

CITY OF ELKHART LERNER BOARD MEETING AGENDA

Common Council Chambers

10:00 a.m., Wednesday, September 11, 2024

<https://signin.webex.com/join>

Meeting Number: 2314 009 9925, Meeting Password: Lerner24

1-415-655-0001

- 1. ROLL CALL**
- 2. APPROVE AGENDA**
- 3. MINUTES Regular Meeting August 14, 2024**
- 4. TREASURER'S REPORT**
 - **Financial Report July 31, 2024- Michelle Adams (Kruggel, Lawton, and Co.)**
 - **Claims and Allowance Docket**
- 5. PRESIDENT'S REPORT**
 - **100 Year Celebration**
- 6. FRIENDS OF THE LERNER**
- 7. CRYSTAL BALLROOM CATERING REPORT**
- 8. PREMIER ARTS REPORT**
- 9. GENERAL MANAGER'S REPORT**
- 10. NEW BUSINESS**
 - **Contract with Conway Entertainment Group, Inc.**
 - **Interim General Manager Agreement with Sherry May**
- 11. PUBLIC PARTICIPATION**
- 12. ADJOURNMENT**

LERNER THEATRE BOARD
Wednesday, August 14, 2024

President Gary Boyn called the Regular Meeting of the Lerner Theatre Board to order at 10:00 a.m. on Wednesday, August 14, 2024. The Clerk of the Board, Nancy Wilson called the roll. Gary Boyn, Diana Lawson, Jamie Arce, Dina Harris, Dallas Bergl, and Carried Berghoff attended in-person. There is one vacancy on the Lerner Governing Board.

1. AGENDA

On motion by Dallas Bergl, seconded by Diana Lawson and carried 6-0, the agenda was approved as amended by adding the Kruggel, Lawton and Co. Contract Amendment.

2. MINUTES: Regular Meeting July 10, 2024

On motion by Dina Harris, seconded by Diana Lawson and carried 6-0, the Board approved the minutes from July 10, 2024.

3. TREASURER'S REPORT

Financials May 31, 2024

Michelle Adams of Kruggel, Lawton and Co. was not in attendance. The June 30, 2024 financial report was submitted to the Board for review and read into record by Dallas. Total operational expenses of \$910,139 were covered by a City contribution of \$364,225 (40%) and a Lerner contribution of \$545,915 (60%). This compared with 2023 City's contribution of 64% and the Lerner's contribution of 36%. The net income from Theatre operations only (shown as Gross Profit) at the end of the period was \$494,735 which was an increase of \$232,485 from 2023. The YTD net income for all Lerner operations (including City expenses) at the end of the period was \$135,775 which was an improvement of \$204,786 from the net loss on last year's statement of (\$69,011). On budgeted City Operational Expenses alone we were under-budget by \$333,736 year-to-date. On motion by Dina Harris, seconded by Diana Lawson and carried 6-0, the Financials from June 30, 2024 were approved.

Claims and Allowance Docket

On motion by Dallas Bergl, seconded by Dina Harris and carried 6-0, the Board approved the claims and allowance docket totaling \$39,683.25 as listed on the register consisting of 5 pages, prepared on August 9, 2024 at 3:11 p.m.

4. PRESIDENT'S REPORT

Diana Lawson gave an update on the 100-year celebration planning. The first committee meeting will be held September 10, 2024 at 9:00 a.m. in the Cittadine Room at the Lerner. All LGB members and all committee members will be asked to attend to plan the celebration.

5. CRYSTAL BALLROOM CATERING

Kurt Janowsky was on WebEx and audio was not available. Jamie Arce read the report details into the record. On motion by Dina Harris, seconded by Carried Berghoff and carried 6-0, the Crystal Ballroom report for July was accepted and placed on file.

6. DIRECTOR OF EVENTS REPORT

The Director of Events Report has been inserted in the minutes as presented.

DIRECTOR OF EVENTS

PREPARED BY: SARAH MACER

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Activity (August-October)	As % of 90 days	
41 Events	46%	Activity in theatre
15 Ticketed Events	17%	Ticketed events
16 Non-Ticketed Events	18%	Non-Ticketed events
10 Rehearsal Dates	11%	Rehearsal Space

Compare to 2023 Board Report Ticketed Events: 21

Compare to 2023 Board Report Non-Ticketed Events +Rehearsals: 25

- July went much quicker than I think anyone anticipated and I can't believe we're now in August. We've had a consistent flow of requests from promoters, some new and some that we've had the privilege of working with prior so that's been something new I've been working on with Deen. The end of the year calendar is filling in with confirmed shows and holds and we're working on 2025 as well.
- The Annual Volunteer Banquet is this month and we're looking forward to the celebration. I've talked with various staff members that have asked how they could help and I'm touched that so many have taken time to offer their time for our Volunteers.
- I'm so proud of the team for stepping up and helping with all of the random requests that are asked of them and doing it so professionally. Deen has been incredible wearing so many different hats and Tristin has been tackling everything I've asked of her. Holly has taken all suggestions given to her for adjustments to projects and created even more amazing options and Jenna and Rachel have started to really shine in their roles. Tim and Diana, as the newest members to management, have been amazing – jumping in to help without being asked and working on new solutions within their departments to better help everyone in the building. I could on about everyone and am grateful to have everyone here helping make The Lerner the place it is.

Accomplished in July:

- Calendar updates are complete and the Facility Occupancy numbers were sent off to the other city departments for life safety of everyone visiting The Lerner.
- Deen and I met with Jamie to work on the upcoming budget.
- I am still working on facilitating shows with Deen and the team. I think the process of getting everyone involved from build to closing has been a benefit for everyone involved and is making for easier show advancement in the future.
- Started meeting for the 100 year
- The usual; Show Closings sheets have been completed for each show and the closing schedule for the month was sent to KL for easier closings of shows.

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Updates for July:

100 Year Planning:

We are very glad we've been able to start working on planning the 100 year Celebration. A huge thanks to Diana Lawson and Stephanie Krol for helping our team out and providing the push to keep things moving. We're excited about the details we've worked on thus far and when we can officially start sharing details with everyone.

Event Planning:

As slow as July was, I wish I had more time. We're getting ready for things to start to speed up again and with only a few events in August, I'm excited to work on tuning some of our practices and getting everyone on the same page. Building and life safety are huge for Deen and I and making sure the team understands that we want everyone to have a great experience when they come through the doors. We've been working on cleaning up some tasks and are excited for shows to start up.

Volunteer Banquet:

Most of the details are coming together with the banquet and we're excited to celebrate our amazing Volunteers. The return to the Ballroom is something many have been thankful for and we're glad we're able to work with Leah and her team to provide a great experience for everyone. We still have a bit to get through, but I'm grateful for the help from the team in working towards this successful event.

TECHNICAL AND FACILITIES DIRECTOR

PREPARED BY: DEEN TUGGLE

Overview:

July turned out to be much busier than anticipated. We had Premier Arts put on a wonderful production of Oklahoma, sadly without a live horse. We also started meeting internally regarding the 100-year celebration which I am glad to be a part of and looking forward to the year ahead. Early on in July I had JPR out to conduct their inspection of the rigging point and am awaiting their report. Sarah and I met with Jamie to go over the 2025 budget and make needed adjustments. Also, this month I held a training session for the facilities team on the new maintenance software to help them better understand and see how we'll use it. With their help, we will be implementing maintenance and cleaning schedules, routine inventory checks, and asset management on nearly all of the building and its components. We also had ACD come and inspect the pit lift, which is thankfully operating as intended. I've also been working closely with Sarah to help her out in any way that I can during this time of transition.

