

AN ORDINANCE 2009-01-15-0020

AUTHORIZING A TWO-YEAR LEASE BEGINNING FEBRUARY 1, 2009 WITH THE SAN ANTONIO FIRE MUSEUM SOCIETY, AS TENANT, FOR APPROXIMATELY 5,237 SQ. FT. IN OLD FIRE STATION NO. 7, LOCATED AT 604 S. ALAMO STREET IN COUNCIL DISTRICT 1.

WHEREAS, this ordinance authorizes the execution of a Lease Agreement with the City of San Antonio, as Landlord, for the lease of approximately 5,237 square feet in Old Fire Station No. 7, a building owned by the City of San Antonio, located at 604 S. Alamo in Council District No. 1, with the Fire Museum Society, a non-profit organization; and

WHEREAS, the Fire Museum Society will utilize the space for reconstructing antique apparatus, collecting and storing antique fire items and historical records; and

WHEREAS, the lease will commence on February 1, 2009 and end on January 31, 2011; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City a lease agreement substantially in the form of **Attachment I**, which is incorporated by reference for all purposes as if fully set forth.

SECTION 2. The City Manager and her designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction.

SECTION 3. The department will record an in kind entry as per the table below:

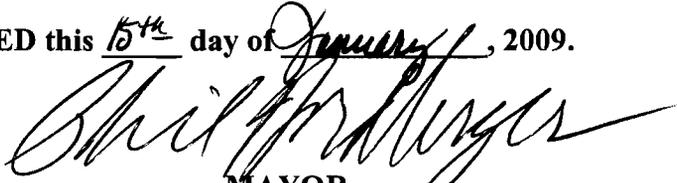
Amount	Cost Center	General Ledger No	Fund No	Internal Order
\$-3,000.00		6500000	11001000	220000000011
\$3,000.00		6806520	11001000	2004010001
Total Amount: \$0.00				

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost

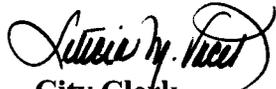
Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance shall take effect immediately upon passage, provided that it is passed by eight or more affirmative votes; otherwise, this ordinance shall take effect ten days from the date of passage.

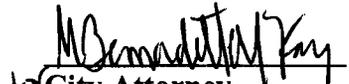
PASSED AND APPROVED this 15th day of January, 2009.


MAYOR
PHIL HARDBERGER

ATTEST:


City Clerk

APPROVED AS TO FORM:


for City Attorney

Attachment I

Office Lease

(San Antonio Fire Museum Society, a non-profit corporation)

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1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord: City of San Antonio

P.O. Box 839966, San Antonio, Texas 78283-3966

Landlord's Address: (Attention: Fire Department Fiscal Planning Manager)
(Bexar County)

Tenant: San Antonio Fire Museum Society, a Texas non-profit corporation

Tenant's Address: Old Fire Station No. 7
604 Alamo Street
San Antonio, TX 78205

Premises: Old Fire Station No. 7
604 Alamo Street
San Antonio, TX 78205

Permitted Use: Operation and reconstructing of firefighting related antique apparatus, collecting and storing firefighting related antique fire items and historical records. Permitted to safeguard antique furniture and accessories which the SAFD has or will collect from some of the older fire stations to be exhibited at the discretion of the Fire Museum Society.

Effective Date: The effective date of the Authorizing Ordinance

Initial Term: February 1, 2009 until January 31, 2011.

2. Grant.

Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

3. Rent.

3.01. Rent includes all sums due to Landlord under this Lease, whether In-Kind Rent, Base Rent, Additional Rent, reimbursement for repairing damages caused by Tenant, or otherwise, no matter how denominated.

3.02. In lieu of money rent, Tenant must provide the following In-Kind Rent at no cost to Landlord: Tenants operation and reconstructing of antique firefighting apparatus, collecting, storing antique fire items and historical records; and safeguarding antique furniture and accessories which the SAFD has or will collect from its older fire stations.

4. Term, Renewal.

4.01. The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease.

4.02. Tenant may renew the agreement for up to three additional one-year terms by giving 120 days prior written notice. Renewal is effected only after written notice of intent to renew and agreement between Landlord and Tenant on rent for the

renewal term and after Council approval. Landlord's acquiescence in Tenant's holding over is not acquiescence to renewal.

4.03. Renewal Terms are governed by this Lease just as the Initial Term, unless sooner terminated as provided in this Lease.

