AN ORDINANCE 2012-08-02-0551

AUTHORIZING A LEASE AND A MEMORANDUM OF UNDERSTANDING ALLOWING THE SAN ANTONIO FIRE MUSEUM SOCIETY TO USE PART OF OLD FIRE STATION #1 AT 801 E. HOUSTON ST. FOR CONVERSION INTO A FIRE DEPARTMENT MUSEUM AND, UNTIL THE MUSEUM OPENS, TO USE OLD FIRE STATION #7 AT 604 ALAMO ST. FOR RECONSTRUCTING ANTIQUE FIRE APPARATUS AND COLLECTING AND STORING ANTIQUE FIRE ITEMS AND HISTORICAL RECORDS.

* * * * *

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, are authorized and directed to execute and deliver on behalf of the City a memorandum of understanding substantially in the form of **Attachment II**, which is incorporated by reference for all purposes as if fully set forth.

SECTION 3. The City Manager and designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transactions, including agreeing to non-material changes to the approved forms and executing and delivering all ancillary instruments and agreements conducive to effectuating the transactions.

SECTION 4. The department will record an in-kind transaction for the services authorized by this ordinance.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 2nd day of August 2012.

M A Y O R
for Julián Castro

Attest:

Leticia M. Vacek, City Clerk

Approved As To Form:

Michael D. Bernard, City Attorney

Request for COUNCIL ACTION

City of San Antonio

Agenda Voting Results - 12

Name:	7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19A, 19B, 20A, 20B, 21, 22, 23, 24, 26
Date:	08/02/2012
Time:	09:36:50 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a lease and a Memorandum of Understanding allowing the San Antonio Fire Museum Society to use part of old Fire Station #1 at 801 E. Houston St. for conversion into a Fire Department Museum and, until the museum opens, to use old Fire Station #7 at 604 Alamo St. for reconstructing antique fire apparatus and collecting and storing antique fire items and historical records for a term ending no later than July 31, 2013. [Erik Walsh, Deputy City Manager; Charles N. Hood, Fire Chief]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				x
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x			x	
Carlton Soules	District 10	x					

Attachment I

Fire Museum Lease
(FS 1 and FS 7)

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1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord: City of San Antonio

Landlord's Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Fire Department Fiscal Planning Manager)

Tenant: San Antonio Fire Museum Society

Tenant's Address:	801 E. Houston Street, San Antonio, Texas
Premises:	The Premises consist of Fire Stations 1 and 7 described below, subject to the reservation described below.
Fire Station 7:	Old Fire Station No. 7, 604 S. Alamo Street, San Antonio, TX 78205, consisting of Lot 4, Block 4, NCB 13815, San Antonio, Bexar County, Texas
Fire Station 1:	Old Fire Station No. 1, 801 E. Houston Street, San Antonio, Bexar County, Texas, located on the southern portion of Lot 1, Block 54, NCB 553, San Antonio, Bexar County, Texas, and depicted on **Exhibit A** ("Fire Station Building"). Fire Station 1 does not include the adjacent building depicted on **Exhibit B** ("EMS Supply"). Fire Station 1 includes the exterior of the Fire Station Building and the land on which that building is located.
Reservation from Fire Station 1:	Landlord reserves from the Premises and the leasehold the second floor of the Fire Station Building, together with the right to enter the Premises at all times to access the second floor by stairs or elevator. Landlord further reserves the right to install an elevator between the first and second floors at a location convenient for that installation. Landlord may use the reserved second floor for any lawful purpose.
Permitted Use:	Operation, reconstruction of firefighting-related antique apparatus and collecting and storing firefighting-related fire items and historical records, and safeguarding antique furniture and accessories that the SAFD has collected or may in the future collect from older fire stations, exhibitions to be at the discretion of Tenant. Tenant is further authorized to have a merchandise/souvenir store within the first floor of the Fire Station Building and may outsource the store operation to a third party after giving notice to Landlord and executing any necessary documents consistent with this Lease Agreement.
Occupancy Commencement Date:	May 1, 2012
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.

2. Grant.

Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease. Tenant's right of occupancy begins at the Occupancy Commencement Date.