Accomplished in July:

- JPR inspection.
- Pit lift inspection.
- Oklahoma!

Upcoming tasks:

- Revising SOPs.
- Elco sign restoration.

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- Finalize emergency preparedness.

COMMUNICATIONS & MARKETING COORDINATOR

PREPARED BY: JENNA BROUILLETTE

July came and went in a flash! We've continued the Tasty Tuesdays series with the goal of bringing people downtown to enjoy lunch and shop at local businesses as well as hosted Premier Arts' Oklahoma! toward the end of the month.

Administratively, I've been working to advertise for our upcoming shows and prepare for our centennial celebration! Additionally, we are into the exciting time of celebrating our volunteers with a banquet at the end of August, and have begun planning for that exciting time. We are also planning for a few announces in the next month, so I have been working to create marketing materials for those as well.

My intern has been a fantastic help here with us for the summer, and has been working on projects related to historical documentation and organization, website review, and social media strategy and content.

As we approach the final parts of the month, I am excited to take some time off, but I'm confident the team has everything covered in my absence.

Here is a snapshot of The Lerner Theatre's Socials as of 7/25/24:

	May 2024	June 2024	July 2024	1-Month Change
Total Audience	36,932	36,347	36,402	0.2% Increase
Total Impressions	777,487	828,948	328,338	60.4% Decrease
Total Engagement	23,497	28,159	13,789	36.9% Decrease

Additional Social Context: At the beginning of June, The City of Elkhart announced the following regarding meetings and social platforms. "The City of Elkhart utilizes its Facebook pages to share information and engage with our constituents. We will continue to use all city pages with that goal in mind, however, commenting on future posts will not be allowed."

As a City-Owned building, this policy affects our pages as well, effectively impacting show announcements, promotions, information sharing, and interaction with patrons (positive or negative). We are currently navigating this constraint and seeing significant challenges to our social data as this limits engagement with our posts and impressions as well.

Additionally, with fewer shows in July and August, it is normal for The Lerner to see a dip in numbers during these months.

Done in June

- Continued our weekly food truck events!

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- Began internal meetings to plan and organize the 100th anniversary celebration
- Started planning for the Annual Volunteer Banquet!

Goals for August

- Work with Holly to update our website and create a more comprehensive accessibility page for the Lerner Website
- Distribute the Year in Review and Community Update for the year
- Work with downtown merchants to generate more excitement for Dancing Queen and Elkhart Artwalk's "Disco Fever!"
- Plan for the Volunteer Banquet coming up in August!

MEDIA SPECIALIST

PREPARED BY: HOLLY COWAN

The month of July has been spent finalizing our 2023 Year End Report. Jenna and I have been working together to get the needed information and get these changes finalized. I've also been working to contact printers for some estimates on the jobs and determine what our printing needs will be.

I've also been spending a lot of time creating assets for our Volunteer Appreciation Banquet. This has included compiling photos together for a presentation, creating invites, and redesigning our past awards. I think I've made some good progress on these tasks and am now just waiting for the nominees to have the awards officially created and printed.

I've also been working on some branding elements for our 100th Celebration coming up. I did receive some feedback on our anniversary logos so I have been working to create some new versions and some branded elements that we can use moving forward.

Accomplishments in July

- Working on graphics and announce emails for upcoming shows
- 2023 Year End Report and Community Update are nearly finalized
- Created graphics for The Lerner Volunteer Appreciation Banquet

Upcoming Goals for August

- Create a new page for the website about our accessibility offerings
- New page for the website about artwork on display in The Lerner
- Ongoing – update The Lerner Website and Friends of The Lerner Website
- Work on 100th celebration branding ideas

BOX OFFICE MANAGER

PREPARED BY: TRISTIN TUBBS

Box Office Manager Accomplishments for July 2024

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- Helped to interview for Ushers as well as interview for Box Office
- Hired 3 new Box Office Team Members and 3 new Ushers
- Successfully built the 2024-2025 Elkhart County Symphony Season, as well as two new events expected to go on-sale in August
- Helped Jenna with our Friends of the Lerner Endowment Program - We are looking to reinstate the program for our 100 Year Anniversary!

Box Office Assistant Manager Accomplishments for July 2024

- Helped hire 2 new Box Office Team Members
- Caught up on Volunteer Points for the Annual Volunteer Banquet
- Caught up on Audits

Box Office Manager Goals for August 2024

- Complete the new Box Office Operations Manual
- Schedule a Mandatory Box Office Meeting to go over the new Box Office Operations Manual
- Continue to work with Jenna on our FOL Endowment Program and help out with the 100 Year Anniversary

Box Office Assistant Manager Goals for August 2024

- Finish updating the Box Office Operations Manual
- Help Organize Annual Volunteer Banquet
- Train new Box Office Team Members

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Date	Time	Event Name	On Sale Date	Sold	Revenue w/Hist. Fee	Net Revenue	Hist. Fee	Total Revenue
7/19/2024	7:30 PM	Premier Arts: Oklahoma!	1/1/2024	205	\$3,385.00	\$2,770.00	\$615.00	\$3,385.00
7/20/2024	2:00 PM	Premier Arts: Oklahoma! All-Youth Performance	1/1/2024	253	\$5,183.00	\$4,424.00	\$759.00	\$5,183.00
7/20/2024	7:30 PM	Premier Arts: Oklahoma!	1/1/2024	157	\$3,275.00	\$2,804.00	\$471.00	\$3,275.00
7/21/2024	2:00 PM	Premier Arts: Oklahoma!	1/1/2024	177	\$3,153.00	\$2,622.00	\$531.00	\$3,153.00
8/3/2024	7:30 PM	Evil Woman - The American ELO	5/30/2024	145	\$4,080.00	\$3,645.00	\$435.00	\$4,080.00
8/16/2024	7:00 PM	The Calvin Richardson Experience	4/17/2024	98	\$4,892.00	\$4,598.00	\$294.00	\$4,892.00
9/8/2024	4:00 PM	Elkhart County Symphony - Rhythms in Bloom	7/24/2024	88	\$1,385.00	\$1,121.00	\$264.00	\$1,385.00
9/14/2024	8:00 PM	4192: An Evening with Pete Rose Live!	4/1/2024	29	\$1,552.00	\$1,465.00	\$87.00	\$1,552.00
9/27/2024	8:00 PM	Home Free - Crazy(er) Life Tour	6/21/2024	105	\$5,479.45	\$5,164.45	\$315.00	\$5,479.45
10/5/2024	7:00 PM	The Voices of Rock Radio	4/12/2024	61	\$3,591.00	\$3,408.00	\$183.00	\$3,591.00
10/6/2024	7:00 PM	The Mersey Beatles	4/23/2024	2	\$86.00	\$80.00	\$6.00	\$86.00
10/18/2024	7:30 PM	Premier Arts: School of Rock	1/1/2024	7	\$185.00	\$164.00	\$21.00	\$185.00
10/19/2024	7:30 PM	Premier Arts: School of Rock	1/1/2024	7	\$67.00	\$46.00	\$21.00	\$67.00
10/20/2024	2:00 PM	Premier Arts: School of Rock	1/1/2024	0	\$0.00	\$0.00	\$0.00	\$0.00
10/23/2024	6:00 PM	Sesame Street Live! - Say Hello	6/28/2024	78	\$3,975.00	\$3,741.00	\$234.00	\$3,975.00
10/25/2024	7:30 PM	Judy Collins	6/21/2024	46	\$2,097.00	\$1,959.00	\$138.00	\$2,097.00
11/2/2024	2:00 PM	Finding Nemo Jr	3/27/2024	9	\$212.00	\$185.00	\$27.00	\$212.00
11/7/2024	7:00 PM	World Ballet Series: Swan Lake	4/2/2024	88	\$5,918.00	\$5,654.00	\$264.00	\$5,918.00
11/9/2024	7:00 PM	Ginger Billy	6/21/2024	25	\$842.00	\$767.00	\$75.00	\$842.00
11/17/2024	4:00 PM	Elkhart County Symphony - Mahler Symphony Number 2	7/24/2024	45	\$704.80	\$569.80	\$135.00	\$704.80
11/23/2024	7:00 PM	Joe Gatto: Let's Get Into It	6/21/2024	42	\$2,119.00	\$1,993.00	\$126.00	\$2,119.00
12/5/2024	7:00 PM	Charlie Berens: Good Old Fashioned Tour	6/21/2024	139	\$5,762.00	\$5,345.00	\$417.00	\$5,762.00
12/6/2024	7:30 PM	The Rat Pack is Back for The Holidays	3/1/2024	10	\$510.00	\$480.00	\$30.00	\$510.00
12/13/2024	7:30 PM	Premier Arts: Elf the Musical	1/1/2024	17	\$435.00	\$384.00	\$51.00	\$435.00
12/14/2024	2:00 PM	Premier Arts: Elf the Musical All-Youth Performance	1/1/2024	8	\$200.00	\$176.00	\$24.00	\$200.00
12/14/2024	7:30 PM	Premier Arts: Elf the Musical	1/1/2024	12	\$300.00	\$264.00	\$36.00	\$300.00
12/15/2024	2:00 PM	Premier Arts: Elf the Musical	1/1/2024	15	\$336.00	\$291.00	\$45.00	\$336.00
2/2/2025	4:00 PM	Elkhart County Symphony - Mahler Symphony Number 2	7/24/2024	88	\$1,476.60	\$1,212.60	\$264.00	\$1,476.60
3/30/2025	4:00 PM	Elkhart County Symphony - Passion and Poetry	7/24/2024	45	\$704.80	\$569.80	\$135.00	\$704.80
5/18/2025	4:00 PM	Elkhart County Symphony - Rebel Symphnoire	7/24/2024	45	\$701.30	\$566.30	\$135.00	\$701.30
Total Ticket Revenue				\$62,606.95				

