and between the City of Santa Fe, a municipal corporation (hereinafter "Lessor") and Lensic Performing Arts Center (hereinafter "Lessee").

WITNESSETH:

In consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. **PREMISES.**

Subject to the terms and conditions of this Lease Agreement, the Lessor allows the Lessee to use and occupy, subject to all of the terms and conditions hereinafter stated, certain portions of the City public right-of-way within Sandoval and West San Francisco streets, Santa Fe, NM. The leased property ("Premises") on Sandoval Street consists of approximately three hundred sixty (360) square feet, all as more fully described and shown in Exhibit "A" attached hereto and made a part hereof. The leased property ("Premises") on West San Francisco Street consists of approximately three hundred sixty (360) square feet, as more fully described and shown in Exhibit "B" attached hereto and made a part hereof. Lessee accepts both Premises in their present state and agrees that they are 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 PREMISES**

Lessor agrees to allow Lessee the non-exclusive use of the Premises for the purpose of allowing Lessee's patrons to use a designated parking space within the street. The Lessor will place signage within public sidewalk designating this parking space as reserved for the Lessee as shown in Exhibit "C." No further use of the Premises shall be allowed except those actions necessary for the use, maintenance and control of the area at the sole and exclusive expense of the Lessee. The use of the Premises is also subject to the following conditions:

- (a) No other commercial use of the Premises, including but not limited to, outdoor seating, the sale or display of merchandise or installation of additional advertising signage shall be permitted;

- (b) No blocking of any existing emergency entrances and exits to other businesses;
- (c) Lessor reserves the right to allow the use of the leased premises for its employees, contractors, agents, utility companies or special events by others at any time, and no compensation or deduction to Lessee for such use will be granted. Lessor however, will be diligent to only utilize this space on a limited basis to accommodate construction, emergencies and/or repair maintenance of existing infrastructure.
- (d) Lessee shall comply with all local codes including the Uniform Traffic Ordinance and other parking regulations; any violations shall be considered grounds for termination of this Agreement.
- (e) No personal vehicles shall occupy the Premises; only commercial vehicles are authorized to occupy the Premises under the terms of this Agreement.
- (f) Lessee shall ensure that all commercial vehicles occupying the Premises are within no more than four (4) inches from the City's curb. Failure to comply with this condition and all other Uniform Traffic Ordinance codes will result in the issuance of a parking violation.
- (g) All rental payments shall be made to the Lessor in the form of a company check or credit card.

3. LEASE TERM

A. The term of this lease shall be for one (1) year, commencing September 1, 2018, through August 31, 2019, with three (3) one (1) year each extensions upon mutual consent by both parties for a total of four (4) years. However, either party may terminate this agreement upon serving the other party a sixty (60) days advance notice of intent to terminate the agreement. There will be no refund of any unused portion of prepaid fees.

B. 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 the Lessor, be continued as a month-to-month tenancy at the then current parking space rental fee.

4. RENT

Rent shall be paid as follows:

A. Base Rent. Lessee shall pay twelve thousand dollars (\$12,000.00) plus applicable gross receipts taxes per year as base rent, due upon signing of this Agreement on September 1, 2018. Lessee shall make all payments of rent each year before anniversary date to the City of Santa Fe Parking Division Administrative Office, 500 Market Street, Suite 200, Santa Fe, NM, 87501.

B. Increases in Base Rent. Upon approval of a second year to the term of this Lease Agreement, or any subsequent renewal thereof, the annual rent shall be adjusted by multiplying the previous year's annual rent by the sum of one and the changeover the most recent 12 months in the Consumer Price Index ("CPI") seasonally adjusted U.S. City Average for All Urban Consumers published monthly in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor (hereinafter, the "CPI-U").

C. In no event shall there be a decline in the rent from year to year as a result of the adjustment provided for in Paragraph B hereof.

5. PENALTY FOR LATE PAYMENT OF RENT

In the event the annual rent is not received by Lessor on or before the anniversary date of this Agreement, Lessee shall pay a penalty in the form of five hundred dollars (\$500) for each month the annual payment is delayed in addition to the annual fee of six thousand dollars (\$6,000) plus applicable gross receipt taxes stated in Item 4 (A) above.

