

Bruce

SECOND AMENDMENT TO USE AGREEMENT FOR THE
MORTON H. MEYERSON SYMPHONY CENTER

This SECOND AMENDMENT TO USE AGREEMENT FOR THE MORTON H. MEYERSON SYMPHONY CENTER (this "Amendment"), executed as of the ___ day of _____, 1999 by and between the CITY OF DALLAS, a Texas municipal corporation (the "City"), and the DALLAS SYMPHONY ASSOCIATION, INC., a Texas nonprofit corporation (the "Association");

WITNESSETH:

WHEREAS, the City and the Association entered into the Use Agreement for the Morton H. Meyerson Symphony Center dated as of September 18, 1985, as amended (the "Agreement");

WHEREAS, the Association at its own expense has made certain capital improvements to, and placed certain equipment and furniture in, the "symphony center" (as defined in Section 1(b) of the Agreement), which improvements, equipment and furniture include without limitation the Broadcast Improvements (as defined in Section 36(a) of the Agreement) and the Lighting Equipment, the Education and Entertainment Facilities and the Choral Office and Library Facilities (as defined in, respectively, Sections 2, 3 and 4 of this Amendment); and

WHEREAS, the City and the Association are executing this Amendment to amend the Agreement to address, among other things, the ownership, management, use and operation of the Broadcast Improvements, the Lighting Equipment, the Education and Entertainment Facilities and the Choral Office and Library Facilities;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Association do hereby agree as follows:

1. Organ. Section 34(b) of the Agreement is hereby amended by revising the last sentence thereof to read in its entirety as follows:

The Association will pay the City as rent 20% of the gross revenues generated from sublease of the Organ by the Association to third parties for non-Association events.

2. Broadcast Improvements. Section 36 of the Agreement is hereby amended by adding new paragraphs (h), (i) and (j), which paragraphs will read in their entirety as follows:

(h) Description of the Broadcast Improvements. The "Broadcast Improvements" defined in Section 36(a) hereof shall consist of (i) the Audio Control Room, the Audio Equipment Room, the Video Control Room, the Video Equipment Room and the Main Storage Room designated on the floor plan for the lower level

of the symphony center and attached hereto as Exhibit A2-1 and (ii) all related cabling, wiring, conduit, connections and broadcast infrastructure equipment.

(i) Broadcast Control Facility and Equipment Rental Fees. The manager of the symphony center (the "Symphony Center Manager") and the President of the Association shall establish a policy governing the use and scheduling of the Broadcast Improvements and all respective fees to be charged to third parties for use of the rooms, equipment and other items constituting the Broadcast Improvements (the "Broadcast Control Facility and Equipment Rental Fees"). No Broadcast Control Facility and Equipment Rental Fees will be charged to (i) the Association for its use of the Broadcast Improvements at any time during the term of this Agreement (including any renewal terms); (ii) GTE for its use of the Broadcast Improvements on one day in each calendar year during the five-year period commencing on January 1, 1998 and terminating on December 31, 2002; and/or (iii) the City for its use of the Broadcast Improvements for City meetings or events at any time during the term of this Agreement (including any renewal terms).

(j) Insurance. The City will be responsible for insuring all Broadcast Improvements, through an insurance company licensed in the State of Texas for fire and other casualty coverage in an amount not less than the replacement cost thereof.

3. Lighting Equipment. Section 38 of the Agreement is hereby deleted in its entirety and the following provisions are substituted therefor:

SECTION 38. LIGHTING EQUIPMENT

(a) Components of the Lighting Equipment. The "Lighting Equipment" consists of (i) that lighting apparatus and equipment described on Exhibit A2-2 to this Agreement, with respect to which the Association hereby contributes, conveys and assigns all its right, title and interest to the City (the "City-Owned Lighting Equipment") and (ii) that lighting apparatus and equipment described on Exhibit A2-3 to this Agreement which is owned by and shall remain the property of the Association (the "Association-Owned Lighting Equipment"). Unless the City and the Association otherwise expressly agree in writing, the Association-Owned Lighting Equipment shall not be deemed to constitute a fixture or other part of the symphony center.