5. Tenant's Affirmative Promises.

Tenant promises that it will:

5.01. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

5.02. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (c) any rules and regulations for the Building and Common Areas adopted by Landlord.

5.03. Obtain and pay for all utility services used by Tenant and not provided by Landlord.

5.04. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

5.05. Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted.

5.06. After casualty loss not terminating the lease, rebuild any leasehold improvements made by Tenant to the extent necessary to continue operating the facility.

5.07. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

5.08. Vacate the Premises and return all keys to the Premises on the last day of the Term, subject to any holdover rights.

5.09. On request, execute an estoppel certificate that states the Commencement Date and Termination Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. Tenant need

not sign any certificate that purports to modify Tenant's obligations in any respect, except for a change in the address for notice or payment of money owed.

5.10. Obtain signed Volunteer Waiver and Release Agreements from all members of Tenant's non-profit organization before permitting Tenant's members entry onto the premises.

6. Indemnity.

6.01. These definitions apply to the indemnity provisions of this Contract:

6.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of: (a) the condition of the Premises or (b) acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Contract, whether or not the person is a party to this agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.

6.01.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

6.01.03. "Indemnitor" means Tenant.

6.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

6.03. If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.

6.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees.

6.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a

particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

6.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

6.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

6.08. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

6.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

7. Tenant's Negative Promises.

Tenant promises that it will not:

7.01. Use the Premises for any purpose other than the Permitted Use.

7.02. Create a nuisance.

7.04. Permit waste.

7.05. Use the Premises in any way that would increase insurance premiums or void insurance on the Building.

7.06. Change Landlord's lock system.

7.07. Alter the Premises.

7.08. Allow a lien to be placed on the Premises.

7.09. Allow members of Tenant's non-profit organization entry onto the premises unless Tenant obtains a signed Volunteer Waiver and Release Agreement from each member.

7.10. Allow non-members to enter the premises, other than repairmen, delivery persons, and other service providers.

8. Landlord's Affirmative Promises.

Landlord promises that it will:

8.01. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

8.02. Obey all applicable laws with respect to Landlord's operation of the Building and Common Areas.

8.03. Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior walls, doors, corridors, and windows, (e) HVAC, wiring, and plumbing, (f) other structures or equipment serving the Premises. Premises and (g) the interior walls, ceiling and floors.

9. Landlord's Negative Promise.

Landlord promises that it will not interfere with Tenant's possession of the Premises as long as Tenant is not in default.

10. Alterations.

Physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

11. Insurance.

11.01. Landlord agrees to waive Tenant's insurance requirements contingent upon:

- (i) Tenant's waiver and release of liabilities as set forth in the signed Agreement Including Waiver and Release, attached as Exhibit "B";
- (ii) Tenant obtaining a signed Volunteer Waiver and Release Agreement from all members of Tenant's non-profit organization before permitting members entry onto the premises.

11.02. Landlord agrees to waive Tenant's insurance requirements because Tenant is a non-profit organization that does not have adequate funding to purchase the requisite insurance normally required by Landlord. Tenant, as a non-profit organization, has volunteered its services at no cost to Landlord to assist the San Antonio Fire Department in the opening of a Fire Museum.

11.03. Tenant agrees that in lieu of obtaining adequate insurance to cover any injury or damage Tenant may cause or suffer while occupying the premises, Tenant agrees to bear the costs of such injury or damage at Tenant's expense.

11.04. Tenant agrees and warrants that if at any time Tenant believes conditions at the premises to be unsafe, Tenant will immediately discontinue further occupation of the premises and immediately notify the San Antonio Fire Department.

12. Release of Claims.

Tenant releases Landlord and its elected officials, officers, employees, agents, and other representatives from all claims, demands, actions, and causes of action directly or indirectly arising from or related to injury to Tenant's property on the Premises or personal injury on the Premises to Tenant's representatives or invitees, including bodily injury resulting in disability or death.

13. Landlord's Municipal Powers.

Landlord is a municipality as well as landlord under this Lease. As a municipality, it may from time to time exercise municipal powers unrelated to the Lease that will nevertheless adversely affect Tenant. Such actions may include redirection of traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this

Lease. Tenant has no more rights under this Lease than it would if its landlord were a private entity.

