

# CITY OF ELKHART LERNER BOARD MEETING AGENDA

Common Council Chambers

10:00 a.m., Wednesday, February 12, 2025

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Meeting Number: 2318 550 8733, Meeting Password: Lerner25  
1-415-655-0001

1. ROLL CALL
2. APPROVE AGENDA
3. MINUTES Regular Meeting January 8, 2025
4. TREASURER'S REPORT
  - Financial Report December 31, 2024- Nick Muller (Kruggel, Lawton, and Co.)
  - Claims and Allowance Docket
5. PRESIDENT'S REPORT
  - 100 Year Celebration- Resolution Accepting Donations
6. FRIENDS OF THE LERNER
7. CRYSTAL BALLROOM CATERING REPORT
8. PREMIER ARTS REPORT
9. GENERAL MANAGER'S REPORT
10. NEW BUSINESS
  - Revised Event Contract
  - Resolution Approving Lerner Emergency Response Plan
  - Resolution Approving Outback Preferred Promoter Agreement
  - Contract with Chicago Flyhouse
  - IT Third-Party Agreements and IT NDA
  - Request Quote #25-01 Lerner Security System Improvements
  - Amendment No. 1 Sherry May Agreement
  - Resolution Authorizing Engagement with Wagner Meinert LLC
11. PUBLIC PARTICIPATION
12. ADJOURNMENT

LERNER THEATRE BOARD  
Wednesday, January 8, 2025

President Gary Boyn called the Regular Meeting of the Lerner Theatre Board to order at 10:00 a.m. on Wednesday, January 8, 2025. The Clerk of the Board, Nancy Wilson called the roll. Gary Boyn, Diana Lawson, Dina Harris and Fran Bouie attended in-person. Carrie Berghoff attended on Webex. Dallas Bergl and Jamie Arce were absent.

1. AGENDA

On motion by Dina Harris, seconded by Diana Lawson and carried 5-0, the agenda was approved as presented.

2. ELECTION OF 2025 OFFICERS

On motion by Diana Lawson, seconded by Fran Bouie and carried 5-0, the 2024 Officers were retained in 2025. Gary Boyn is President, Dina Harris is Vice-President and Dallas Bergl is Treasurer in 2025. Congratulations!

3. MINUTES: Regular Meeting December 11, 2024

On motion by Dina Harris, seconded by Diana Lawson and carried 5-0, the Board approved the minutes from December 11, 2024.

4. TREASURER'S REPORT

Financials November 30, 2024

Nick Muller of Kruggel, Lawton and Co. attended on Webex. The November 30, 2024 financial report was submitted to the Board for review. Total operational expenses of \$1,616,809 were covered by a City contribution of \$744,954 (46%) and a Lerner contribution of \$871,855 (54%). This compared with 2023 City's contribution of 56% and the Lerner's contribution of 44%. The net income from Theatre operations only (shown as Gross Profit) at the end of the period was \$788,652 which was an increase of \$172,942 from 2023. The YTD net income for all Lerner operations (including City expenses) at the end of the period was \$171,712 which was an improvement of \$200,967 from the net loss on last year's statement of (\$29,255). On budgeted City Operational Expenses alone we were under-budget by \$663,630 year-to-date. On motion by Dina Harris, seconded by Diana Lawson and carried 5-0, the Financials from November 30, 2024 were approved.

Claims and Allowance Docket

On motion by Dina Harris, seconded by Diana Lawson and carried 5-0, the Board approved the claims and allowance docket totaling \$96,364.63 as listed on the register consisting of 4 pages, prepared on January 6, 2025 at 10:28 a.m.

5. PRESIDENT'S REPORT

Diana Lawson gave an update on the 100-year celebration. The committees are all hard at work. The first meeting of the year is next week. They are putting together a series that will be a gift to the community with a number of free events for them to enjoy. They are thanking the community for their support over the past 100 years! It is going very well, the committee is excited and they are all very proud to be a part of the initiative.

6. CRYSTAL BALLROOM CATERING

Kurt Janowsky attended on Webex. December was an outstanding month for The Ballroom with revenue of \$156,000, adding concessions of \$40,503 the total sales were \$196,977, bring the total for the year to \$1,145,765 which is a new record for the Crystal Ballroom. The Ballroom had \$236,000 in concessions which was also

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a record. The total commissions paid in 2024 to the City were \$231,000, as compared to \$197,000 in 2023, and over the record year of \$222,000 in 2022. It was a good year for the Ballroom and a good year for the City. 2025 looks fantastic so far. Wedding bookings and bookings of all sorts are up. Gary and Diana both thanked him for a great year and a great report!

7. PREMIER ARTS

Craig Gibson said everyone was flying high in December including Premier Arts. Elf was a great success. He announced season ticket holders can renew their season tickets on line this year. Auditions for "Charlie and the Chocolate Factory" are happening in a couple weeks. The Elf show had amazing turnout. The YES show sold out, and we had children attending from four different counties. For the benefit of our new Board member Fran, Craig introduced himself and briefly explained they are the resident theatre company and they produce a series of shows every year with at least five shows. They welcome auditions from all ages. Diana thanked Craig for everything he does for the Lerner and for the community. Craig reminded everyone to check out the windows that celebrate all of the Lerner eras from the last 100 years.

8. GENERAL MANAGER REPORT

Conway Entertainment Group

Sherry May reported they had a busy December in the theatre and a wildly successful Elf! In January and February we are focusing on training, updating manuals, and making sure SOP's and everything are up to where they need to be. Deen is working on security identification credentials that will tremendously help our security company and any breeches coming in the back door or anywhere else. We are scheduling Emergency Response Training for anyone that has not already been trained. Jenna and the Marketing team are working on the overall Marketing Plan for the Lerner incorporating the 100<sup>th</sup> Anniversary into that. We are working on updating the Docent Manuals. Brittney is doing a fantastic job in the Box Office. We hired a couple new Box Office employees and let a couple go. She is in charge of doing a lot of Box Office Training. We cleaned up our admins with our City website and we are City compliant. All of our admins on our social medias have also been cleaned up and that has been brought in house. We will be doing that internally from now on. Sarah is working on a new Floor Managing Manual and she is training some new floor managers so we can keep the office staff in the office more. Everyone is going through Culture City training, and we are setting up active shooter training for all of the staff, volunteers, and ushers. Diana asked Sherry, once the job descriptions are all completed and approved and the staff has all been trained, could you provide the Board with the details of the employees and what they are doing? Sherry said she would get digital copies of those to the Board this week. Sherry said she feels really good about the staff and where we are. She added they are hiring two new custodial people. Sherry discussed the weapons clause in the Event Contract with the Board and said they met with the security company. They have a few new ideas to implement with staff.

Scott Welch started his report by saying the Morris is a weapons-free venue and he believes that is what the artists want. He gave the Board a 90-day report to review. He said they are going to start interviewing for the GM this month. They

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have some candidates. He told the Board they will share the scope with them for the new GM. Diana agreed it would be of value for all of the Board members to see that.

Lerner Non-Profit Rate Sheets

Scott asked the Board to approve the revised Non-Profit Rates as presented. A motion was made by Dina Harris and seconded by Diana Lawson to approve the revised Non-Profit Rate Sheet. Diana asked him if he went over the revision with the non-profits. He said they have not seen the sheet but he did speak to them. It's only a couple hundred dollars. He is trying to get to a break even point, not trying to make money off them. Blake clarified that Premier Arts and the Symphony will be taken care of during phase two of the revisions. Diana said they have both been so exceptional and they are the two she was referring to. Blake said they understand their importance and they will take care of them. Gary called for the vote and the motion passed 5-0.

Lerner Repair and Maintenance Report

Tim Gardner the Facilities Manager gave the Board an overview of maintenance issues. He discussed the Asset Management Program he is working on with Deen. The program sends him an email reminder when maintenance is due. Diana asked if he could share the schedule with the Board. She expressed her concern with the condition of the Green Room. She said if we are attracting world class talent, we need to improve the Green Room.

Outback Concerts Deal

Blake McDaniel talked to the Board about a deal he is working on with Outback Concerts, the third largest Promoter in North America. They do all kinds of programming. They are the largest Comedy Promoter in the world. Getting promoters to focus on a smaller market like ours here in Elkhart is difficult, especially as a preferred promoter. We wanted to establish a base with them by doing a preferred promoter agreement. He asked if the Board received the information on Outback, and Gary responded it was circulated but it was not in the packet. Nancy said it was not given to her for the packet. Blake gave an overview of the terms. They will have first right of refusal to promote or co-promote on all shows entering the building up to 30 shows/year. If an outside promoter brings in Bruce Springsteen, Outback can say we don't want to prevent them from bringing the show in, we will Co-Promote with them, that way the Lerner gets the programming and the opportunity of the finances that come along with that, but Outback also gets a piece of it as well. Blake said they are very good about co-promoting. The owner of Outback wants everybody to do well. They will guarantee 8 comedy shows and 12 musical shows/year. Blake said with confidence this will be top tier talent that will do well. Part of what they do is they have a network of theatres. The Lerner would be plugged in to that network. When they make an offer with an artist to do 30 shows, they will plug the Lerner in to that offer. Another unique dynamic of this deal is a forward outlay of payment. He will pay \$15,000.00 to the Lerner on April 1, \$15,000.00 to the Lerner on October 1, and \$15,000.00 to the Lerner on January 2. What that does is put it on him to make that money back. Part of the deal is he will be able to re-coup that rent. When he puts shows in he can recoup that rent, then we go into covering expenses, and then, once we hit the break even point, we split

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50-50. Every deal has different dynamics and personalities. They can get complex. Where this deal does really well for us is when we sell 1,100 tickets. Leading up to 1,100 tickets, this deal, if you look at the financials, they will kind of pencil out to be about the same as the deals we have had before, but because we are reducing all of the risk on Outback, they are willing to give us a bigger back end. By giving us a bigger back end, once we hit the 1,200, 1,300, 1,400 ticket threshold, we start making incrementally more money. For instance, for the Night Rangers show, we made \$17,000.00. With this deal if we go to sell-out, we are making \$40,000-\$50,000.00. That is putting everything in the pot, ticketing fees and concessions, and splitting it 50/50. He was able to carve out the Historical fees. We would not have any hard costs, or be liable for writing any checks outside of our internal costs itself. So as Scott was saying that number that is around \$8,000 or \$9,000 per day operational cost, those are cost we would be able to absorb and spread out during the entire year. If we have an \$8,000 loss it is on our books. We do not have to write any checks. That is our worst case scenario. The best case scenario, instead of making \$17,000, we can make \$40,000-\$50,000 on a sellout show. Blake said the only way he would do a deal with someone like this, is with someone who had the capability of consistently bringing in 1,500-1,700 ticket selling shows. The third largest promoter in America is a safe deal for us. Gary Boyn asked, once we pay the show expenses out of the ticket sales, they get the next \$3,500? Blake said no, they get the first \$3,500 back from the \$15,000 rent they paid. Then we go over all of the approved expenses that we have all looked at, and after that we split 50/50. Gary said after the \$45,000 is recouped, we start from the beginning with the expenses. Dina asked with concession, splitting them 50/50, how does that affect Kurt's contract? Blake said none, because that is 50 of our take not 50 of Kurts. It's 50 of whatever Kurt gives us. Diana asked if he worked all of this out with Jamie Arce, because where does the money go that they give on the front end? Blake said that is an interesting question, we will ask Jamie. Diana said if it comes in, she does not know how the City handles that. Blake said he would hope it would go to the Lerner account. Diana said there are so many laws that govern what he is able to do. We need to confer with Controllers and Legal as well. Gary asked if they have produced a contract? Blake said they wanted to get approval before they have the City generate the contract. Blake told Kevin Davis he would provide him with a sample he did with a municipality. Diana asked if this is a one-year contract? Gary mention a one-year contract with an automatic renewal and a 90-day period to decide if they agree to renew. Diana said we would expect the second year to be better than the first year. Diana asked Blake what the Board should be looking for? Are there any red flags? Blake responded the financial report said the City contributed 46% and the Lerner 54%. Blake said the Lerner should be 90% and the City 10%. Ideally the City would be 0%. If we see an improvement in that ratio, we can see we are better than we were last year. Blake said there are a lot of variables, but this gives us the best odds. Gary asked about the exclusive 30 shows, in your experience Blake, were other promoters interested in co-promoting? Blake said absolutely yes. Blake said that was part of the deal. If someone local wants to put something in the theatre we do not want to prevent that from happening. Also they will be supported by someone who knows what they are doing. Blake said there are

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already dates on the calendar Outback is holding. Diana asked him how soon we will have deals and know who is going to be on the stage and when. Blake said there are four in the Spring that he knows of. They haven't starting plugging the Lerner in yet. He said they can't go in front of a national announcement. They will tell us when we can announce. Blake explained the right of refusal. They automatically get the first hold on every date on the calendar. Gary said the contract should specify that they will pull back if they don't want a date, and how it works so it is very clear. Blake said he has done hundreds of millions of dollars of shows with Mike from Outback in the last twenty years and he trusts him. He wants to make this work as much as we do. Gary said it doesn't sound too bad. Does anyone have any questions? Gary asked for a motion. Deputy Attorney Kevin Davis said this is not on the agenda. This needs to happen at a separate meeting. Kevin said if there is a contract generated we will bring it back to the February meeting. Blake asked if the Board could approve the general terms, and Kevin said no, it is not on the agenda. We can't circumnavigate the Open Door Law that way. Gary said you have to get a contract drafted anyway. What you will be doing over the next month is working with Kevin to get the terms of the contract so we can get it on the agenda and get it approved. Dina asked if we could hold an emergency meeting if necessary. Nancy said we only need 48 hours' notice to call a special meeting and take action. Kevin said he would help get the contract done as soon as possible. Gary offered to help discuss the contract as well.

Revised Event Contract

Sherry May explained the reason to present a revised Event Contract for approval. She recommended changing the wording in Section 20 to "Check here if you do not want this to be an arms free event". Kevin said the issue we run into is that Indiana is an open carry State. As a City entity except in certain situations, you can take your gun anywhere you want to go. Because we are the landlord for the building the tenant (promoter) can come in and say I don't want arms in my event. Gary said we can't change that. We have to stick with what we have. Sherry went over all of the changes with the Board. On motion by Dina Harris, seconded by Fran Bouie and carried 5-0 the revised Event Contract was approved as presented.

9. DIRECTOR OF EVENTS REPORT

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

**January 2025**

Activity (January-March)	As % of 90 days
<b>18 Events</b>	20% <b>Activity in theatre</b>
<b>8 Ticketed Events</b>	9% <b>Ticketed events</b>
<b>4 Non-Ticketed Events</b>	4% <b>Non-Ticketed events</b>
<b>6 Rehearsal Dates</b>	7% <b>Rehearsal Space</b>

Compare to 2024 Board Report Ticketed Events: 14  
 Compare to 2024 Board Report Non-Ticketed Events +Rehearsals: 12

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**DIRECTOR OF EVENTS**  
PREPARED BY: SARAH MACER

**Accomplished in December:**

- The Facility Occupancy numbers were sent off to the city departments for those visiting The Lerner. Prism has been updated based off from conversations with Sherry, Blake and Scott and all three now have access to view this calendar.
- 100 year meetings are up and running and Deen and I will set up meetings for our individual committee in 2025 along with meetings with the full committee.
- Per usual, all of the usual tasks associated with my position have been completed; Show Closings sheets have been completed for each show and the show closing schedule for the month was sent to KL. I have meetings scheduled for the start of the year to work on some details within Prism to fine tune some of our practices

**Updates for December:**

**Prism:**

I have officially reached back out to our Prism representative to get some meetings scheduled for the upcoming year. Prism is our calendar app that we use in limited doses that I am excited to start using in a broader scope. They are working on collaborating with TicketMaster so we can have accurate counts on shows and, once all of our contracts and user fees are updated, we can plug those in and work on closings and over all show management. I'm hoping this will help me keep things streamlined and the rest of the team on board with information. This will take more than just a few months and officially I don't start these meetings until end of December but I'm excited nonetheless.

**KultureCity:**

We are ready for Year 2 of KultureCity at The Lerner! I have been working with our KultureCity representatives to get the information and once everything is sent back I will loop in our team at The Lerner to continue their education. I am hoping to have all full time staff trained by the end of January and to have in person training sessions for any part-time or Volunteers that are interested this month.

**Planning and Building Procedures:**

I've been working more with Sherry on setting up details for the future including scheduling some of our routine series like Lerner on the Lawn, The Silent Organ Series and Lunchtime Live. We are also working on potentially starting a movie series through the decades. I am working on a Floor Manager SOP or Manual of the sorts so any incoming managers will have a better idea of what to expect when they work a show. I've talked through some of the parts with a few staff that are "newer" to floor managing to have their opinions and thoughts on how to make the processes smoother for everyone.

**Huge Thanks!!**

Thanks and a shout out to all of the departments that helped from Mike Lightner with Buildings and Grounds, Mike Szucs with Streets and Josh Holt for lining up a golf

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cart for transporting patrons with the roads closed. Erin Koons is always amazing to work with from the Controller's Office for last minute purchase help and Wayne Bias (Police) and Jamison Czarnecki (Parks) were great to work on patron safety outside the building. We appreciate all of the help and communication.

**TECHNICAL AND FACILITIES DIRECTOR**  
PREPARED BY: DEEN TUGGLE

Overview:

As one chapter closes, another one opens. December started off extremely busy, with multiple back-to-back shows, stretching the tech department to the max. We started off the month by being the space for a new tour to do rehearsals and put their show together before holding their first-ever performance right on The Lerner stage. We then hosted a myriad of other events that led into a week of Premier Arts and Elf the musical! After twelve years of involvement with Premier Arts, I made my stage debut as Mr. Narwhal in Elf. It was a great way to cap off my year. We then hosted a wonderful performance by local legend, Celia Weiss, to end the year with a joyful rendition of Christmas classics on the mighty Kimball organ! With the typical winter downtime, I was able to take a much-needed break after a chaotic year and spent the past three weeks settling into my new home and enjoying time with family. I am looking forward to starting the year off fresh and in a new position, as your Director of Operations. I'm also looking forward to my assistant, Jacob, taking over as Technical Director, and leading him on to success in the coming months.

Accomplished in December:

- Technical assistance for shows.
- Stage debut.

Upcoming tasks:

- Transition to Director of Operations.
- Operations 2025 budget overview.
- Training and transitioning Jacob into TD.

**COMMUNICATIONS & MARKETING COORDINATOR**  
PREPARED BY: JENNA BROUILLETTE

We kicked off December with a final few weeks of fabulous events! Starting off the month, we hosted the Elkhart Municipal Band, followed by four national tours and a wonderful week of Premier Arts shows with Elf the Musical. Towards the end of the year, I've been working on items for the Lerner's 100<sup>th</sup> anniversary including marketing plans and historical research. We look forward to rebranding the website, socials, and all of our other documents with the 100 year branding throughout the next few weeks as well as focusing on other projects.



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Here is a snapshot of The Lerner Theatre's Socials as of 12/31/24:

	October 2024	November 2024	December 2024	1-Month Change
Total Audience	36,591	36,835	37,003	0.3% Increase
Total Impressions	492,900	842,664	471,502	44% Decrease
Total Engagement	12,452	14,300	8,419	41.1% Decrease

**Additional Social Context:** *Beginning June 2024, 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 long-term challenges to our social data as this limits engagement with our posts and impressions as well.

**Done in December**

- Worked on developing Marketing plans for The Lerner and The Lerner Theatre 100<sup>th</sup> initiatives
- Continued as a liaison to the Lerner's 100 year celebration committees in the areas of History+Renovation and Communications
- Continued Lerner History Research and digital documentation of resources

**Goals for January**

- Finalize the 2025 Marketing Plan for The Lerner and Lerner Theatre 100<sup>th</sup> Anniversary
- Continue as a liaison to the Lerner's 100 year celebration committees in the areas of History+Renovation and Communications.
- Assist in the rebrand our information, website, and socials for the 100<sup>th</sup> Anniversary!

**MEDIA SPECIALIST**

PREPARED BY: HOLLY COWAN

The month of December was very busy with shows and floor managing. I worked as lead floor manager for both Charlie Berens and the Night Ranger show. With the Night Ranger show there were a few questions that I've had with floor managing and different situations that have come up with our patrons, so I have been working with Sarah to get more comfortable and be sure I'm understanding all of our expectations to assist patrons better.

In December, we also worked with Premier Arts to get their season tickets on sale from our website. I worked with Kina and Brittany to help get season renewals and

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season tickets available on our account manager platform. Premier Arts had several requests to be able to renew their season tickets online so Brittany and I worked with our Ticketmaster representative to do this. I think the process has gone well and seems to be easy for users with the instructions that we collaborated on.

As we move into January there will be less emphasis on managing shows and I can begin to work on some other initiatives with marketing. Currently I've been working on creating some additional advertising pieces about becoming a volunteer with The Lerner and for tours of the building. With these marketing tasks we will also be redesigning several pieces to incorporate the new 100 Year branding that Eyedart has created.