(b) Availability, Exclusivity and Required Use. Subject to their compliance with the other provisions of this Section 38, the Lighting Equipment will be available to the Association and any third party at any time the Association or such third party is entitled to use the "concert hall" (as defined in Section 1(b) of this Agreement). A third party using the concert hall for a performance or other event (i) must first attempt to satisfy its requirements for stage and performance lighting through use of all the Lighting Equipment and (ii) may bring in supplemental lights,

trusses, rigging and other equipment only with the advance approval of the City's Technical Director for the symphony center. Any such supplemental lights, trusses, rigging and other equipment may only be used with the Association-Owned Lighting Equipment with the Association's prior written consent. Full use of the Lighting Equipment suitable for broadcast will be required for any performance or event that is to be televised (whether live or by delayed broadcast) by the Association or a third party. Archival and video recording for internal non-public use by the Association or a third party will not be required to use full broadcast lighting. The Association-Owned Lighting Equipment will be the preferred option offered by management of the symphony center for use by a third party.

(c) Responsibilities with Respect to the Lighting Equipment. The City will be responsible for managing the Lighting Equipment (including both the City-Owned Lighting Equipment and the Association-Owned Lighting Equipment), including (i) entering into arrangements with third parties for the use thereof, collecting all Lighting Equipment Rental Fees (as defined in Section 38(e) hereof), deposits and any applicable sales tax; (ii) remitting to the Association its share of Lighting Equipment Rental Fees as set forth in Section 41(b) hereof; (iii) insuring all City-Owned Lighting Equipment, through an insurance company licensed in the State of Texas, for fire and other casualty coverage in an amount not less than the replacement cost thereof; and (iv) maintaining all City-Owned Lighting Equipment in first-class working order, condition and repair (including replacement of light bulbs).

(d) Operation of the Lighting Equipment. The Lighting Equipment shall only be operated under the supervision of the City's Technical Director for the symphony center (or, in the case of use of the Lighting Equipment by the Association, under the supervision of the Association's Stage Manager); provided, however, any rigging or other work involving the connection of lighting fixtures and apparatus to Association trusses shall only be done under the supervision of the Association's Stage Manager. The City will require any third party using the Lighting Equipment to hire a crew to set up, operate and disassemble the Lighting Equipment that consists solely of (i) members of Local No. 127 of the International Alliance of Theatrical Stage Employees (the "Union") with respect to all Association-Owned Lighting Equipment and (ii) individuals who meet all eligibility requirements for membership in the Union (irrespective of whether such individuals are members of the Union) with respect to all City-Owned Lighting Equipment.

(e) Lighting Equipment Rental Fees and Deposits. The Symphony Center Manager and the President of the Association shall establish a policy governing the use of the Lighting Equipment and all respective fees to be charged to third parties for use of the Lighting Equipment (the "Lighting Equipment Rental Fees"). No Lighting Equipment Rental Fees will be charged to, nor will any deposit be required of, (i) the Association for its use of the Lighting Equipment at any time

during the term of this Agreement (including any renewal terms); (ii) GTE for its use of the Lighting Equipment on one day in each calendar year during the five-year period commencing on January 1, 1998 and terminating on December 31, 2002; and/or (iii) the City for its use of fixed position Lighting Equipment (excluding trusses) for City meetings or events at any time during the term of this Agreement (including any renewal terms).

4. **Education and Entertainment Facilities.** The Agreement is hereby amended by adding new Section 39, which will read in its entirety as follows:

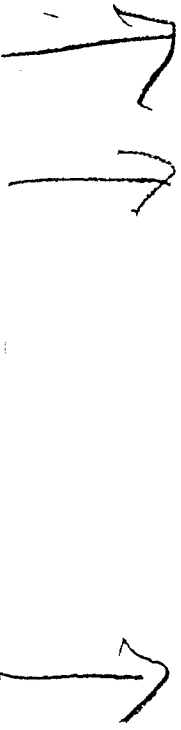
SECTION 39. EDUCATION AND ENTERTAINMENT FACILITIES