14. Prohibited Interests in Contracts.

14.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

14.02. Tenant warrants and certifies as follows:

- (i) Tenant and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Tenant has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

14.03. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

15. Casualty/Total or Partial Destruction.

15.01. If the Premises are damaged by casualty, Tenant may terminate this lease by written notice delivered to Landlord.

16. Condemnation/Substantial or Partial Taking.

16.01. If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

16.02. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

17. Holdover.

If Tenant holds over after termination or expiration of this Lease, it is a Tenant at sufferance under the terms of this Lease.

18. Default, Remedies for Default.

18.01. If Tenant permits or fails to prevent any of the following occurrences, it is a Tenant event of default:

18.01.01. Tenant fails to pay when due any installment of Rent, and such default continues for five days after written notice from Landlord, but Tenant is not entitled to more than one notice of a delinquency in regularly recurring rent installments during any 12-month period. After the first such delinquency, Tenant is in default for failure to pay regularly recurring Rent installments timely even if Landlord does not give notice.

18.01.02. Tenant fails to comply with any term, provision or covenant of this Lease, other than the payment of rental or expenses demanded by Landlord and does not cure such failure within 30 days after written notice thereof to Tenant, or any representation or warranty by Tenant or any guarantor of this Lease is false or misleading in any material respect when given to Landlord.

18.01.03. This Lease or the Premises or any part thereof is taken upon execution or by other process of law directed against Tenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not to be discharged or disposed of within 30 days after the levy thereof.

18.01.04. Tenant or any guarantor of the Lease files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an assignment

for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.

18.01.05. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant or any guarantor of the Lease is instituted against Tenant or such guarantor, as the case may be, or a receiver or trustee of all or substantially all of the property of Tenant or any guarantor is appointed, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

18.01.06. Tenant deserts, vacates or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operate its business on the Premises, or fails to commence business operations in the Premises on or before the Commencement Date. If Tenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Premises, Tenant's breach is established conclusively.

18.01.07. Tenant does or permits to be done anything which creates a lien upon the Premises which is not removed or released within 30 days of its filing.

18.01.08. This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

18.02. Remedies Upon Default. Upon the occurrence of any Tenant event of default, Landlord has the option to pursue anyone or more of the following:

18.02.01. In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. If that event, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

18.02.02. Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for

prosecution or any claim for damages therefor without having terminated the Lease.

18.02.03. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

18.02.04. Alter all locks and other security devices at the Premises without terminating this Lease. If Landlord does so:

(i) Landlord need not allow Tenant re-entry to the Premises or provide Tenant with a new key unless and until Tenant cures any and all defaults under this Lease,

(ii) Landlord may refuse to give Tenant a new key unless Tenant increases its security deposit by an amount determined by Landlord,

(iii) if Landlord does provide Tenant with a key, it will do so only during the Landlord's regular business hours, and

(iv) Tenant must obligate to pay Landlord all costs and expenses incurred by Landlord in connection with altering the locks and other security devices.

Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

18.03. Repossession and Alteration of Locks. Landlord's exercise of one or more remedies is not acceptance of Tenant's purported surrender of the Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of Landlord and Tenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (A) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices and (B) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible

detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

18.04. Default by Landlord. If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-days prior written notice specifying the alleged default and giving Landlord opportunity to cure. Unless and until Landlord fails to timely cure a default after written notice, Tenant has no remedy or cause of action by reason thereof. All obligations of Landlord are covenants, not conditions. Landlord's liability to Tenant for default is limited to actual, direct, but not consequential, damages. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

18.05. Payments After Termination. Tenant's payment of money to Landlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Tenant prior to the payment. After the service a suit or after any final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums due under the terms of this Lease or may otherwise exercise any of its rights and remedies hereunder. Such payment, whether as rent or otherwise, does not waive any notice or a termination of Tenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

18.06. Rights Respecting Personal Property. If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("Claimant") who presents to Landlord a copy of any

instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant's or Tenant's predecessor's signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant indemnify Landlord from all loss, cost, liability, or expense arising from or relating to Landlord's relinquishment of property to a Claimant. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable.

18.07. Cumulative Remedies. Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

19. Warranty Disclaimer.

19.01. There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease. Without limitation, this Lease contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes.

19.02. Tenant acknowledges it has had ample opportunity to perform due diligence regarding the Premises and accepts the Premises in their present condition, as-is.

20. Abandoned Property.

Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

21. Appropriations.

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City

Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, the City may terminate this Lease and have no further liability.