LERNER SERVICES COORDINATOR
 PREPARED BY: DIANA GALVES

In July, the Lerner hasn't had many theatre performances or Ballroom events allowing for heavy duty cleaning within the building.

Accomplished in July:

- Lerner service staff did heavy cleaning in all Main floor, Ballroom, and Cittadine Bathrooms. We washed down all walls underneath sinks, soap dispensers in Family bathrooms, hand blowers, toilets, and urinals.
- Lerner service staff did a deep cleaning/degreasing of the freight elevator and walls.

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- Lerner services staff used soap and water and cleaned as well as wiped down all the backs of the seats/cup holders in the theatre and balcony.
- Lerner services staff dusted and used soap and water to wipe down base boards in the theatre and balcony.
- Lerner services staff mopped under all seats in theatre and balcony.
- Lerner services staff vacuumed and shampooed all carpets in theatre. Balcony including the steps in the balcony area.
- Lerner services staff vacuumed and shampooed all three Main floor lobbies.
- Lerner services staff cleaned all exterior and interior glass doors/windows.

Upcoming Tasks:

- Work on polishing brass rails and kick plates throughout the Lerner.
- Work on maintaining the freight elevators floor.
- Continue daily cleaning and maintenance throughout the Lerner.

FACILITIES MANAGER

PREPARED BY: TIM GARDNER

This being my first month with The Lerner I expected to spend most of my time getting to learn how to find my way around the building. Impressed with the staff in place and was happy to find I was able to jump right in and start helping the first week. Working off a check list prepared before my arrival, we managed to get quite a few things taken care of with a clear view of the coming month.

Work in July

- 1) Working on exterior Terrazzo wall. Cleaning and inspecting for cracks/breaks. Working with Wayne and Deen along with the company that installed it to see what our options are, in regards to repair or replacement. *(Continued)*
- 2) Franklin Street side of building power washed and cleaned, along with overhang over sidewalk.
- 3) Dressing room #1 mirror replaced.
- 4) Dryer vent hoses replaced due to age.
- 5) Exterior yellow lines painted by bus parking.
- 6) Paint touched up above new signs by dressing rooms/green room.
- 7) Power washed and sealed walkway outside of box office. *(Continued)*
- 8) Lights replaced in chandeliers in lobby.
- 9) VAV's for HVAC system located and photos taken for maintenance program input. *(Continued)*
- 10) Tristan's office window shade installed.

Goals for August

- 1) *(From July)* Find better way to clean salt out of walk way by Box Office entrance to better seal and improve aesthetics.
- 2) *(July)* Find last of VAV's for HVAC system
- 3) *(July)* Repaired metal flashing underneath Main Street window. One more window flashing to repair. One window Terrazzo sill repaired temporarily,

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hoping to learn more about care and repairs in this month or next. (see #1 from July)

- 4) Replace bulbs in Lerner blade sign with equipment we have in house, makes plans to rent lift to reach all lights.
- 5) Complete inventory.
- 6) Look into spot lights above marquee. Reported to me that there is at least one out.
- 7) Replacing all manual flushers with auto flushers in all bathrooms.

7. NEW BUSINESS

Fox Valley Contractors, LLC

On motion by Dallas Bergl, seconded by Dina Harris and carried 6-0, the Board approved an Amendment to the Fox Valley Contractors, LLC contract for the textone finish repair in the amount of \$7,220.00.

Rackley Restoration

On motion by Dina Harris, seconded by Diana Lawson and carried 6-0, the Board approved a contract with Rackley Restoration for the removal and replacement of the stage floor in the amount of \$18,360.00.

Kruggel Lawton & Company, LLC

On motion by Dina Harris, seconded by Diana Lawson and carried 6-0, the Board approved an Amendment to the Kruggel Lawton & Company, LLC Agreement.

8. ADJOURNMENT

On motion by Dallas Bergl seconded by Jamie Arce and carried 6-0, the Lerner Theatre Governing Board was adjourned at 10:23 a.m.

_____ Gary Boyn, President

Attest: _____ Nancy Wilson, Clerk of the Board

The Lerner Theatre

To: The Lerner Governing Board

From: Michelle Adams (Kruggel, Lawton and Co)

Subject: Notes regarding the July 31, 2024 Financial Statements

Attached are the year-to-date financial statements for The Lerner for the period ending July 31, 2024.

The net income from theatre operations only (shown as Gross Profit) at the end of the period is \$496,564, which is an increase of \$177,168 from the Gross Profit on last year's statement of \$319,396.

The year-to-date net income for all Lerner operations (including city expenses) at the end of the period is \$122,508 which is an improvement of \$201,583 from the net loss on last year's statement of (\$79,075).

On budgeted city Operational Expenses alone are under-budget by \$437,738 year-to-date.

Total Operational Expenses of \$1,013,450 were covered by a City contribution of \$460,825 (45%) and a Lerner contribution of \$552,625 (55%). This compares with last year's City contribution of 63% and the Lerner's contribution of 37%.

