

10 OCT 12 PM

DEPARTMENT HEAD'S SUMMARY FORM

CITY CLERK DEPT.
10 OCT 12 PM 4:21

DEPARTMENT: Sun Metro, Mass Transit Department
AGENDA DATE: October 19, 2010
CONTACT PERSON/PHONE: Jay Banasiak, Sun Metro Director, (915) 534-5810
DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to sign a License Agreement between the **CITY OF EL PASO** and **MVS INTERNATIONAL CORP.**, for the use of Union Depot and an adjacent parking lot for performances by Fuerza Bruta.

BACKGROUND / DISCUSSION:

Amor por Juarez (www.amorporjuarez.com) is an ongoing awareness campaign to demonstrate solidarity and support for the people of Juarez. Fuerza Bruta (www.fuerzabruta.net) is a world renowned entertainment event that would like to perform in El Paso in support of the APJ campaign. All the proceeds of ticket sales will go to El Paso Community Foundation (their fiscal sponsor), which will forward these proceeds to some yet-to-be-determined Non-Governmental-Organizations (NGOs) from Juarez that have a proven record of integrity and programs aimed at the youth (12-19 years olds) since they are the most vulnerable to becoming part of the Organized Crime issues in Juarez.

Fuerza Bruta desires use of the Union Depot Rotunda and Parking Lot #6 during the following dates and times:

Union Depot Rotunda - Thursday, November 11, 2010 through Saturday, November 20, 2010, from 7:00 pm through 12:00 am with the exception of Friday, November 12, 2010.

Parking Lot #6 - Thursday, November 4 through Thursday, November 25, 2010.

This particular use of Union Depot requires City Council approval because Council's previously approved policy regarding use of the Depot by the public, amended November 7, 2000, states that:

"Only community-based, non-profit, charitable organizations may rent the Rotunda Room for general civic or artistic purposes and that private citizens and/or businesses may rent the Rotunda Room for any function that is non-commercial, not for profit, not a solicitation for customers, not a solicitation of campaign contribution and does not engage in any activity promoting a commercial enterprise".

The City Manager generally has authority (Ordinance 16015, dated March 15, 2005) to sign such agreements granting use of City facilities for special events when done in accordance with the guidelines and policies adopted or established by Council. Since this activity is outside the scope of the adopted policy, the use of the Depot by this group for the purpose outlined needs to be approved by Council.

PRIOR COUNCIL ACTION:

City Council has previously approved a policy which was most recently amended on November 7, 2000 to state that only community-based, non-profit, charitable organizations and private citizens may use the Depot for any function that is non-commercial.

AMOUNT AND SOURCE OF FUNDING:

No source is required. Estimated rental income for use of City owned property is \$18,345.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



Information copy to appropriate Deputy City Manager

CITY CLERK DEPT.

10 OCT 12 PM 4:21

RESOLUTION

WHEREAS, MVS International Corp. desires use of the City’s Union Depot Rotunda and adjacent areas, as well as Parking Lot #6 adjacent to the Union Depot Facility, for the purpose of staging performances by **FUERZA BRUTA**, hereinafter referred to as the “Event”; and

WHEREAS, the City Council finds that participation by the City in the Event will provide great benefits to the City and citizens of El Paso and as such, constitutes an important public purpose of benefit to the City and citizens of El Paso.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a License Agreement between the **CITY OF EL PASO** and **MVS INTERNATIONAL CORP.**, for the use of Union Depot and an adjacent parking lot for performances by Fuerza Bruta.

ADOPTED this _____ day of _____, 2010.

THE CITY OF EL PASO:

John F. Cook
Mayor

ATTEST:

Richarda Duffy-Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Cynthia Osborn
Assistant City Attorney

Jay Banasiak
Director, Mass Transit Department

STATE OF TEXAS)
)
COUNTY OF EL PASO)

LICENSE AGREEMENT

This License Agreement, hereinafter referred to as the "Agreement", is made and entered into on this _____ day of _____, 2010, by and between the **CITY OF EL PASO** hereinafter referred to as "the City" and **MVS INTERNATIONAL CORP.**, hereinafter referred to as "Licensee".