(a) **Description of the Education and Entertainment Facilities.** The "Education and Entertainment Facilities" shall consist of (i) the Reception Area, Lecture/Recital Hall, Meeting Suite and Entertainment Suite designated on the floor plan for the lower level of the symphony center and attached hereto as Exhibit A2-1 (collectively, the "City-Owned Education and Entertainment Facilities"), with respect to which the Association hereby contributes, conveys and assigns all its right, title and interest in the capital improvements to the City; (ii) the projector, screen and audio-visual equipment (collectively, the "Audio-Visual Equipment") located within the Lecture/Recital Hall, Reception Area, Meeting Suite and Entertainment Suite, with respect to which the Association hereby contributes, conveys and assigns all its right, title and interest in the Audio-Visual Equipment to the City; and (iii) all free-standing furniture (collectively, the "Furniture") in the Lecture/Recital Hall, Reception Area, Meeting Suite and Entertainment Suite, which Furniture is owned by and shall remain the property of the Association. Unless the City and the Association otherwise expressly agree in writing, the Furniture shall not be deemed to constitute a fixture or other part of the symphony center.

(b) **Kitchen.** The "Kitchen" shall consist of the kitchen and pantry designated on the floor plan for the lower level of the symphony center and attached hereto as Exhibit A2-1, with respect to which the Association hereby contributes, conveys and assigns all its right, title and interest to the capital improvements to the City. Any free-standing appliances, furniture and other items in the Kitchen shall not be deemed to constitute a fixture or other part of the symphony center. The Kitchen shall constitute an "exclusive area" of the Association (within the meaning of Section 4(c) hereof and Exhibit B hereto) for all purposes of this Agreement. The Kitchen shall be subject to use by the City upon reasonable notice to, and approval of, the Association.

(c) **Management of the Education and Entertainment Facilities.** The City will be responsible for managing the Education and Entertainment Facilities (including the City-Owned Education and Entertainment Facilities, the Audio-Visual Equipment and the Furniture), including (i) entering into arrangements with third

parties for the use thereof, collecting all Facilities Rental Fees (as defined in Section 39(e) hereof), deposits and any applicable sales tax, remitting to the Association its share of the Facilities Rental Fees as set forth in Section 41(b) hereof; and (ii) maintaining all Education and Entertainment Facilities (including the City-Owned Education and Entertainment Facilities, the Audio-Visual Equipment and the Furniture) in first-class working order, condition and repair. The Association will be responsible for the repair or replacement of any Audio-Visual Equipment, Furniture or fixtures within the Education and Entertainment Facilities to the extent such are damaged by the negligent or improper use thereof by the Association's staff or volunteers or third parties working on behalf of the Association.



(d) Priority to, and Rental of, the Education and Entertainment Facilities. In accordance with Section 4 hereof, the Association shall have exclusive rights to utilize the Education and Entertainment Facilities during any period of time for which the Association has the right to use the concert hall or the lobby of the symphony center for a concert, fund-raiser, banquet, reception or other activity that involves ticketed and/or invited guests; provided, however, (i) exclusive rights to the Education and Entertainment Facilities are not extended to the Association for load-ins, rehearsals, auditions, load-outs and other similar activities of the Association that take place within the concert hall and lobby and (iv) the Meeting Suite within the Education and Entertainment Facilities will be reserved for the exclusive use of the Association at all times. Any request by a third party to use the Meeting Suite on a date that is more than 30 days in the future will require Association approval (which the Association can provide or withhold in its sole discretion without reason). If a third party requests to use the Meeting Suite on a date that is within the 30-day period immediately following such request, the City will promptly notify the Association and the Association will have two business days to determine if the Association needs use of the Meeting Suite on the requested date. If the Association advises the City that it does not desire to use the Meeting Suite on the requested date, the City may rent the Meeting Suite to such third party. If a third party desires to rent any portion of the Education and Entertainment Facilities other than the Meeting Suite on a day that is more than 90 days from such third party's request, the City will not rent that space to such third party without the Association's consent (which consent must be given or withheld by the Association within three working days and which the Association will not withhold without cause). Nothing in this paragraph shall preempt the Association's right to place any dates for use of any portion of the Education and Entertainment Facilities "on hold" at any time as contemplated by Section 4 or other provisions of this Agreement.