There was 1 show and event in July that generated the following profit:

- Oklahoma - \$ 8,869.01

The Lerner Theatre

Financial Analysis Through July 31, 2024

	<u>2024</u>		<u>2023</u>		<u>Diff</u>
<i>City Operational Expenses</i>					
Staff & Related	710,016		606,033		103,983
Other	<u>303,434</u>		<u>402,938</u>		<u>(99,504)</u>
Total Expenses to be Covered	1,013,450		1,008,971		4,479
Less: City Subsidy (Budgeted)	<u>583,333</u>		<u>554,167</u>		<u>29,167</u>
Net City Operational Expenses	430,117		454,804		(24,687)
<i>Lerner Box Office Operations</i>					
Income	588,008		444,401		143,607
COGS	<u>91,444</u>		<u>125,005</u>		<u>(33,561)</u>
Gross Profit (Loss)	496,564		319,396		177,168
Lerner Labor Expense	<u>56,060</u>		<u>56,333</u>		<u>(272)</u>
Lerner Contribution from Operations	552,625		375,729		176,896
<i>Additional Subsidy Sources</i>					
City Subsidy (Un-Budgeted)	-		79,075		
Lerner Excess Contribution	122,508		-		
How the Operational Expenses Are Covered:					
City Contribution	460,825	45%	633,242	63%	
Lerner Contribution	<u>552,625</u>	55%	<u>375,729</u>	37%	
Total Expenses to be Covered	1,013,450	100%	1,008,971	100%	

The Lerner Theatre

P&L - Total Theatre - Summary Comparison

January - July, 2024

	TOTAL			
	JAN - JUL, 2024	JAN - JUL, 2023 (PY)	CHANGE	% CHANGE
Income				
Theatre Income	588,008.31	444,401.03	143,607.28	32.31 %
Total Income	\$588,008.31	\$444,401.03	\$143,607.28	32.31 %
Cost of Goods Sold				
Cost of Sales	91,444.07	125,004.98	-33,560.91	-26.85 %
Total Cost of Goods Sold	\$91,444.07	\$125,004.98	\$ -33,560.91	-26.85 %
GROSS PROFIT	\$496,564.24	\$319,396.05	\$177,168.19	55.47 %
Expenses				
City Accts by Submission Date	1,013,449.81	1,008,970.55	4,479.26	0.44 %
Total Expenses	\$1,013,449.81	\$1,008,970.55	\$4,479.26	0.44 %
NET OPERATING INCOME	\$ -516,885.57	\$ -689,574.50	\$172,688.93	25.04 %
Other Expenses				
5000000 City Contribution Toward Budget	-583,333.31	-554,166.69	-29,166.62	-5.26 %
99998 Show Labor Exp Incl in Budget	-56,060.36	-56,332.42	272.06	0.48 %
Total Other Expenses	\$ -639,393.67	\$ -610,499.11	\$ -28,894.56	-4.73 %
NET OTHER INCOME	\$639,393.67	\$610,499.11	\$28,894.56	4.73 %
NET INCOME	\$122,508.10	\$ -79,075.39	\$201,583.49	254.93 %

The Lerner Theatre

P&L - Total Theatre - Detailed Comparison

January - July, 2024

	TOTAL			
	JAN - JUL, 2024	JAN - JUL, 2023 (PY)	CHANGE	% CHANGE
Income				
Theatre Income				
4000 Ticket Sales Collected	994,608.44	653,717.90	340,890.54	52.15 %
4001 Ticket Sales Due/Paid	-994,608.44	-653,717.90	-340,890.54	-52.15 %
4010 Facility Rental - Theatre	61,838.03	40,979.65	20,858.38	50.90 %
40200 Ticket Processing Fees	2,019.09	3,445.99	-1,426.90	-41.41 %
40201 Mailing Fee		738.75	-738.75	-100.00 %
40202 Phone Order Convenience Fee		942.00	-942.00	-100.00 %
40203 Historical Facility Fee	70,733.00	56,928.50	13,804.50	24.25 %
40204 Box Office Fee	51,178.74	30,239.16	20,939.58	69.25 %
40205 Blended Ticket Transaction Fee	24,378.48	30,794.80	-6,416.32	-20.84 %
40206 Web Ticket Fees	93,056.55	73,178.50	19,878.05	27.16 %
40208 Convenience Fees	83,801.65	51,400.00	32,401.65	63.04 %
Total 40200 Ticket Processing Fees	325,167.51	247,667.70	77,499.81	31.29 %
4050 Equipment Rental	19,734.50	20,845.00	-1,110.50	-5.33 %
4060 Outside Lighting & Advertising	-3,150.00	100.00	-3,250.00	-3,250.00 %
4070 Catering	500.00	0.00	500.00	
4080 Concessions Commissions	315.50		315.50	
4090 Merchandise Commissions	5,136.04	1,301.00	3,835.04	294.78 %
4140 Miscellaneous Income	13,763.14	5,448.50	8,314.64	152.60 %
Event Labor				
4030 Stagehands, Etc.	36,223.38	29,822.36	6,401.02	21.46 %
4040 Front of House	20,193.56	18,090.29	2,103.27	11.63 %
Total Event Labor	56,416.94	47,912.65	8,504.29	17.75 %
Non-Ticketed Event Revenue				
41314 Crystal Ballroom Events	108,286.65	80,146.53	28,140.12	35.11 %
Total Non-Ticketed Event Revenue	108,286.65	80,146.53	28,140.12	35.11 %
Total Theatre Income	588,008.31	444,401.03	143,607.28	32.31 %
Total Income	\$588,008.31	\$444,401.03	\$143,607.28	32.31 %
Cost of Goods Sold				
Cost of Sales				
5025 Merchant Ticket Fees	24,885.75	39,111.00	-14,225.25	-36.37 %
5030 Ticket CC Processing Expense	56,231.33	31,410.23	24,821.10	79.02 %
5035 Merchant Account Fees	-45,733.46	-1,998.75	-43,734.71	-2,188.10 %

The Lerner Theatre

P&L - Total Theatre - Detailed Comparison

January - July, 2024

	TOTAL			
	JAN - JUL, 2024	JAN - JUL, 2023 (PY)	CHANGE	% CHANGE
5080 Advertising Expense		150.00	-150.00	-100.00 %
Direct Labor - Events				
5050 Stage Labor	39,581.41	42,407.16	-2,825.75	-6.66 %
5060 Front of House Labor	16,479.04	13,925.34	2,553.70	18.34 %
Total Direct Labor - Events	56,060.45	56,332.50	-272.05	-0.48 %
Total Cost of Sales	91,444.07	125,004.98	-33,560.91	-26.85 %
Total Cost of Goods Sold	\$91,444.07	\$125,004.98	\$ -33,560.91	-26.85 %
GROSS PROFIT	\$496,564.24	\$319,396.05	\$177,168.19	55.47 %
Expenses				
City Accts by Submission Date				
Capital Outlay				
4420400 Building & Structure	3,975.00	16,454.38	-12,479.38	-75.84 %
4440100 Furniture & Fixtures		75,435.00	-75,435.00	-100.00 %
4440500 Other Equipment-Capital Expense	33,720.42	16,106.22	17,614.20	109.36 %
Total Capital Outlay	37,695.42	107,995.60	-70,300.18	-65.10 %
Other Services/Charges				
4310400 Professional Services	27,062.00	15,940.30	11,121.70	69.77 %
4320300 Travel	4,463.81	1,058.74	3,405.07	321.62 %
4320400 Telephone/Communications	13,748.17	11,778.06	1,970.11	16.73 %
4330300 Advertising/Marketing	26,922.49	38,225.11	-11,302.62	-29.57 %
4330301 Promotions	235.67	161.43	74.24	45.99 %
4340200 Liability Insurance	28,150.00	56,300.00	-28,150.00	-50.00 %
4350100 Electricity	71,795.16	61,740.47	10,054.69	16.29 %
4350200 Natural Gas	8,780.57	8,921.88	-141.31	-1.58 %
4350400 Water & Sewer	1,611.38	1,527.62	83.76	5.48 %
4360100 Repairs & Maintenance-Building	32,222.15	62,784.55	-30,562.40	-48.68 %
4370200 Equipment Leases	320.56	513.44	-192.88	-37.57 %
4390200 Postage	651.53	930.59	-279.06	-29.99 %
4390300 Subscriptions	3,392.74	3,002.00	390.74	13.02 %
4390800 Memberships & Dues	1,636.00	1,185.88	450.12	37.96 %
4390910 Education	13,194.19	10,873.78	2,320.41	21.34 %
4390912 Contract Services	1,383.75		1,383.75	
Total Other Services/Charges	235,570.17	274,943.85	-39,373.68	-14.32 %