### **Accomplishments in December**

- Premier Arts season tickets were added to account manager and went on sale from our website
- Started implementing the new branding in our current marketing pieces

### **Upcoming Goals for January**

- Create a new page for the website about our accessibility and work with Eyedart on redesigning our website
- New page for the website about artwork on display in The Lerner
- Ongoing – update The Lerner Website and Friends of The Lerner Website information
- Continue working with Eyedart on accessibility features for our websites
- Design a new Know Before You Go social graphic and email
- Create some advertising pieces for becoming a Lerner Volunteer and Tours of The Lerner
- Work on sponsorship deck with Jenna and Sherry
- Begin work on the Year in Review documents

### **BOX OFFICE MANAGER**

PREPARED BY: BRITTANY WEINGART

Box Office Manager:  
December Accomplishments -

- Interviewed 4 people for the part-time box-office position and offered 2 of the 4 a job
- Scheduled additional staff training and a box office mandatory meeting for January
- Successfully built the Premier Arts Season Packages as well as the first concert for the 2025 Jazz Festival

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January Goals -

- Continue training current and new box office employees
- Continue to train Kina in show builds
- Finish building out the individual Premier Arts Shows for single ticket purchases

Box Office Assistant Manager  
 Accomplishments

1. Learned how to do the Gift Cert. log reports
2. Was shown how to build shows
3. Successfully help build Premier Arts Subscriptions

Goals

1. To be able to do the Mid-Month reports to Kruggel Lawton alone
2. Get better at doing the daily audits without mistakes
3. Learn how to fully build a show

Date	Time	Event Name	On Date	Sale Sold	Net Revenue	Hist. Fee	T
12/4/2024	7:00 PM	Christmas in the Air	8/15/2024	70	\$3,100.00	\$210.00	\$
12/5/2024	7:00 PM	Charlie Berens: Good Old Fashioned Tour	6/21/2024	102	\$4,220.00	\$306.00	\$
12/6/2024	7:30 PM	The Rat Pack is Back for The Holidays	3/1/2024	162	\$10,109.00	\$486.00	\$
12/7/2024	6:00 PM	Hometown Jams: Night Ranger	8/14/2024	183	\$11,626.69	\$549.00	\$
12/13/2024	7:30 PM	Premier Arts: Elf the Musical	1/1/2024	396	\$8,033.00	\$1,188.00	\$
12/14/2024	2:00 PM	Premier Arts: Elf the Musical All-Youth Performance	1/1/2024	340	\$6,660.00	\$1,020.00	\$
12/14/2024	7:30 PM	Premier Arts: Elf the Musical	1/1/2024	355	\$7,454.00	\$1,065.00	\$
12/15/2024	2:00 PM	Premier Arts: Elf the Musical	1/1/2024	378	\$7,729.00	\$1,134.00	\$
1/25/2025	3:00 PM	Bravo Bash	10/16/2024	93	\$1,506.00	\$279.00	\$
2/2/2025	4:00 PM	Elkhart County Symphony - Mahler Symphony Number 2	7/24/2024	14	\$330.00	\$42.00	\$
2/22/2025	3:00PM	Aurinko Ballet Presents: Cinderella and Repertory	10/16/2024	13	\$286.50	\$39.00	\$
2/22/2025	1:00 PM	Cinderella and Repertory - Tea Party	10/16/2024	5	\$262.50	\$15.00	\$

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3/30/2025	4:00 PM	Elkhart County Symphony - Passion and Poetry	7/24/2024	8	\$248.00	\$24.00	\$
5/3/2025	7:00 PM	Justin Willman	11/1/2024	65	\$2,926.00	\$195.00	\$
5/18/2025	4:00 PM	Elkhart County Symphony - Rebel Symphnoire	7/24/2024	4	\$124.00	\$12.00	\$
6/13/2025	7:00 PM	A Toast to Bread	11/8/2024	36	\$1,472.00	\$108.00	\$
6/19/2025	8:00 PM	Elkhart Jazz Fest Presents: Diana Krall	12/6/2024	730	\$70,522.00	\$2,190.00	\$
11/16/2025	3:00 PM	Snow Queen	9/18/2024	11	\$638.00	\$33.00	\$
25PAPF		Premier Arts Season Package Friday	12/13/2024	136	\$16,288.00	\$408.00	\$
25PAPPY		Premier Arts Season Package Youth	12/13/2024	25	\$1,911.00	\$75.00	\$
25PAPS		Premier Arts Season Package Saturday	12/13/2024	93	\$11,088.00	\$279.00	\$
25PAPSU		Premier Arts Season Package Sunday	12/13/2024	92	\$10,892.00	\$276.00	\$

<b>Total Ticket Revenue</b>	<b>\$187,358.69</b>
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**LERNER SERVICES COORDINATOR**  
 PREPARED BY: DIANA GALVES

December was a busy month with Lerner Theatre performances and Ballroom events.

Accomplished in December:

- Lerner Services staff throughout the month had to do mopping of auditorium/balcony isles, Box office floor, Franklin St/Premier Arts entrance ways, as well as all bathroom floors due to winter weather snow/rain, and salt that was used to treat the sidewalks/streets.
- Lerner Services had to spot shampoo carpet in Grand Hall due to holiday spills of food/drink.
- Lerner Services had to shampoo carpet in front of the Franklin St/Main St entrances due to salt residue from sidewalks/streets.

Upcoming Tasks:

- Doing some heavy cleaning in all bathrooms. All walls under sinks, under hand blowers, back of toilets, and urinals.
- Cleaning/degreasing the freight elevator floor.
- Shampooing Grand Hall from kitchen to Grand staircase.

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**FACILITIES MANAGER**  
PREPARED BY: TIM GARDNER

**Accomplishments:**

Continued cleaning fresh air returns throughout the theatre.  
Did some plumbing work with back flow preventers.  
Removed stall walls and standards in dressing room bathrooms prepping for tile removal.  
Ran paint tests in bathrooms and ball room kitchen to choose best possible tile replacement.  
Cleaned, repaired, and waxed Cittadine clock in lobby.  
Did general PM throughout theatre

**Goals for January 25**

Finish stripping all dressing room bathrooms and ball room kitchen and repainting floors for durability and ease of cleaning.  
Working on WMI to come in and help fix the heater/humidifier units in organ chambers.

10. ADJOURNMENT

On motion by Dina Harris seconded by Diana Lawson and carried 5-0, the Lerner Theatre Governing Board was adjourned at 11:35 a.m.

\_\_\_\_\_ Gary Boyn, President

Attest: \_\_\_\_\_ Nancy Wilson, Clerk of the Board

# The Lerner Theatre

To: The Lerner Governing Board

From: Nick Muller (Kruggel, Lawton and Co)

Subject: Notes regarding the December 31, 2024 Financial Statements

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

The net income from theatre operations only (shown as Gross Profit) at the end of the period is \$910,102, which is an increase of \$231,990 from the Gross Profit on last year's statement of \$678,113.

The year-to-date net income for all Lerner operations (including city expenses) at the end of the period is \$172,253 which is an improvement of \$178,891 from the net loss on last year's statement of (\$6,638).

On budgeted city Operational Expenses alone are under-budget by \$655,587 year-to-date.

Total Operational Expenses of \$1,832,164 were covered by a City contribution of \$827,747 (45%) and a Lerner contribution of \$1,004,418 (55%). This compares with last year's City contribution of 55% and the Lerner's contribution of 45%.

There were 6 shows and events in December that generated the following profit (loss):

- Charlie Berens - \$18,084.60
- Christmas in the Air – (\$263.15)
- Elf - \$14,569.10
- Elkhart Municipal Band - \$2,156.78
- Night Ranger - \$14,780.05
- Rat Pack - \$5,992.45

# The Lerner Theatre

## Financial Analysis Through December 31, 2024

	<u>2024</u>		<u>2023</u>		<u>Diff</u>
<b><i>City Operational Expenses</i></b>					
Staff & Related	1,174,490		1,108,256		66,234
Other	<u>657,674</u>		<u>618,360</u>		<u>39,315</u>
Total Expenses to be Covered	1,832,164		1,726,616		105,549
Less: City Subsidy (Budgeted)	<u>1,000,000</u>		<u>950,000</u>		<u>50,000</u>
Net City Operational Expenses	832,164		776,616		55,549
<b><i>Lerner Box Office Operations</i></b>					
Income	1,081,234		892,981		188,253
COGS	<u>171,131</u>		<u>214,868</u>		<u>(43,737)</u>
Gross Profit (Loss)	910,102		678,113		231,990
Lerner Labor Expense	<u>94,315</u>		<u>91,865</u>		<u>2,450</u>
Lerner Contribution from Operations	1,004,418		769,978		234,440
<b><i>Additional Subsidy Sources</i></b>					
City Subsidy (Un-Budgeted)	-		6,638		
Lerner Excess Contribution	172,253		-		
<b>How the Operational Expenses Are Covered:</b>					
City Contribution	827,747	45%	956,638	55%	
Lerner Contribution	<u>1,004,418</u>	55%	<u>769,978</u>	45%	
Total Expenses to be Covered	1,832,164	100%	1,726,616	100%	

# The Lerner Theatre

## P&L - Total Theatre - Summary Comparison

January - December 2024

	TOTAL			
	JAN - DEC 2024	JAN - DEC 2023 (PY)	CHANGE	% CHANGE
Income				
Theatre Income	1,081,233.51	892,980.90	188,252.61	21.08 %
<b>Total Income</b>	<b>\$1,081,233.51</b>	<b>\$892,980.90</b>	<b>\$188,252.61</b>	<b>21.08 %</b>
Cost of Goods Sold				
Cost of Sales	171,131.27	214,868.37	-43,737.10	-20.36 %
<b>Total Cost of Goods Sold</b>	<b>\$171,131.27</b>	<b>\$214,868.37</b>	<b>\$-43,737.10</b>	<b>-20.36 %</b>
GROSS PROFIT	<b>\$910,102.24</b>	<b>\$678,112.53</b>	<b>\$231,989.71</b>	<b>34.21 %</b>
Expenses				
City Accts by Submission Date	1,832,164.31	1,726,615.75	105,548.56	6.11 %
<b>Total Expenses</b>	<b>\$1,832,164.31</b>	<b>\$1,726,615.75</b>	<b>\$105,548.56</b>	<b>6.11 %</b>
NET OPERATING INCOME	<b>\$-922,062.07</b>	<b>\$-1,048,503.22</b>	<b>\$126,441.15</b>	<b>12.06 %</b>
Other Expenses				
5000000 City Contribution Toward Budget	-1,000,000.00	-950,000.00	-50,000.00	-5.26 %
99998 Show Labor Exp Incl in Budget	-94,315.31	-91,865.22	-2,450.09	-2.67 %
<b>Total Other Expenses</b>	<b>\$-1,094,315.31</b>	<b>\$-1,041,865.22</b>	<b>\$-52,450.09</b>	<b>-5.03 %</b>
NET OTHER INCOME	<b>\$1,094,315.31</b>	<b>\$1,041,865.22</b>	<b>\$52,450.09</b>	<b>5.03 %</b>
NET INCOME	<b>\$172,253.24</b>	<b>\$-6,638.00</b>	<b>\$178,891.24</b>	<b>2,694.96 %</b>



# The Lerner Theatre

## P&L - Total Theatre - Detailed Comparison

January - December 2024

	TOTAL			
	JAN - DEC 2024	JAN - DEC 2023 (PY)	CHANGE	% CHANGE
<b>Income</b>				
Theatre Income				
4000 Ticket Sales Collected	1,661,346.00	1,310,714.06	350,631.94	26.75 %
4001 Ticket Sales Due/Paid	-1,661,346.00	-1,310,714.06	-350,631.94	-26.75 %
4010 Facility Rental - Theatre	110,242.41	69,743.65	40,498.76	58.07 %
40200 Ticket Processing Fees	3,680.39	4,122.74	-442.35	-10.73 %
40201 Mailing Fee		1,260.00	-1,260.00	-100.00 %
40202 Phone Order Convenience Fee		1,546.00	-1,546.00	-100.00 %
40203 Historical Facility Fee	125,219.00	114,780.50	10,438.50	9.09 %
40204 Box Office Fee	88,840.96	62,726.49	26,114.47	41.63 %
40205 Blended Ticket Transaction Fee	24,378.48	62,171.76	-37,793.28	-60.79 %
40206 Web Ticket Fees	157,273.85	148,829.00	8,444.85	5.67 %
40208 Convenience Fees	165,434.05	102,821.00	62,613.05	60.90 %
<b>Total 40200 Ticket Processing Fees</b>	<b>564,826.73</b>	<b>498,257.49</b>	<b>66,569.24</b>	<b>13.36 %</b>
4050 Equipment Rental	35,854.50	30,045.00	5,809.50	19.34 %
4060 Outside Lighting & Advertising	-200.00	-715.16	515.16	72.03 %
4070 Catering	-3,868.00	-414.00	-3,454.00	-834.30 %
4080 Concessions Commissions	4,735.90	2,262.11	2,473.79	109.36 %
4090 Merchandise Commissions	10,213.87	3,017.00	7,196.87	238.54 %
4129 Contributions - FOL Volunteers		110.00	-110.00	-100.00 %
4130 Grants & Other Funding	10,000.00		10,000.00	
4140 Miscellaneous Income	23,269.79	10,723.18	12,546.61	117.00 %
Event Labor				
4030 Stagehands, Etc.	62,829.74	52,057.62	10,772.12	20.69 %
4040 Front of House	32,995.38	30,671.57	2,323.81	7.58 %
<b>Total Event Labor</b>	<b>95,825.12</b>	<b>82,729.19</b>	<b>13,095.93</b>	<b>15.83 %</b>
Non-Ticketed Event Revenue				
41314 Crystal Ballroom Events	230,333.19	197,222.44	33,110.75	16.79 %
<b>Total Non-Ticketed Event Revenue</b>	<b>230,333.19</b>	<b>197,222.44</b>	<b>33,110.75</b>	<b>16.79 %</b>
<b>Total Theatre Income</b>	<b>1,081,233.51</b>	<b>892,980.90</b>	<b>188,252.61</b>	<b>21.08 %</b>
<b>Total Income</b>	<b>\$1,081,233.51</b>	<b>\$892,980.90</b>	<b>\$188,252.61</b>	<b>21.08 %</b>
Cost of Goods Sold				
Cost of Sales				
5025 Merchant Ticket Fees	57,343.50	69,278.25	-11,934.75	-17.23 %
5030 Ticket CC Processing Expense	97,517.99	63,327.78	34,190.21	53.99 %

# The Lerner Theatre

## P&L - Total Theatre - Detailed Comparison

January - December 2024

	TOTAL			
	JAN - DEC 2024	JAN - DEC 2023 (PY)	CHANGE	% CHANGE
5035 Merchant Account Fees	-78,245.68	-10,357.75	-67,887.93	-655.43 %
5080 Advertising Expense	200.00	150.00	50.00	33.33 %
5110 Merchandise Expense		604.81	-604.81	-100.00 %
Direct Labor - Events				
5050 Stage Labor	67,122.75	69,108.11	-1,985.36	-2.87 %
5060 Front of House Labor	27,192.71	22,757.17	4,435.54	19.49 %
<b>Total Direct Labor - Events</b>	<b>94,315.46</b>	<b>91,865.28</b>	<b>2,450.18</b>	<b>2.67 %</b>
<b>Total Cost of Sales</b>	<b>171,131.27</b>	<b>214,868.37</b>	<b>-43,737.10</b>	<b>-20.36 %</b>
<b>Total Cost of Goods Sold</b>	<b>\$171,131.27</b>	<b>\$214,868.37</b>	<b>\$ -43,737.10</b>	<b>-20.36 %</b>
<b>GROSS PROFIT</b>	<b>\$910,102.24</b>	<b>\$678,112.53</b>	<b>\$231,989.71</b>	<b>34.21 %</b>
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	54,532.92	-20,812.50	-38.17 %
<b>Total Capital Outlay</b>	<b>37,695.42</b>	<b>146,422.30</b>	<b>-108,726.88</b>	<b>-74.26 %</b>
Other Services/Charges				
4310400 Professional Services	101,131.76	40,240.08	60,891.68	151.32 %
4320300 Travel	4,524.78	3,554.61	970.17	27.29 %
4320400 Telephone/Communications	23,258.70	18,316.09	4,942.61	26.99 %
4330300 Advertising/Marketing	50,028.29	71,979.75	-21,951.46	-30.50 %
4330301 Promotions	745.82	1,912.63	-1,166.81	-61.01 %
4340200 Liability Insurance	56,300.00	56,300.00	0.00	0.00 %
4350100 Electricity	133,240.80	116,580.46	16,660.34	14.29 %
4350200 Natural Gas	11,517.24	11,603.73	-86.49	-0.75 %
4350400 Water & Sewer	2,655.67	2,644.10	11.57	0.44 %
4360100 Repairs & Maintenance-Building	110,405.84	85,498.54	24,907.30	29.13 %
4360200 Equipment Repair		3,878.50	-3,878.50	-100.00 %
4370200 Equipment Leases	879.83	654.23	225.60	34.48 %
4390200 Postage	850.26	1,746.97	-896.71	-51.33 %
4390300 Subscriptions	26,028.63	4,268.67	21,759.96	509.76 %
4390800 Memberships & Dues	1,636.00	2,480.88	-844.88	-34.06 %
4390910 Education	13,194.19	15,176.92	-1,982.73	-13.06 %
4390912 Contract Services	39,388.36		39,388.36	
<b>Total Other Services/Charges</b>	<b>575,786.17</b>	<b>436,836.16</b>	<b>138,950.01</b>	<b>31.81 %</b>

# The Lerner Theatre

## P&L - Total Theatre - Detailed Comparison

January - December 2024

	TOTAL			
	JAN - DEC 2024	JAN - DEC 2023 (PY)	CHANGE	% CHANGE
<b>Personnel Services</b>				
4110130 Full Time	758,333.16	717,908.17	40,424.99	5.63 %
4110150 Part Time	140,951.11	120,299.10	20,652.01	17.17 %
4110160 Overtime Wages	1,407.49	764.29	643.20	84.16 %
4130100 Employer's Social Security	54,144.75	49,952.47	4,192.28	8.39 %
4130200 Employer's Medicare	12,662.91	11,682.27	980.64	8.39 %
4130300 Employer's PERF	106,797.86	101,404.43	5,393.43	5.32 %
4130500 Employer's Group & Life	100,192.67	106,245.29	-6,052.62	-5.70 %
<b>Total Personnel Services</b>	<b>1,174,489.95</b>	<b>1,108,256.02</b>	<b>66,233.93</b>	<b>5.98 %</b>
<b>Supplies</b>				
4210200 Stationary & Print	440.53	1,412.42	-971.89	-68.81 %
4210500 Office Supplies	2,002.39	1,690.44	311.95	18.45 %
4220150 Operating Supplies	13,574.87	13,948.32	-373.45	-2.68 %
4220310 Household, Laundry	10,841.06	6,680.12	4,160.94	62.29 %
4230200 Repair Parts	3,543.50	4,209.48	-665.98	-15.82 %
4230300 Small Tools/Minor Equipment	13,790.42	7,160.49	6,629.93	92.59 %
<b>Total Supplies</b>	<b>44,192.77</b>	<b>35,101.27</b>	<b>9,091.50</b>	<b>25.90 %</b>
<b>Total City Accts by Submission Date</b>	<b>1,832,164.31</b>	<b>1,726,615.75</b>	<b>105,548.56</b>	<b>6.11 %</b>
<b>Total Expenses</b>	<b>\$1,832,164.31</b>	<b>\$1,726,615.75</b>	<b>\$105,548.56</b>	<b>6.11 %</b>
<b>NET OPERATING INCOME</b>	<b>\$ -922,062.07</b>	<b>\$ -1,048,503.22</b>	<b>\$126,441.15</b>	<b>12.06 %</b>
<b>Other Expenses</b>				
5000000 City Contribution Toward Budget	-1,000,000.00	-950,000.00	-50,000.00	-5.26 %
99998 Show Labor Exp Incl in Budget	-94,315.31	-91,865.22	-2,450.09	-2.67 %
<b>Total Other Expenses</b>	<b>\$ -1,094,315.31</b>	<b>\$ -1,041,865.22</b>	<b>\$ -52,450.09</b>	<b>-5.03 %</b>
<b>NET OTHER INCOME</b>	<b>\$1,094,315.31</b>	<b>\$1,041,865.22</b>	<b>\$52,450.09</b>	<b>5.03 %</b>
<b>NET INCOME</b>	<b>\$172,253.24</b>	<b>\$ -6,638.00</b>	<b>\$178,891.24</b>	<b>2,694.96 %</b>