(e) Facilities Rental Fees and Deposits. The Symphony Center Manager and the President of the Association shall establish a policy governing the use of the Education and Entertainment Facilities and all respective fees to be charged to third parties for use of the Education and Entertainment Facilities (the "Facilities Rental Fees"). No Facilities Rental Fees will be charged to, nor will any deposit be required of, (i) the Association for its use of the Education and

Entertainment Facilities at any time during the term of this Agreement (including any renewal terms) or (ii) the City for its use of the Education and Entertainment Facilities for City meetings or events at any time during the term of this Agreement (including any renewal terms).

(f) Reevaluation of Arrangements. During the first calendar quarter of the year 2000, and during the first calendar quarter of each year thereafter, the City and the Association will cause their respective representatives to meet and discuss in good faith what changes, if any, should be made in the provisions of this Agreement with respect to the Education and Entertainment Facilities. Any changes agreed upon by the Association and the City as a result of this reevaluation will not take effect until commencement of the City's next fiscal year.

5. Choral Office and Library Facilities. The Agreement is hereby amended by adding new Section 40, which will read in its entirety as follows:

SECTION 40. CHORAL OFFICE AND LIBRARY FACILITIES

(a) Description of the Choral Office and Library Facilities. The "Choral Office and Library Facilities" shall consist of the Choral Music Director's office and the library facilities designated on the floor plan for the lower level of the symphony center and attached hereto as Exhibit A2-1, with respect to which the Association hereby contributes, conveys and assigns all its right, title and interest in the capital improvements to the City. The rolling shelf music storage system, custom work counter, work stations and furniture in the Choral Office and Library Facilities shall not be deemed to constitute a fixture or other part of the symphony center.

(b) Exclusive Area. The Choral Office and Library Facilities shall constitute an "exclusive area" of the Association (within the meaning of Section 4(c) hereof and Exhibit B) for all purposes of this Agreement.

6. Sharing and Remittance of, and Accounting for, Rental Fees. The Agreement is hereby amended by adding new Section 41, which will read in its entirety as follows:

SECTION 41. SHARING AND REMITTANCE OF, AND ACCOUNTING FOR, RENTAL FEES

(a) Sharing of Rental Fees. All fees associated with the rental of facilities and equipment shall be allocated between the City and the Association as follows:

<i>Fee</i>	<i>City</i>	<i>Association</i>
Fee for Organ use and recording	20%	80%
Fee for Choral Rehearsal Suite	20%	80%
Fee for sound system (side fills)	20%	80%
Broadcast Control Facility and Equipment Rental Fees	20%	80%
Lighting Equipment Rental Fees	20%	80%
Facilities Rental Fees	70%	30%

(b) Remittance of Rental Fees. Within 30 days after the end of each calendar quarter, the City will pay to the Association its share (as set forth in Section 41(a) hereof) of all fees described in Section 41(a) hereof collected during the immediately preceding calendar quarter. The City shall not be obligated to pay the Association its share of any such fee that is uncollectible, but the City shall in good faith expend every effort to collect the required fees from third party users.

(c) Inspection of Applicable Records. The Association and its representatives may from time to time inspect the books and records of the City relating to the symphony center to verify the accuracy of the Broadcast Control Facility and Equipment Rental Fees, the Lighting Equipment Rental Fees, the Facilities Rental Fees and other fees described in Section 41(a) hereof charged, collected and remitted by the City. Any such inspection will be done during the City's normal business hours upon not less than five days' prior written notice. The cost of such inspection shall be borne by the Association unless, as a result thereof, the aggregate Broadcast Control Facility and Equipment Rental Fees, the Lighting Equipment Rental Fees, the Facilities Rental Fees and other such fees remitted to the Association in any calendar quarter being inspected reflect an error in the City's favor of more than 5%.

7. Affiliates of the Association. The Agreement is hereby amended by adding new Section 42, which will read in its entirety as follows:

SECTION 42. AFFILIATES OF THE ASSOCIATION

Whenever any provision of this Agreement entitles the Association to the priority use of the concert hall, the Education and Entertainment Facilities or other space, facilities or equipment in the symphony center or to the use thereof without the payment of any rental fees (including without limitation the Broadcast Control Facility and Equipment Rental Fees, the Lighting Equipment Rental Fees, the Facilities Rental Fees and the other fees described in Section 41(a) hereof) or the

making of any security deposit, the term "Association" shall be deemed to include (in addition to the Dallas Symphony Association, Inc.), the Dallas Symphony Chorus, Dallas Symphony Community Outreach, Inc., the Dallas Symphony Foundation, the Dallas Symphony Fund for Excellence, the Dallas Symphony Orchestra Guild, the Dallas Symphony Orchestra League, the Innovators, the Junior Group of the Dallas Symphony Orchestra League and such other foundations auxiliary organizations, boards, committees and other affiliates as the Association has from time to time.