The Lerner Theatre

P&L - Total Theatre - Detailed Comparison

January - July, 2024

	TOTAL			
	JAN - JUL, 2024	JAN - JUL, 2023 (PY)	CHANGE	% CHANGE
Personnel Services				
4110130 Full Time	461,857.27	392,928.82	68,928.45	17.54 %
4110150 Part Time	79,600.88	65,927.10	13,673.78	20.74 %
4110160 Overtime Wages	838.14	279.42	558.72	199.96 %
4130100 Employer's Social Security	32,563.03	27,226.16	5,336.87	19.60 %
4130200 Employer's Medicare	7,615.63	6,367.40	1,248.23	19.60 %
4130300 Employer's PERF	65,123.86	55,130.48	9,993.38	18.13 %
4130500 Employer's Group & Life	62,416.95	58,173.38	4,243.57	7.29 %
Total Personnel Services	710,015.76	606,032.76	103,983.00	17.16 %
Supplies				
4210200 Stationary & Print	377.28	527.03	-149.75	-28.41 %
4210500 Office Supplies	909.26	1,147.20	-237.94	-20.74 %
4220150 Operating Supplies	10,821.62	3,894.47	6,927.15	177.87 %
4220310 Household, Laundry	6,776.90	5,231.50	1,545.40	29.54 %
4230200 Repair Parts	2,100.45	3,363.82	-1,263.37	-37.56 %
4230300 Small Tools/Minor Equipment	9,182.95	5,834.32	3,348.63	57.40 %
Total Supplies	30,168.46	19,998.34	10,170.12	50.85 %
Total City Accts by Submission Date	1,013,449.81	1,008,970.55	4,479.26	0.44 %
Total Expenses	\$1,013,449.81	\$1,008,970.55	\$4,479.26	0.44 %
NET OPERATING INCOME	\$ -516,885.57	\$ -689,574.50	\$172,688.93	25.04 %
Other Expenses				
5000000 City Contribution Toward Budget	-583,333.31	-554,166.69	-29,166.62	-5.26 %
99998 Show Labor Exp Incl in Budget	-56,060.36	-56,332.42	272.06	0.48 %
Total Other Expenses	\$ -639,393.67	\$ -610,499.11	\$ -28,894.56	-4.73 %
NET OTHER INCOME	\$639,393.67	\$610,499.11	\$28,894.56	4.73 %
NET INCOME	\$122,508.10	\$ -79,075.39	\$201,583.49	254.93 %

The Lerner Theatre

Budget vs. Actuals: FY_2024 - FY24 P&L

January - July, 2024

	TOTAL		
	ACTUAL	BUDGET	OVER BUDGET
Income			
Total Income			\$0.00
GROSS PROFIT	\$0.00	\$0.00	\$0.00
Expenses			
City Accts by Submission Date			
Capital Outlay			
4420400 Building & Structure	3,975.00	116,666.69	-112,691.69
4440100 Furniture & Fixtures		1,910.44	-1,910.44
4440500 Other Equipment-Capital Expense	33,720.42	53,704.70	-19,984.28
Total Capital Outlay	37,695.42	172,281.83	-134,586.41
Other Services/Charges			
4310400 Professional Services	27,062.00	24,908.31	2,153.69
4320300 Travel	4,463.81	7,991.69	-3,527.88
4320400 Telephone/Communications	13,748.17	14,668.50	-920.33
4330300 Advertising/Marketing	26,922.49	40,926.69	-14,004.20
4330301 Promotions	235.67	2,916.69	-2,681.02
4340200 Liability Insurance	28,150.00	32,841.69	-4,691.69
4350100 Electricity	71,795.16	79,310.00	-7,514.84
4350200 Natural Gas	8,780.57	11,870.81	-3,090.24
4350400 Water & Sewer	1,611.38	2,053.31	-441.93
4360100 Repairs & Maintenance-Building	32,222.15	92,165.50	-59,943.35
4360200 Equipment Repair		1,166.69	-1,166.69
4370200 Equipment Leases	320.56	1,866.69	-1,546.13
4390200 Postage	651.53	816.69	-165.16
4390300 Subscriptions	3,392.74	1,727.81	1,664.93
4390800 Memberships & Dues	1,636.00	1,012.06	623.94
4390900 Other Services & Charges	0.00	29,166.69	-29,166.69
4390910 Education	13,194.19	17,820.81	-4,626.62
4390912 Contract Services	1,383.75	5,191.69	-3,807.94
4390930 Processing Fees		29,750.00	-29,750.00
Total Other Services/Charges	235,570.17	398,172.32	-162,602.15
Personnel Services			
4110130 Full Time	461,857.27	497,700.00	-35,842.73
4110150 Part Time	79,600.88	131,833.31	-52,232.43
4110160 Overtime Wages	838.14	3,383.31	-2,545.17
4130100 Employer's Social Security	32,563.03	39,258.31	-6,695.28
4130200 Employer's Medicare	7,615.63	9,216.69	-1,601.06
4130300 Employer's PERF	65,123.86	72,216.69	-7,092.83
4130500 Employer's Group & Life	62,416.95	88,900.00	-26,483.05
Total Personnel Services	710,015.76	842,508.31	-132,492.55
Supplies			
4210200 Stationary & Print	377.28	554.19	-176.91

The Lerner Theatre

Budget vs. Actuals: FY_2024 - FY24 P&L

January - July, 2024

	TOTAL		
	ACTUAL	BUDGET	OVER BUDGET
4210500 Office Supplies	909.26	2,625.00	-1,715.74
4220150 Operating Supplies	10,821.62	15,621.55	-4,799.93
4220310 Household, Laundry	6,776.90	5,541.69	1,235.21
4230200 Repair Parts	2,100.45	2,450.00	-349.55
4230300 Small Tools/Minor Equipment	9,182.95	11,433.31	-2,250.36
Total Supplies	30,168.46	38,225.74	-8,057.28
Total City Accts by Submission Date	1,013,449.81	1,451,188.20	-437,738.39
Total Expenses	\$1,013,449.81	\$1,451,188.20	\$ -437,738.39
NET OPERATING INCOME	\$ -1,013,449.81	\$ -1,451,188.20	\$437,738.39
Other Expenses			
5000000 City Contribution Toward Budget	-583,333.31	-583,333.31	0.00
Total Other Expenses	\$ -583,333.31	\$ -583,333.31	\$0.00
NET OTHER INCOME	\$583,333.31	\$583,333.31	\$0.00
NET INCOME	\$ -430,116.50	\$ -867,854.89	\$437,738.39