WITNESSETH:

WHEREAS, Licensee desires use of the Union Depot Rotunda and adjacent areas of Sun Metro's Union Depot Facility, as well as an adjacent parking lot referred to as Parking Lot #6, as more fully described below, hereinafter referred to as the "Premises", for the purpose of staging performances by **FUERZA BRUTA** hereinafter referred to as the "Event"; and

WHEREAS, the City desires to provide its local citizens with a variety of high quality cultural programs; and

WHEREAS, the Event will allow the citizens of El Paso the opportunity for recreational entertainment and the enjoyment of community activities; and

WHEREAS, the Event will further promote tourism and economic development in the community; and

WHEREAS, the City Council has found that the Event is of the same type of activity generally presented or promoted by the City within its established programs, and that participation by the City in the Event constitutes an important public purpose or benefit to the City and citizens of El Paso for which the City is willing to expend funds.

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

1. **THE PREMISES.** In return for the consideration described, the covenants set out herein to be kept by Licensee and other restrictions noted herein, Sun Metro does hereby permit Licensee's use of the Premises, as more fully described, to-wit:

An area located in the Union Depot main floor which includes the Rotunda, adjacent areas within the structure, access to the bathroom facilities, located on the first floor, the snack room and parking lot #6 Union Depot located at 700-A San Francisco Avenue, El Paso, Texas, more fully depicted in Exhibits "A" and "B" and attached hereto as if fully incorporated herein.

CITY CLERK DEPT.
10 OCT 18 PM 4:29

2. **LICENSE FEE.** The fee for this license shall be **EIGHTEEN THOUSAND THREE HUNDRED FORTY FIVE DOLLARS AND NO/100 (\$18,345.00)** broken down as follows:

Union Depot Rotunda and adjacent areas at \$150.00 per hour, for five hours per day, for nine performance days, for a total of \$6,750.00.

Janitorial Fee at \$150.00 per janitor, for four janitors, for nine performance days, for a total of \$5,400.00.

Parking lot #6 at \$5.00 per space per day, for 59 spaces, for 21 days, for a total of \$6,195.00.

The license fee shall be paid to the Mass Transit Department of the City of El Paso not later than **two (2) days prior to the proposed use of the Premises.** Failure to make such payment, and any applicable Fire Inspector charges referenced herein will result in cancellation of this Agreement.

3. **TERM OF THE AGREEMENT.** The term of this Agreement shall be from the date of full execution of this Agreement through the last day of the Take Down for the Event. Licensee desires use of the Union Depot Rotunda and Parking Lot #6 during the following dates and times, or other dates of the same duration, mutually agreed upon by the Director of the Mass Transit Department and Licensee:

ROTUNDA

Setup – Monday, November 8, 2010, beginning at 8 am.

Event – Thursday, November 11, 2010, through Saturday, November 20, 2010, from 7pm to 12am, except Friday, November 12, 2010.

Take Down – Sunday, November 21, 2010, from 8am through Monday, November 22, 2010 at 8pm.

A total of 9 performance days.

PARKING LOT #6

Setup – Thursday, November 4, 2010, beginning at 8am.

Event – Thursday, November 11, 2010, through Saturday, November 20, 2010, from 7pm to 12am, except Friday, November 12, 2010.

Take Down – Sunday, November 21, 2010, from 8am through Thursday, November 25, 2010, at 8 pm.

A cumulative period of 21 days.

4. **TERMS AND CONDITIONS.**

- A. Licensee understands and agrees that the use of the Union Depot Rotunda is limited to the dates and times set forth herein.