8. Effective Date of this Amendment. This Amendment shall be effective as of November 1, 1998.

9. Effect of Amendment on Agreement. All other terms, provisions, conditions and obligations of the Agreement shall remain in full force and effect, and the Agreement and this Amendment shall be construed together as a single contract.

IN WITNESS WHEREOF, the City and the Association have executed this Amendment as of the date first set forth above.

APPROVED AS TO FORM:

ANGELA WASHINGTON
ACTING CITY ATTORNEY


CITY OF DALLAS
TEODORO J. BENAVIDES, CITY MANAGER

By: _____
Acting City Attorney

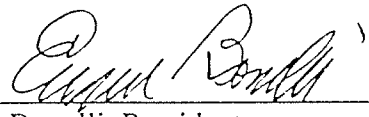
By: _____
Assistant City Manager

ATTEST:

DALLAS SYMPHONY ASSOCIATION, INC.



Howard E. Rachofsky
Secretary, Dallas Symphony
Association, Inc.

By: 

Eugene Bonelli, President

EXHIBIT A2-1. MHMSC LOWER LEVEL ROOM LAYOUT

Room Location Key

A Broadcast Control Facility
 B Education and Entertainment Facilities
 C Kitchen
 D Choral Office and Library Facilities

Please Note: Room layouts depicted may not reflect exact building conditions.