The Lerner Theatre

Premier Arts: Oklahoma

All Dates

	TOTAL
<hr/>	
Income	
Theatre Income	
4000 Ticket Sales Collected	31,296.34
4001 Ticket Sales Due/Paid	-31,296.34
4010 Facility Rental - Theatre	2,563.00
40200 Ticket Processing Fees	551.60
40203 Historical Facility Fee	4,728.00
40204 Box Office Fee	1,564.82
40206 Web Ticket Fees	490.20
40208 Convenience Fees	3,141.60
Total 40200 Ticket Processing Fees	10,476.22
4140 Miscellaneous Income	927.30
Event Labor	
4030 Stagehands, Etc.	1,992.00
4040 Front of House	1,452.00
Total Event Labor	3,444.00
Total Theatre Income	17,410.52
Total Income	\$17,410.52
Cost of Goods Sold	
Cost of Sales	
5025 Merchant Ticket Fees	2,364.00
5030 Ticket CC Processing Expense	1,296.79
Direct Labor - Events	
5050 Stage Labor	3,610.56
5060 Front of House Labor	1,270.16
Total Direct Labor - Events	4,880.72
Total Cost of Sales	8,541.51
Total Cost of Goods Sold	\$8,541.51
GROSS PROFIT	\$8,869.01
Expenses	
Hourly Costs	0.00
Total Expenses	\$0.00
NET OPERATING INCOME	\$8,869.01
NET INCOME	\$8,869.01
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LERNER THEATRE GOVERNING BOARD

CLAIM AND ALLOWANCE DOCKET

I HEREBY CERTIFY THAT EACH OF THE ABOVE LISTED VOUCHERS AND INVOICES OR BILLS ATTACHED THERETO ARE TRUE AND CORRECT AND I HAVE AUDITED SAME IN ACCORDANCE WITH IC 5-11-10-1.6. I ALSO HEREBY CERTIFY THAT THESE VOUCHERS AND INVOICES REPRESENT GOODS AND/OR SERVICES THAT ARE FOR THE BENEFIT OF THE CITY OF ELKHART AND THAT APPROPRIATIONS FOR THESE EXPENDITURES HAVE BEEN DULY MADE OR OTHERWISE AUTHORIZED BY THE CITY COUNCIL AND OTHER APPROPRIATE AUTHORITY.

September 9, 2024 
JAMIE ARCE - CONTROLLER

IN RELIANCE ON THE ABOVE CERTIFICATION, CLAIMS IN THE TOTAL AMOUNT OF \$43,622.99 AS LISTED ON THE REGISTER ATTACHED HERETO CONSISTING OF 5 PAGES, ARE HEREBY APPROVED EXCLUDING ANY CLAIMS WITHHELD AS SHOWN ON THE SEPARATE SUMMARY OF PENDING CLAIMS.

EXECUTED THIS 11TH DAY OF SEPTEMBER 2024 BY:

PRESIDENT	_____
	GARY BOYN
VICE PRESIDENT	_____
	DINA HARRIS
TREASURER	_____
	DALLAS BERGL
MEMBER	_____
	VACANT
MEMBER	_____
	DIANA LAWSON
MEMBER	_____
	JAMIE ARCE
MEMBER	_____
	CARRIE BERGHOFF

ORIGINAL COPY MUST BE RETAINED IN THE CONTROLLER'S OFFICE

M E M O R A N D U M

DATE: SEPTEMBER 3, 2024
TO: Lerner Governing Board
FROM: Bradley Tracy, Chief of Staff
RE: **Conway Entertainment Group Inc., (CEG)**

The Administration is seeking approval of this contract between Conwy Entertainment Group Inc., and the City of Elkhart. This contract will allow the City to work with CEG for the purposes of recruiting and hiring of a new General Manager at The Lerner Theater. In July, Michelle Weir, former General Manager, resigned to pursue new opportunities.

The Administration seeks to have a national search for a new General Manager with an experienced professional who has current experience managing a theater such as The Lerner. CEG will recruit locally and nationally in this effort.

As we begin the 100-year anniversary celebration of The Lerner Theater, the Administration is excited about the next 100 years and looks forward to showcasing our gem facility.

Funds for this contract will come from current 2024 budget funds.

Your support is very much appreciated.

CONTRACT AGREEMENT

This Contract Agreement (“Agreement”) is made and entered into as of September 3, 2024 (“Effective Date”), between The City of Elkhart, a municipal corporation, by and through its Lerner Governing Board (LGB) located at 229 S. Second Street Elkhart IN 46516 and **Conway Entertainment Group Inc.**, (CEG), a domestic corporation with its principal place of business located at 2001 Blair Blvd Unit B, Nashville TN 37212

RECITALS

WHEREAS, CEG is engaged in providing musical entertainment, venue management, and hiring services,

WHEREAS, the City desires to hire CEG to locate, interview, and train candidates for the General Manager position at the Lerner Theatre,

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

1. SCOPE OF WORK

1.1 Description of Services: CEG agrees to provide the following services to the City:

- Use commercially reasonable efforts to locate suitable candidates for the General Manager position at the Lerner Theatre.
- Conduct interviews to assess candidates’ qualifications and fit for the role.
- Provide training for the selected candidate to ensure a smooth transition into the role.

1.2 Deliverables: CEG will deliver the following:

- A shortlist of pre-qualified candidates.
- Comprehensive interview assessments.
- Training for the selected candidate.
- CEG to locate and hire interim GM as soon as possible.

1.3 Timeline: CEG will use commercially reasonable efforts to complete the services and deliverables for hiring permanent GM by November 1, 2024, subject to paragraph 1.4 below.

1.4 Exclusivity; Guarantee: Notwithstanding the foregoing, City acknowledges and agrees that CEG cannot guarantee that a suitable candidate will be located or hired or that a suitable candidate will be located or hired by the date set forth in paragraph 1.3. City further acknowledges and agrees that CEG is engaged in providing services similar to the services provided to City for persons or entities other than City, and, except as otherwise set forth herein, CEG is not required to provide services exclusively to City.

1.5 Cooperation; Compliance with Law: CEG and the City agree to exert their best efforts in connection with the services herein, and all persons or entities under City's control will cooperate with CEG to enable it to provide its services herein, including, without limitation, with respect to vetting, interviewing, and training. The City and CEG will be responsible for compliance with all local, state, and federal laws and regulations related to the retention, employment, and hiring of the GM.

2. COMPENSATION

2.1 Fees: The City agrees to pay CEG a total amount of \$30,000 for the services described herein.

2.2 Payment Schedule:

- \$15,000 payable upon execution of this Agreement.
- \$15,000 payable upon the successful hiring of a candidate who accepts the General Manager position at the Lerner Theatre.

3. TERM AND TERMINATION

3.1 Term: This Agreement will commence on the Effective Date and will continue until the services are completed or terminated in accordance with the provisions herein.

3.2 Termination for Convenience: Either party may terminate this Agreement for any reason by providing at least 30 days written notice to the other party.

3.3 Termination for Cause: Either party may terminate this Agreement immediately if the other party fails to comply with any material term or condition of this Agreement.

4. CONFIDENTIALITY

4.1 Confidential Information: Both parties agree to keep confidential all information obtained from the other party that is designated as confidential or that should reasonably be understood to be confidential ("Confidential Information"). Confidential Information shall not include: (i) information that is or becomes public domain other than as a result of a violation of this Agreement; (ii) information rightfully in the possession of the receiving party prior to the Effective Date; (iii) information lawfully and independently derived from or created without reference to or use of any Confidential Information; (iv) information legally obtained from third parties; and (v) information that falls within the scope of the Indiana Access to Public Records Act.

4.2 Non-Disclosure: Neither party will disclose any Confidential Information to third parties without prior written consent from the disclosing party other than as required to perform services for the receiving party.

