

CITY COUNCIL MEETING

AGENDA ITEM X



CITY OF FRANKLIN
COUNCIL AGENDA REPORT
City Council Meeting May 2012

From: Elizabeth Dragon – City Manager
Subject: City Council to consider approval of Opera house lease May 2012 through May 2017 (5 year term)

Recommended motion:

1. Councilor moves:

“I move that the Franklin City Council approve the Opera House lease entitled “Management Agreement between City of Franklin and Franklin Opera House May 2012 through May 2017”

2. Mayor asks a second, discussion, and calls the vote.

Discussion: The most recent agreement with the opera house expired on May 3rd 2011 (that agreement was a three year agreement) There have been many changes with the Opera house which became The Middle and then changed back to the Opera House. Over the last couple years we had been working on a lease agreement but the process stalled when the organization requested a 30yr lease to meet grant/loan program requirements for a sprinkler project. Once the sprinkler project fell apart the lease language was changed back to a five year lease. It appeared we had agreement on the terms and language in the lease at that time. However, changes in leadership at the opera house once again put the lease on the back burner for us both. Now that the Opera house has reorganized and shifted focus, I am ready to bring the lease back for consideration.

I originally had proposed a three year lease (same term as the one that expired last year)- however I am not opposed to a five year term under the terms of this agreement.

I have better defined the areas used by the city and areas used by the opera house by adding a few sentences in the appendix. The city has been actively using office space on the lower level of city hall and actively using the meeting space as well.

The city attorney was involved in drafting language changes last year when the process stalled. This year when we brought the agreement back for consideration to the opera house we made only minor additional language changes to address ensuring restricted access to the building for safety reasons and including language that storage areas are subject to periodic inspections by the fire department.

Management Agreement

Between

City of Franklin and Franklin Opera House, Inc.

NOW COMES the City of Franklin, a municipal corporation organized and existing under the laws of the State of New Hampshire, having a mailing address of 316 Central Street, Franklin, New Hampshire 03235 (hereinafter "City") and the Franklin Opera House, Inc. a 501(c)(3) voluntary corporation organized and existing under the laws of the State of New Hampshire, having a mailing address of: P O. Box 172, Franklin, New Hampshire 03235 (hereinafter "FOH").

WHEREAS, the City is the owner of real estate now known as the Franklin City Hall & Opera House, located at 316 Central Street, Franklin, New Hampshire, and more specifically designated on Franklin Tax Map 117, Lot 145 (hereinafter "Premises"); and

WHEREAS, the Franklin Opera House, Inc., as the caretakers, protectors and presenters of performances at the Franklin Opera House, strives to provide a wide variety of artistic cultural events to the community and provide a performance venue for school and community events, and

WHEREAS, the Franklin City Hall complex is located on the National Register of Historic Places and the Franklin Opera House, Inc. strives to pursue the restoration of the Opera House; and

WHEREAS, the Franklin Opera House is able and willing to assume day-to-day management, control access to the building, and certain responsibilities to operate the Opera House, subject to oversight and authority of the City.

THEREFORE, based upon mutual consideration as contained in this Agreement, the parties acknowledge and agree to the following:

1. Overview

It is the intent of the City of Franklin to authorize the Franklin Opera House, Inc. exclusive authority to manage the Opera House space for the community, such authority to include the auditorium (theater), and space on the lower level of the building to be used for Franklin Opera House administrative offices, dressing rooms, storage and equipment rooms for all events that are not directly related to City government or City business (such space is further defined by the attached addendum). In consideration of management responsibilities and desire to benefit the City by operating the Opera House as an arts, culture, and entertainment venue for the community and region, and making

improvements to the Opera House building and thus, the City Hall, Franklin Opera House, Inc. may charge users for events. Proceeds received for said management services are to be utilized for the Opera House to pay for administrative costs, cultural events, improvements, and repairs.

The Opera House may seat patrons in the theatre to a capacity determined by the city's code enforcement officer.

2. Term

The term of this management agreement shall be term shall be Five years; I commence on May 2012 and end on May 2017 and shall extend automatically for one year each year on May 30, unless, written notice is given to the other party of the intent to terminate the Agreement.