CITY CLERK DEPT.
10 OCT 18 PM 4:29

- B. Licensee understands and agrees that the activity for which this Agreement is entered into shall in no way interfere with AMTRAK operations or passengers and that Licensee will comply with any instructions from the Director of the Mass Transit Department or his designee, concerning any such actual or potential interference.
- C. Licensee understands and agrees that the activity for which this Agreement is entered into shall in no way interfere with the United Blood Drive Dinner/Dance to be held in the Union Depot Rotunda on Friday, November 12, 2010, from 6:00pm – 10:00pm, and Licensee agrees to comply with any instructions from the Director of the Mass Transit Department or his designee, concerning any such actual or potential interference.
- D. Licensee agrees and covenants to keep the Premises in good repair and condition during the event for which this license is granted, including setup and removal of any pre-approved equipment. It is understood and agreed that Licensee shall pay a **janitorial fee of ONE HUNDRED FIFTY AND 00/100 DOLLARS (\$150.00)** per janitor, for four janitors, for each of the nine nights Licensee shall be using the Union Depot during the term, said amount to be included in the license fee.
- E. Food or other refreshments will be allowed within the Premises during the course of the scheduled activity, for consumption by persons participating in the activity. If food is to be served it must be catered. Only plastic or paper containers are to be used in serving food and refreshments. Licensee agrees that he/she will comply with all applicable federal, state and local laws while using the Premises pursuant to this Agreement including, but not limited to, any laws applicable to the sale, service and consumption of alcoholic beverages on the Premises. No smoking will be permitted in the rotunda of Union Depot, restrooms or snack room, as required by **Chapter 9.50 of the El Paso City Code**, as may be amended. Violators will be reported to the Fire Department or Police Department for enforcement.

If a caterer is to be used, Licensee shall cause the certificate at **Exhibit "C"** to this Agreement to be signed by the parties indicated. The certificate shall be completed in triplicate: one copy for the Licensee; one copy for the caterer; and one copy for Sun Metro. Failure to furnish Sun Metro with a properly executed copy of the certificate will be cause for prohibiting the use of food and other refreshments at the event(s).

- F. Licensee shall submit a security plan to be approved by the Director of the Mass Transit Department. Failure to submit a security plan not later than **two (2) days prior to the proposed used of the Premises** shall result in cancellation of this Agreement.
- G. All furniture and equipment furnished by Licensee for the activity shall be removed not later than **Thursday, November 25, 2010**. Licensee will ensure that no sliding or dragging of furniture or equipment across the Union Depot tile floor is allowed. Items with casters will be allowed to be rolled across the floor. It is expressly understood and agreed that any damage to the tile floor caused by such sliding of

10 OCT 18 PM 4:59
 CITY CLERK DEPT.

equipment or furniture will be repaired by Sun Metro, with all repair costs to be reimbursed by Licensee.

- H. It shall be the responsibility of Licensee to obtain any necessary permits or special privilege licenses and comply with all City requirements regarding the erection of tent(s) in Parking Lot #6. It is expressly understood and agreed that any damage to the asphalt of Parking Lot #6 incurred as a result of the erection of tent(s) will be repaired by Sun Metro, with all repair costs to be reimbursed by Licensee.
- I. It is further agreed that the Mass Transit Department Director must approve any posters used for decoration prior to the proposed event.
- J. It is understood and agreed that the **number of attendees inside the Union Depot may not exceed three hundred fifty (350) individuals for events requiring tables and chairs. For events utilizing theatre seating or otherwise not requiring seating, maximum capacity will be established by the Director, dependent upon proposed layout and guidance of the Fire Marshal. It is further understood and agreed that if the number of people present inside the Union Depot during the event exceed the capacities stated above, the Director may order the event to be terminated and order all attendees to leave the Premises.** Licensee agrees that he/she will ensure compliance with this provision, the Agreement, and other lawful orders of the Director, Fire Marshal, Police Department, or security guards relating to fire or other safety issues. **Licensee shall pay directly to the Fire Department any fees or charges for the attendance of Fire Inspectors in the event required by the Fire Marshal.** Such fees or charges shall be in addition to license fees and charges paid to the City, as required by this Agreement.
- K. It is agreed and understood between the parties that liability insurance is required for the use of the Premises. Licensee shall provide a certificate of insurance showing insurance coverage in the amounts required by the City's Risk Management Department. Further, Licensee agrees to include Sun Metro and the City of El Paso, as owner of the Premises, as an additional insured. A copy of the insurance policy, or certificate, issued by an insurance company authorized and licensed to do business in the State of Texas and reflecting the coverage required herein, shall be furnished to Sun Metro **at least forty-eight (48) hours prior to the use of the Premises.** It is understood and agreed that failure to provide the required insurance or evidence of insurance coverage shall preclude the use of the Premises, as otherwise agreed herein. Licensee does hereby state and warrant that any entity providing services to Licensee fully complies with all workmen's compensation requirements in the State of Texas.
- L. Licensee further agrees to abide by the Policies for Use of the Union Depot, dated February 11, 1992, which is attached hereto as **Exhibit "D"** and made a part hereof.
- M. This Agreement shall be effective as of the date this Agreement is fully executed by both parties. All proposals, negotiations, notices and representations with reference to matters covered by this Agreement are merged in this instrument, and no amendment