5. INDEMNIFICATION

5.1 **Indemnification by CEG:** CEG agrees to indemnify, defend, and hold harmless the City from any third-party claims, damages, liabilities, and expenses arising out of or related to CEG's performance under this Agreement (except to the extent arising out of City's acts or omissions).

6. DISCLAIMER AND LIMITATION OF LIABILITY

6.1 Failure or delay by either party in the performance of any term, condition, or covenant herein, shall be excused if such failure or delay in performance was caused by an act of God or the elements, or disturbance, fire, war, or the consequence thereof, insurrection, civil strife or mob violence, law, regulations or requirements of any government, pandemic or epidemic, or any other cause beyond the reasonable control of the failing party. Such failure or delay shall be excused until such cause has ceased, provided that if a delay exceeds thirty (30) days, either party shall each have the right to terminate this Agreement at their sole discretion.

6.2 CEG agrees to maintain the following insurance coverages as listed in Exhibit A.

7. MISCELLANEOUS

7.1 **Governing Law:** This Agreement will be governed by and construed in accordance with the laws of the State of Indiana.

7.2 **Dispute Resolution:** The parties will first endeavor to resolve any disputes arising under this Agreement through mediation with a mutually agreed upon mediator. If said dispute cannot be resolved through mediation, any dispute shall be resolved through litigation in a court of competent jurisdiction.

7.3 **Entire Agreement; Counterparts:** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements or understandings. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

7.4 **Amendments:** Any amendments to this Agreement must be made in writing and signed by authorized signatories of both parties.

7.5 **Severability:** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions will continue in full force and effect.

7.6 **Relationship of Parties.** Nothing in this Agreement or the parties' course of dealing shall be construed to create a partnership or joint venture between City and CEG.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Conway Entertainment Group (CEG)

By: _____

Name: Tony Conway

Title: Owner

CITY OF ELKHART

By its Lerner Governing Board

Gary D. Boyn, President

This is **EXHIBIT A**, consisting of 1 page, referred to in and part of the
Agreement between the LGB and CEG

Insurance

Paragraph 6.2 of the Agreement is amended and supplemented to include the following agreement of the parties:

Insurance

A. The limits of liability for the insurance required by paragraph 6.2 of the Agreement for CEG are as follows:

1. Workers' Compensation:	Statutory
2. Employer's Liability --	
a. Each Accident	\$1,000,000
b. Disease, Policy Limit:	\$1,000,000
c. Disease, Each Employee:	\$1,000,000
3. Commercial General Liability --	
a. Each Occurrence:	\$1,000,000
b. General Aggregate:	\$2,000,000
c. Products/Completed Operations:	\$1,000,000
d. Personal and Advertising	\$1,000,000
e. Contractual Liability--	
Each Occurrence:	\$1,000,000
General Aggregate	\$2,000,000
4. Contractual Liability--	
a. Each Occurrence:	\$1,000,000
b. General Aggregate	\$2,000,000
5. Excess Umbrella Liability --	
a. Each Occurrence:	\$5,000,000
b. General Aggregate:	\$5,000,000
6. Business Automobile Liability --	
a. Bodily Injury –Each Accident:	\$1,000,000
b. Property Damage –Each Accident:	\$1,000,000
7. Professional Liability Insurance	
a. Each Claim Made:	\$1,000,000
b. Annual Aggregate:	\$1,000,000

CONTRACT AGREEMENT

This Contract Agreement (“Agreement”) is made and entered into as of September 10, 2024 (“Effective Date”), between The City of Elkhart, at 29 S. Second Street Elkhart IN 46516 (The City) and Sherry May (SM), individual, with her principal place of business located at 3280 Wetherby Cove S, Germantown, TN 38139.

RECITALS

WHEREAS, the City desires to retain the services of a competent interim Lerner Theater General Manager (GM) with the necessary skills, expertise and ability in the area of venue management and venue concert booking, and

WHEREAS, SM represents that she has the requisite skills, expertise and ability in the areas of venue management and venue concert booking;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

1. SCOPE OF WORK

1.1 Description of Services: SM agrees to provide the following services to the City:

- In conjunction with Conway Entertainment Group Inc. (CEG) meet with all current staff members to gain insight as to theater operations and provide feedback to the staff and administration on theater operations.
- In conjunction with CEG, conduct a financial review of existing theater events and make recommendations on how to make those events more streamline and profitable.
- In conjunction with CEG, provide calendar year 2025 event recommendations based on market/demographics.
- In conjunction with CEG, review and make recommendations regarding ticket sales, pricing, catering, and merchandising.
- In conjunction with CEG, conduct interviews for the Lerner Theater General Manager position and assess candidate qualifications and fitness for the position.
- In conjunction with CEG, provide training for the selected candidate to ensure a smooth transition into the role.

1.3 Timeline: SM will use commercially reasonable efforts to complete the services and deliverables by January 1, 2025 or upon the hiring of a full time GM for the Lerner Theatre.

1.4 Cooperation; Compliance with Law: The City and SM agree to use their best efforts in connection with the services herein, and all persons or entities under the City’s control will cooperate with SM to enable her to provide the services herein, including, without limitation, with respect to vetting, interviewing, and training of all Lerner Theater staff. The City and SM will each be responsible for their compliance with all local, state, and federal laws and regulations.

2. COMPENSATION

2.1 Fees: The City agrees to pay SM an amount of \$10,000 per month for services rendered and \$2,500 per month for travel and lodging expenses.

2.2 Payment Schedule:

- \$12,500 payable upon execution of this Agreement.
- \$12,500 payable upon the 1st of the month following the execution of this Agreement.

3. TERM AND TERMINATION

3.1 Term: This Agreement will commence on the Effective Date and will continue until the services are completed or terminated in accordance with the provisions herein.

3.2 Termination for Convenience: Either party may terminate this Agreement for any reason by providing at least 30 days written notice to the other party.

3.3 Termination for Cause: Either party may terminate this Agreement immediately if the other party fails to comply with any material term or condition of this Agreement.

3.4 Default or Withdrawal. If SM either defaults or withdraws before the completion of the terms under this Agreement, then the City may immediately terminate this Agreement.

4. CONFIDENTIALITY

4.1 Confidential Information: Both parties agree to keep confidential all information obtained from the other party that is designated as confidential or that should reasonably be understood to be confidential ("Confidential Information"). Confidential Information shall not include: (i) information that is or becomes public domain other than as a result of a violation of this Agreement; (ii) information rightfully in the possession of the receiving party prior to the Effective Date; (iii) information lawfully and independently derived from or created without reference to or use of any Confidential Information; (iv) information legally obtained from third parties; and (v) information that falls within the scope of the Indiana Access to Public Records Act.

4.2 Non-Disclosure: Neither party will disclose any Confidential Information to third parties without prior written consent from the disclosing party other than as required to perform services for the receiving party.

5. INDEMNIFICATION

5.1 Indemnification by SM: SM agrees to indemnify, defend, and hold harmless the City from any third-party claims, damages, liabilities, and expenses arising out of or related to SM's performance under this Agreement (except to the extent arising out of City's acts or omissions).

6. DISCLAIMER AND LIMITATION OF LIABILITY

6. Failure or delay by either party in the performance of any term, condition, or covenant herein, shall be excused if such failure or delay in performance was caused by an act of God or the elements, or disturbance, fire, war, or the consequence thereof, insurrection, civil strife or mob violence, law, regulations or requirements of any government, pandemic or epidemic, or any other cause beyond the reasonable control of the failing party. Such failure or delay shall be excused until such cause has ceased, provided that if a delay exceeds thirty (30) days, either party shall each have the right to terminate this Agreement at their sole discretion.