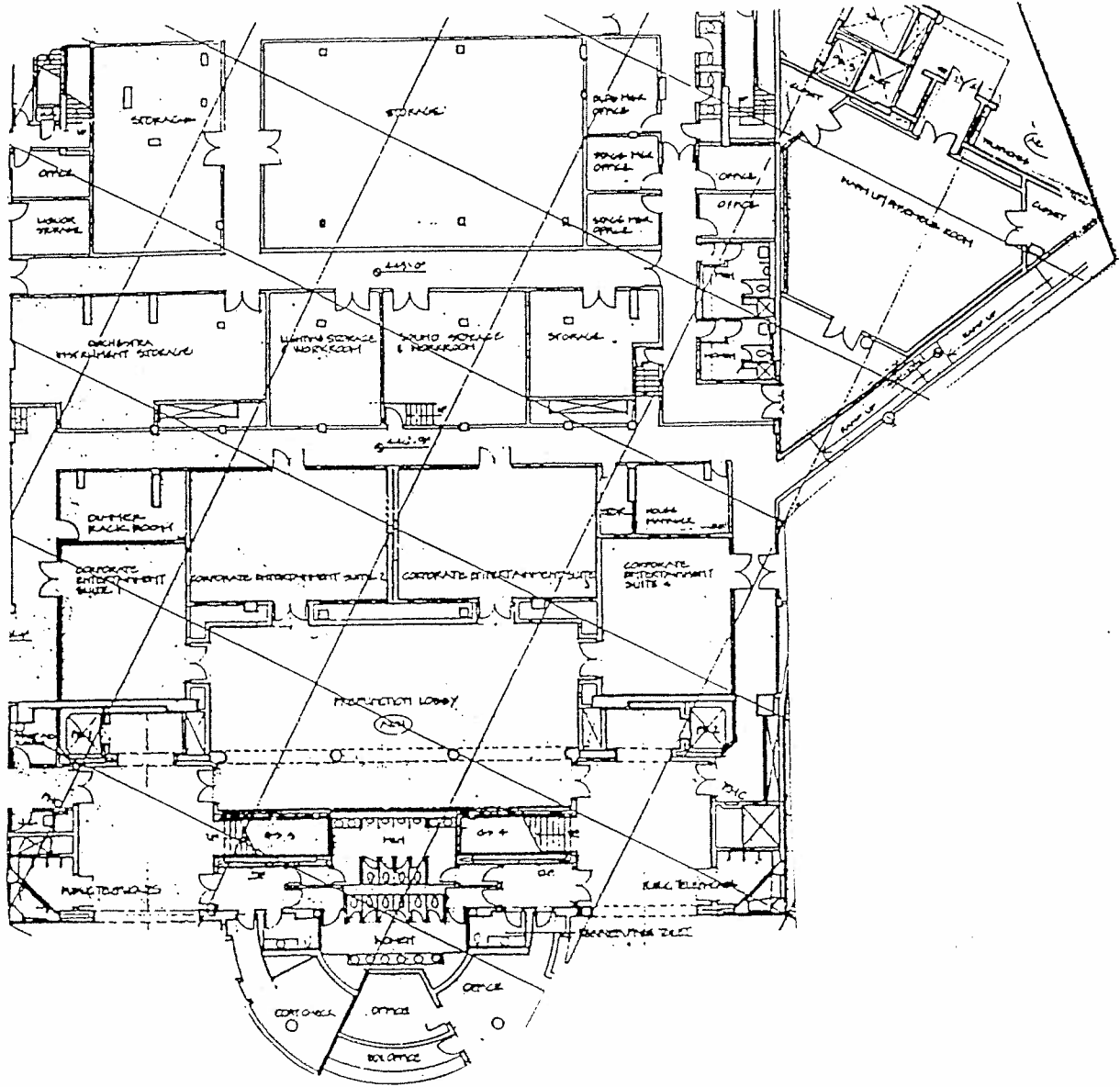


EXHIBIT A2-1. MHMSC LOWER LEVEL ROOM LAYOUT – SYMPHONY SUITES

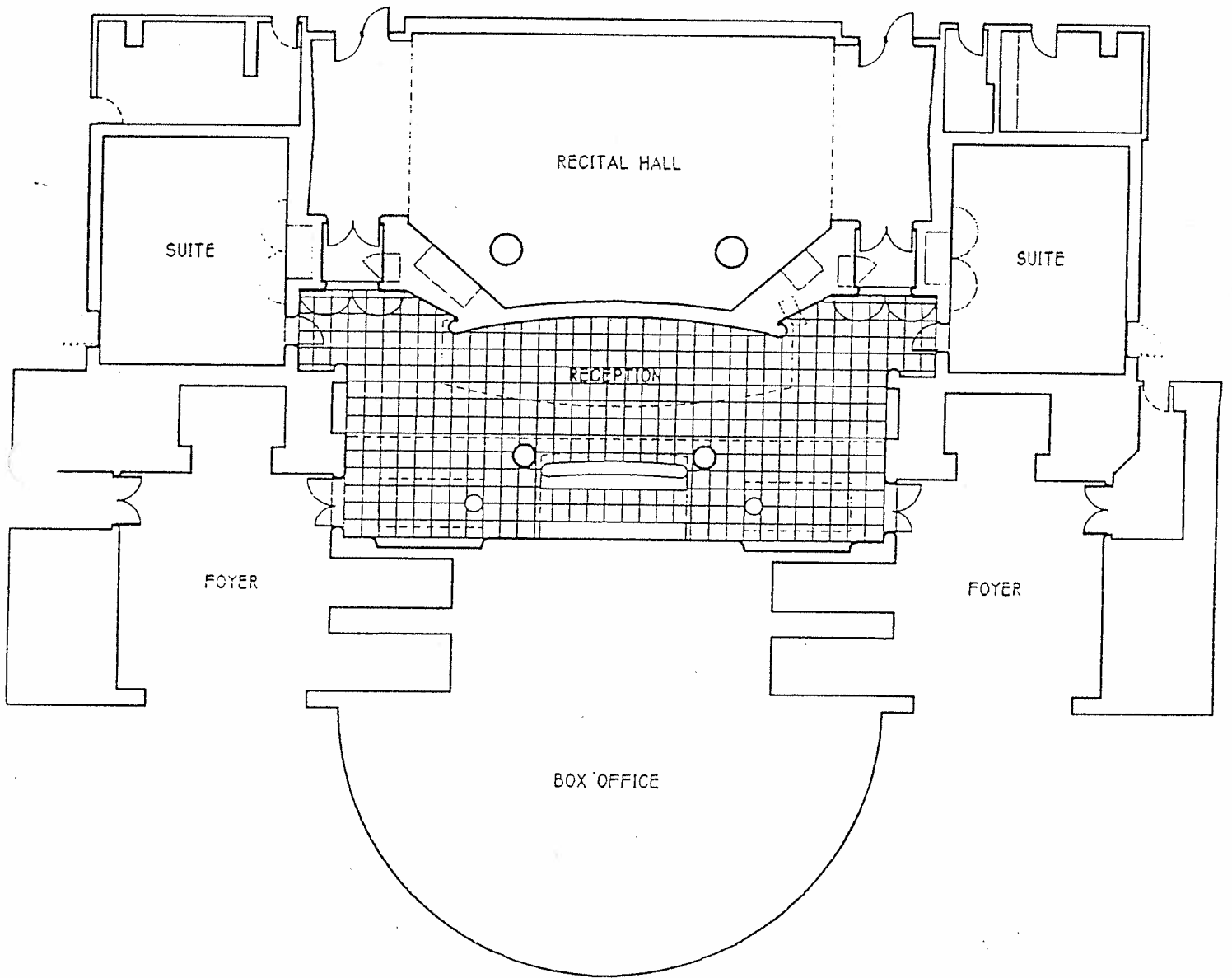


EXHIBIT A2-2. CITY-OWNED LIGHTING EQUIPMENT

- (13) Chain hoist motors (attic)
- House lights:
 - All front canopy Leko's
 - All canopy rim light Leko's
 - (18) Colortran Leko's (front of house)
 - (12) Source 4 Leko's (front of house)
 - All canopy down lights (Leko's, Elipse & Pars)
- Lighting control console
- All Dimmer control equipment, interconnections & racks
- (2) Super Trooper Follow-Spots (spotlight booth)

EXHIBIT A2-3. ASSOCIATION-OWNED LIGHTING EQUIPMENT

- Xenon super trooper follow-spot
- (168) PAR 64 lights (choral lofts, loge, trusses)
- (10) Source 4 (leko's) lights (choral lofts)
- Vari-lites – all positions
- (17) Pre-rigged trusses + fall arrest system & wire ladders

Boadicea White

January 13, 1999

16

ITEMS FOR INDIVIDUAL CONSIDERATION (Continued)

ITEMS FOR FURTHER CONSIDERATION (Continued)

80. Authorize the City Auditor's Long-Range Plan for 1999-2001 as required by Section 4 of City Council Resolution 79-0723, as amended by Council Resolution 90-4027, dated December 12, 1990 - Financing: No cost consideration to the City
81. Adoption of an ordinance either approving or denying change of control of the cable television franchise from TCI Cablevision, Inc. to AT&T Corp - Financing: No cost consideration to the City