3. Rent.
Rent consists of the in-kind services of Tenant to Landlord in operating the museum, repairing and safeguarding the items in the museum, and reconstructing antique firefighting-related equipment. Tenant's covenant to pay Rent and Landlord's covenants are independent. Tenant must not abate Rent for any reason.

4. Term, Renewal.

4.01. Unless sooner terminated as provided in this Lease, the term of this Lease as to both Premises ends July 31, 2013, unless the fire museum is not operating and open to the public at least five days a week by February 15, 2013. If the fire museum is not operating and open to the public at least five days a week by February 15, 2013, then the term of this Lease as to both Premises ends April 15, 2013.

4.02. If Tenant is not in default under the Lease, Tenant may ask to renew this Lease as to Fire Station 1 only for up to three additional one-year terms by giving Landlord three months prior written notice before expiration of the previous term. Landlord's acquiescence in Tenant's holding over is not acquiescence to renewal. Renewal is effected only after written notice of intent to renew and approval of the proposed renewal by further ordinance City Council. Though no renewal is effective unless approved by City Council, Landlord has no duty to present a proposed renewal to Council, even though Tenant has given the requisite notice.

4.03. Renewal Terms are governed by this Lease just as the Initial Term including rent.

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; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises; and (c) any rules and regulations adopted by Landlord.

5.03. Obtain and pay for all utility services used by Tenant.

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 the interior and exterior of the Premises.

5.06. After casualty loss not terminating the lease, rebuild the interior partitions, ceilings, wiring, light fixtures, and plumbing.

5.07. At all times keep locked the door to the tunnel to EMS Supply and to refrain from using that tunnel for any purpose. Landlord must have a copy of the key and be able to use the tunnel at all times.

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 Occupancy 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. If Landlord sells the Premises, Tenant must deliver to the buyer or the buyer's lender a subordination, nondisturbance, and attornment agreement reasonably satisfactory to the buyer and its lender. Tenant's obligation to deliver the agreement may be conditioned on buyer's agreement to honor this Lease according to its terms, but buyer will not be estopped to act on Tenant's default under this Lease.

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, in whole or in part, out of 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. Indemnified Claims also include claims in which an Indemnitee shares liability with the Indemnitor, excluding only claims as to which Indemnitees are solely negligent.**

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 an 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.

7.03. Interfere with Landlord's or any other tenant's normal business operations, including those on the second floor of the Fire Station Building.

7.04. Permit waste.

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

7.06. Change Landlord's lock system.

7.07. Alter the Premises.

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

8. Landlord's Affirmative Promises.
Landlord promises that it will:

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

8.02. Obey all applicable laws with respect to Landlord's operation of the Premises.

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 Occupancy Commencement Date, normal wear excepted.

11. Risk of Loss.
Tenant is responsible for maintaining the Premises in a safe condition. If, at any time, Tenant believes the Premises are unsafe, it must immediately notify Landlord in writing and cease all operations at the Premises.

12. Release of Claims/Subrogation.
The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant release each other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the party actually has the insurance ("Covered Claims"). This release is additional to and does not limit any other release contained in this lease. Landlord and Tenant, to the maximum extent allowable without causing

cancellation of a required policy, will require their insurers to waive subrogation against each other for Covered Claims.

13. Environmental Matters.

13.01. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

13.02. "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

13.03. "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

13.04. In its use of the Premises, Tenant must comply with all applicable Environmental Laws and must cause its employees, agents, and contractors on the Premises to do so as well. Tenant will obtain all permits required under Environmental Law for its use of the Premises. At least 180 days before expiration of any such permit, Tenant must present proof to Landlord that it has applied for renewal.

13.05. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not to handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

13.06. Tenant must immediately provide to Landlord copies of: (i) any documents required to be submitted to a Governmental Authority under Environmental Law; (ii) any notice alleging a violation of Environmental Law, or (iii) any demand from or allegation by any third party in relation to Hazardous Materials or Environmental Law. Tenant must promptly deliver to Landlord any information it receives regarding any Release of Hazardous Materials on, to, from, or about the Premises.