7. MISCELLANEOUS

7.1 Governing Law: This Agreement will be governed by and construed in accordance with the laws of the State of Indiana.

7.2 Dispute Resolution: The parties will first endeavor to resolve any disputes arising under this Agreement through non-binding mediation with a mutually agreed upon mediator. If said dispute cannot be resolved through mediation, any dispute shall be resolved through litigation in a court of competent jurisdiction in Elkhart County.

7.3 Entire Agreement; Counterparts: This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements or understandings. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

7.4 Amendments: Any amendments to this Agreement must be made in writing and signed by authorized signatories of both parties.

7.5 Severability: If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions will continue in full force and effect.

7.6 Relationship of Parties. Nothing in this Agreement or the parties' course of dealing shall be construed to create a partnership or joint venture between City and SM.

7.7 Assignment of Contract. SM shall not assign this contract without express written consent by the City.

7.8 Material Actions. SM shall provide the City prompt written notice of any material action, suit or proceeding before any court, governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which affects SM. SM shall provide the City prompt written notice of any material change in condition, financial or otherwise, or material transaction that may affect its operations or performance of obligations under this Agreement.

7.9 Nondiscrimination. SM shall not discriminate against any person on the basis of race, color, national origin, sex, age or disability in discharging the duties and responsibilities of the SM under this contract. SM shall at all times comply with all applicable federal and state laws and regulations, including but not limited to the Equal Credit Opportunity Act; the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, The Civil Rights Act of 1866, the Pregnancy Discrimination Act, the Equal Pay Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the Indiana Civil Rights Act, Vietnam Veterans Reemployment Act the Occupational and Health Act and the Employee Polygraph and Protection Act.

7.10 Right to Consult Counsel. Both parties are aware of their right to consult counsel of their choosing to review this agreement prior to signing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Sherry May

By: _____

Name: Sherry May

Title: Individual

CITY OF ELKHART
By its LERNER GOVERNING BOARD

Gary D. Boyn, President

ATTEST:

Nancy Wilson, Clerk



MEMORANDUM

DATE: September 9, 2024

TO: The Lerner Governing Board

FROM: Kevin Davis, Deputy City Attorney

RE: **Contract for Interim Lerner Theater Director**

The City of Elkhart would like to enter into an Agreement with Sherry May to serve as The Lerner Theater's Interim Executive Director while the City continues to work with Conway Entertainment Group (CEG) to find a permanent Executive Director. Sherry May will work with CEG, the City and the Lerner Theater staff to continue theater operations and training as well as to aid in the search process for a permanent Executive Director. I ask the Lerner Governing Board's approval of the attached contract. I have reviewed the contract for its legality.

Please authorize The Lerner Governing Board President to sign the Sherry May contract.

CONTRACT AGREEMENT

This Contract Agreement (“Agreement”) is made and entered into as of September 11, 2024 (“Effective Date”), between The City of Elkhart, at 229 S. Second Street Elkhart IN 46516 (The City) and Sherry May (SM), individual, with her principal place of business located at 3280 Wetherby Cove S, Germantown, TN 38139.

RECITALS

WHEREAS, the City desires to retain the services of a competent interim Lerner Theater General Manager (GM) with the necessary skills, expertise and ability in the area of venue management and venue concert booking, and

WHEREAS, SM represents that she has the requisite skills, expertise and ability in the areas of venue management and venue concert booking;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

1. SCOPE OF WORK

1.1 Description of Services: SM agrees to provide the following services to the City:

- In conjunction with Conway Entertainment Group Inc. (CEG) meet with all current staff members to gain insight as to theater operations and provide feedback to the staff and administration on theater operations.
- In conjunction with CEG, conduct a financial review of existing theater events and make recommendations on how to make those events more streamline and profitable.
- In conjunction with CEG, provide calendar year 2025 event recommendations based on market/demographics.
- In conjunction with CEG, review and make recommendations regarding ticket sales, pricing, catering, and merchandising.
- In conjunction with CEG, conduct interviews for the Lerner Theater General Manager position and assess candidate qualifications and fitness for the position.
- In conjunction with CEG, provide training for the selected candidate to ensure a smooth transition into the role.

1.3 Timeline: SM will use commercially reasonable efforts to complete the services and deliverables by January 1, 2025 or upon the hiring of a full time GM for the Lerner Theatre.

1.4 Cooperation; Compliance with Law: The City and SM agree to use their best efforts in connection with the services herein, and all persons or entities under the City’s control will cooperate with SM to enable her to provide the services herein, including, without limitation, with respect to vetting, interviewing, and training of all Lerner Theater staff. The City and SM will each be responsible for their compliance with all local, state, and federal laws and regulations.

2. COMPENSATION

2.1 Fees: The City agrees to pay SM an amount of \$10,000 per month for services rendered and \$2,500 per month for travel and lodging expenses.

2.2 Payment Schedule:

- \$12,500 payable upon execution of this Agreement.
- \$12,500 payable upon the 1st of the month following the execution of this Agreement.

3. TERM AND TERMINATION

3.1 Term: This Agreement will commence on the Effective Date and will continue until the services are completed or terminated in accordance with the provisions herein.

3.2 Termination for Convenience: Either party may terminate this Agreement for any reason by providing at least 30 days written notice to the other party.

3.3 Termination for Cause: Either party may terminate this Agreement immediately if the other party fails to comply with any material term or condition of this Agreement.

3.4 Default or Withdrawal. If SM either defaults or withdraws before the completion of the terms under this Agreement, then the City may immediately terminate this Agreement.

4. CONFIDENTIALITY

4.1 Confidential Information: Both parties agree to keep confidential all information obtained from the other party that is designated as confidential or that should reasonably be understood to be confidential ("Confidential Information"). Confidential Information shall not include: (i) information that is or becomes public domain other than as a result of a violation of this Agreement; (ii) information rightfully in the possession of the receiving party prior to the Effective Date; (iii) information lawfully and independently derived from or created without reference to or use of any Confidential Information; (iv) information legally obtained from third parties; and (v) information that falls within the scope of the Indiana Access to Public Records Act.

4.2 Non-Disclosure: Neither party will disclose any Confidential Information to third parties without prior written consent from the disclosing party other than as required to perform services for the receiving party.

5. INDEMNIFICATION

5.1 Indemnification by SM: SM agrees to indemnify, defend, and hold harmless the City from any third-party claims, damages, liabilities, and expenses arising out of or related to SM's performance under this Agreement (except to the extent arising out of City's acts or omissions).

6. DISCLAIMER AND LIMITATION OF LIABILITY

6. Failure or delay by either party in the performance of any term, condition, or covenant herein, shall be excused if such failure or delay in performance was caused by an act of God or the elements, or disturbance, fire, war, or the consequence thereof, insurrection, civil strife or mob violence, law, regulations or requirements of any government, pandemic or epidemic, or any other cause beyond the reasonable control of the failing party. Such failure or delay shall be excused until such cause has ceased, provided that if a delay exceeds thirty (30) days, either party shall each have the right to terminate this Agreement at their sole discretion.

7. MISCELLANEOUS

7.1 **Governing Law:** This Agreement will be governed by and construed in accordance with the laws of the State of Indiana.

7.2 **Dispute Resolution:** The parties will first endeavor to resolve any disputes arising under this Agreement through non-binding mediation with a mutually agreed upon mediator. If said dispute cannot be resolved through mediation, any dispute shall be resolved through litigation in a court of competent jurisdiction in Elkhart County.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Sherry May

By: _____

Name: Sherry May

Title: Individual

CITY OF ELKHART
By its LERNER GOVERNING BOARD

Gary D. Boyn, President

ATTEST:

Nancy Wilson, Clerk