22. Sublease, Assignment.

Tenant cannot assign or sublease this lease without Landlord's prior written consent. Assignments include any transaction in which (A) a material part of Tenant's assets are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant.

23. Dispute Resolution.

23.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

23.02. Filing suit on a claim that should be mediated waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

23.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

23.04 The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

23.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

23.06. Mediator fees must be borne equally.

23.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

24. Miscellaneous.

24.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

24.02. *Severability.* If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

24.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

24.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

24.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion.

24.06. *Third Party Beneficiaries.* This Agreement benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

24.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

24.08. *Pronouns.* Plural constructions include the singular, and singular constructions include the plural. Whether a pronoun is masculine, feminine, or neuter does not affect meaning or application of the relevant term. The words "herein," "hereof," and other, similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

24.09. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

24.10. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

24.11. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

24.12. *Administrative Agreements.* All certificates, memoranda, and modifications of nonmaterial rights and obligations arising under this Lease may be signed on behalf of Landlord and delivered to Tenant by the Director of Capital Improvements Management Services, without further council action.

24.13. *Conflicts Between Numbers Stated Two Ways.* Whenever this lease states the same number both as a lump sum and as a calculated number (as, e.g., rent per month or costs per square foot), if the lump sum conflicts with the calculated number, the calculated number controls.

24.14. *Incorporation of Exhibits.* All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

24.15. *Binding Date.* This agreement is binding on the parties on the later of (A) the effective date of the Authorizing Ordinance or (B) the later of the signatures of the two parties.

25. Public Information.

Tenant acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

In Witness Whereof, the parties have caused their representatives to set their hands.

Landlord:

City of San Antonio, a Texas
municipal corporation

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Tenant:

San Antonio Fire Museum Society, a
Texas non-profit corporation

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

Exhibit B

City of San Antonio, San Antonio Fire Department Agreement Including Waiver and Release signed by the Fire Museum Society.

CITY OF SAN ANTONIO
SAN ANTONIO FIRE DEPARTMENT

AGREEMENT INCLUDING WAIVER AND RELEASE

The City of San Antonio ("City") on condition of your signing this waiver and affirming the promises and statements contained below, agrees to permit you to participate in the volunteer service project ("Project") known as Fire Museum Project consisting of volunteers from the Fire Museum Society, a non-profit organization, performing volunteer work at the Old Fire Station No. 7 located at 604 Alamo Street, San Antonio, Texas 78205.

I, _____ acknowledge the following statements are true:

I acknowledge that my services are provided strictly on a volunteer basis, without any pay or compensation of any kind, and without any liability of any nature on behalf of the City; all services are performed at my own risk.

I acknowledge that my participation in volunteering with activities involved in the Project entails known and unanticipated risks that could result in physical or emotional injury, damage to me, to my property, or to third parties. These risks include the following:

Injuries associated with the operation and reconstruction of antique apparatus, collecting and storing antique fire items and historical records, safeguarding of furniture and accessories to be exhibited at the Fire Museum including lifting and/or transporting heavy items to, from and/or within the fire station.

I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else agree to bear the costs of such injury or damage myself. I further certify that I am willing to assume the risk of any medical or physical condition I may have. In addition, I agree and warrant that if at any time I believe conditions at Old Fire Station No. 7 to be unsafe, I will immediately discontinue further participation in the Project and immediately notify the San Antonio Fire Department.

On behalf of myself, my heirs, personal representatives and executors, I hereby disclaim, release and waive any and all claims against the CITY for personal injuries or damages to property sustained by myself or any other person arising out of my participation in the PROJECT, including claims and damages arising in whole or in part from the negligence or the CITY, its agents or employees.

IT IS MY EXPRESS INTENT TO RELEASE THE CITY FROM ANY AND ALL CLAIMS ARISING FROM MY PARTICIPATION IN THE PROJECT REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED NEGLIGENCE OF CITY, ITS AGENTS OR EMPLOYEES.

In signing this release and waiver I am relying wholly upon my own judgment, belief and knowledge. By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation as a volunteer, I may be found by a court of law to have waived my right to maintain a lawsuit against the City on the basis of any claim from which I have released them herein. I have had sufficient opportunity to read this entire document. I read and understand it, and I agree to be bound by its terms.

VOLUNTEER SIGNATURE

DATE

ADDRESS

CITY

STATE

ZIP CODE

TELEPHONE NUMBER

EMERGENCY NUMBER

DRAFT