

**RESOLUTION OF THE CITY OF LOVINGTON
LEA COUNTY, NEW MEXICO**

RESOLUTION 2016-5

**A RESOLUTION EXECUTING A LEASE AGREEMENT BETWEEN THE CITY AND THE LEA
COMMUNITY FOUNDATION FOR THE ARTS**

WHEREAS, the City of Lovington and the Lea Community Foundation for the Arts entered into a Project Participation Agreement for the operation of a theatre and performing arts center on October 1, 2014; and

WHEREAS, the Foundation has met all of the obligations under the Agreement; and

WHEREAS, the continued operation of the Theatre leads to an enhanced quality of life for the citizens of Lovington.

NOW, THEREFORE, BE IT RESOLVED by the Lovington City Commission that the Mayor is authorized to execute the lease agreement for the Lea Theatre, attached hereto for reference, between the City and the Lea Community Foundation for the Arts.

DONE THIS 25TH DAY OF JANUARY, 2016 at

City of Lovington
New Mexico

Scotty Gandy, Mayor

ATTEST:

Carol Ann Hogue, City Clerk

LEASE AGREEMENT

This Lease Agreement made this 26th day of January 2016 between the CITY OF LOVINGTON, a municipal corporation organized and existing under the law of the State of New Mexico, (hereinafter referred to as "Lessor") and the Lea Community Foundation for the Arts, a foundation permitted to conduct business in the State of New Mexico, (hereinafter referred to as "Lessee").

WITNESSETH:

1. **Leased Premises:** Lessor does hereby lease unto Lessee certain real property located at 106 E. Central Avenue, Lovington, New Mexico, also known as the Lea Theatre (hereinafter referred to as "Theatre")
2. **Rental:** The annual rental to be paid by the Lessee to Lessor shall be one dollar (\$1.00) per year during the primary term of this agreement which shall be ten (10) years, subject to the restrictions and limitations set forth herein. The Commencement Date of the Lease shall be Jan. 26, 2016 and the lease shall terminate on Jan. 27, 2026. Lessee may, at its own option, purchase the property from the Lessor at any time during the lease period for one dollar (\$1.00) upon approval of the City Commission.
3. **Use.** It is agreed and understood that the leased premises may be used for the operation of a movie theatre and in such manner by Lessee shall not violate any ordinances or other regulations of the City of Lovington or County of Lea, or any other state or federal rule, regulation or law, now in force or hereinafter adopted, which in any manner shall affect the use of the demised premises. Lessee may operate the leased premises as a performing arts center but must maintain the regular operation of the movie theatre at the premises. Any other uses must be approved by written permission of the Lessor.
4. **Prohibited Use of Premises:** Lessee will make no offensive use of the leased premises. Lessee will not use the lease premises, or any part thereof for permanent or temporary residence. Lessee shall not use the lease premises, or any part thereof for any use that is extra hazardous on account of fire, chemical waste or for any purpose that is a nuisance or that is offensive to other tenants or occupants of other buildings in the vicinity without written permission from Lessor. Said written permission shall not be unreasonably withheld but is subject to all applicable rules and regulations governing said use.
5. **Improvements and Removal; Termination.** It is agreed and understood by the parties that the Lessee may construct certain improvements upon the leased premises at

Lessee's own cost and conforming to the building code or regulations of the City of Lovington. It is further agreed and understood by the parties that the Lessee shall obtain structure, building, electrical, plumbing, environmental, facility, or other permits. Lessee shall be responsible for all engineering and architectural services, improvements, inspections and testing, insurance, repairs, maintenance, operating costs, and all utilities unless otherwise specified in this agreement.

All improvements permanently attached to the land upon the expiration of the lease or any extension thereof, which is not removed within thirty (30) days from and after the expiration of the term, shall become the property of the City of Lovington.

Lessor reserves the right to cancel or terminate this Lease by giving to Lessee not less than thirty (30) days written notice of cancellation and termination if the governing body determines that the property is needed for either municipal purposes, if operation is against public policy, or Lessee fails to conduct an efficient or cost effective operation as deemed by the City Commission from information obtained from financial statements or reports from the City or EDC Representative. Lessee shall have the right to cancel and terminate this lease at the end of the 12th, 24th, 36th, 48th, 60th, 72nd, 84th, 96th, 108th, 120th, or 132nd month of the primary term by giving to Lessor not less than thirty (30) days written notice of cancellation and termination.

6. **Liens.** The Lessee shall not permit any liens or encumbrances to be filed against the property, which is subject to this Lease, or against the Lessee's leasehold interest in the leased premises.

Lessee shall make no contract or agreement for the construction, alteration, or repairing of any building or other improvement on the demised premises without prior written approval by Lessor. Any such contract shall provide for ten (10) days notice to Lessor prior to the beginning of any work and such contract or agreement is in writing and contains an express waiver by such contractor of any claim for mechanic's or materialmen's liens against the demised premises or improvements thereon.