# The Lerner Theatre

Budget vs. Actuals: FY\_2024 - FY24 P&L

January - December 2024

	TOTAL		
	ACTUAL	BUDGET	OVER BUDGET
Income			
<b>Total Income</b>			<b>\$0.00</b>
GROSS PROFIT	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
Expenses			
City Accts by Submission Date			
Capital Outlay			
4420400 Building & Structure	3,975.00	200,000.00	-196,025.00
4440100 Furniture & Fixtures		3,275.00	-3,275.00
4440500 Other Equipment-Capital Expense	33,720.42	92,065.22	-58,344.80
<b>Total Capital Outlay</b>	<b>37,695.42</b>	<b>295,340.22</b>	<b>-257,644.80</b>
Other Services/Charges			
4310400 Professional Services	101,131.76	42,700.00	58,431.76
4320300 Travel	4,524.78	13,700.00	-9,175.22
4320400 Telephone/Communications	23,258.70	25,146.00	-1,887.30
4330300 Advertising/Marketing	50,028.29	70,160.00	-20,131.71
4330301 Promotions	745.82	5,000.00	-4,254.18
4340200 Liability Insurance	56,300.00	56,300.00	0.00
4350100 Electricity	133,240.80	135,960.00	-2,719.20
4350200 Natural Gas	11,517.24	20,350.00	-8,832.76
4350400 Water & Sewer	2,655.67	3,520.00	-864.33
4360100 Repairs & Maintenance-Building	110,405.84	157,998.00	-47,592.16
4360200 Equipment Repair		2,000.00	-2,000.00
4370200 Equipment Leases	879.83	3,200.00	-2,320.17
4390200 Postage	850.26	1,400.00	-549.74
4390300 Subscriptions	26,028.63	2,962.00	23,066.63
4390800 Memberships & Dues	1,636.00	1,735.00	-99.00
4390900 Other Services & Charges	0.00	50,000.00	-50,000.00
4390910 Education	13,194.19	30,550.00	-17,355.81
4390912 Contract Services	39,388.36	8,900.00	30,488.36
4390930 Processing Fees		51,000.00	-51,000.00
<b>Total Other Services/Charges</b>	<b>575,786.17</b>	<b>682,581.00</b>	<b>-106,794.83</b>
Personnel Services			
4110130 Full Time	758,333.16	853,200.00	-94,866.84
4110150 Part Time	140,951.11	226,000.00	-85,048.89
4110160 Overtime Wages	1,407.49	5,800.00	-4,392.51
4130100 Employer's Social Security	54,144.75	67,300.00	-13,155.25
4130200 Employer's Medicare	12,662.91	15,800.00	-3,137.09
4130300 Employer's PERF	106,797.86	123,800.00	-17,002.14
4130500 Employer's Group & Life	100,192.67	152,400.00	-52,207.33
<b>Total Personnel Services</b>	<b>1,174,489.95</b>	<b>1,444,300.00</b>	<b>-269,810.05</b>
Supplies			
4210200 Stationary & Print	440.53	950.00	-509.47

# The Lerner Theatre

## Budget vs. Actuals: FY\_2024 - FY24 P&L

January - December 2024

	TOTAL		
	ACTUAL	BUDGET	OVER BUDGET
4210500 Office Supplies	2,002.39	4,500.00	-2,497.61
4220150 Operating Supplies	13,574.87	26,779.76	-13,204.89
4220310 Household, Laundry	10,841.06	9,500.00	1,341.06
4230200 Repair Parts	3,543.50	4,200.00	-656.50
4230300 Small Tools/Minor Equipment	13,790.42	19,600.00	-5,809.58
<b>Total Supplies</b>	<b>44,192.77</b>	<b>65,529.76</b>	<b>-21,336.99</b>
<b>Total City Accts by Submission Date</b>	<b>1,832,164.31</b>	<b>2,487,750.98</b>	<b>-655,586.67</b>
<b>Total Expenses</b>	<b>\$1,832,164.31</b>	<b>\$2,487,750.98</b>	<b>\$ -655,586.67</b>
NET OPERATING INCOME	<b>\$ -1,832,164.31</b>	<b>\$ -2,487,750.98</b>	<b>\$655,586.67</b>
Other Expenses			
5000000 City Contribution Toward Budget	-1,000,000.00	-1,000,000.00	0.00
<b>Total Other Expenses</b>	<b>\$ -1,000,000.00</b>	<b>\$ -1,000,000.00</b>	<b>\$0.00</b>
NET OTHER INCOME	<b>\$1,000,000.00</b>	<b>\$1,000,000.00</b>	<b>\$0.00</b>
NET INCOME	<b>\$ -832,164.31</b>	<b>\$ -1,487,750.98</b>	<b>\$655,586.67</b>

The Lerner Theatre  
NiteLite Promotions: Charlie Berens  
All Dates

	TOTAL
<b>Income</b>	
Theatre Income	
4000 Ticket Sales Collected	53,799.00
4001 Ticket Sales Due/Paid	-53,799.00
4010 Facility Rental - Theatre	1,575.00
40200 Ticket Processing Fees	-785.20
40203 Historical Facility Fee	3,624.00
40204 Box Office Fee	2,804.80
40206 Web Ticket Fees	7,477.70
40208 Convenience Fees	9,313.00
<b>Total 40200 Ticket Processing Fees</b>	<b>22,434.30</b>
4050 Equipment Rental	1,050.00
4090 Merchandise Commissions	-28.47
4140 Miscellaneous Income	175.00
Event Labor	
4030 Stagehands, Etc.	416.25
4040 Front of House	660.01
<b>Total Event Labor</b>	<b>1,076.26</b>
<b>Total Theatre Income</b>	<b>26,282.09</b>
<b>Total Income</b>	<b>\$26,282.09</b>
Cost of Goods Sold	
Cost of Sales	
5025 Merchant Ticket Fees	4,530.00
5030 Ticket CC Processing Expense	2,901.14
Direct Labor - Events	
5050 Stage Labor	359.31
5060 Front of House Labor	407.04
<b>Total Direct Labor - Events</b>	<b>766.35</b>
<b>Total Cost of Sales</b>	<b>8,197.49</b>
<b>Total Cost of Goods Sold</b>	<b>\$8,197.49</b>
<b>GROSS PROFIT</b>	<b>\$18,084.60</b>
Expenses	
Hourly Costs	0.00
<b>Total Expenses</b>	<b>\$0.00</b>
<b>NET OPERATING INCOME</b>	<b>\$18,084.60</b>
<b>NET INCOME</b>	<b>\$18,084.60</b>

# The Lerner Theatre

## The Honeywell Foundation: Christmas in the Air

All Dates

	TOTAL
Income	
Theatre Income	
4000 Ticket Sales Collected	16,937.00
4001 Ticket Sales Due/Paid	-16,937.00
4010 Facility Rental - Theatre	300.00
40200 Ticket Processing Fees	0.00
40203 Historical Facility Fee	1,290.00
40204 Box Office Fee	508.11
40206 Web Ticket Fees	-8.65
40208 Convenience Fees	568.00
<b>Total 40200 Ticket Processing Fees</b>	<b>2,357.46</b>
Event Labor	
4030 Stagehands, Etc.	630.25
4040 Front of House	246.00
<b>Total Event Labor</b>	<b>876.25</b>
<b>Total Theatre Income</b>	<b>3,533.71</b>
<b>Total Income</b>	<b>\$3,533.71</b>
Cost of Goods Sold	
Cost of Sales	
5025 Merchant Ticket Fees	1,612.50
5030 Ticket CC Processing Expense	725.56
Direct Labor - Events	
5050 Stage Labor	1,212.42
5060 Front of House Labor	246.38
<b>Total Direct Labor - Events</b>	<b>1,458.80</b>
<b>Total Cost of Sales</b>	<b>3,796.86</b>
<b>Total Cost of Goods Sold</b>	<b>\$3,796.86</b>
<b>GROSS PROFIT</b>	<b>\$ -263.15</b>
Expenses	
Hourly Costs	0.00
<b>Total Expenses</b>	<b>\$0.00</b>
<b>NET OPERATING INCOME</b>	<b>\$ -263.15</b>
<b>NET INCOME</b>	<b>\$ -263.15</b>

# The Lerner Theatre

Premier Arts: Elf

All Dates

	TOTAL
<b>Income</b>	
Theatre Income	
4000 Ticket Sales Collected	69,708.34
4001 Ticket Sales Due/Paid	-69,708.34
4010 Facility Rental - Theatre	3,025.00
40200 Ticket Processing Fees	1,218.35
40203 Historical Facility Fee	10,443.00
40204 Box Office Fee	3,485.42
40206 Web Ticket Fees	6,128.15
40208 Convenience Fees	6,939.60
<b>Total 40200 Ticket Processing Fees</b>	<b>28,214.52</b>
4140 Miscellaneous Income	804.30
Event Labor	
4030 Stagehands, Etc.	1,794.00
4040 Front of House	1,904.00
<b>Total Event Labor</b>	<b>3,698.00</b>
<b>Total Theatre Income</b>	<b>35,741.82</b>
<b>Total Income</b>	<b>\$35,741.82</b>
Cost of Goods Sold	
Cost of Sales	
5025 Merchant Ticket Fees	13,053.75
5030 Ticket CC Processing Expense	3,279.94
Direct Labor - Events	
5050 Stage Labor	3,195.34
5060 Front of House Labor	1,643.69
<b>Total Direct Labor - Events</b>	<b>4,839.03</b>
<b>Total Cost of Sales</b>	<b>21,172.72</b>
<b>Total Cost of Goods Sold</b>	<b>\$21,172.72</b>
<b>GROSS PROFIT</b>	<b>\$14,569.10</b>
Expenses	
Hourly Costs	0.00
<b>Total Expenses</b>	<b>\$0.00</b>
<b>NET OPERATING INCOME</b>	<b>\$14,569.10</b>
<b>NET INCOME</b>	<b>\$14,569.10</b>



The Lerner Theatre  
Elkhart Municipal Band's: Free Winter Concert  
All Dates

	TOTAL
Income	
Theatre Income	
4010 Facility Rental - Theatre	1,175.00
4050 Equipment Rental	700.00
4140 Miscellaneous Income	300.00
Event Labor	
4030 Stagehands, Etc.	390.00
4040 Front of House	283.50
<b>Total Event Labor</b>	<b>673.50</b>
<b>Total Theatre Income</b>	<b>2,848.50</b>
<b>Total Income</b>	<b>\$2,848.50</b>
Cost of Goods Sold	
Cost of Sales	
Direct Labor - Events	
5050 Stage Labor	417.66
5060 Front of House Labor	274.06
<b>Total Direct Labor - Events</b>	<b>691.72</b>
<b>Total Cost of Sales</b>	<b>691.72</b>
<b>Total Cost of Goods Sold</b>	<b>\$691.72</b>
<b>GROSS PROFIT</b>	<b>\$2,156.78</b>
Expenses	
Hourly Costs	0.00
<b>Total Expenses</b>	<b>\$0.00</b>
<b>NET OPERATING INCOME</b>	<b>\$2,156.78</b>
<b>NET INCOME</b>	<b>\$2,156.78</b>

The Lerner Theatre  
 Flight Levelz: Night Ranger  
 All Dates

	TOTAL
<b>Income</b>	
Theatre Income	
4000 Ticket Sales Collected	67,556.57
4001 Ticket Sales Due/Paid	-67,556.57
4010 Facility Rental - Theatre	1,575.00
40200 Ticket Processing Fees	-1,555.95
40203 Historical Facility Fee	2,829.00
40204 Box Office Fee	3,465.33
40206 Web Ticket Fees	4,454.95
40208 Convenience Fees	7,980.00
<b>Total 40200 Ticket Processing Fees</b>	<b>17,173.33</b>
4050 Equipment Rental	1,275.00
4140 Miscellaneous Income	614.25
Event Labor	
4030 Stagehands, Etc.	2,011.50
4040 Front of House	912.00
<b>Total Event Labor</b>	<b>2,923.50</b>
<b>Total Theatre Income</b>	<b>23,561.08</b>
<b>Total Income</b>	<b>\$23,561.08</b>
Cost of Goods Sold	
Cost of Sales	
5025 Merchant Ticket Fees	3,536.25
5030 Ticket CC Processing Expense	3,141.18
Direct Labor - Events	
5050 Stage Labor	1,423.53
5060 Front of House Labor	680.07
<b>Total Direct Labor - Events</b>	<b>2,103.60</b>
<b>Total Cost of Sales</b>	<b>8,781.03</b>
<b>Total Cost of Goods Sold</b>	<b>\$8,781.03</b>
<b>GROSS PROFIT</b>	<b>\$14,780.05</b>
Expenses	
Hourly Costs	0.00
<b>Total Expenses</b>	<b>\$0.00</b>
<b>NET OPERATING INCOME</b>	<b>\$14,780.05</b>
<b>NET INCOME</b>	<b>\$14,780.05</b>

The Lerner Theatre  
 Gehrig Peterson: Rat Pack  
 All Dates

	TOTAL
<b>Income</b>	
Theatre Income	
4000 Ticket Sales Collected	18,005.00
4001 Ticket Sales Due/Paid	-18,005.00
4010 Facility Rental - Theatre	1,575.00
40200 Ticket Processing Fees	-200.85
40203 Historical Facility Fee	927.00
40204 Box Office Fee	900.25
40206 Web Ticket Fees	1,733.30
40208 Convenience Fees	1,557.00
<b>Total 40200 Ticket Processing Fees</b>	<b>4,916.70</b>
4050 Equipment Rental	1,125.00
4140 Miscellaneous Income	20.55
Event Labor	
4030 Stagehands, Etc.	1,324.00
4040 Front of House	285.00
<b>Total Event Labor</b>	<b>1,609.00</b>
<b>Total Theatre Income</b>	<b>9,246.25</b>
<b>Total Income</b>	<b>\$9,246.25</b>
Cost of Goods Sold	
Cost of Sales	
5025 Merchant Ticket Fees	1,158.75
5030 Ticket CC Processing Expense	841.96
Direct Labor - Events	
5050 Stage Labor	1,043.10
5060 Front of House Labor	209.99
<b>Total Direct Labor - Events</b>	<b>1,253.09</b>
<b>Total Cost of Sales</b>	<b>3,253.80</b>
<b>Total Cost of Goods Sold</b>	<b>\$3,253.80</b>
<b>GROSS PROFIT</b>	<b>\$5,992.45</b>
Expenses	
Hourly Costs	0.00
<b>Total Expenses</b>	<b>\$0.00</b>
<b>NET OPERATING INCOME</b>	<b>\$5,992.45</b>
<b>NET INCOME</b>	<b>\$5,992.45</b>

# 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.

February 10, 2025



JAMIE ARCE - CONTROLLER

IN RELIANCE ON THE ABOVE CERTIFICATION, CLAIMS IN THE TOTAL AMOUNT OF \$84,889.32 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 12TH DAY OF FEBRUARY 2025 BY:

PRESIDENT

GARY BOYN

VICE PRESIDENT

DINA HARRIS

TREASURER

DALLAS BERGL

MEMBER

FRANCES BOUIE

MEMBER

DIANA LAWSON

MEMBER

JAMIE ARCE

MEMBER

CARRIE BERGHOFF

ORIGINAL COPY MUST BE RETAINED IN THE CONTROLLER'S OFFICE



City of Elkhart

City of Elkhart

# Expense Approval Report

By Fund

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
<b>Fund: 2511 - LERNER THEATRE</b>					
HOPE RESTORED INC	2740	02/12/2025	Removal/replacement of stag	2511-5-502-4360100	18,360.00
SWANK MOTION PICTURES, I	BO2406772	02/12/2025	Movie Event	2511-5-502-4390900	2,040.00
JAMES A CONWAY	1006A	02/12/2025	Monthly fee	2511-5-502-4310400	15,000.00
SHERRY LYNN MAY	211	02/12/2025	Consulting Services as Interim	2511-5-502-4390912	195.39
SHERRY LYNN MAY	211	02/12/2025	Travel and expenses	2511-5-502-4390912	9,804.61
SHERRY LYNN MAY	212	02/12/2025	Travel and expenses	2511-5-502-4390912	2,500.00
JAMES A CONWAY	1009A	02/12/2025	Monthly expense reimbursem	2511-5-502-4310400	1,137.00
AMAZON CAPITAL SERVICES I	13PG-HNFV-4PNG	02/12/2025	Coastwide Professional 12-16	2511-5-502-4220310	42.16
AMAZON CAPITAL SERVICES I	13PG-HNFV-4PNG	02/12/2025	Coastwide Professional 12-16	2511-5-502-4230300	122.15
OVG MEDIA & CONFERENCES	142175	02/12/2025	Pro Subscription: Yearly Fee	2511-5-502-4330300	648.00
SHOFF SECURITY SERVICES , I	154233	02/12/2025	Guard Response- Burglary Ala	2511-5-502-4390912	45.00
KALAMAZOO SANITARY SUPPL	1643435	02/12/2025	ECO Element Proportioner	2511-5-502-4220310	46.38
KALAMAZOO SANITARY SUPPL	1643435	02/12/2025	ECO Element Proportioner	2511-5-502-4390200	9.95
ULINE, INC.	187995806	02/12/2025	Commercial Carpet Extractor	2511-5-502-4230300	3,775.00
ULINE, INC.	187995806	02/12/2025	Commercial Carpet Extractor	2511-5-502-4390200	106.22
AMAZON CAPITAL SERVICES I	1CRK-47T9-64K7	02/12/2025	Blue Light Bulb-60W Equivale	2511-5-502-4220150	16.95
AMAZON CAPITAL SERVICES I	1CRK-47T9-64K7	02/12/2025	Blue Light Bulb-60W Equivale	2511-5-502-4230300	692.53
AMAZON CAPITAL SERVICES I	1HYH-M94R-DRMF	02/12/2025	McKesson Isopropyl Rubbing Al	2511-5-502-4210500	222.20
AMAZON CAPITAL SERVICES I	1HYH-M94R-DRMF	02/12/2025	McKesson Isopropyl Rubbing Al	2511-5-502-4220150	9.45
AMAZON CAPITAL SERVICES I	1HYH-M94R-DRMF	02/12/2025	McKesson Isopropyl Rubbing Al	2511-5-502-4230300	23.98
AMAZON CAPITAL SERVICES I	1P91-PPTK-613H	02/12/2025	Paint Can Lid Cover and Pouri	2511-5-502-4230200	6.99
AMAZON CAPITAL SERVICES I	1P91-PPTK-613H	02/12/2025	Paint Can Lid Cover and Pouri	2511-5-502-4230300	52.68
AMAZON CAPITAL SERVICES I	1XC9-FJL9-NQCH	02/12/2025	Amazon Basic Care-Hand Sani	2511-5-502-4210500	347.20
AMAZON CAPITAL SERVICES I	1XC9-FJL9-NQCH	02/12/2025	Amazon Basic Care-Hand Sani	2511-5-502-4220150	217.99
AMAZON CAPITAL SERVICES I	1XC9-FJL9-NQCH	02/12/2025	Amazon Basic Care-Hand Sani	2511-5-502-4230200	33.71
COMMUNICATION COMPANY	31717	02/12/2025	Testing and inspection of fire	2511-5-502-4360100	940.39
KRUGGEL, LAWTON & COMPA	383619	02/12/2025	Accounting invoice for service	2511-5-502-4310400	2,650.00
SHERWIN WILLIAMS	4478-3	02/12/2025	1 Gallon: PM 200 OFL Ultra: C	2511-5-502-4230200	56.93
PRINTED BY ERIK, INC	49729	02/12/2025	Hearing Loop Signs-Mounted	2511-5-502-4220150	86.37
SHERWIN WILLIAMS	5053-0	02/12/2025	1 Gallon: Custom Match Color	2511-5-502-4230200	455.30
RICOH USA, INC	5069642261	02/12/2025	Copier October 2023 Color an	2511-5-502-4370200	90.36
RICOH USA, INC	5069642262	02/12/2025	Copier November 2023 Color	2511-5-502-4370200	66.14
RICOH USA, INC	5069642263	02/12/2025	Copier August and September	2511-5-502-4370200	185.96
RICOH USA, INC	5069642264	02/12/2025	Copier December 2023 Color	2511-5-502-4370200	135.64
RICOH USA, INC	5069642361	02/12/2025	Copier June 2023 Color and B	2511-5-502-4370200	212.75
RICOH USA, INC	5069642362	02/12/2025	Copier July 2023 Color and B	2511-5-502-4370200	82.19
RICOH USA, INC	5069642363	02/12/2025	Copier February 2024 Color a	2511-5-502-4370200	116.04
RICOH USA, INC	5069712751	02/12/2025	Copier June 2024 Color and B	2511-5-502-4370200	125.52
RICOH USA, INC	5070910128	02/12/2025	Copier January 2025 Color an	2511-5-502-4370200	90.05
SHERWIN WILLIAMS	5208-0	02/12/2025	1 Gal. Custom Eco Blue, 1 Gal.	2511-5-502-4230200	310.58
JP ENTERPRISES, INC	56999	02/12/2025	3"x12" Reverse Gold; Lerner B	2511-5-502-4220150	25.00
JP ENTERPRISES, INC	56999	02/12/2025	3"x12" Reverse Gold; Lerner B	2511-5-502-4390200	8.00
JP ENTERPRISES, INC	57030	02/12/2025	Staff Name Badges: Brittany,	2511-5-502-4220150	60.00
JP ENTERPRISES, INC	57030	02/12/2025	Staff Name Badges: Brittany,	2511-5-502-4390200	8.00
NEA LLC dba ALLEGRA PRINT	60921	02/12/2025	Takeaway Cards: Lerner Volun	2511-5-502-4330300	37.51
PRISM FM INC	6180	02/12/2025	Prism Subscription-1/2/2025-	2511-5-502-4310400	7,920.00
Menard, INC	69909	02/12/2025	Fiora Toilet Paper-12 Double R	2511-5-502-4210500	109.05
Menard, INC	69909	02/12/2025	Fiora Toilet Paper-12 Double R	2511-5-502-4220310	-34.91
Menard, INC	69909	02/12/2025	Fiora Toilet Paper-12 Double R	2511-5-502-4220310	326.24
Menard, INC	70223	02/12/2025	Loctite Power Grav Heavy Con	2511-5-502-4220310	20.97
Menard, INC	70223	02/12/2025	Loctite Power Grav Heavy Con	2511-5-502-4230300	98.72
Menard, INC	70584	02/12/2025	Masterforce Force-Blade 16' S	2511-5-502-4230300	63.37
Menard, INC	70584	02/12/2025	Masterforce Force-Blade 16' S	2511-5-502-4230300	-31.25