82. Authorize the second amendment to the long term use agreement with the Dallas Symphony Association, Inc. - Financing: No cost consideration to the City

PASSED UNANIMOUSLY
1-13-99

Closed Session

Attorney Briefings (Sec. 551.071 T.O.M.A)

- Debra Walker, et al. v. HUD, et al
- City of Fort Worth, Texas and American Airlines, Inc. v. City of Dallas, Texas et al., Cause No. 48-171109-97
- Continental Airlines, Inc. and Continental Express, Inc. v. City of Dallas, Texas and City of Fort Worth, Texas, et al., Cause No. 3:98-CV-1187-R (consolidated with City of Dallas, Texas v. Department of Transportation, et al., Cause No. 3:97-CV-2734-R)
- U.S. Department of Transportation
Love Field Service Interpretation Proceeding,
Docket No. OST-98-4363
- AT&T Communications of the Southwest, Inc. v. City of Dallas, Cause No. 3-98-CV-0003-R; GTE Southwest Incorporated v. City of Dallas, Cause No. 3-98-CV-0662-R; Southwestern Bell Telephone Company v. City of Dallas, Cause No. 3-98-CV-0843-R; Teligent, Inc. v. City of Dallas, Cause No. 3-97-CV-3052-R
Caprock Communications Corp., Golden Harbor of Texas, Inc. and Westel, Inc. v. City of Dallas, Cause No. 3-98-CV-1227-R; and Sprint Communications Company, L.P. v. City of Dallas, Cause No. 3-98-CV- 1576-R