7. **Condition.** The Lessee agrees that it will surrender the property peaceably and in good condition at the termination of this Lease if the option to purchase is not exercised or approved by the City Commission, ordinary wear and tear excepted.
8. **Utilities.** The Lessor will provide water, sewer, trash collection, electrical and gas service for the Lea Theatre during the term of this agreement. This provision will be reviewed by the Lessor on an annual basis and the agreement will be modified if determined to be in the best interests of the Lessee and Lessor.
9. **Access.** The Lessee hereby grants to the City the right of access, ingress, and egress from the Lea Theatre by the City and its agents.

10. **Lessee's Assumption of Liability.** The Lessee covenants and agrees that it will indemnify and save the Lessor harmless from any and all liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person or death or damage to property on or off the premises, arising or resulting from Lessee's usage of the leased premises or the operations by the Lessee.

11. **Insurance.** Lessee and any agents or assigns shall procure and maintain in force, at its expense, during the term of this Lease and any extension thereof, public liability insurance with insurers approved by Lessor with a certificate of said insurance. Such coverage shall be adequate to protect against liability for damage claims through public use of or arising out of accidents occurring in or around the lease premises, in a minimum amount of \$1,000,000 combined single limit for property damage. Lessee shall obtain a written obligation from the insurers to notify Lessor in writing at least thirty (30) days prior to cancellation or refusal to renew any policy. The Lessee shall name the City of Lovington as an additional insured.

All insurance policies, agents, brokers and companies must be submitted to the City Manager of the City of Lovington, for review and approval by the City Manager. A Certificate of Insurance must be filed in the office of the City Manager each year of the Lease term.

12. **Default.** In the event of default on the part of Lessee, the Lessor shall notify Lessee of such default and in the event Lessee does not correct said default within ninety (90) days from the date notice is received, then the Lessor may, at its option, terminate this Lease.

13. **Assignment/Subletting.** The Lessee shall not assign or sublet any portion of the Theatre, whether it is for a set fee, amount, or free of charge.

14. **Tax Status.** The Lessee shall be a 501(c)(3) organization or obtain this status within the first year of this agreement. Lessee shall maintain this status during the term of the agreement.

15. **Representation.** Lessee will have bylaws that create a Board of Directors. The bylaws will specifically:

- a. Establish a permanent voting position on its Board of Directors for a representative of the Lovington Economic Development Corporation (hereinafter referred to as "EDC"). The EDC Representative shall be a permanent member of the Executive Committee, per Lessee bylaws, whether an officer or not.
- b. Establish a permanent voting position on its Board of Directors for a representative appointed by the Lovington City Commission.

16. **Review.** The Lessee shall provide to the Lessor current financial statements no later than the twentieth (20th) day of each month during the term of this agreement. Financial statements submitted to the Lessor shall follow standard accounting guidelines and procedures.

17. **Business Plan.** The Lessee shall provide to the Lessor a completed business plan, which will be presented to potential investors or donors, no later than thirty (30) days from the date of this agreement.

18. **Notices.** All notices to be given with respect to this Lease shall be given in writing. Each notice shall be sent either by certified mail, postage prepaid, and return receipt requested to the party to be notified, or by personal delivery at the address set forth herein or at such other address as either party may from time to time designate in writing.

Lessor: City Manager
City of Lovington
214 S. Love
Lovington, NM 88260

Lessee: President
Lea Community Foundation for the Arts
P.O. Box 635
Lovington, NM 88260

19. **Taxes and Assessments.** The Lessee shall pay such taxes or assessments as may be lawfully levied by any government agency for the improvements to be erected on the premises.

20. **Governing Law and Provisions.** This Agreement shall be governed by the laws of the State of New Mexico. Jurisdiction and venue relating to any litigation or dispute arising out of this Agreement shall be in the District Court of Lea County, New Mexico, only. If any part of this contract shall be deemed in violation of the laws or Constitution of New Mexico, only such part thereof shall be thereby invalidated, and all other parts hereof shall remain valid and enforceable.

21. **Successor's Bound.** The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the Lessor and Lessee and their respective successors and assigns.

22. Authority to Contract. Lessor covenants and represents that it has met all of the legal requirements necessary to its entry into this Lease and further covenants that the officers are persons signing on behalf of the City of Lovington, a municipal corporation.

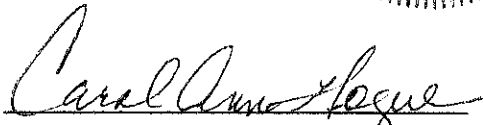
The foregoing constitutes the entire agreement between the parties and may be modified only in writing signed by both parties.



CITY OF LOVINGTON, NEW MEXICO


SCOTTY GANDY, MAYOR

ATTEST


CAROL ANN HOGUE, CITY CLERK

APPROVED AS TO FORM:


PATRICK MCMAHON, CITY ATTORNEY

LESSEE


President TITLE