6. CANCELLATION BY LESSOR

At any time upon Lessee's failure to comply with any provision of this Lease Agreement or otherwise without cause, Lessor may cancel this Lease Agreement. Prior to cancellation, Lessor shall hand-deliver or mail notice to Lessee via certified or registered mail specifying:

A. In the event of breach prior to cancellation:

- i. Detailed description of the breach;
- ii. The action required to cure the breach;
- iii. Specific date/s, not less than fifteen (15) days from the date the notice is delivered to Lessee, by which such breach must be cured;
- iv. That failure to cure such breach on or before the date specified in the notice will result in termination of the Agreement;

B. If otherwise without cause, specifying when Lease Agreement will terminate, not less than sixty (60) days from date of notice.

7. ASSIGNMENT OR SUBLEASE

Lessee shall not transfer or assign in whole or in part, its rights and obligations under this Lease Agreement. Any such actions taken by Lessee shall result in immediate termination of this Lease Agreement.

8. INSURANCE

The Lessee at its own cost and expense, shall carry and maintain in full force and effect during the term of this Lease Agreement comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the Lessor, with limits of coverage in the maximum amount which the Lessor 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 Lessor is named as an additional insured and that Lessor will be notified within ten (10) days of cancellation for any reason. The Lessee shall furnish the Lessor with a copy of a "Certificate of Insurance" as a condition of the Lease.

9. INDEMNIFICATION

The Lessee shall indemnify, hold harmless and defend the Lessor from all losses, damages, claims for judgments, including payment of all attorney's fees and costs, on account of any suit, judgement, execution, claim, action or demand whatsoever arising from Lessee's use of the premises hereunder, as well as that of any of Lessee's employees, agents, representatives, guests or invitees and subcontractors.

10. THIRD PARTY BENEFICIARIES

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

11. REPAIR AND MAINTENANCE

A. Lessee shall not cause or permit any waste, damage or injury to the Premises. Lessee shall, at its sole expense keep and maintain the Premises in good condition and good working order (reasonable wear and tear excepted), and shall be responsible for payment of all necessary expenses of repairs and replacements that arise during Lessee's use of the Premises. Repairs and replacements required to be made by the Lessee shall be made promptly as and when necessary and shall be at least equal in quality of materials and workmanship to that originally existing in the Premises. In the event of a default by Lessee in making such repairs and replacements, Lessor may, but shall not be required to, make such repairs and replacements for Lessee's account, and the expense thereof shall constitute and be collectible as additional rent.

B. 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.

12. ALTERATIONS AND IMPROVEMENTS

Lessee shall make no alteration, addition or improvements to the Premises for the uses described in Article 2 herein without the prior written consent of the Lessor. Lessor shall have the right to require Lessee to remove any alterations, additions or improvements made, at Lessee's sole expense, upon termination of this Lease Agreement.

13. EASEMENTS

Lessor reserves the exclusive right to grant access, utility or other easements on or through the Premises.

14. NOTICE

Any required notice will be deemed delivered, given and received (i) when personally delivered or (ii) five days after the same are deposited in the United States mail, postage prepaid, registered, addressed to the applicable party at the address indicated below for such party, or at the email address designated below or at such other address as may be designated by either party in a written notice to the other party:

Lessor:

City of Santa Fe
Sara Smith
Contracts Analyst
500 Market Street, Suite 200
Santa Fe, NM 87501
sjsmith@ci.santa-fe.nm.us

Lessee:

Aggie Damron-Garner
Director of Finance & Administration
Lensic Performing Arts Center
211 W. San Francisco Street
Santa Fe, NM 87501
aggiedg@lensic.org

15. NO WAIVER

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

16. SEVERABILITY

In the event that one or more of the provisions contained in this Lease Agreement 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.

17. ENTIRE AGREEMENT

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 modified or amended except by a written document signed by the parties.

18. BINDING EFFECT

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

19. 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.

20. RECORDING

This Lease Agreement shall be recorded in its entirety. Lessee shall bear all costs for recording of the Lease Agreement and any other associated costs.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of this 1st day of September, 2018.

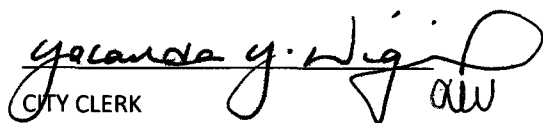
LESSOR:

CITY OF SANTA FE


A handwritten signature in black ink, appearing to be 'EJS', is written over a horizontal line.