13.07. Landlord may conduct, at Tenant's expense, periodic inspections of the Premises and Tenant's operations thereon to assure compliance with Tenant's environmental covenants. Tenant need not pay the expense of more than such inspection in any 12-month period.

13.08. If Tenant breaches any of its representations, warranties or covenants, Tenant at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Tenant must take all action required by applicable Environmental Laws. If Tenant's actions under this provision involve cleaning up a Release of

Hazardous Materials, Tenant must perform the cleanup consistently with residential use of the Premises and will not use any institutional controls or engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain, or remove pollutants.

13.09. Tenant must indemnify Landlord and hold Landlord and its officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees and expenses, including all attorney's fees and expenses incurred by Tenant in enforcing this indemnity) arising from or relating to breach of Tenant's environmental representations, warranties, and covenants..

14. 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.

15. Insurance.

15.01. Landlord waives 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.

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

15.03. 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.

16. Prohibited Interests in Contracts.

16.01. 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.

16.02. 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.

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

17. Casualty/Total or Partial Destruction.

17.01. If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, at its expense, restore the roof, foundation, Common Areas, and structural soundness of the exterior walls of the Premises and any leasehold improvements within the Premises the maintenance of which is not assigned to Tenant under this lease. Restoration must be to substantially the same condition existing before the casualty. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

17.02. If the Premises cannot be restored within ninety days, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

17.03. To the extent the Premises are untenantable after the casualty, the Rent will be adjusted as may be fair and reasonable.

17.04. If Landlord is obligated to rebuild or chooses to do so, Tenant must promptly rebuild and restore all improvements the maintenance of which are its responsibility under this Lease. Restoration must be to substantially the same condition existing before the casualty.

17.05. As with the insurance requirements, the rebuilding obligations of this paragraph are a bargained-for allocation of risk.

18. Condemnation/Substantial or Partial Taking.

18.01. If the Premises or any portion of them are taken by eminent domain, or sale in lieu of eminent domain, by any entity other than Landlord, the Lease automatically terminates as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first.

18.02. If entire Premises are not taken, the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

18.03. Tenant has no claim to the condemnation award or proceeds in lieu of condemnation.

19. Holdover.

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

20. Default, Remedies for Default.

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

20.01.01. Tenant fails to comply with any term, provision or covenant of this Lease, 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.

20.01.02. 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.

20.01.03. 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.

20.01.04. 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.

20.01.05. 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 Occupancy 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.

20.01.06. 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.

20.01.07. The business operated by Tenant is closed for failure to pay any State sales tax as required or for any other reason, other than repairs, death of the principals of Tenant, or normal business holidays.

20.01.08. 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.

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

20.02.01. 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. Upon termination, 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.

20.02.02. 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.

20.02.03. 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.

20.02.04. 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 obligated 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.

20.03. *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.

20.08. *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.**

20.09. *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.

20.11. *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.

21. Warranty Disclaimer

21.01. 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.

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

22. Abandoned Property.

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

23. 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.

24. 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.

25. Dispute Resolution.

25.01. 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.

25.02. 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.

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

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

25.05. 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.

25.06. Mediator fees must be borne equally.

25.07. 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.

26. Miscellaneous.

26.01. *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.

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

26.03. *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.

26.04. *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.**

26.05. *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. Any modification of this Lease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

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

26.07. *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. 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.

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

26.09. *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.

26.10. *Administrative Actions and Agreements*. The Fire Chief may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare Tenant defaults and pursue remedies for such defaults, including terminating this Lease. This paragraph does not authorize lease amendments or renewals without council consent.

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

27. Disclaimer of Warranties.
Tenant takes the Premises As-Is, with all faults. Landlord disclaims all warranties not expressed in this Lease and specifically disclaims a warranty of suitability for any purpose.

28. 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. Nothing in this agreement waives an otherwise applicable exception to disclosure.