3. Liaison

The Franklin Opera House shall designate its Executive Director or the President of its Board of Directors as liaison to the City Manager. The purpose of the liaison is to maintain ongoing communications between the City and , and to help ensure satisfaction of the responsibilities of each party to this agreement.

4. Scheduling

The City of Franklin and the Franklin Opera House, Inc. shall continue to coordinate schedules and to maintain adequate communication to ensure no conflicts between City business and Opera House events. The Franklin Opera House shall strive to minimize any negative impact on government operations. The Opera House shall maintain a schedule relating to the use of the Opera House (auditorium) space, preserving designated times for use by the City to include regularly scheduled meetings of the Planning and Zoning Board and City Council as well as all City Elections.. Additional uses by the City such as ceremonies, and other meetings shall be included as needed for any unscheduled/available dates and times. The City shall reserve space by contacting The Opera House Executive Director or his designee, such confirmation of reserved space being provided by The Opera House in written communication (typically via email).

The Opera House shall limit scheduling events during City Business hours. Any event scheduled to occur during business hours (either in part or in whole) will need the prior approval of the City Manager.

5. Insurance

The Franklin Opera House, Inc. shall be solely responsible for providing adequate liability insurance for all events and performances held under its control. Liability insurance coverage shall be a minimum of \$1 million per incident. The FOH shall be responsible for insuring its own property kept in the

Franklin City Hall complex. The City Hall complex shall be covered by the City's insurance carrier upon the same terms and conditions as other City-owned buildings. The Franklin Opera House will be responsible for ensuring that scheduled acts, events, and activities in the Opera House possess the necessary liability insurance coverage. Proof of insurance with the City of Franklin listed as an insured party will be supplied to the City annually on policy renewal.

6. Facility Maintenance and Improvement Plan

The Franklin Opera House Annually, by April 15 each year, and the City shall jointly prepare/update an Opera House Facility Improvement Plan detailing, at a minimum, anticipated capital repairs, maintenance, and improvements scheduled for the upcoming fiscal year period (July 1 to June 30). The Franklin Opera House and Municipal Services Director will review and accept the plan and approve the schedule.

The accepted Facility Improvement Plan gives the Franklin Opera House authority to undertake those repairs, improvements, and restorations to fulfill its mission and to make the facilities habitable for the purposes herein described. The Facility Improvement Plan will also strive to detail those capital projects that are the responsibility of the City or the primary responsibility of the Franklin Opera House in order to fulfill its mission. The City will endeavor to place funds into its capital improvement plan to address needed capital improvements not within the responsibility of the Franklin Opera House. Under no circumstances shall the Franklin Opera House perform work that is the responsibility of the City or any other work to the building without prior approval by the City Manager.

As required, the Executive Director or President of Franklin Opera House, Inc. will review all new projects not detailed on the Facility Improvement Plan with the City Manager and Municipal Services Department Director before project commencement.

All work performed by the Franklin Opera House or its subcontractors will be completed to meet all applicable State and City ordinances and codes. All work undertaken by the Franklin Opera House shall be completed in a manner to not disturb the normal daily routines and functions of the City of Franklin business offices.

In emergencies, where immediate repair is necessary in order to avoid further damage to the premises, the Franklin Opera House shall use diligent attempts to notify the City of the necessity to undertake such emergency repairs, the reasons therefore. As soon as practical, the Franklin Opera House shall meet with the City Manager to obtain the City's after-the-fact approval for the repairs.

The Franklin Opera House will be responsible for insuring its own property kept on the premises. All permanent improvements shall become the property of the City of Franklin.

7. Utilities

The City of Franklin, as owner of the building, will continue to provide heat, utilities, and general maintenance services, with the exception of the separate electrical meter installed in the name of the Franklin Opera House, Inc. for stage lighting. At the conclusion of an event, the FOH will clean those areas it utilizes for rehearsals and performances or other Opera House events. After each non-city event, it will be the responsibility of the Opera House to ensure that the building is returned to the same condition it was in at the beginning of each event. This includes ensuring the space is cleaned, the floors are periodically dry mopped, the curtains are re-opened and the bathroom areas are restocked. The Opera house may be required to contract with the city's cleaning service for additional cleanings after large events as determined by the city manager.