Expense Approval Report

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
Menard, INC	70646	02/12/2025	GE Clear Silicone Tub & Tile Se	2511-5-502-4220310	14.88
Menard, INC	70646	02/12/2025	GE Clear Silicone Tub & Tile Se	2511-5-502-4230300	103.52
Menard, INC	71461	02/12/2025	Lightweight Paint Pail- 5 Quar	2511-5-502-4230200	7.98
Menard, INC	71461	02/12/2025	Lightweight Paint Pail- 5 Quar	2511-5-502-4230300	-22.83
Menard, INC	71461	02/12/2025	Lightweight Paint Pail- 5 Quar	2511-5-502-4230300	-13.47
Menard, INC	71461	02/12/2025	Lightweight Paint Pail- 5 Quar	2511-5-502-4230300	146.35
SHERWIN WILLIAMS	8190-0	02/12/2025	1 Gallon EG Ultra: Custom Plu	2511-5-502-4230200	109.08
SHERWIN WILLIAMS	8241-1	02/12/2025	1 Gallon Cashmere ES Extra:C	2511-5-502-4230200	83.90
FULL COMPASS SYSTEMS LTD.	INC02628154	02/12/2025	Lighting Gels+shipping	2511-5-502-4230300	42.24
FULL COMPASS SYSTEMS LTD.	INC02628154	02/12/2025	Lighting Gels+shipping	2511-5-502-4390200	8.95
FULL COMPASS SYSTEMS LTD.	INC02634154	02/12/2025	Dance Floor Tape(4)	2511-5-502-4230300	55.48
SWANK MOTION PICTURES, I	RG2406737	02/12/2025	MOVIE EVENT-Movie Series Ri	2511-5-502-4390900	2,130.00
WAGNER- MEINERT, LLC	SVC0050511	02/12/2025	(12.12.2024): Spoke to custo	2511-5-502-4360100	806.64
Fund 2511 - LERNER THEATRE Total:					<b>73,143.18</b>
Grand Total:					<b>73,143.18</b>

**Fund Summary**

Fund	Expense Amount
2511 - LERNER THEATRE	<u>73,143.18</u>
<b>Grand Total:</b>	<b>73,143.18</b>

**Account Summary**

Account Number	Account Name	Expense Amount
2511-5-502-4210500	Office Supplies	678.45
2511-5-502-4220150	Operating Supplies	415.76
2511-5-502-4220310	Household, Laundry, & C	415.72
2511-5-502-4230200	Repair Parts	1,064.47
2511-5-502-4230300	Small Tools & Minor Equ	5,108.47
2511-5-502-4310400	Professional Services	26,707.00
2511-5-502-4330300	Advertising/marketing	685.51
2511-5-502-4360100	Repairs & Maint - Bldg	20,107.03
2511-5-502-4370200	Equipment Leases	1,104.65
2511-5-502-4390200	Postage	141.12
2511-5-502-4390900	Other Services & Charge	4,170.00
2511-5-502-4390912	Contract Services	<u>12,545.00</u>
	<b>Grand Total:</b>	<b>73,143.18</b>

**Project Account Summary**

Project Account Key	Expense Amount
**None**	<u>73,143.18</u>
<b>Grand Total:</b>	<b>73,143.18</b>



City of Elkhart

City of Elkhart

# Expense Approval Report

By Fund

Payment Dates 1/6/2025 - 2/9/2025

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
<b>Fund: 2511 - LERNER THEATRE</b>					
COMCAST BUSINESS	12.23.2024	01/10/2025	Monthly service charges for s	2511-5-502-4320400	140.65
NORTHERN INDIANA PUBLIC S	INV0006342	01/17/2025	0517660086 410 S Main St	2511-5-502-4350200	2,122.22
1ST SOURCE BANK	12.23.2024-1.2.2025	01/24/2025	Facebook Ads: 11/7/2024:cha	2511-5-502-4330300	1.06
1ST SOURCE BANK	12.23.2024-1.2.2025	01/24/2025	Facebook Ads: Justin Willman	2511-5-502-4330300	11.36
TIMOTHY GARDNER	1.23.2025	01/31/2025	Employee Reimbursement: mi	2511-5-502-4320300	43.05
FRONTIER NORTH INC.	1.25.2025	01/31/2025	Elevator Lines, Security Alarm	2511-5-502-4320400	146.56
ELKHART PUBLIC UTILITIES	INV0006453	01/31/2025	3148906100 410 S Main St	2511-5-502-4350400	232.46
INDIANA MICHIGAN POWER C	INV0006454	01/31/2025	04680727429 410 S Main	2511-5-502-4350100	8,838.98
<b>Fund 2511 - LERNER THEATRE Total:</b>					<b>11,536.34</b>
<b>Fund: 8853 - LERNER THEATRE BOX OFFICE</b>					
BALLERINA DREAMS LLC	12525BRAVOBASH	02/07/2025	EFT payment	8853-5-502-4310101	209.80
<b>Fund 8853 - LERNER THEATRE BOX OFFICE Total:</b>					<b>209.80</b>
<b>Grand Total:</b>					<b>11,746.14</b>



## Report Summary

### Fund Summary

Fund	Payment Amount
2511 - LERNER THEATRE	11,536.34
8853 - LERNER THEATRE BOX OFFICE	209.80
<b>Grand Total:</b>	<b>11,746.14</b>

### Account Summary

Account Number	Account Name	Payment Amount
2511-5-502-4320300	Travel	43.05
2511-5-502-4320400	Telephone & Communic	287.21
2511-5-502-4330300	Advertising/marketing	12.42
2511-5-502-4350100	Electricity	8,838.98
2511-5-502-4350200	Natural Gas	2,122.22
2511-5-502-4350400	Water & Sewer	232.46
8853-5-502-4310101	Show Closing	209.80
<b>Grand Total:</b>	<b>Grand Total:</b>	<b>11,746.14</b>

### Project Account Summary

Project Account Key	Payment Amount
**None**	11,746.14
<b>Grand Total:</b>	<b>11,746.14</b>

**RESOLUTION OF THE LERNER GOVERNING BOARD ACCEPTING DONATIONS  
AND APPROVING STANDARD OPERATING PROCEDURES PERTAINING  
TO ANNIVERSARY FUNDS AND EVENT CONTRACTS**

WHEREAS, the Board has received numerous donations to help fund the anniversary events in 2025 and desires to formally accept the same and establish the procedures for handling those funds; and

WHEREAS, the anniversary committee will be using the anniversary designated funds to contract for shows and events at the Lerner, and, in order to take advantage of opportunities to commit to purchase the shows and events on a timely basis, has requested that the Vice President of the Board, as well as the President, be authorized to execute all contracts related thereto as and when reviewed and approved by the City Attorney; and

WHEREAS, the Board finds the procedures established herein are necessary for the proper operation of the facility and desires to approve the same.

NOW, THEREFORE, BE IT RESOLVED:

1. The Board accepts the following donations to the 100<sup>th</sup> Anniversary Celebration Fund: \$100,000 of funds appropriated by the City Council; \$100,000 from The Friends of the Lerner, Inc.; \$50,000 from the Community Foundation of Elkhart County; and \$182,000 from The Elkhart County Convention and Visitors Bureau; and directs that those funds and all future Anniversary Celebration donations be deposited promptly upon receipt into the Lerner Theater Donation Fund # 2315 established by the Elkhart City Controller, pending formal acceptance by the Lerner Board at a public meeting. All such donations shall be restricted for the specific use defined by the Donor. The Officers and staff shall cause a written acknowledgment of receipt of each such donation to be sent to each donor.

2. The Board authorizes the Board President, and in his absence or unavailability, the Vice President, to execute all contracts needed for the 100<sup>th</sup> Anniversary Celebration shows and events, subject to the prior review and approval by the Elkhart City Attorney and City Controller, and directs that all such contracts be reported to the Board at the next meeting.

3. The Lerner managers and staff are authorized to incorporate the revised Standard Operating Procedures into their Procedures Manual, provide the revised forms of Event Contract to all proposed Lessees and do all other acts they deem necessary in furtherance of this Resolution.

DULY ADOPTED BY MAJORITY VOTE THIS 12TH DAY OF FEBRUARY 2025.

**LERNER GOVERNING BOARD**

By: \_\_\_\_\_  
Gary D. Boyn, President

ATTEST:

By: \_\_\_\_\_  
Nancy Wilson, Secretary



**FRIENDS OF THE LERNER, INC.**

1516 Middlebury Street  
Elkhart, IN 46516

January 22, 2025

RE: Annual Report on Critical Needs Fund

To the Common Council, Mayor of Elkhart, and Lerner Governing Board,

As requested per the requirements from the City of Elkhart for the \$500,000 Critical Needs Fund placed in an account labeled: "Friends of the Lerner (FOL) Maintenance - #10897 at the Community Foundation of Elkhart County for the Friends of the Lerner to use in case of an emergency maintenance repair needed for The Lerner Theatre. We would like to report that no disbursements were made or requested from this fund in 2024 fiscal period.

Sincerely,

Ashley Martin,

Friends of the Lerner Chair



EVENT INFORMATION		REVENUE / COMMISSION CATEGORIES															
DATE	EVENT NAME	EVENT TYPE	Lerner						Crystal Ballroom			GRAND TOTAL SALES					
			RENTAL OF LERNER SPACES		CONCESSIONS < \$1,000		CONCESSIONS \$1,001 - \$3,000		CONCESSIONS > \$3,001		RENTAL OF CB		BANQUET				
			RENT	TAX	Food & Bar	Food	Bar	Food	Bar	Food	Bar	Food	Bar				
01/04/25	Black Expo	Banquet										72.90	2,382.24	3,055.14			
01/10/25	Kern Krest	Banquet										10,864.00	2,084.41	13,948.41			
01/20/25	Texas Roadhouse	Banquet										5,500.00		5,900.00			
01/25/25	Bravo Bash	Concessions			220.56		83.18					1,512.50		303.74			
01/27/25	Empowered Ventures	Banquet										17,949.40	4,486.65	1,912.50			
	<b>TOTAL SALES</b>		\$ -	\$ -	\$ -	\$ 220.56	\$ 83.18	\$ -	\$ -	\$ -	\$ -	\$ 2,400.00	\$ 4,486.65	\$ 25,119.79			
	Commission Rate		50.00%	50.00%	25.0%	20.0%	20.0%	30.0%	30.0%	40.0%	40.0%	15.00%	15.00%	15.00%			
<b>Total Commissions Earned</b>			-	-	-	44.11	16.64	-	-	-	-	360.00	2,692.41	670.00	3,783.16		
			Lerner Total      60.75														
			Lerner Rent      -														
			Lerner Rent Tax      -														
			Lerner Concession Commission      60.75														
			Lerner Total      60.75														
<b>Net Commission Due</b>			Crystal Ballroom Total      3,722.41														
			<b>GRAND TOTAL DUE</b> 3,783.16														





February 8, 2025

TO: Lerner Governing Board

FROM: Sherry May, Interim General Manager

Please find included the newest proposed Event Contract. The only change is in Section 31. The addition of "except for those purchased from the Lerner approved caterer/concessionaire" was added in the first sentence of the paragraph.

Kevin Davis has also reviewed this document.

Thank you,

Sherry May

**Sherry May**

INTERIM GENERAL MANAGER

410 S. Main Street / Elkhart, Indiana 46516 / 574-293-4469 / 800-294-8223 / Fax 574-293-8096

# THE LERNER

## CITY OF ELKHART

410 South Main Street, Elkhart IN 46516

### EVENT CONTRACT

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between The LERNER Theatre and the City of Elkhart, Indiana, ("LERNER"), and \_\_\_\_\_ ("Lessee"), Witnesseth:

1. THE LERNER agrees to furnish to Lessee:  the entire Auditorium;  the Lobby only;  the \_\_\_\_\_ room only;  the Theatre only (the "Theatre") of The LERNER Theatre, 410 S. Main Street, Elkhart, Indiana (the "Building"), (The Building and its appurtenances are collectively referred to as the "Premises") commencing at or about \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, and terminating on or about 11:59pm on the \_\_\_\_\_ day of \_\_\_\_\_.

All public events must include one intermission of a minimum of \_\_\_\_\_ minutes in length per performance. If Promoter chooses not to have an intermission, The LERNER may charge the Lessee a negotiable fee for reduced concession income. The intermission for the Event is set at \_\_\_\_\_ minutes.

#### 2. AMOUNT AND TIME OF PAYMENT:

The Lessee will present \_\_\_\_\_ and furnish everything necessary for the performance not hereinafter agreed to be furnished by The LERNER, and will pay The LERNER, as follows:

- a) the rental of \_\_\_\_\_ Dollars ("Base Rental Fee") or \_\_\_\_\_ of the gross receipts, whichever is higher, not to exceed twice the Base Rental Fee;
- b) an upfront deposit of the Base Rental Fee by Certified Check on the date of signing of this Event Contract; **Event Contract and Deposit are due prior to show announcement.**
- c) any balance due from Lessee will be paid upon receipt of invoice;
- d) if for any reason the balance is not paid when due, any box office receipts in the possession of The LERNER may be applied to the payment of the balance due.

If within seven (7) days of the event, ticket event revenue is not sufficient to pay the estimate of cost indicated on the Addendum to the Event Contract, the estimated balance must be paid in full by Lessee upon demand. Non-ticketed events are subject to the minimum required event charge as specified on the User Rate Sheet which shall be paid at the time the Event Contract is signed.

All tickets for the event, including tickets requested by the Promoter to be sold on consignment, shall be created and issued exclusively by the Lerner Box Office ticketing system. All electronic must be sold through the direct link provided by The LERNER. Lessee shall return any consignment tickets into the box-office three (3) days before a performance. The Promoter will be charged the full ticket price for unreturned consignment tickets.

The LERNER reserves \_\_\_\_\_ promotional seats in the auditorium without charge. The Lessee shall pay a ticket printing fee of \_\_\_\_\_ cents (\$ \_\_\_\_\_) per general usage ticket. Complimentary tickets ticket printing fee at (\$ \_\_\_\_\_) cents per ticket issued.

#### TERMS AND CONDITIONS:

1. **INSURANCE:** Lessee will carry the following insurance:
  - A. General liability; premises completed operations or products. Bodily injury and Property Damage limits: \$1,000,000.00 combined single limit; The LERNER and City of Elkhart named as additional insureds. Workmen's Compensation per statutes of the State of Indiana. Employees liability \$100,000.00.
  - B. Auto liability, Bodily Injury and Property Damage limits \$500,000.00 combined single limit; The LERNER and City of Elkhart named as additional insureds.  
**LESSEE shall furnish The LERNER with a certificate of insurance showing The LERNER and the City of Elkhart as additional insured at least two weeks prior to the event.**
2. **LAW OBSERVANCE:** Lessee and its agents shall conform to and comply with all the laws of the United States and the State of Indiana, and all of the ordinances of the City of Elkhart, Indiana, and the rules and regulations of The LERNER for the government and management of the Premises, together with all rules and requirements of the Police and Fire Department of the City of Elkhart, Indiana and will not do, or suffer to be done, anything on said Premises, during the term of this lease, in violation of any such rules, laws, or ordinances. Lessee shall be responsible to make deductions for Federal Tax, F.I.C.A. and Indiana Income and Employment Tax for all employees and pay same to the proper governmental agency. No lewd or indecent actions, conduct, language, pictures, or portrayals shall be included in the activities or events presented by Lessee on the Premises.
3. **CONTROL OF BUILDING:** The LERNER does not relinquish the right to control the Building, and enforce all necessary and proper rules for its operation. The LERNER and Crystal Ballroom Management and staff of the Building may enter the same, and

all of the Premises, at any time and on any occasion. The LERNER shall at all times retain sole control and direction of its ticket office, sales revenue and its personnel until settlement.

4. **NO DEFACEMENT OF BUILDING:** Lessee shall not injure, mar, or deface the Premises, nor shall Lessee drive, or permit to be driven, any nails, hooks, tacks or screws, nor apply any glue or other adhesive substance, in any part of the Premises, nor shall Lessee make, or allow to be made, any alteration of any kind therein. If the Premises shall be damaged by the act, default or negligence of Lessee, or the Lessee's agents, employees, patrons or any persons admitted to the Premises by Lessee or its agents, licensees and invitees, Lessee will pay to The LERNER upon demand, such sum as shall be necessary to restore the Premises to its present condition. Physical changes to the Premises required by the event's technical production are subject to approval by The LERNER. Approved physical changes are at the sole cost of Lessee and Lessee is required to restore the Premises to their present condition unless otherwise agreed in writing prior to the scheduled event, normal wear and tear excepted.
5. **NO OBSTRUCTION TO SIDEWALK AND OTHER PASSAGEWAYS:** No portion of the sidewalks, entries, passages, vestibules, halls, elevators, and other ways of access to public utilities of the Premises, shall be obstructed by Lessee or used for any purpose other than for ingress and egress. Water closets and water apparatus will not be used for any purpose than that for which they were constructed, and no sweepings, rubbish, rags, paper or other substances shall be thrown therein. Any damage resulting to them on account of misuse of any nature or character whatever, shall be paid by Lessee.
6. **AISLES CLEAR:** Lessee will permit no chairs or removable seats to be or remain in the passageways, and will keep all passageways clear at all times.
7. **NO RESPONSIBILITY FOR PROPERTY IN BUILDING:** The LERNER assumes no responsibility whatever for any property placed in or on the Premises, and The LERNER is relieved and discharged from any and all liability for any loss, injury or damage to persons or property that may be sustained by reason of the occupancy of the Premises, or any part thereof, under this lease. All watchmen or other protective service desired by Lessee must be arranged for by special agreement with The LERNER.
8. **REMOVAL OF STRUCTURES:** In the event platforms or staging or any other structures are erected by Lessee or any of the exhibitors in any portion of the Premises, the expense of construction and removal shall be paid by Lessee. All damage to the Premises caused by the erection or removal of such structures shall be paid by Lessee.
9. **SIGNS AND POSTERS:** Lessee will not post or allow to be posted any signs, cards or posters except upon display areas as The LERNER may provide. Use of such areas is a non-exclusive right. All Material is subject to approval by The LERNER.
10. **FORCE MAJEURE:** The LERNER strictly follows governmental and/or health authority directives and guidelines. If, within 10 weeks of the scheduled EVENT, such directives or guidelines should modify VENUE capacity or outline restrictions requiring enhanced operations and safety protocols, the parties agree that Force Majeure conditions exist and:
  - A. Lessee or The LERNER will have the right to unilaterally postpone or cancel EVENT without liability, or penalty other than the obligation to refund ticket purchases to patrons, with the understanding that a cancellation will only follow good faith efforts to reschedule;
  - B. Any direct costs associated with ensuring the health and safety of staff, audience, and/or artists within The LERNER, pursuant to said directives and guidelines, shall be borne by Lessee including but not limited to reopening costs, screenings at points of entry, personal protective equipment, additional front-of-house, security and cleaning/disinfecting labor plus materials.
11. **UNAVOIDABLE HAPPENING:** If, for any reason, an unforeseen event occurs, including, but not limited to, fire, casualty, labor strike, or other unforeseen occurrence, which renders impossible the fulfillment of any term of this contract, the Lessee shall have no right to nor claim for damages against The LERNER.
12. **PUBLIC SAFETY:** Lessee agrees that it will conduct its activities with full regard to public safety, and will observe and abide by all applicable regulations and requests by The LERNER, or duly authorized government agencies responsible for public safety, to assure such safety. The LERNER shall retain the right to cause the interruption and termination of any performance when in the sole judgment of The LERNER such act is necessary in the interest of public safety.
13. **EVACUATION OF FACILITY:** Should it become necessary, in the judgment of The LERNER, to evacuate the Premises because of a bomb threat or other reasons of public safety, the Lessee will retain possession of the Premises for sufficient time to complete presentation of this activity without additional rental charge providing such time does not interfere with another Lessee. If it is not possible to complete presentation of the activity, rental shall be forfeited, prorated, or adjusted at the discretion of The LERNER management based on the situation, and the Lessee hereby waives any right and all claims for damages against The LERNER, or any of its agents.
14. **OBJECTIONABLE PERSONS:** Lessee assumes full responsibility for the character, acts, and conduct of all persons admitted to the Premises, or to any portion thereof, by the consent of Lessee, or Lessee's employees or any person acting for or on behalf of Lessee, and Lessee agrees to have on hand at all times sufficient police force, the number of which to be determined by The LERNER, to maintain order and protect persons or property. The LERNER reserves the right to eject any objectionable person or



persons from the Premises and upon the exercise of this authority, through its manager, agents, or policemen; Lessee hereby waives any right and all claims for damages, against The LERNER or any of its agents.