10 OCT 18 PM 4:29
CITY CLERK DEPT.

or modification thereof shall be valid unless evidence in writing is signed by both parties. Admission to the Premises for the activities covered by this Agreement shall not be denied to any person on account of race, color, national origin or handicap, as provided in **Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, or any other applicable laws.**

- N. The person signing this Agreement, if done so on behalf of the Licensee, warrants that he/she has both the authority to do so and the authority to bind the Licensee to this Agreement and all the terms and conditions contained herein.

5. INDEMNIFICATION:

THE LICENSEE AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF THE LICENSEE'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF THE LICENSEE OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF THE LICENSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, OR CONCESSIONAIRES, IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF THE CITY. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST THE CITY BY REASON OF ANY SUCH CLAIM, THE LICENSEE, UPON NOTICE FROM THE CITY, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO THE CITY.

6. ALLOCATION OF RISK.

- A. **GOVERNMENTAL FUNCTION.** The Licensee expressly agrees that, in all things relating to this Agreement, Sun Metro is performing governmental functions, as defined by the Texas Tort Claims Act. The Licensee further expressly agrees that every act or omission of Sun Metro which, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function. Accordingly, the Licensee further agrees that liability, if any, for damages for injury to or death of any person or for damage to any property, arising, if at all, out of or in connection with activities under this Agreement, shall be determined under the limited waiver of sovereign immunity contained in the Texas Tort Claims Act.

- B. **EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES.** Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, SUN METRO WILL NOT BE LIABLE TO LICENSEE (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM LICENSEE'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND -- including lost profits, loss of business, or other economic damage, and

CITY CLERK DEPT.
10 OCT 18 PM 4:29

further including injury to property, mental anguish and emotional distress -- AS A RESULT OF BREACH OF ANY TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER SUN METRO WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

- C. **MAXIMUM AGGREGATE LIABILITY.** Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement IN NO EVENT SHALL SUN METRO'S AGGREGATE LIABILITY TO THE LICENSEE (INCLUDING LIABILITY - TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY LICENSEE), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE SUM OF ALL AMOUNTS ACTUALLY PAID BY LICENSEE TO SUN METRO UNDER THE TERMS OF THIS AGREEMENT.

- D. **INTENTIONAL RISK ALLOCATION.** The Licensee expressly and independently acknowledges that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between the Licensee and Sun Metro of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

WITNESS THE FOLLOWING SIGNATURES on the day and year first written above.

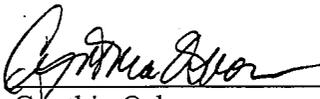
CITY OF EL PASO:

Joyce A. Wilson
City Manager

**LICENSEE:
MVS INTERNATIONAL
CORP.**

Manuel Saturno
General Manager

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

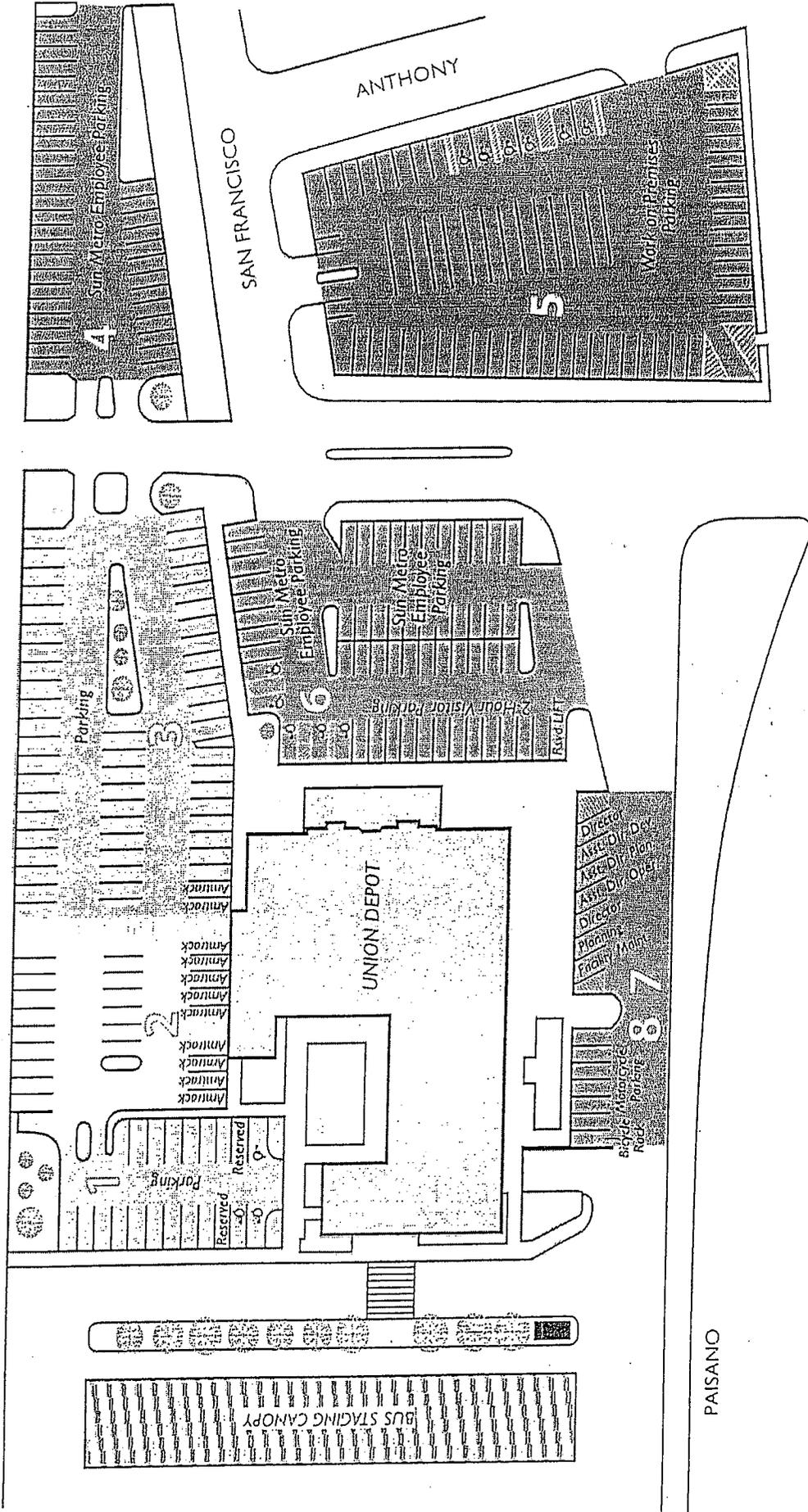


Jay Banasiak, Director
Mass Transit Department

10 OCT 11 PM 4:29
CITY OF EL PASO
TRANSIT DEPT.

Exhibit "A"