The City will clean the City hall building as set forth in its annual Custodial Service Bid (which does not currently include any regular cleaning of the auditorium area). The Opera house is responsible for cleaning the spaces used by their organization in the lower portion of the building as well as the auditorium space. In addition, The Opera House may be required to contract with the city's cleaning service to clean all areas of the building being used for events as determined by the city manager. In addition, The Opera House is responsible for any maintenance of space use on days city hall is closed (including but not limited to addressing any snow or ice hazard).

The Utilities section of this agreement may be reviewed no more frequently than annual by the city. At the city's option, after reasonable notice the Opera house may become responsible for utilities utilized by the Opera house including heat, electricity, general maintenance and janitorial services.

8. Termination

Subject to the Remedies section that follows, this Agreement may be terminated for cause by either party if the other party is found to be violating any material terms of this Agreement. Either party may request modifications to this Management Agreement in writing to the other party at anytime.

In addition to cause, this agreement may be amended or terminated if it is determined by the Franklin City Council that termination or an amendment is required for an orderly expansion of municipal use within the building and is in the best interest of the City of Franklin.

9. Remedies

Either party may notify the other party of its failure to meet responsibilities under this Agreement and require remedy of the same, which if not reasonably achieved or a remedy plan agreed to by both parties within 60 days time shall subject this Agreement to possible termination as described in the preceding section.

10. Offices and Storage Space

The Franklin Opera House shall occupy a portion of the City Hall complex to use for office space for conducting its affairs as set forth herein. The specific area in the premises for such shall be coordinated with the City Manager. Unused items by the Franklin Opera House shall not be stored in the Opera House but in storage areas approved by the City Manager. (Subject to periodic inspections by the fire department for compliance).

12. Security

Franklin Opera House shall attempt to notify the City and Police Department of any special event that is expected to occur during odd hours (after midnight). Franklin Opera House is responsible to ensure the premises are secure after any event. Franklin Opera House shall coordinate with facility users to establish and implement guidelines for securing the Premises at the conclusion of an event. Exterior doors must remain closed (shall not be left propped open) to ensure restricted access to the building for safety purposes and fire safety reasons.

13. Additional Provisions

1. Overnight use of the Premises is by approval of the City Manager.
2. The Agreement is not assignable absent written approval of both parties.
3. In the event Franklin Opera House receives notice of any actual or potential revocation of its Articles of Agreement or its 501(c)(3) status, it shall immediately notify the City and provide the City with a copy of all such notices.
4. The City reserves the right, with no liability, to close the facility without notice when it serves the public interest and safety.
5. Use of City Hall equipment (including sound system) shall be coordinated with City Manager's Office.

14. Amendment

This agreement may be amended by mutual consent of the parties hereto. No amendment will be effective until it is reduced to writing and signed by both

parties. All such amendments shall be executed in duplicate and attached as addenda in consecutive chronological order to the original documents.

15. Approvals

Executed this __ day of _____, 2012

By,
City of Franklin

Elizabeth Dragon
City Manager
Duly Authorized by the Franklin City
Council

Executed this _ day of _____, 2012
Franklin Opera House, Inc.

Executive Director
Duly Authorized by the Franklin Opera
House, Inc. Board of Directors

APPENDIX A

Lower level

Opera house space:

Opera house offices & dressing rooms in the lower level of city hall from the parking lot entrance (to where the hallway begins to city offices) In addition, the opera house uses the small storage closet just past the beginning of the hallway.

The opera house also uses the box office on the main floor of city hall.

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City hall occupied space on lower level:

City offices (2) currently only one is being occupied by the city but there are plans to occupy the second office in the near future.

Storage room with files in it (which may be converted to a third office as the three rooms abut one another in the same hallway), the boiler room, computer room, the large meeting room, and kitchenette area.

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