15. **PERFORMANCE CONTRACT:** The Lessee certifies and attests that he has a valid, properly executed and enforceable contract with the performers whose services form the basis for this desire to rent the Premises. The Lessee shall submit to The LERNER upon demand a copy of the contract with the performers. The LERNER retains approval right of performance, exhibition, or entertainment to be offered under this agreement, and Lessee agrees that no such activity or part thereof shall be given or held if The LERNER objects on the grounds of character offensive to public morals, failure to uphold event advertising claims or violations of event content restrictions agreed to by both parties after the time of completion of this agreement.
16. **ASSIGNMENTS:** Lessee shall not assign this lease or use of the Premises other than herein specified, nor sublet the Premises or any part thereof, without the written consent of The LERNER.
17. **STAGE CREW AND HOUSE STAFF:** Assistance in the handling of baggage, scenery, production supplies, sound and lighting equipment of Lessee and/or contracted performers shall be at the expense of Lessee. Ushers, ticket-takers, and additional box office and housekeeping personnel, **TO BE PROVIDED BY THE LERNER**, (see attached schedule of rates) shall be at the expense of the Lessee.
18. **SECURITY:** Local/Community events held in The Lerner Theatre require the following for security and safety: 1 usher (designated for crowd and life safety) per 250 patrons, 1 security/event personnel (designated for crowd control and event safety) per 500 patrons and 1 armed security officer per 1,000 patrons. Exceptions may be made at the discretion of the General Manager ("GM") as the GM deems appropriate. Concerts/large events held in The Lerner Theatre require the following for security and safety: 1 usher (designated for crowd and life safety) per 200 patrons, 1 security/event personnel (designated for crowd control and event safety) per 250 patrons and 2-armed security officers per 1,000 patrons. Any additional security personnel will be an expense charged to the Lessee per event and will be at the discretion of The Lerner management after consultation with local law enforcement and Lessee. Exceptions may be made at the discretion of the General Manager ("GM") as the GM deems appropriate.
19. **BAG RESTRICTIONS:** Patron bags exceeding 14 inches by 14 inches (14" x 14") are not permitted inside The Lerner. The term "bags" includes, without limitation, backpacks, briefcases, luggage, duffle bags, musical instrument cases, purses, boxes, packages and carry-alls. All bags are subject to search at the discretion of management and/or security personnel. Exceptions are made for bags used to carry medical equipment and diaper bags for customers with small children. Guests with prohibited items will be turned away from the entrances to return items to their vehicles or to dispose of them. No storage or "check in area" will be provided for prohibited items. Lerner management reserves the right to deny any item it deems to be a safety hazard.
20. **WEAPONS/FIREARMS BAN AT REQUEST:** At least 48 hours prior to event date, Lessee may institute a no weapons policy for their event at The Lerner Theatre. Lessee would be required to fill out "Weapons Firearms Ban Designation Form" and return to theatre management. Any personnel and equipment rental charges for this implementation will be assessed to the Lessee. Should a Lessee designate an event as a no weapons or firearms event, off-duty law enforcement or retired law enforcement persons with certified firearms qualifications under their previous or current agency, may register themselves with hired security to be admitted to event with firearm or weapon.
21. **CATERING AND MERCHANDISING:** All food and beverage service to contract performers, public or private receptions, meetings, and/or stage crew shall be provided by The LERNER caterer at the expense of Lessee. The LERNER caterer shall have first right of refusal for said services. The LERNER reserves all rights not specifically granted to Lessee under terms hereof including, but not limited to, the sale of all merchandise items and programs. No free sample of food, beverage or product may be given away or otherwise distributed without prior consent in writing of The LERNER. The LERNER shall have the right to confiscate any food, beverage or product not served in accordance with the catering contract. Lessee agrees to inform all merchandisers and their agents that the venue will assess a seller's fee for a seller request (required minimum of 2) and a commission fee on the gross sales. Seller's fee shall be \$100 each for a merchandise seller provided by the LERNER. Commission on the sale of promotional items shall be thirty percent (30%) of the gross sales, to be paid the day of event. Failure to communicate the venue merchandise terms to the merchandisers and agents will result in the amount of \$.25 per patron to the venue to be assessed at the promoter closing.
22. **REFUND OF TICKET REVENUE:** The LERNER retains the right to make ticket refunds for cause, in keeping with The LERNER's policy of retaining public faith. This shall include, but not be limited to, show cancellation, seats blocked by equipment when exchange for comparable location is not possible, failure of projection equipment, failure of act to perform or to go on stage within a reasonable time of schedule provided by Lessee. In all other instances, requests for refunds will be referred to and exclusively up for approval by the Lessee.
23. **ADVERTISING:** Lessee agrees that all advertising of event will designate the facility as The LERNER, and will include the phrase "Tickets available online [www.Ticketmaster.com](http://www.Ticketmaster.com)." Additionally, Lessee agrees that all advertising of event designate the city as ELKHART. The LERNER has the final approval of all text that will be placed on its marquee, and to edit any message requested by Lessee. Multiple events may be listed at the same time.

24. **PROMOTIONAL MATERIALS:** The LERNER has the sole right to display posters and to distribute flyers, brochures, and other promotional materials throughout the facility at all times.
25. **EMAIL MARKETING:** The LERNER will offer two complimentary emails to the Lessee, along with inclusion in a weekly email newsletter. Complimentary emails will include an announcement to the patron database about the event, in conjunction with the event announcement and box office sale and a second email to the patron database near the end of the campaign. Lessee may purchase one additional email for every 60 days that an event is on sale at a rate of \$99. The purchased email will be placed in rotation at the discretion of the Marketing Manager. The LERNER guarantees an open rate of 30% on the purchased email. The purchased email can be sent to two targeted groups in the LERNER patron database. To access the entire LERNER patron database, the purchased email must contain a discount or exclusive offer. All marketing materials must be provided at least 72 hours in advance.
26. **LOST ARTICLES:** The LERNER shall have the sole right to collect and have the custody of articles left in the Premises by persons attending any performance, exhibition or entertainment given or held in the Building, and the Lessee or any person in Lessee's employ shall not collect nor interfere with the collection or custody of such articles.
27. **SEATING CAPACITY:** In no event shall tickets to any concert, entertainment, exhibit, or any other use of the Premises by Lessee, be sold or disposed of in excess of the seating capacity of the house. The LERNER will have the right to retain 1% plus 1 of seating capacity of house seats as backup for ticket and problem seat locations per performance.
28. **OPENING HOURS:** Lessee agrees to open doors for event in accord with advertised times unless The LERNER agrees to the contrary.
29. **ELECTRICITY AND WATER:** In the event extra lights, electrical power, or water other than the regular house lights or electrical power or water usage shall be required by Lessee, they shall be paid for by Lessee at the rates in effect in the Building.
30. **CIVIL RIGHTS:** Lessee agrees not to discriminate against any employee or any applicant for employment because of race, religion or national origin, and further agrees likewise not to discriminate for those same reasons against any persons relative to admission, services or privileges offered to or enjoyed by the general public.
31. **ALCOHOLIC BEVERAGES AND CONCESSIONS:** Lessee shall not permit any alcoholic beverages to be brought into, or consumed on the Premises except for those purchased from the Lerner approved caterer/concessionaire. The LERNER has the absolute discretion to provide all event catering, alcoholic beverages and concessions to be sold at the performances and events. The LERNER reserves the right to request catering/concession personnel to refuse to serve anyone who appears to be intoxicated. The LERNER has the right to adjust the Base Rental Fee if concessions are not allowed.
32. **RADIO AND TV:** Lessee shall have the exclusive right to negotiate and enter into agreements for the granting of radio, television broadcast and recording rights in connection with the staging of any game, performance or event, under the terms of this lease, providing that any and all revenue from said radio, television or other rights so granted shall be included in the gross receipts for such event in the same manner as the receipts from ticket sales, and The LERNER shall be entitled to the same percentage thereof.
33. **COPYRIGHTS:** Lessee will assume all costs arising from the use of patented, trademarked, franchised or copyrighted music, material, devices, process or dramatic rights, used on or incorporated in the event. Lessee agrees to indemnify, defend and hold harmless, The LERNER from any claims or costs, including legal fees, which might arise from question of use of any such material described above.
34. **DEFAULT:** Should the Lessee default in the performance of any of the terms and conditions of this Lease, The LERNER Manager, at his/her option, may terminate the Lease and Lessee shall be liable for the full amount of the rent, and advertising costs incurred, less rent charges received from others for use of the premises at the times specified in this lease. Any deposit made by Lessee to The LERNER shall be retained by The LERNER as damages.
35. **RETENTION OF LESSOR PRIVILEGES:** Waiver or failure of The LERNER to insist upon strict and prompt performance of the covenants and agreements hereunder, or any of them, and the acceptance of such performance hereafter, shall not constitute or be construed as a waiver or relinquishment of The LERNER's right hereafter to enforce the same strictly, according to the tenor thereof, in the event of continuous or subsequent default on the part of Lessee.
36. **TERMINATION:** The LERNER reserves the right to terminate the Lease granted by this agreement for good cause (which does not include subsequent scheduling of a more preferred event). Good Cause includes, without limitation, police ordered closings, acts of God, emergency public health and public safety issues, an Alert status issued by the U.S. Dept. of Homeland Security, terrorist attacks against the U.S., or acts of war. In the event The LERNER exercises the right retained by it hereunder, it shall refund, or, as the case may be, release Lessee from liability for payment of an amount bearing the same proportion to the total payment provided for in Paragraph One hereof as the period in which the facilities are in fact not utilized bears to the total duration of Lease. Should the Lessor exercise its right to terminate this Lease, Lessee agrees to forego any and all claims for damages against

Lessor and further agrees to waive any and all rights which might arise by reason of the terms of this lease; and Lessee shall have no recourse of any kind against The LERNER.

37. **CANCELLATION:** Cancellation of an event by a Lessee will be subject to the following schedule of cancellation fees and forfeiture of deposits on account, as liquidated damages:

More than 120 calendar day notice: \$1,000; or Theatre rental fee whichever is higher;

Less than 120 calendar day notice: \$1,000 plus 50% of the rental fee;

Less than 90 calendar day notice: \$1,000 plus 75% of the rental fee;

Less than 60 calendar day notice: \$1,000 plus 100% of rental fee;

plus 100% of any expenses incurred. All expenses will include, without limitation, double the contracted Box Office Fee and blended transaction fee based on gross ticket sales at the time of cancellation.

The LERNER agrees to use reasonable means to mitigate its damages. The LERNER will not retain any fee if cancellation is due to Good Cause as defined in the Termination section.

38. **AUDITORIUM SURCHARGE:** Lessee agrees that every ticket sold to the aforementioned event, whose pre-discount face value is \$5.00 or more, will include an embedded \$3.00 LERNER Historical Fee in its advertised price structure, as well as a \$—— LERNER Facility Fee, not included in the advertised price, based off from the matrix listed below. Said Historical Fee must be included in the advertised ticket prices and will be deducted from gross ticket sales at settlement. The Facility Fee will not be included when calculating the gross ticket sales revenue.

Lerner Facility Fee (FF or Processing Fee) will be based off the price of the ticket	
Ticket Price	Facility Fee
\$0.00 - \$9.99	\$4.50
\$10.00 - \$19.99	\$5.00
\$20.00 - \$29.99	\$6.00
\$30.00 - \$39.99	\$7.00
\$40.00 +	\$8.00

39. **TICKET SALES AND BOX OFFICE:** The Box Office and all ticket sales shall be under the exclusive control of The LERNER. The LERNER Performing Arts Center Box Office charges are as follows: Lessee agrees to pay % surcharge on total receipts handled by The LERNER Theatre Box Office, in addition to a % bank charge on all credit card purchases handled through The LERNER Theatre Box Office. Lessee designates that the % bank charge on all credit card purchases be charged to the ticket purchaser upon check-out. Credit card fees/surcharges will not be included in the computation of gross ticket sales.

40. **SETTLEMENT.** Upon request, The LERNER will submit preliminary settlement figures with 48 business hour notice. The LERNER shall make a good effort to settle with Lessee the next working day, provided all invoices and ticket sales are received and reconciled. If a second pre-settlement is requested an additional ninety-nine dollars (\$99.00) is added to the settlement at closing. Settlement shall be made by check, electronic fund transfer, or wire to be written/sent after total reconciliation of outstanding invoices and ticket sales. Wires cost additional thirty dollars (\$30.00) for processing that will be taken out at settlement. However if payment is requested at settlement, a request must be received by The LERNER not less than 48 business hours prior to settlement date. Wires and EFT payment take a minimum of one week to process and require additional assistance with the City Controller's Office, including contact name and phone number to verify settlement amount and account information.

41. **INDEMNIFICATION:** Lessee agrees to indemnify and hold harmless The LERNER, City of Elkhart and their officers, agents and employees from any and all claims, damages, liability, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury, or damage sustained or claimed to have been sustained by anyone, including, without limitation, any person, firm, partnership or corporation, in connection with, or arising out of, any negligent act or omission by Lessee or any of its employees or agents performing work under this agreement. Notice of any suit covered by this indemnification will be promptly given to The LERNER and City of Elkhart Corporation Counsel.

42. **I.R.S:** The Payee of proceeds from this Agreement (Payee is defined herein as "Lessee" unless designated elsewhere in this agreement) must complete and file with The LERNER a new IRS Form W-9 once every calendar year, which must be on file with The LERNER at least six weeks (6) prior to the scheduled event.

43. **SALES/USE TAX:** Lessee must pay Indiana Sales Tax on agreed upon facility and equipment rental charges unless Lessee hold a valid tax-exempt status. Lessee must provide evidence of valid tax exempt status at least ten (10) business days prior to scheduled event.

- 44. **SOUND LEVELS:** The decibel limits are controlled by the type of show and/or music and under the discretion of the Technical Director.
- 45. **OTHER CONDITIONS:** It is agreed that any matters not expressly provided for in this agreement will be at the sole discretion of The LERNER.
- 46. **ADDENDUM:** It is agreed that the following items are added to the above conditions of this lease agreement for the purpose of this single occasion.
- 47. **BOX OFFICE BUILDS AND ON-SALES:** Lessee shall use The Lerner ticketing service, Ticketmaster, for all ticket sales and entry into The Lerner, including comp tickets. Every guest entering The Lerner shall be counted. Building events and shows will need at least seventy-two (72) hours to be ready for the approved pre-sales and on-sales. Box Office at The Lerner will be staffed and managed during event day by Lessor (hours TBD). Lerner Box Office Staff will be on site for Will-Call and Guest Services and conflict resolution. The Lessee will be responsible for any changes or additions to the initial event build.

See attachment for additional charges.

In Witness Whereof the parties have hereunto set their hands and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Lessee)

For: The LERNER and the City of Elkhart, Indiana  
(Lessor)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

THE LERNER

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

FEIN: \_\_\_\_\_

NFP#: \_\_\_\_\_

RESOLUTION OF THE LERNER GOVERNING BOARD APPROVING REVISED  
LERNER EMERGENCY RESPONSE PLAN

Whereas, the Board has received and reviewed the attached revised Lerner Emergency Response Plan (the "Revised Plan"); and

Whereas, the Board finds the updated plan is necessary for the proper operation of the facility and desires to approve the same.

NOW, THEREFORE, BE IT RESOLVED:

1. The Board approves the form and content of the Revised Plan.
2. The Lerner managers and staff are authorized to incorporate the Revised Plan into their Procedures Manual, provide the Revised Plan to all occupants of the building, to all employees, staff, volunteers and lessees of the Lerner, as appropriate, and to such others as they deem necessary and appropriate, and do all other acts they deem necessary in furtherance of this Resolution.

DULY ADOPTED THIS 12<sup>TH</sup> DAY OF FEBRUARY 2025.

LERNER GOVERNING BOARD

By: \_\_\_\_\_  
Gary D. Boyn, President

ATTEST:

By: \_\_\_\_\_  
Nancy Wilson, Secretary



# THE LERNER

100 YEARS

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## MEMORANDUM

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**DATE:** Monday, January 27, 2025

**TO:** Lerner Governing Board

**FROM:** Deen Tuggle, Director of Operations

**RE:** **Update to Lerner Emergency Response Plan**

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The Lerner Theatre Staff requests approval of the updated Lerner Emergency Response Plan. This plan has been reviewed by appropriate City staff and officials at EPD, EFD, HR, and Legal. Adjustments have been made based on their review and are now reflected in the attached ERP.

As of January 27, 2025, all staff have been trained on the emergency response plan.

The action requested by the Lerner Governing Board is as follows:

**Approve the Lerner Emergency Response Plan, dated January 27, 2025.**

RESOLUTION OF THE LERNER GOVERNING BOARD APPROVING OUTBACK  
PREFERRED PROMOTER AGREEMENT

Whereas, the Board has received and reviewed the attached Preferred Promoter Agreement with Outback Presents, LLC which is intended to expand the live comedy, music and other entertainment events offered by the Lerner Theatre (the "Agreement"); and

Whereas, the Board finds the Agreement has been approved by legal counsel and will enhance the Lerner's ability to offer high quality, name entertainment to its programming, increase its cash flow and improve its operational earnings and desires to approve the same.

NOW, THEREFORE, BE IT RESOLVED:

1. The Board approves the form and content of the Agreement.
2. The Board President and Clerk are authorized to approve such revisions as they deem appropriate and consistent with the intent of the parties that have been reviewed and approved by legal counsel, and execute and deliver the final form of Agreement.
3. The Officers and Lerner staff are authorized do all other acts they deem necessary and appropriate in furtherance of this Resolution.

DULY ADOPTED THIS 12<sup>TH</sup> DAY OF FEBRUARY 2025.

LERNER GOVERNING BOARD

By: \_\_\_\_\_  
Gary D. Boyn, President

ATTEST:

By: \_\_\_\_\_  
Nancy Wilson, Secretary

## PREFERRED PROMOTER AGREEMENT

THIS PREFERRED PROMOTER AGREEMENT ("Agreement") is made and entered between the City of Elkhart, a municipal corporation, by and through its Lerner Governing Board ("City"), located at 229 S. Second St, Elkhart, IN 46516 and Outback Presents, LLC ("Promoter"), located at 209 10th Avenue South, Ste 409, Nashville, TN 37203.

City owns, manages, and operates the Lerner Theater, which is located at 410 S. Main Street, Elkhart, IN (the "Facility"). The Facility operates as a venue for high-quality live performances and civic events. Promoter is in the business of arranging, promoting, and managing live musical and other performances and events at entertainment venues throughout the United States. City desires to engage the services of Promoter to assist with bringing high-quality live entertainment and other events to the Facility.

In consideration of the foregoing and of the mutual promises and covenants herein contained, the parties hereby agree as follows:

1. **Effective Date, Term and Early Termination.** This Agreement will become effective April 1, 2025 (the "Effective Date"). The Term of the Agreement shall be one year, commencing on the Effective Date. The Term may be extended for two additional years (each an "Extended Term") upon the mutual written consent of the parties. A "Contract Year" shall be the 12-month period beginning on the Effective Date and each 12-month period thereafter during the Term. On October 1, 2025, both parties will decide whether or not to renew this Agreement for an Extended Term.

### 2. Preferred Promoter

a. **Engagement.** City engages Promoter as the Facility's exclusive comedy show promoter and non-exclusive preferred promoter for booking, promoting, and managing live musical and other performances and events at the Lerner Theatre as provided for in this Agreement. Promoter accepts such engagement upon the terms and conditions of this Agreement. Promoter acknowledges and agrees that City also may book events (including live entertainment events) at the Lerner during the term hereof.

b. **Services.** Promoter will book at the Lerner each year this Agreement is in effect eight (8) comedy shows and twelve (12) musical shows totaling twenty (20) shows. If an artist performs two shows in one day, those two shows will count towards the twenty (20) shows. The following tours will be exclusions to this Agreement: Dave Chappelle, Jerry Seinfeld, Jeff Dunham or any comedians in an exclusive tour deal with LiveNation, AEG Presents, or ICON Entertainment.

3. **Definitions.** For the purposes of this Agreement and the activities authorized herein, the terms listed below shall have the specialized meanings as contained within this subsection.

a. "Promoter Events": Live music, comedy, and other events performed in the Premises that are promoted by Outback Presents under this Agreement.



b. "Existing Tenant": Any tenant of the Facility who has a current and pre-existing contractual right to use the Lerner Theatre and related spaces.

c. "Existing Tenant Events": Any event held or hosted by the existing (as of the effective date of this Agreement) tenant of the Facility pursuant to its lease or other existing contracts with the Lerner.

d. "City Events": Events held and/or contracted for by City including but not limited to films projected onto video screens located on the stage, circus acts, conventions, trade shows, family shows, banquets, athletic and other competitions and tournaments, examinations, rehearsals, dances, television tapings, and two concerts per year benefitting local fire fighters.

e. "Third-Party Promoters": Firms other than Promoter or Existing Tenant offering to promote or perform concerts and other stage events.

f. "Third-Party Events": Concerts and other stage events promoted by Third-Party Promoters and if co-promoted by Promoter such event shall be deemed a Promoter Event.