Union Depot Parking

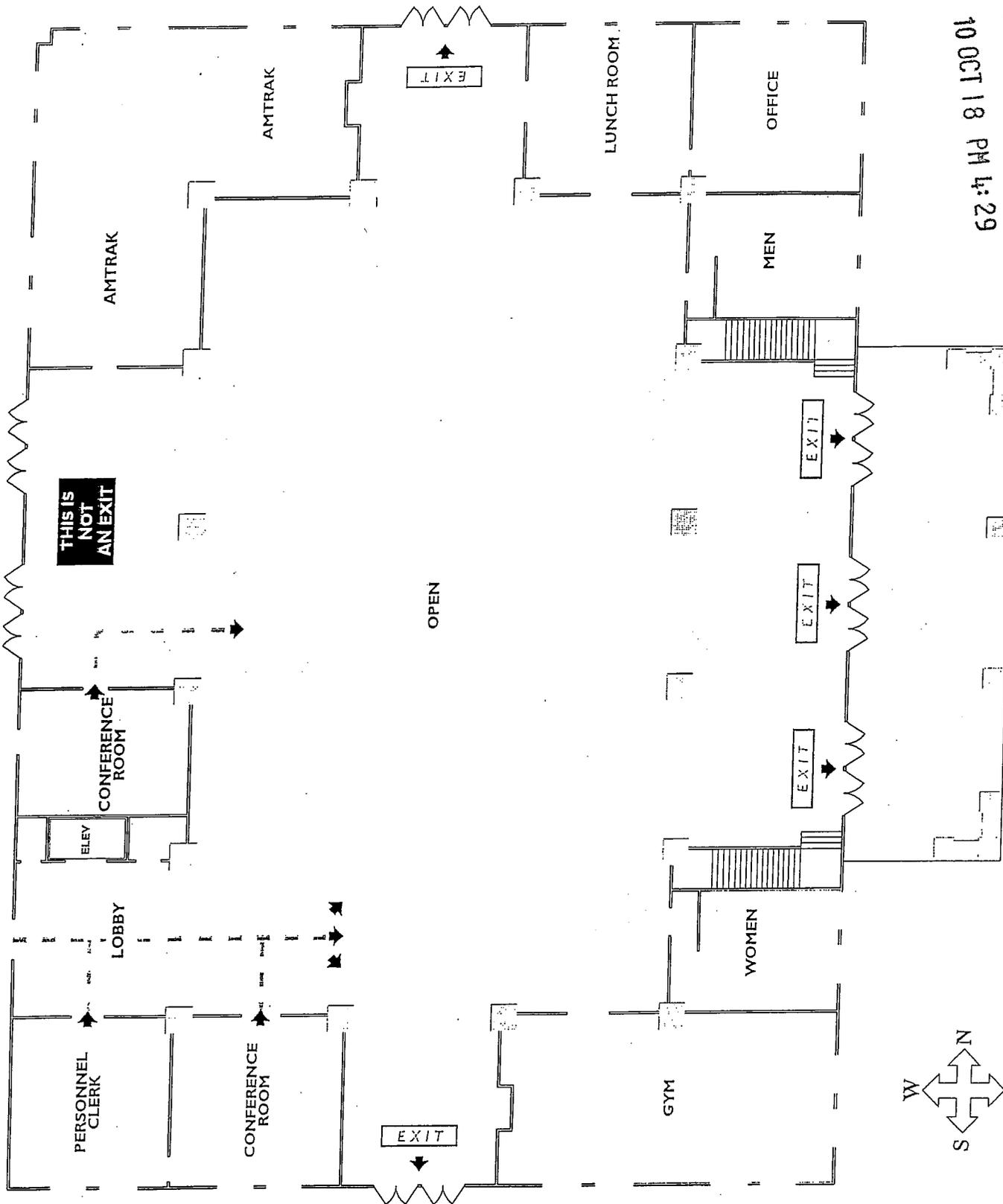


- Lot 1: 21 spaces total (2 handicapped, 2 reserved)
- Lot 2: 34 spaces total (9 Amtrak)
- Lot 3: 67 spaces total (2 Amtrak)
- Lot 4: 36 spaces total
- Lot 5: 74 spaces total (6 handicapped)
- Lot 6: 59 spaces total (5 handicapped)
- Lot 7: 7 reserved spaces
- Lot 8: 6 motorcycle spaces