CITY MANAGER

ATTEST:


A handwritten signature in black ink, appearing to be 'Yolanda G. Nigam', is written over a horizontal line.
CITY CLERK

APPROVED AS TO FORM:

MDM 9/4

CITY ATTORNEY

APPROVED:

Mary McCoy 10/3

FINANCE DIRECTOR

51150/435900

Business Unit / Line Item

CRSF 02-38943000

City of Santa Fe Business license #
18-00080326

LESSEE:

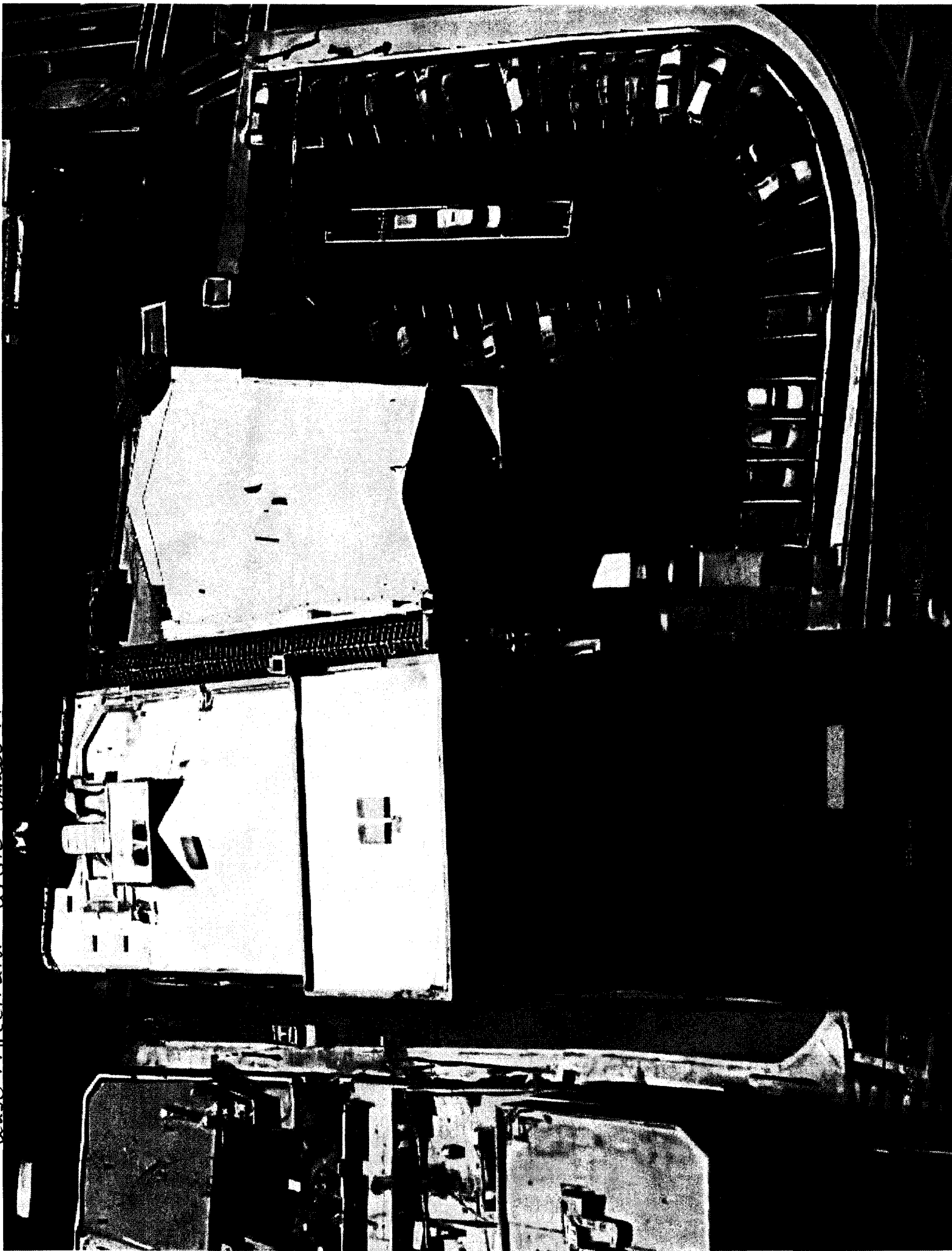
LENSIC PERFORMING ARTS CENTER

Aggie Damron Garner

BY: NEED SIGNATORY NAME AND TITLE

AGGIE DAMRON Garner
Managing Director

Lease Agreement - Lensic - Exhibit A



Lease Agreement - Lense - Exhibit B