4. **Promoter Access, Event Contract.** Promoter's use and access to the Premises for each event shall be as set forth in the Lerner Event Contract and User Rate Sheet in effect at the time, a copy of which is attached hereto. Promoter will execute and deliver a current Event Contract for each show it promotes at the Lerner.

5. **Events other than Promoter Events.** The parties acknowledge and agree that, while Promoter is the preferred and primary promoter of the Premises, Promoter will not have the exclusive right to book, promote, advertise, and manage events at the Lerner, provided that all Third Party Promoter booking requests received by the Lerner shall be presented to Promoter in writing to allow it the opportunity to participate as a co-promoter for up to thirty (30) shows per year, on such terms as it and the Third Party Promoter shall agree. Promoter shall have 24 hours from the date of such notice to provide the Lerner written notice of its desire to co-promote and shall have reached an agreement with the Third Party Promoter on terms for co-promotion within forty eight (48) hours thereafter, and if such agreement is not reached the Lerner shall be free to contract directly with the Third Party Promoter to book the show or event. The following activities will continue to occur at the Premises throughout the term of this Agreement, and shall not be deemed to be Promoter Events (unless Promoter is a co-promoter or sole promoter thereof):

a. Existing Tenant Events. Promoter shall have a right of first refusal on any dates for such Existing Tenant Events not already firmly scheduled. Existing Tenant is not obliged to co-promote with Promoter.

b. City Events. As defined above. City Events are not promoted by Promoter or its affiliates.

c. Third-Party Events. Promoter shall have a right of first refusal on any future dates for events by Third-Party Promoters not already firmly scheduled and shall have a right of first refusal to co-promote such events.

6. **Promotional Activities to be Performed by Promoter.** Promoter shall:
- a. collect and remit to the proper governmental authorities any taxes, including, but not limited to, sales tax, where such taxes arise out of goods or services sold as part of its Promotional Activities;
  - b. negotiate, administer, and execute in Promoter's name agreements reasonably necessary to confirm bookings at the Lerner including licenses, occupancy agreements, sponsorship agreements, rental agreements, and booking commitments;
  - c. book talent for Promoter Events to be held at the Premises and pay all talent and artist costs and deposits associated with such booking, consistent with the subsection below entitled "Booking Rights of Promoter;"
  - d. produce Promoter Events and bear all costs associated with such production; provided, however, that such costs will be utilized in the calculation of Net Profit. Such costs include, without limitation, artist settlement and insurance, special services, backstage or event-related catering services, rental of equipment not maintained within the house inventory, personnel costs (including, without limitation, stagehands, set-up and clean-up staff, box office staffing and administration) box office costs (ticket printing, credit card fees), and security costs. Notwithstanding anything to the contrary contained in this Agreement, in no event will City charge any costs or expenses to Promoter that exceed the actual and direct cost and expense of City therefor, and, in connection with a Promoter Event;
  - e. engage in such advertising, solicitation, promotional activities, and other action reasonably necessary to promote its booked events;
  - f. to the extent Promoter may desire, and subject to Premises availability, host any Promoter Events with the costs thereof utilized in the calculation of the Net Profit; and,
  - g. to the extent Promoter may desire, sell or cause to be sold at the Premises for any Promoter Events such merchandise that is not a food or beverage.

7. **Booking Rights of Promoter.** Promoter may at any time inquire of City whether any future date or dates are available for Promoter to book a Promoter Event. City shall respond to such an inquiry within 48 hours and at Promoter's good-faith request shall hold or reserve for a Promoter Event any open date . Promoter shall notify City within 48 hours of the release of any date previously requested be held or reserved by Promoter for a Promoter Event such that City can make that date available for other uses.

8. **Booking Rights of City.** Subject to the terms of this Agreement and Promoter's preferred rights, City shall have the continuous right to book City Events, Existing Tenant Events, , and Third-Party Events (each, a "Non- promoter Event") on terms established solely by City so long as such events do not conflict with any date already designated as held, reserved, or confirmed for a Promoter Event. City may at any time notify Promoter that City is prepared to confirm a

Non-promoter Event for any date Promoter has previously requested be held or reserved for an unconfirmed Promoter Event. In such event, Promoter shall have 48 hours to either confirm the Promoter Event for which that date has been held or reserved or release that date such that City may confirm the Non-promoter Event.

9. **Access and Use of Premises.**

a. **Ownership Retained by City.** At all times, City shall retain ownership of the Premises, including the furniture, fixtures, and equipment contained therein, and the real property on which the Facility is situated. No real property interest is conveyed to Promoter under this Agreement. Promoter's use of the Lerner shall be as set forth in the Lerner Event Contract.

b. **Control.** City, as the Facility owner and manager, shall have control and authority over the day-to-day operations of the Premises, and Promoter agrees to coordinate with City in performing its Activities on site. During Promoter Events, Promoter shall provide and pay for staff security, and such other services that it may require. Promoter shall endeavor to follow all reasonable and necessary policies and guidelines of City as are applicable to the Premises, including such policies and guidelines that are established or modified after the execution of this Agreement. City policies and guidelines currently in effect are deemed approved. City shall provide reasonable notice to Promoter in writing of any proposed amendment to its policies and guidelines. Notwithstanding anything to the contrary contained in this Agreement, City and Promoter agree that for Promoter Events the Promoter will be responsible for providing and/or paying for the services, staff and equipment and City shall be responsible, including the payment of the cost thereof, for providing or causing to be provided all other matters.

10. **Compensation.**

a. **Revenues.** The Parties agree to evenly divide the net revenue from each event. This excludes the Lerner Historic fee and Lerner Facility fee which shall be the sole property of the Lerner.

Promoter shall bear all of its own costs and expenses associated with its performance under this Agreement. This Agreement does not guarantee any specific amount of revenue to be collected and retained by Promoter.

The Parties agree that the Promoter will advance to The Lerner Theater on or before the first day of each year of this Agreement three payments on the following dates as a security deposit for the faithful performance of Promoter's obligations hereunder:

Fifteen Thousand (\$15,000) on April 1, 2025, and each succeeding contract year

Fifteen Thousand (\$15,000) on October 1, 2025, and each succeeding contract year

Fifteen Thousand (\$15,000) on January 2, 2026, and each succeeding contract year

Upon the completion of each Promoter Event held at the Lerner in each contract year, the Lerner will refund Three Thousand Five Hundred Dollars (\$3500) to Promoter until such time as the

entire Security Deposit is fully refunded. If any refund owed to the Promoter upon conclusion of any show in a contract year exceeds the amount of Security Deposit, then on deposit with the City, the undeposited amount will be credited against the future Security Deposits to be made by Promoter during that contract year, with the last required Security Deposit being credited first. Should Promoter fail to book sufficient events at the Lerner to earn a full refund, any funds remaining in the Security Deposit at the end of each annual term of this Agreement will be forfeited to the Lerner.

b. **Facility Fee.** Promoter agrees that every ticket sold to an event, whose pre-discount face value is \$5.00 or more, will include an embedded \$3.00 LERNER Historical Fee in its advertised price structure, as well as a LERNER Facility Fee, as referenced in the Lerner Event Contract, that is not included in the advertised price. Said Historical Fee must be included in the advertised ticket prices and will be deducted from gross ticket sales at settlement. The Facility Fee will not be included when calculating the gross ticket sales revenue.

c. **Concession Revenues.** All concession revenues generated from the sale of food and beverages at the Lerner shall be calculated into the gross revenue from the event.

d. **Merchandise Revenues.** For purposes of this paragraph, "Merchandise Revenues" means all documented gross revenues received by Promoter through sales of merchandise at Promoter Events, less all applicable state and local sales taxes and such percentage thereof owed to the Lerner pursuant to the Event Contract.

## 11. **Default and Remedies.**

The parties agree to mitigate any damages resulting from a default under this Agreement.

a. **Promoter Default.** The rights and remedies of City provided in this section are nonexclusive and are in addition to any other rights and remedies provided by law or under the Agreement. Promoter is not relieved of its liability to City for damages sustained by virtue of a default of this Agreement. City reserves the right to cure any default without terminating this Agreement and seek reimbursement for such reasonable expenses from Promoter, with the understanding that City is under no obligation to correct any such default. City's exercise of its right to cure shall not act as a waiver of its right to terminate this Agreement for default as provided hereunder. In addition to any other right it may have, City may terminate this Agreement upon the occurrence of any of the following:

i. Promoter fails to perform its contracted duties and responsibilities in a timely and proper manner and fails cure such failure within 30 days after receipt of written notice from City identifying the failure; provided that Promoter shall not be in default if Promoter commences to cure an identified breach within 30 days after receipt of such notice and thereafter diligently proceeds to complete such cure;

ii. Promoter files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future bankruptcy or other similar law, or seeks or consents to or acquiesces in the

appointment of any trustee, receiver or liquidator of manager or of all or any substantial part of Promoter's property, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;

iii. a court of competent jurisdiction enters an order, judgment or decree approving a petition filed by or against Promoter seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future bankruptcy or other similar law;

iv. Promoter abandons or, subject to Force Majeure or other events beyond Promoter control, discontinues booking its Promoter Events at the Lerner; or

v. Promoter or any Promoter Employee responsible for the direct performance of any of Promoter's responsibilities under this Agreement is convicted of a felony after the Effective Date and within 10 days of written demand from City the Promoter does not remove such Promoter Employee from performing any of Promoter's responsibilities under this Agreement.

b. **City Default.** City shall be in default of this Agreement if it fails to perform one or more of its obligations hereunder and such failure continues for more than 30 days after written notice thereof from Promoter; provided that if the nature of City's default is such that more than 30 days are reasonably necessary to cure, City shall not be in default if City commences to cure within the 30-day period and thereafter diligently proceeds to complete such cure. Upon City's default, Promoter shall have the right to:

i. cure City's default with the actual and reasonable cost thereof to be reimbursed by City within 30 days of the receipt of an invoice and, failing such timely reimbursement, to offset the cost against payments next coming due from Promoter to City; or

ii. terminate this Agreement.

## 12. **Maintenance.**

a. **Routine Maintenance and Repair.** City, at its sole cost and expense, shall perform or otherwise cause to be performed such reasonable facility maintenance services as are appropriate or necessary to maintain and operate the Lerner in a manner consistent with applicable policies, procedures and operations of The Lerner Theater so as to allow Promoter to perform hereunder and hold Promoter Events.

b. **Utilities.** City shall provide all necessary utilities within the capabilities of the equipment and systems currently installed in the Premises, or to be installed pursuant to this Agreement, and pay all charges therefor.

c. **Special Equipment and Infrastructure.** Promoter shall arrange for and pay all costs associated with any specialty equipment or infrastructure Promoter desires to conduct a

Promoter Event which is not part of the equipment or infrastructure comprising part of the Premises upon the Effective Date of this Agreement, provided that City shall ensure all existing equipment and infrastructure is kept in good order and working condition and available for use by Promoter in a manner consistent with City's historical provision of such equipment and infrastructure. For every Promoter Event the City, at its sole cost and expense except as otherwise provided in this Agreement, shall provide all Facility services, equipment and infrastructure reasonably necessary to hold such Promoter Event at the Premises.

13. **Records and Audit.** The Lerner will conduct show closings at the conclusion of each Promoter Event and provide copies thereof to Promoter upon the conclusion of each show closing.

14. **Defense and Indemnification.** Promoter agrees to indemnify, defend and hold harmless City, its agents, officers, and employees (the "City Indemnitees") from and against any and all claims, liability, loss, property damage, personal injury or death, interest, judgments, liens, costs and expenses that arise out of, or are incurred in connection with any and all claims, demands, suits, actions or proceedings which may be made or brought against City or any of the City Indemnitees by reason of or as a result of:

a. any contracts, agreements, licenses, use permits or other obligations incurred by Promoter hereunder;

b. the lack of exercise of reasonable care by Promoter in the employment of any of its employees or the lack of reasonable care in the direction and supervision of Promoter's employees in performing the Promotional Activities;

c. the willful or negligent act or omission of Promoter, its agents, officers, employees, directors or others in privity with Promoter; or

d. the failure or omission of Promoter to observe and perform any of its material obligations, covenants and conditions to be observed and performed by it under this Agreement which result in a default after applicable notice and cure periods.

15. **Insurance.**

a. **Required Coverages.** Prior to commencing performance under this Agreement, Promoter shall provide to City:

i. commercial general liability insurance coverage for the Premises for the protection of City for risks customarily covered by such insurance (including, but not limited to, coverage for premises/operation, products and completed operations, independent contractors, and personal injury, including coverage for false arrest, false imprisonment, malicious prosecution, libel, slander, defamation and advertising) to the extent caused by Promoter or its employees, agents, contractors or invitees in an amount not less \$1,000,000.00 single limit;

- ii. workers' compensation coverage as required by Indiana law;
- iii. automobile liability coverage with limits not less than \$2,000,000.00 combined single limit each accident; and
- iv. excess insurance with a limit of not less than \$10,000,000.00 each occurrence in excess of each liability coverage required in this section. This coverage shall be on a follow form basis.

b. **General.** All primary coverage shall be written by an insurer that is nationally recognized with a policyholder's rating of at least A-, as listed from time to time by A.M. Best Insurance Reports. Each policy shall provide that it may not be cancelled or terminated unless at least 30 days' prior notice thereof has been provided to City, except in case of cancellation or termination due to lapse for nonpayment, in which case only ten days' notice shall be required. Each policy shall contain mutual waivers of all rights of subrogation for property damage. Each policy covering third party liability shall contain a "cross-liability" endorsement or a "severability of interest" endorsement providing that coverage, to the maximum amount of the policy, will be available despite any suit between the insured and any additional insured under such policy. The insurance policies shall not in the aggregate have deductibles in excess of \$2,000,000. City shall be named an additional insured on all policies (other than Workers' Compensation) with respect to Promoter's use of the Premises, as its interests may appear. In the event of any dispute that could be reasonably covered by a policy of insurance required by this Agreement, Promoter shall provide a copy of such policy to City upon City's request. Promoter's willful failure to comply with the requirements of this Paragraph shall constitute a default of this Agreement, if such failure continues after 10 business days' notice and opportunity to cure.

c. **Promoter Personal Property.** City is not responsible for any damage or loss of Promoter's personal property except to the extent caused by the unreasonable actions of City or its employees, agents, or officers. Promoter agrees to hold City harmless from any damage or loss of Promoter's personal property located within the Premises except to the extent caused by the unreasonable actions of City or its employees, agents, or officers.

16. **Personnel Policies.** Promoter shall not discriminate on the basis of race, color, political or religious opinion or affiliation, creed, age, physical or mental handicap, sex, marital status, ancestry, national origin or sexual preference/orientation. Promoter shall comply with all applicable laws, rules, and regulations regarding discrimination in employment, unlawful employment practices and affirmative action. Promoter shall be an equal opportunity employer.

17. **Assignment.** This Agreement may not be assigned, in whole or in part, by either party without the written consent of the other party, such consent not to be unreasonably withheld, conditioned or delayed. To be a valid assignment under this Agreement, any assignee must succeed to all of the rights and interests and assume all of the liabilities and obligations (including, without limitation, all operating losses) of the assignor under this Agreement, and the assignee must agree to cure any prior default of this Agreement committed by the assignor, all in writing to the reasonable satisfaction of the non-assigning party. No agreement that Promoter is authorized or empowered to enter into under this Agreement, including, without limitation, any

concessionaire agreement, ticketing agreement, sponsorship agreement or service agreement, shall be an assignment of this Agreement or a default under this paragraph.

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

City of Elkhart

Corporation Counsel/Lerner Governing Board

229 S. Second Street

Elkhart, IN 46516

18. **Representations and Warranties.** Each of the parties hereto represents and warrants that it has full power and authority to enter into this Agreement and to assume and perform all of its obligations under this Agreement, that it has obtained any and all approvals that may be required before it can execute and perform this Agreement, including approvals required by any loan documents, bond authorization, corporate articles and bylaws, city charter or state statute, regulation or court order, and that the persons executing this Agreement on its behalf have been duly authorized and are empowered to bind it to this Agreement, that the execution of this Agreement, and the performance by it of the actions anticipated by this Agreement neither breaches any contract with any third party, or constitutes any event, which, with the passage of time, or the giving of notice, or both, will breach any contract with any third party, and that this Agreement executed by it are or when fully delivered will be duly authorized, executed and delivered by it and will be valid, binding and enforceable obligations of it.

19. **Intellectual Property.** Promoter shall require in its contracts with persons holding or promoting events at the Premises that such persons shall obtain all necessary approvals for or arising from the use of patented and/or copyrighted materials, equipment, devices, processes, or dramatic rights used on or incorporated in the conduct of any events which Promoter books at the Premises. Promoter shall indemnify and hold City harmless from any breach of patent or copyright rights or patent or copyright infringements or violations of patent or copyright laws.

20. **Force Majeure.** Should any matter or condition ("Force Majeure") beyond the reasonable control of City or Promoter, such as, but not limited to, war, public emergency or calamity, fire, earthquake, flood, severe weather conditions, Act of God, pandemic or epidemic, as reported by the World Health Organization (WHO) or Center for Disease Control and Prevention (CDC) or the National Institutes of Health (NIH), measures of government authority taken in response to a pandemic or epidemic, strikes or labor disturbances, civil disturbances or riots, or any governmental restriction, prevent or delay performance of this Agreement in accordance with provisions hereof, in whole or in part, after the employment of all reasonably available and economically feasible means to overcome such condition, avoid delay and mitigate the effects thereof, performance of this Agreement by the party affected thereby shall be suspended or excused to the extent commensurate with such interfering occurrence; provided that the party availing itself of this section shall notify the other party within 21 days after its actual knowledge of commencement of such occurrence of the event of Force Majeure; and



provided further that the time of suspension or excuse shall not extend beyond that reasonably necessitated by the occurrence of the event of Force Majeure. If the Premises is rendered inoperable by a Force Majeure condition during the term of this Agreement and such inoperability prevents the holding of one or more booked Promoter Events, then Promoter's payment obligations to City shall be equitably abated in proportion to Promoter's documented loss directly attributable to such Force Majeure condition.

21. **Merger, Integration and Amendment.** Except as otherwise expressly stated or referenced herein, this Agreement is the entire integrated agreement of the parties. No other agreement, oral or written, prior or contemporaneous, except the Agreement, shall be deemed to exist between the parties. No subsequent agreement or any amendment of this Agreement shall be binding upon the parties unless it is contained in a written document executed by properly authorized representatives of each party.

22. **Approvals Waiver.** Except as otherwise expressly provided, whenever a provision of this Agreement requires a review, determination or approval of a party, such review, determination and approval (or notice of disapproval) shall be in writing and shall not be unreasonably withheld or delayed (except where such review, determination or approval is expressly made subject to the sole discretion or determination of a party), and shall in any event be made within any time limit specified therefore or within 30 days if no time limit is specified. No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition, or duty of the other, shall be construed as consent to or a waiver of any other breach of the same, or any other covenant, condition, or duty. No approval or review by City hereunder, or any right of approval or review by City, as to any matter or under any circumstances shall be deemed to constitute Promoter as an agent for or acting on behalf of City. Additional Documentation. Each of the parties to this Agreement, without further consideration, shall execute and deliver such additional documents and shall take other actions as may be reasonably required in order to fully effectuate all of the terms and provision of this Agreement.

23. **Construction.** This Agreement is the result of the joint efforts and negotiations of the parties hereto, and no single party is the author or drafter hereof. Each party assumes joint responsibility for the form and position of each and all the contents of this Agreement and each agrees that this Agreement shall be interpreted as though each of the parties participated in the composition of this Agreement and each and every part thereof.

24. **No Joint Venture.** It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Promoter and that Promoter is an independent contractor and not an agent of City. City and Promoter hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City, on one hand, and Promoter, its Owners or Affiliates, on the other hand, as joint ventures or partners. Promoter is an independent contractor with the rights and obligations provided in this Agreement. The parties acknowledge that City negotiated and executed this Contract for Promoter's promotional and marketing skills.

25. **Premises Not to Be Used as Security.** Promoter shall not pledge or permit the Premises to be used as security for any loan or obligation of Promoter and shall not permit the filing of any lien against the Premises property on account of any work performed by or for Promoter or any contract to which Promoter is a party. In the event a lien is filed against the Premises or any part thereof relating to any agreement made by Promoter, Promoter shall promptly cause such lien to be removed by filing an appropriate bond.

26. **Choice of Law and Venue.** Any lawsuit relating to this Agreement shall be filed in a court of competent jurisdiction in Elkhart County, Indiana. Indiana law, without application of Indiana conflicts of laws principles, shall govern any dispute between City and Promoter. The parties hereby consent to personal jurisdiction in such courts and irrevocably waive any objection and any right of immunity on the ground of venue, the convenience of forum or the jurisdiction of such courts.