10 OCT 1991
 CITY CLERK DEPT.

Exhibit "B"

CITY CLERK DEPT.
10 OCT 18 PM 4:29



UNION DEPOT ROTUNDA
1st FLOOR EVACUATION PLAN

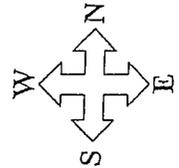


EXHIBIT C
CATERING CERTIFICATE

I, _____, a representative of _____, a catering service located in _____, have been advised by representatives of the MVS INTERNATIONAL CORP. (LICENSEE), who is holding an event at the Union Depot on **Thursday, November 11, 2010, through Saturday, November 20, 2010**, that the use of glass containers for food or beverage is prohibited.

LICENSEE:

MVS INTERNATIONAL CORP.

By: _____
Manuel Saturno
General Manager

Date

CATERER:

Printed Name: _____

Date

CITY CLERK DEPT.
10 OCT 18 PM 4:29

EXHIBIT D
POLICIES FOR USE OF THE UNION DEPOT

1. Security cameras, fire alarms, pull boxes and annunciation panel are not be covered or blocked.
2. No nails or tape may be used on walls, pillars or marble. No wire, tape or nails may be used on baluster.
3. Electrical boxes are not to be opened for drop cords.
4. Power in excess of 110v is not be used from the outlets.
5. Exit and interior doors of the Union Depot are not to be blocked.
6. Electrical fixtures are to be turned on or off by Sun Metro Personnel only.
7. Food and/or beverages are to be consumed in the rotunda and front patio areas only.
8. Smoking is allowed only in the front patio area.
9. No furniture or other objects are to be dragged across the floors. Items with casters will be allowed to be rolled.
10. Patrons are not to park on the south side of the building (Paisano Street side).
11. A janitorial person is to be present throughout the license period to mop up any spills and maintain restroom facilities.
12. The Amtrak benches are not to be moved.
13. The on-duty radio dispatcher and Director's designated appointee are representatives of the Director of Sun Metro and are authorized to speak for the Director during the time of this use.
14. Glass containers are not be used for beverage or food consumption.
15. Sun Metro Officials are not responsible for equipment used by Licensee.

Date: February 11, 1992

CITY CLERK DEPT.
10 OCT 18 PM 4:29

RECAP SHEET

EVENT FEE SCHEDULE & CHECK-LIST

MVS INTERNATIONAL CORP., "Licensee" desires use of the Union Depot Rotunda and adjacent areas of the Sun Metro Union Depot as well as adjacent Parking Lot # 6 at the rates and period(s) noted below. In the event of conflict between this Recap Sheet and the License Agreement, the License Agreement shall control.

DATE: November 4, 2010 through November 25, 2010

1. UNION DEPOT FEE:

\$150.00 per hour, for five hours, for nine days (\$150 x 5 hrs x 9 days)

TOTAL AMOUNT	<u>\$6,750.00</u>
---------------------	--------------------------

2. JANITORIAL FEE:

\$150.00 per janitor, for 4 janitors, for nine days (\$150 x 4 janitors x 9 days)

TOTAL AMOUNT	<u>\$5,400.00</u>
---------------------	--------------------------

3. PARKING LOT FEE:

\$5.00 per space per day, for 59 spaces, for 20 days (\$5.00 x 59 spaces x 21 days)

TOTAL AMOUNT	<u>\$6,195.00</u>
---------------------	--------------------------

GRAND TOTAL AMOUNT:	<u>\$18,345.00</u>
(\$6,750.00 + \$5,400.00 + \$6,195.00)	
<i>Union Depot+ Janitorial Fee + Parking Lot</i>	

Items to be provided to Sun Metro by Licensee prior to the event:

- Total Required Fees by _____
 Signed Contract & Exhibits by _____
 Proof of Liability Insurance _____

CITY CLERK DEPT.
10 OCT 18 PM 4:29