27. **Limitations on Legal Requirements.** Notwithstanding anything to the contrary contained herein, Promoter acknowledges and agrees that the power and authority to adopt, rescind, or amend laws for the City of Elkhart resides with the City of Elkhart Common Council and that nothing contained herein shall in any way obligate the City of Elkhart Common Council to adopt, rescind, or amend applicable law, or subject City to any liability on account of the Common Council failure to adopt, rescind or amend any applicable law.

28. **Iran Divestment Act.** In accordance with the Iran Divestment Act, Indiana Code § 5-22-16.5-8 et seq., CONTRACTOR certifies that to the best of its knowledge and belief, neither CONTRACTOR nor any of its subcontractors are on the list created pursuant to Indiana Code § 5-22-16 et seq. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a contractor or subcontractor contracts.

Time of the Essence. Time is of the essence of this Agreement.

Notices and Designation of Agent for Service of Process

All notices to the City shall be mailed or hand delivered to:

Corporation Counsel

City of Elkhart

229 S. Second Street

Elkhart, IN 46516

Notices to Promoter shall be mailed or hand delivered to:

Outback Presents, LLC

209 10th Avenue South

Suite 409

Nashville, TN 37203

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above set forth.

City of Elkhart

Outback Presents LLC

Lerner Governing Board

By: \_\_\_\_\_

By: \_\_\_\_\_

Gary D. Boyn, President

Mike Smardak

Attest:

By: \_\_\_\_\_

Nancy Wilson, Clerk



# THE LERNER

100 YEARS

Thursday, January 23, 2025

To: The Lerner Governing Board  
From: Deen Tuggle, Director of Operations  
Subject: Contract – Chicago Flyhouse  
Date: January 23, 2025

The City of Elkhart, through its Lerner Governing Board, seeks to enter into a contractual agreement with Chicago Flyhouse for an annual rigging inspection of the theatrical fly system, as well as necessary repairs to the fly system.

I ask the Lerner Governing Board to approve this Chicago Flyhouse contract. The contract has been reviewed by City Legal.

Respectfully submitted,

Deen Tuggle  
Director of Operations  
The Lerner Theatre

**CONTRACT FOR THE INSPECTION AND REPAIR OF RIGGING COMPONENTS**

This Agreement is made and entered into this \_\_\_\_ of \_\_\_\_\_, 2025, between the **CITY OF ELKHART, INDIANA** ("CITY"), by and through the Lerner Governing Board, located at 229 S. Second Street, Elkhart, Indiana 46516 and **CHICAGO FLYHOUSE, INC** ("CONTRACTOR"), located at 2450 W Hubbard St, Chicago, IL 60612.

**RECITALS:**

**WHEREAS**, the Lerner Theater Board needs to inspect and subsequently repair rigging components at the Lerner Theater, ("**Premises**"); and

**WHEREAS**, the Lerner Theater desires to retain the services of a competent contractor with the necessary equipment, expertise, and personnel to perform the required repairs.

**WHEREAS**, the CONTRACTOR represents that it has the requisite expertise and ability to complete this project and guarantees that CONTRACTOR is properly bonded;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

SECTION 1. Scope of Services.

CONTRACTOR agrees to furnish the services listed in the Quote for the Rigging Inspection and Quote for the Repairs, both dated January 7, 2025, and attached to this Contract as Exhibit A and Exhibit B respectively.

SECTION 2. Schedule.

Services described in Section 1 shall commence within a reasonable amount of time from when CITY approval of this Agreement is communicated to CONTRACTOR.

SECTION 3. Payment.

In consideration for the services rendered under this contract, the CITY agrees to pay to the CONTRACTOR the sum of Two Thousand One Hundred and Twenty-Eight dollars (\$2,128.00) for the Inspection services listed in Exhibit A, and Fourteen Thousand Four Hundred Fourteen dollars (\$14,414.00) for the Repair services listed in Exhibit B; for a grand total amount of Sixteen Thousand Five Hundred Forty-Two dollars (\$16,542.00) upon inspection and approval by the City, under the terms and conditions described in the attached Exhibits A and B. No payment shall be made until the City's inspection reveals that the work is entirely completed, and no advance payment will be made.

SECTION 4. Indemnification.

Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to Indemnify and hold harmless the other Party, and its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal

fees and cost of any kind or amount whatsoever, which result from or arise out of any act or omission of the Indemnifying party, its respective affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with Agreement. This Indemnification will survive the termination of the Agreement.

SECTION 5. Assignment.

Neither this agreement nor any interest of CONTRACTOR herein may be assigned, sublet, or transferred to a third party without prior written consent of the CITY.

SECTION 6. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and any suit based thereon must be brought in the Superior or Circuit Court of Elkhart County, Indiana.

SECTION 7. Compliance with State and Local Law.

CONTRACTOR agrees to comply with all federal, state and local laws, rules, regulations, or ordinances that are applicable at the time of CONTRACTOR'S services pursuant to this Agreement are rendered, and all provisions required thereby to be included herein are hereby incorporated by reference.

SECTION 8. E-Verify Compliance.

All terms defined in LC. § 22-5-1.7 et seq. are adopted and incorporated into this section. Pursuant to LC. § 22-5-1.7 et seq., CONTRACTOR shall enroll in and verify the work eligibility status of all of its newly-hired employees using the E-Verify program, if it has not already done so as of the date of this Agreement. CONTRACTOR is further required to execute an affidavit affirming that: (i) it is enrolled and is participating in the E-verify program, and (ii) does not knowingly employ any unauthorized aliens. In support of the affidavit, CONTRACTOR shall provide the CITY with documentation that it has enrolled and is participating in the E-Verify program. This Agreement shall not take effect until said affidavit is signed by CONTRACTOR and delivered to the CITY's authorized representative.

Should CONTRACTOR subcontract for the performance of any work under this Agreement, the CONTRACTOR shall require any subcontractor(s) to certify by affidavit that: (i) the subcontractor does not knowingly employ or contract with any unauthorized aliens, and (ii) has enrolled and is participating in the E-verify program. CONTRACTOR shall maintain a copy of such certification for the duration of the term of any subcontract. CONTRACTOR shall also deliver a copy of the certification to the CITY within seven (7) days of the effective date of the subcontract.

If Contractor, or any subcontractor of Contractor, knowingly employs or contracts with any unauthorized aliens, or retains an employee or contract with a person that the CONTRACTOR or subcontractor subsequently learns is an unauthorized alien, CONTRACTOR shall terminate the employment of or contract with the unauthorized alien within thirty (30) days ("Cure Period"). Should the CONTRACTOR or any subcontractor of CONTRACTOR fail to cure within the Cure

Period, the CITY has the right to terminate this Agreement without consequence.

The E-Verify requirements of this Agreement will not apply should the E-Verify program cease to exist.

SECTION 9. Supplement.

This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

SECTION 10. Entire Agreement.

This Agreement constitutes the entire agreement of the parties, and, unless specified otherwise herein, no representations, inducement, promises, or prior agreements, oral or written between the parties, or made by any agent on behalf of the parties or otherwise, shall be of any force and effect.

SECTION 11. Authority.

The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

SECTION 12. Nondiscrimination.

CONTRACTOR shall not be in violation of Elkhart City Ordinance No. 4101, for the duration of this agreement. Should CONTRACTOR be in violation of any of the aforementioned provisions, such shall be considered a material breach of this agreement.

SECTION 13. Severability.

In the event that any portion of this Agreement is found to be invalid it shall be deemed severed and the remainder of this Agreement shall remain in full force and effect as if the severed portion did not exist.

SECTION 14. Council Appropriation.

In the event funds for the payment of services pursuant to this Agreement are not appropriated by the Elkhart City Common Council, then, the CITY shall have the right to terminate this Agreement without penalty by giving prior written notice to CONTRACTOR.

IN WITNESS WHEREOF, the parties have duly executed this Agreement pursuant to all the required authorization as of the date first set forth above.

\_\_\_\_\_  
Gary D. Boyn, President

\_\_\_\_\_  
Signature of Contractor

Lerner Governing Board

\_\_\_\_\_

City of Elkhart, Indiana

Print Name



LERNER THEATRE  
 410 S MAIN ST  
 ELKHART, IN 46516  
 ATTN: DEEN TUGGLE  
 DEEN@THELERNER.COM

**QUOTE**  
 RIGGING INSPECTION | JANUARY 7, 2025

## PROPOSED INSPECTION WORK

### PROVIDE (2) TECHNICIANS WHO WILL:

- Complete a visual review of the rigging components in (1) venue, noting only conditions which are abnormal or problematic:
  - Equipment will be exercised and observed in order to identify problems, and inspection technicians will attempt to identify causality when possible. Technicians endeavor to be thorough, observing each component of each sub-system but may not observe all items if there is no access or where obstacles hinder access to certain parts of the rigging equipment.
  - No equipment will be disassembled unless noted; equipment which requires disassembly in order to complete manufacturer-required or ANSI-required inspections (i.e. stand-alone products like chain hoists) will be quoted separately
  - Equipment which is not listed below is not included in this inspection
  - A report will be issued electronically, and will include photographic documentation of each problem, explanations of the problems, potential solutions, and cost/time estimates of suggested repairs
  - All Flyhouse inspections are ANSI E1.47 Level 2 compliant unless otherwise noted
  - Findings will be placed into one of three categories:
    - Urgent: An issue that represents an immediate threat to life safety and requires immediate attention
    - Necessary: A repair that will facilitate proper operation of the rigging system and which will improve the life span of the equipment... these repairs should be made within the next year
    - Basic: These include general rigging and safety improvements that reflect standard industry practices
- Lerner Theatre: Rigging inspections in the theater will focus on:
  - (30) single purchase line sets
  - (1) manual reset fire curtain
    - When a fire curtain is included, CFI reserves the right to exclude testing if CFI technicians determine that it may not reset correctly without additional service or personnel. CFI will do its best to notify customer while on site and will note any testing exclusions in the inspection report.
  - (4) Nystrom smoke hatch rigging systems
    - Smoke hatch rigging will be inspected
    - Smoke hatches will be tested with venue staff pending weather
  - All over stage track and drapery
  - Front of house entertainment rigging systems

**TOTAL PRICE**

**INSPECTION PRICE**

**\$ 2,128\***

**\*INSPECTION TO BE COMPLETED DURING THE 2025 REPAIR MOBILIZATION. SCHEDULING SEPARATE VISITS WILL RESULT IN AN INCREASED COST DUE TO BILLABLE TRAVEL.**

- (1) working days will be required to complete the inspection.
- A walkable grid is present. A lift will be required to access the curtain tracks and will be provided by The Lerner Theater
- Space below inspection locations must be free of all equipment, seats, platforms, etc.
- Reports typically take up to 8 weeks to generate.

Chicago Flyhouse | 2450 W Hubbard St, Chicago, IL 60612 | [www.flyhouse.com](http://www.flyhouse.com)



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TERMS

- Payment Terms: Net due upon completion, pending receipt of purchase order. Signed quotes are Net due prior to delivery of report.
- This quote is based on working Monday thru Friday, 8am to 5pm.
- This proposal is valid (30) days from date shown.
- All agreements contingent upon accidents, strikes, acts of God or delay beyond our control.
- This quote contains proprietary information: no portion, part, drawing and/or photographic reproduction is to be shared or provided to other vendors, customers, suppliers or competitors of The Chicago Flyhouse Incorporated.

---

SIGN FOR APPROVAL AND EMAIL WITH PURCHASE ORDER TO MBRADDOCK@FLYHOUSE.COM OR FAX TO 773-533-1598:

Name: \_\_\_\_\_ Title: \_\_\_\_\_ PO #: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email Address: \_\_\_\_\_

I HEREBY CONFIRM THE ABOVE QUOTED WORK AND AGREE TO THE PAYMENT AND OTHER TERMS AS SHOWN:

---

SIGNATURE

DATE



LERNER THEATRE  
410 S MAIN ST  
ELKHART, IN 46516  
ATTN: DEEN TUGGLE  
DEEN@THELERNER.COM

**QUOTE**  
REPAIRS | JANUARY 7, 2025

**PROPOSED WORK**

- o Repair all of the below according to the proposals outlined in each appendix.

TOTAL PRICE	REPAIR PRICE	\$ 9,806
	ESTIMATED DOOR TO DOOR TRAVEL**	\$ 4,608
	<b>TOTAL PRICE</b>	<b>\$ 14,414</b>

- (3-4) working days will be required to complete the repairs.
- Steel recycling dumpsters and/or other dumpsters are not included and are to be provided by the customer
- Protection of the existing flooring is not included and is by others if required
- Due to ongoing supply chain disruptions, lead times are unknown. Flyhouse commits to doing our best for its customers after confirmation, but all delivery date requirements are subject to discussion and to factors beyond our control.
- A walkable grid is present and no lift should be required. If a lift becomes necessary it will be provided by Chicago Flyhouse and billed at cost.
- **\*\*All travel expenses are subject to current market conditions at the time of scheduled work and will be billed at cost.**
- Space below repair locations must be free of all equipment, seats, platforms, production equipment etc.
- Reports can take up to 8 weeks to generate.

**TERMS**

- Payment Terms: Payment terms: 60% due upon confirmation, 40% due upon completion, pending receipt of purchase order.
- This quote is based on working Monday thru Friday, 8am to 5pm.
- This proposal is valid (30) days from date shown.
- RIGGING EQUIPMENT MUST BE OPERATED WITH CARE: This proposal assumes that all rigging equipment will be operated by trained, experienced operators using industry-standard methods and processes; Flyhouse assumes no liability or responsibility for the safe and proper operation of the equipment after installation is complete.
- Rigging systems require annual inspections during their lifetimes to maintain safe and proper operation. These inspections are not included and are the responsibility of the owner/operator.
- All agreements contingent upon accidents, strikes, acts of God or delay beyond our control.
- This quote contains proprietary information: no portion, part, drawing and/or photographic reproduction is to be shared or provided to other vendors, customers, suppliers or competitors of The Chicago Flyhouse Incorporated.

SIGN FOR APPROVAL AND EMAIL WITH PURCHASE ORDER TO MBRADDOCK@FLYHOUSE.COM OR FAX TO 773-533-1598:

Name: \_\_\_\_\_ Title: \_\_\_\_\_ PO #: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email Address: \_\_\_\_\_

I HEREBY CONFIRM THE ABOVE QUOTED WORK AND AGREE TO THE PAYMENT AND OTHER TERMS AS SHOWN:

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

# Rigging Log Summary

RIGGING LOG ID	TICKET STATUS	DESCRIPTION
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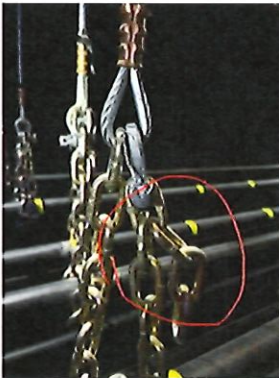
## URGENT:

## NECESSARY:

- |   |      |  |
|---|------|--|
| 1 | OPEN | Trim chain links captured in load path                     |
| 2 | OPEN | Lift lines on some line sets are improperly terminated     |
| 3 | OPEN | Lift line 6 runs on keeper bolts of loft block 5           |
| 4 | OPEN | Bearings failing on first loft block of line set 5         |
| 5 | OPEN | Wire rope running through loft block 1 is rubbing slightly |
| 6 | OPEN | Wire rope rubbing  |

## BASIC:

- |   |      |  |
|---|------|--|
| 7 | OPEN | Arbor guide needs adjustment on line set 12        |
| 8 | OPEN | Rope lock rings are damaged                        |
| 9 | OPEN | Lift lines on arbors are not aligned appropriately |

**RIGGING LOG DETAIL****LEVEL OF PROBLEM:** NECESSARY**RIGGING LOG ID:** 1**PROBLEM:** Trim chain links captured in load path**STATUS:** OPEN**EST. COST:** \$1002**EST. TIME:** 0.5 DAYS**PHOTO BEFORE****EXPLANATION OF PROBLEM**

There is an unloaded chain link trapped in the load path of the trim chains. This trapped link is loading the minor axis of the first chain link in the load path. Chain links are designed to be loaded along the major axis (the long dimension of the link) in order to maintain the full capacity of the chain. When a chain link is loaded along its minor axis it is weakened an unknown amount. This weakened attachment could fail under the rated load and result in personal injury or property damage. This was first noted as a problem during the September 2021 inspection, and continues to be an issue as of January 2024.

**RECOMMENDED SOLUTION**

The trim chain should be removed and reseated to remove the loose end from the load path. This requires careful installation of the shackle, minding the orientation of the loaded and free links. When reinstalled, the shackle pin should then be fixed (moused) with a zip tie or piece of wire.

## RIGGING LOG DETAIL

**LEVEL OF PROBLEM:** NECESSARY

**RIGGING LOG ID:** 2

**PROBLEM:** Lift lines on some line sets are improperly terminated

**STATUS:** OPEN

**EST. COST:** \$3184

**EST. TIME:** 1 DAYS

---

### PHOTO BEFORE



### EXPLANATION OF PROBLEM

Some of the wire rope in the counterweight system has compression sleeves that are not properly installed. The sleeves have not been crimped according to manufacturer specifications. Not crimping the sleeves in the correct manner reduces the efficiency of the termination by an unknown amount, in turn reducing the capacity of the system by an unknown amount. The system rating is no longer known, creating a scenario where the system could fail causing damage to equipment or injuring individuals. This was first noted as a problem during the September 2021 inspection, and continues to be an issue as of January 2024.

### RECOMMENDED SOLUTION

All of the affected terminations should be replaced with properly installed compression sleeves that have at least one diameter's width of cable protruding from the end of the sleeve. This will require installing new wire rope as cutting the end termination will affect the height of the rigging.

**RIGGING LOG DETAIL**

**LEVEL OF PROBLEM:** NECESSARY

**RIGGING LOG ID:** 3

**PROBLEM:** Lift line 6 runs on keeper bolts of loft block 5

**STATUS:** OPEN

**EST. COST:** \$1812

**EST. TIME:** 0.5 DAYS

---

**PHOTO BEFORE**



**EXPLANATION OF PROBLEM**

On all of the counterweight line sets, loft block 6 sits lower than the remaining loft blocks. This causes the 6th lift line of the set to rub on the 5th loft block. In several cases the wire rope is cutting into the top keeper bolt. This is causing system damage and excess and unnecessary wear on the wire rope. It is also quite loud when running line sets. This was first noted as a problem during the September 2021 inspection, and continues to be an issue as of January 2024.

**RECOMMENDED SOLUTION**

An ultra high molecular weight (UHMW) plastic idler bar should be installed on top of the 5th loft blocks. This will quiet the system and allow the wire rope to run without rubbing the steel.

**RIGGING LOG DETAIL**

**LEVEL OF PROBLEM:** NECESSARY

**RIGGING LOG ID:** 4

**PROBLEM:** Bearings failing on first loft block of line set 5

**STATUS:** OPEN

**EST. COST:** \$1311

**EST. TIME:** 0.5 DAYS

---

**PHOTO BEFORE**



**EXPLANATION OF PROBLEM**

The first loft block of line set 5 is beginning to wobble during use. As it rolls the side of the sheave scrapes on the side plate in a cyclical manner. This is an indication that the bearings are failing. Failed bearings will cause the line set to be difficult or impossible to move. This was first noted as a problem during the September 2021 inspection, and continues to be an issue as of January 2024.

**RECOMMENDED SOLUTION**

This loft block should be replaced with a new loft block as the bearings cannot be repaired.

## RIGGING LOG DETAIL

**LEVEL OF PROBLEM:** NECESSARY

**RIGGING LOG ID:** 5

**PROBLEM:** Wire rope running through loft block 1 is rubbing slightly

**STATUS:** OPEN

**EST. COST:** \$1002

**EST. TIME:** 0.5 DAYS

---

### PHOTO BEFORE



### EXPLANATION OF PROBLEM

On several of the line sets the fleet from the head block to the loft block sheave is slightly too severe. As the line set is run there is audible rubbing of the wire rope on the side of the loft block sheave. This results in unnecessary wear and can require premature loft block replacement due to sheave or bearing failure. This problem was first noted during the September 2021 inspection and continues to be an issue as of January 2024.

### RECOMMENDED SOLUTION

The affected loft blocks should be twisted slightly on the well in order to align them better with the side of the head block.



## RIGGING LOG DETAIL

**LEVEL OF PROBLEM:** NECESSARY

**RIGGING LOG ID:** 6

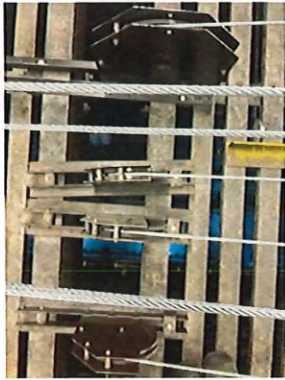
**PROBLEM:** Wire rope rubbing

**STATUS:** OPEN

**EST. COST:** \$1086

**EST. TIME:** 0.5 DAYS

### PHOTO BEFORE



### EXPLANATION OF PROBLEM

The wire rope is dragging on the keeper bolt on some of the first loft blocks from the head block during use. A keeper bolt is designed to prevent the wire rope from jumping out of its groove and falling off of the sheave, causing it to bind between the sheave and cheek plate. This drag will cause damage to the system as the wire rope cuts into the keeper bar and also results in unnecessary wear on the wire rope.



### RECOMMENDED SOLUTION

The keeper bolts on each affected loft block should be adjusted so that it is slightly off of the wire rope when secured. This may require drilling a new set of holes to allow the keeper bar to be moved.

## RIGGING LOG DETAIL

**LEVEL OF PROBLEM:** BASIC

**RIGGING LOG ID:** 7

**PROBLEM:** Arbor guide needs adjustment on line set 12

**STATUS:** OPEN

**EST. COST:** \$1002

**EST. TIME:** 0.5 DAYS

---

### PHOTO BEFORE



### EXPLANATION OF PROBLEM

There is a section on the arbor guide track for line set 12 where the arbor drags and occasionally gets stuck. The spot is located a few feet above the lower arbor stop. There is no clear, visible cause for the issue, but it is repeatable and likely to cause a problem during normal operation. This was first noted as a problem during the September 2021 inspection and continues to be an issue as of January 2024.

### RECOMMENDED SOLUTION

The guide track will need to be adjusted. Because no clear cause is evident, a process of trial and error will need to be employed. Possible solutions may also include grinding down sections of the guide track as necessary.

**RIGGING LOG DETAIL**

**LEVEL OF PROBLEM:** BASIC

**RIGGING LOG ID:** 8

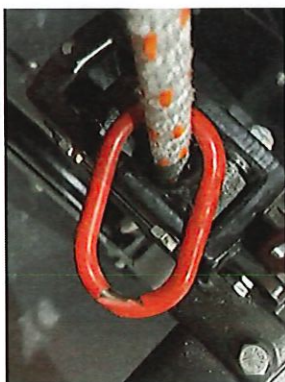
**PROBLEM:** Rope lock rings are damaged

**STATUS:** OPEN

**EST. COST:** \$1295

**EST. TIME:** 0.5 DAYS

**PHOTO BEFORE**



**EXPLANATION OF PROBLEM**

About 1/3 of the rope lock rings in the system are showing damage to their vinyl covering. This damage is the result of excess tension in the rope lock cams making it hard to pull the ring over the handle and putting a compression force on the vinyl of the ring. This is, in part, a symptom of the smaller diameter hand line in use on the system. The vinyl coating on the rings is intended to extend the life of the hand line. When damaged, it can shorten the life of the hand lines and could lead to a failure if the damage goes unnoticed. This was first noted as a problem during the September 2021 inspection and continues to be an issue as of January 2024.

**RECOMMENDED SOLUTION**

The rope lock rings should be replaced.

**RIGGING LOG DETAIL****LEVEL OF PROBLEM:** BASIC**RIGGING LOG ID:** 9**PROBLEM:** Lift lines on arbors are not aligned appropriately**STATUS:** OPEN**PHOTO BEFORE****EXPLANATION OF PROBLEM**

The lift lines running from the arbors through the head block are not aligned properly. The wire rope thimbles should be set against the sides of the arbor so that they travel into the head block plumb. When they are pressed to one side, they drag along the side of the head block sheaves when the arbor is at its highest point of travel and will result in premature wear of the system. This was first noted during the September 2021 inspection and continues to be an issue as of January 2024.

**RECOMMENDED SOLUTION**

All of the arbors should have the terminations of the wire rope moved to the outside edges of each arbor. This work should be completed and monitored by venue staff and has not been estimated. A quote will be provided upon request.



# THE LERNER

100 YEARS

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## MEMORANDUM

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**DATE:** Friday, January 31, 2025

**TO:** Lerner Governing Board

**FROM:** Deen Tuggle, Director of Operations

**RE:** **IT Third-Party Agreements and IT NDA**

---

The Lerner Theatre Staff requests approval of the IT Third Party Agreements for Navarre Hospitality Group and Premier Arts and the IT NDA. These documents have been reviewed by City Legal.

These agreements and NDA will allow our third-party building partners to have access to their own network within The Lerner, allowing them to connect devices such as computers, printers, and POS systems. This will allow the continued growth of the relationship between The Lerner and our partners with Navarre and Premier Arts.

The action requested by the Lerner Governing Board is as follows:

**Approve the IT Third-Party Agreements for Premier Arts and Crystal Ballroom, and the IT NDA.**

## NON-DISCLOSURE AGREEMENT

This Nondisclosure Agreement (the "Agreement") is entered into by and between The City of Elkhart, (the "Disclosing Party"), and \_\_\_\_\_, located at \_\_\_\_\_ (the "Receiving Party"), for the purpose of preventing the unauthorized disclosure of Sensitive Information as defined below, in line with the City of Elkhart's Information Technology Policy. The parties agree to enter a confidential relationship with respect to the disclosure of certain sensitive, proprietary or protected information ("Sensitive Information").

1. **Definition of Sensitive Information.** For purposes of this Agreement, "Sensitive Information" shall include all information or material that

- has or could have commercial value or other utility in the business in which Disclosing Party is engaged
- might lead to the security of the Disclosing Party's physical or information assets or the safety of its staff and customers being compromised.
- Information regarding the City and its technology

2. **Exclusion from Sensitive Information.** Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; (d) is disclosed by Receiving Party with Disclosing Party's prior written approval; or (e) independently developed by the Receiving Party outside the scope of this agreement.

3. **Obligations of Receiving Party.** Receiving Party shall hold and maintain the Sensitive Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party shall carefully restrict access to Sensitive Information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall not share Sensitive Information with outside entities or third parties with consent from the Disclosing Party. Receiving Party shall put in place effective governance controls to monitor compliance and respond to (and report) any security breach incidents. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Sensitive Information. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Sensitive Information within a reasonable time period if Disclosing Party requests it in writing.

4. **Time Periods.** The non-disclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Sensitive Information in confidence shall remain in effect until the Sensitive Information no longer qualifies as a trade secret or otherwise needing

protection until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

5. **Relationships.** Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venture or employee of the other party for any purpose.

6. **Severability.** If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to effect the intent of the parties.

7. **Integration.** This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. This Agreement may not be amended except in writing signed by both parties.

8. **Waiver.** The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

This Agreement and each party's obligations shall be binding on the representatives, assigns and successors of such party. Each party has signed this Agreement through its authorised representative.

---

(Signature, on behalf of Disclosing Party)

Date: \_\_\_\_\_

---

(Signature, on behalf of Receiving Party)

Date: \_\_\_\_\_

## LICENSE AND INDEMNIFICATION AGREEMENT

The City of Elkhart, by and through its Lerner Governing Board, whose address is 229 S. Second Street Elkhart IN 46516 (“Licensor”), and Crystal Room Catering, a Limited Liability Company, whose address is 727 S. Eddy Street South Bend, IN 46615, (“Licensee”), enter into this Agreement upon the following terms:

1. Background. Licensor, The City of Elkhart, is the owner of real property located at 410 S. Main Street, Elkhart, Indiana, known as The Lerner Theater. Licensee operates its business inside The Lerner Theater and as part of its operations, the Licensee makes use of the Licensor’s computer network infrastructure.
2. Grant of the License. The limited purpose of the license is to maintain allow the Licensee to use the computer network infrastructure located at The Lerner Theater.
3. Connectivity. Elkhart City Government is not responsible for the Licensee’s equipment connectivity or security and use of the Licensor’s computer network infrastructure is at Licensee’s own risk.
4. Indemnification and Waiver. Licensee agrees to indemnify the Licensor against any claims, actions, damages, liability, arising by reason of Licensee’s use of the City’s network, including any claims arising against Licensor by reason of person using the Licensor’s computer network infrastructure (whether invited or uninvited) Licensee also waives any right of recovery it may have, now or later, against the Licensor for any loss or damage arising out of this license or the use of the City’s computer network infrastructure.
5. Duty to Defend. Licensee further agrees that it has the Duty to Defend Licensor and a Duty to Indemnify and save and hold Licensor harmless from any and all claims, demands, judgments, losses, fines, penalties, costs, expenses, and attorneys’ fees for damages to persons or property, which may occur due to use of the Licensor’s computer network infrastructure, whether occurring inside of or outside of The Lerner Theater.
6. Revocation. This License Agreement may be revoked by Licensor at any time, upon written notice to Licensee at the addresses below.
7. Effective Date. This License Agreement shall become effective when all the parties listed below have signed this Agreement.



LICENSEE:

CRYSTAL ROOM CATERING LLC

By: \_\_\_\_\_

Dated: February, \_\_\_\_\_, 2025

Attest:

\_\_\_\_\_  
Nancy Wilson  
Board Clerk

Approved by:

Kevin Davis, Id. No. 31004-71  
Deputy City Attorney  
City of Elkhart, Department of Law  
229 S. Second St  
Elkhart, IN 46516  
574-294-5471  
kevin.davis@coei.org

LICENSOR:

CITY OF ELKHART LERNER GOVERNING BOARD

By: \_\_\_\_\_  
Gary Boyn, President of the Board

Dated: February \_\_\_\_, 2025

## LICENSE AND INDEMNIFICATION AGREEMENT

The City of Elkhart, by and through its Lerner Governing Board, whose address is 229 S. Second Street Elkhart IN 46516 (“Licensor”), and Premier Arts Incorporated, Indiana Corporation whose address is 410 S. Main Street, Elkhart IN, (“Licensee”), enter into this Agreement upon the following terms:

1. Background. Licensor, The City of Elkhart, is the owner of real property located at 410 S. Main Street, Elkhart, Indiana, known as The Lerner Theater. Licensee operates its business inside The Lerner Theater and as part of its operations, the Licensee makes use of the Licensor’s computer network infrastructure.
2. Grant of the License. The limited purpose of the license is to maintain allow the Licensee to use the computer network infrastructure located at The Lerner Theater.
3. Connectivity. Elkhart City Government is not responsible for the Licensee’s equipment connectivity or security and use of the Licensor’s computer network infrastructure is at Licensee’s own risk.
4. Indemnification and Waiver. Licensee agrees to indemnify the Licensor against any claims, actions, damages, liability, arising by reason of Licensee’s use of the City’s network, including any claims arising against Licensor by reason of person using the Licensor’s computer network infrastructure (whether invited or uninvited) Licensee also waives any right of recovery it may have, now or later, against the Licensor for any loss or damage arising out of this license or the use of the City’s computer network infrastructure.
5. Duty to Defend. Licensee further agrees that it has the Duty to Defend Licensor and a Duty to Indemnify and save and hold Licensor harmless from any and all claims, demands, judgments, losses, fines, penalties, costs, expenses, and attorneys’ fees for damages to persons or property, which may occur due to use of the Licensor’s computer network infrastructure, whether occurring inside of or outside of The Lerner Theater.
6. Revocation. This License Agreement may be revoked by Licensor at any time, upon written notice to Licensee at the addresses below.
7. Effective Date. This License Agreement shall become effective when all the parties listed below have signed this Agreement.

LICENSEE:

PREMIER ARTS INC.

By: \_\_\_\_\_  
Craig Gibson, Executive Artistic Dir

Dated: February \_\_, 2025

LICENSOR:

CITY OF ELKHART LERNER GOVERNING BOARD

By: \_\_\_\_\_  
Gary Boyn, President of the Board

Dated: February \_\_, 2025

Attest:

\_\_\_\_\_

Nancy Wilson

Board Clerk

Approved by:

Kevin Davis, Id. No. 31004-71  
Deputy City Attorney  
City of Elkhart, Department of Law  
229 S. Second St  
Elkhart, IN 46516  
574-294-5471  
kevin.davis@coei.org



# THE LERNER

100 YEARS

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## MEMORANDUM

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**DATE:** Wednesday, February 5, 2025

**TO:** Lerner Governing Board

**FROM:** Deen Tuggle, Director of Operations

**RE:** **Permission to Request Quote #25-01, Lerner Security System Improvements**

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The Lerner Theatre staff requests approval of documents for Quote #25-01, Lerner Security System Improvements. This project will include the removal, installation, programming, and training of a new security system at The Lerner, including access control, intrusion alarm, and visitor management systems, along with the capabilities of printing and programming ID badges.

These improvements are expected to improve the overall security of the building, offering around-the-clock customer support and monitoring. This project will also allow monitoring of the systems from anywhere via mobile device, limiting where individuals can access throughout the building, and adding an extra level of security in an ever-changing environment.

The project will be funded through approved funds in the 2025 Lerner Theatre operating budget.

The action requested by the Lerner Governing Board is as follows:

**Approve the quote documents and grant permission to request Quote #25-01, Lerner Security System Improvements.**



**THE LERNER**  
100 YEARS

THE LERNER THEATRE

ELKHART, INDIANA

**SPECIFICATIONS AND CONTRACT DOCUMENTS  
FOR**

**Lerner Security System Improvements**  
**QUOTE # 25-01**

APPROVED BY THE LERNER GOVERNING BOARD

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2025

\_\_\_\_\_  
Gary Boyn  
President

\_\_\_\_\_  
Dina Harris  
Vice President

\_\_\_\_\_  
Dallas Bergl  
Treasurer

\_\_\_\_\_  
Diana Lawson  
Member

\_\_\_\_\_  
Carrie Berghoff  
Member

\_\_\_\_\_  
Fran Bouie  
Member

\_\_\_\_\_  
Jamie Arce  
Member

## NOTICE TO QUOTERS

The City of Elkhart, Indiana through its Lerner Governing Board will receive sealed quotes for the following:

QUOTE #25-01: Lerner Security System Improvements

Project Summary: Remove and replace existing access control, intrusion alarm, and visitor management systems along with the addition of an ID badge printing system.

Quotes shall be filed with:

Clerk of the Lerner Governing Board  
City of Elkhart  
229 South Second St, Third Floor  
Elkhart, IN 46516.

Quotes will be accepted during the hours of 8:00 A.M. to 5:00 P.M. (ET), up until 10:00 A.M. (ET) Wednesday, March 12<sup>th</sup>, 2025 (the "Deadline"). All quotes received by the Clerk of the Board by the Deadline will be opened and read aloud at the meeting of the Board scheduled to start at 10:00 A.M. (ET) on Wednesday, March 12<sup>th</sup>, 2025. Any quote received after the Deadline will be returned to the quoter unopened. After opening the quotes, the Board will take all quotes under advisement and refer them to City staff for review and tabulation.

All quote documents may be obtained from the following source:

The Lerner Theatre  
410 S. Main Street  
Elkhart IN 46516  
Phone: (574) 293-4469

A proposal or quotation submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each Beneficiary of the trust and each Settler empowered to revoke or modify the trust.

The Board will award a contract to the lowest responsive and responsible quoter. The Board reserves the right to waive informalities or irregularities, and to reject any and all quotes or portions thereof.



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## MEMORANDUM

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**DATE:** January 27, 2025

**TO:** The Lerner Governing Board

**FROM:** Kevin Davis, Deputy City Attorney

**RE:** **Amendment No. 1 Sherry May Agreement**

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Please see the attached Amendment No.1 to the Contract Agreement dated October 1, 2024, between the City of Elkhart, acting by and through its Lerner Governing Board, and Sherry May, Interim Executive Director Lerner Theater. This Amendment provides an extension for the services contained in the above referenced Agreement and requires thirty (30) days notice prior to termination. I ask the Lerner Governing Board's approval of the attached contract amendment. I have reviewed the contract for its legality.

**Please authorize The Lerner Governing Board President to sign Amendment No. 1 to the contract between the City of Elkhart and Sherry May.**

**ADDENDUM No. 1 TO CONTRACT AGREEMENT BETWEEN THE CITY OF  
ELKHART AND SHERRY MAY**

This Addendum to the Contract Agreement dated September 10, 2024, between the City of Elkhart, Indiana, a municipal corporation, acting by and through its Lerner Governing Board and Sherry May, individual, (SM) is executed this 12th day of February 2025.

In order to clarify the intent and agreement of the parties, the parties hereby amend Paragraph 1.3 Term to reflect : Either Party shall give thirty (30) days written notice prior to the termination of this Agreement.

In all other respects the Contract Agreement shall remain unchanged.

IN WITNESS WHEREOF, the parties have executed this Addendum No. 1 as of the date above set forth.

City of Elkhart  
Lerner Governing Board

Sherry May

By: \_\_\_\_\_  
Gary D. Boyn, President

By: \_\_\_\_\_  
Sherry May, Individual

Attest:

By: \_\_\_\_\_  
Nancy Wilson, Clerk



## RESOLUTION

### A RESOLUTION OF THE LERNER GOVERNING BOARD OF THE CITY OF ELKHART, INDIANA, TO AUTHORIZE THE LERNER THEATER TO ENGAGE THE SERVICES OF WAGNER MEINERT LLC ON BEHALF OF THE LERNER GOVERNING BOARD

WHEREAS, the City of Elkhart (“City”), Indiana, is a municipal corporation;

WHEREAS, the City discovered issues with the organ chamber, heating, ventilation, and air conditioning, (HVAC), and the City is seeking funds to cover the unbudgeted repair costs;

WHEREAS, the Lerner staff will not be able to control the temperature and humidity within the organ chambers;

WHEREAS, the organ’s, instruments and pipes require a specific climate in order to function properly;

WHEREAS, without temperature or humidity regulation, the instruments and pipes within the organ chambers are at risk of damage;

WHEREAS, the Board has received and reviewed the repair quote provided by Wagner-Meinert LLC, the prime contractor for organ repair and finds that is the most qualified, complete and responsive quote.

NOW THEREFORE BE IT RESOLVED BY THE LERNER GOVERNING BOARD OF THE CITY OF ELKHART:

1. The Board finds that the repairs are emergency repairs, approves the HVAC repairs in the description of services and awards the contract to Wagner-Meinert to perform the repairs to the organ.

2. Due to the emergency need to complete the repairs, the interim Lerner General Manager has requested, and the Friends Of the Lerner (FOL) has approved: funding the repair costs as a Critical Need and Approved Use as set forth in the Forgivable Loan Agreement to be paid from the specified FOL Non-endowed Fund at the Community Foundation of Elkhart County.
3. The Officers and staff are authorized and directed to coordinate with the appropriate city officials, insurers, and other appropriate funding sources to recover as much of the repair costs as possible to reimburse the Friends Of the Lerner.
4. The officers of the Board are authorized to execute and deliver the quote and other such contracts, and do all other acts, at such time as they deem appropriate, reasonable and necessary in furtherance of this Resolution.

LERNER GOVERNING BOARD

By: \_\_\_\_\_

Gary D. Boyn, President

Attested By \_\_\_\_\_

Nancy Wilson, Board Clerk

REQUEST FOR FRIENDS OF THE LERNER FUNDING OF CRITICAL REPAIRS FOR THE LERNER

The undersigned Interim General Manager of The Lerner requests that The Friends of the Lerner, Inc. ("FOL") request the Community Foundation of Elkhart County issue \$76,300.00 of funds from the Special FOL Maintenance Account-#10897 to the Friends of the Lerner, Inc. ("FOL") for the following critical/emergency repairs needed at The Lerner, as no funds were appropriated for these needs in annual Lerner Budgets , to wit:

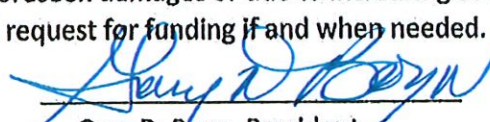
1. \$48,550 to FOL to reimburse it for funds FOL advanced to cover the exterior repairs performed on the Lerner Building caused by a 2021 auto collision with the building driven by an uninsured motorist.
2. Organ chamber humidifiers, bulb replacement on exterior sign and interior, bathroom faucet replacement and restroom stall grab bars all as more fully set forth in the attached list of repairs needed at this time at total cost of \$27,750.

Dated: January 14, 2025

  
Sherry May, Interim General Manager

Received by me, the duly elected President of the Lerner Governing Board ("LGB") this 14<sup>th</sup> Day of January 2025. As of this date I certify to FOL that LGB officers have reviewed the funding request for critical repairs previously performed to the Theatre Building with \$48,550 funds advanced by FOL, which have not been otherwise reimbursed to FOL, and the estimate for current repairs in the amount of \$27,750.00 and have found the estimate to be reasonable and the building repair a Critical Unfunded Need within the definition of an Approved Use under the Fifteen Year Forgivable Loan Agreement entered by LGB and FOL, and requests FOL approve this funding request in the total amount of \$76,300.00. If any change orders are required for any unforeseen damages or due to increasing costs in order to complete the repair, we will submit an additional request for funding if and when needed.

Dated: January 14, 2025

  
Gary D. Boyn, President  
Lerner Governing Board

The above funding request is approved in the amount of \$76,300.00 this \_\_\_\_\_ day of \_\_\_\_\_, 2025, and FOL requests that the Community Foundation of Elkhart county issue a check from the Lerner Critical Needs Maintenance Fund-#10897 to Friends of the Lerner, Inc. to be used for the purposes stated herein

\_\_\_\_\_  
Ashley Martin, President