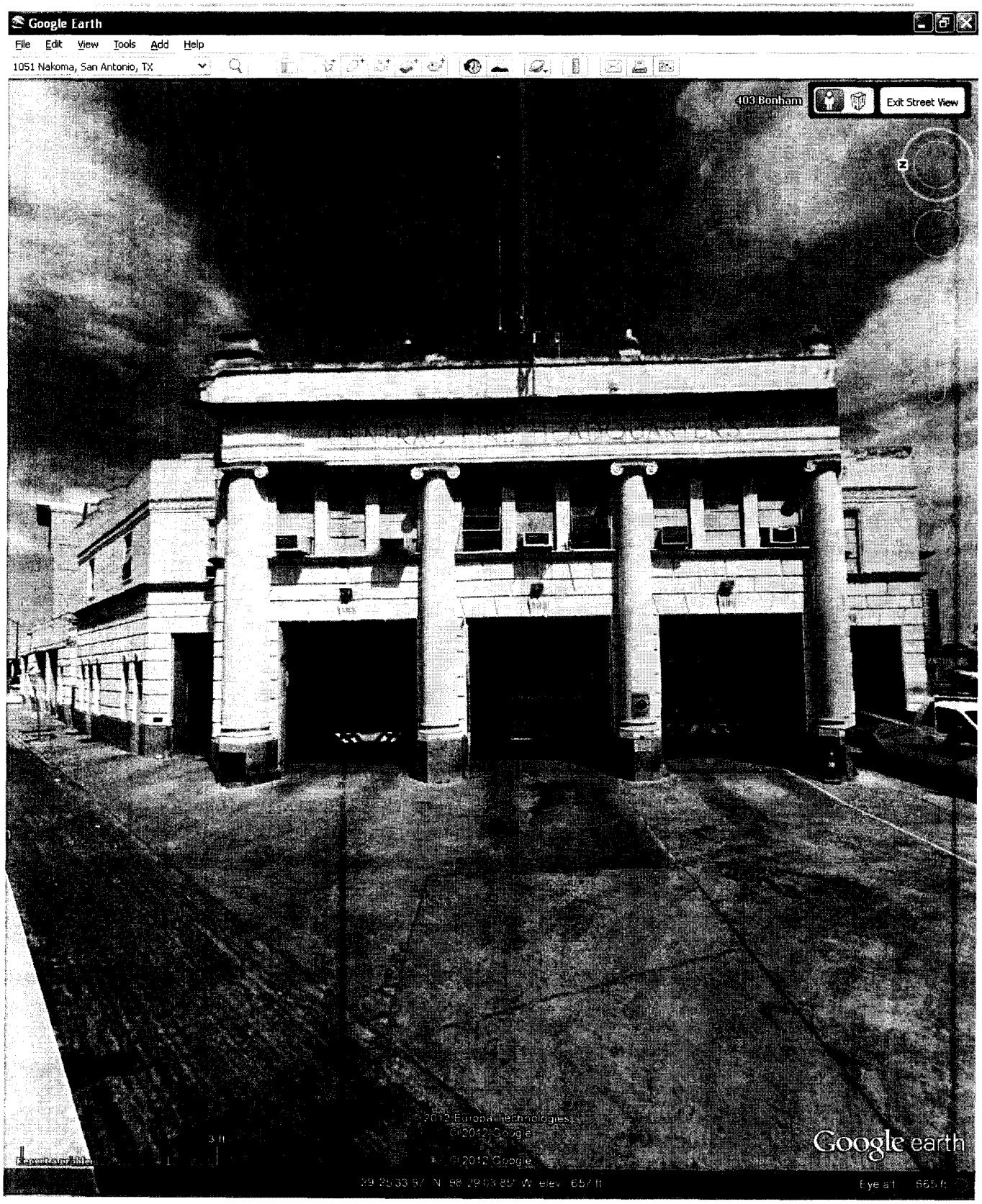
In Witness Whereof, the parties have caused their representatives to set their hands.

Landlord:	**Tenant:**
City of San Antonio, a Texas municipal corporation	**San Antonio Fire Museum Society**, a Texas non-profit corporation
Signature:_____	Signature:_____
Printed Name:_____	Printed Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

Approved as to Form:

_____
City Attorney

Exhibit A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403 Bonham
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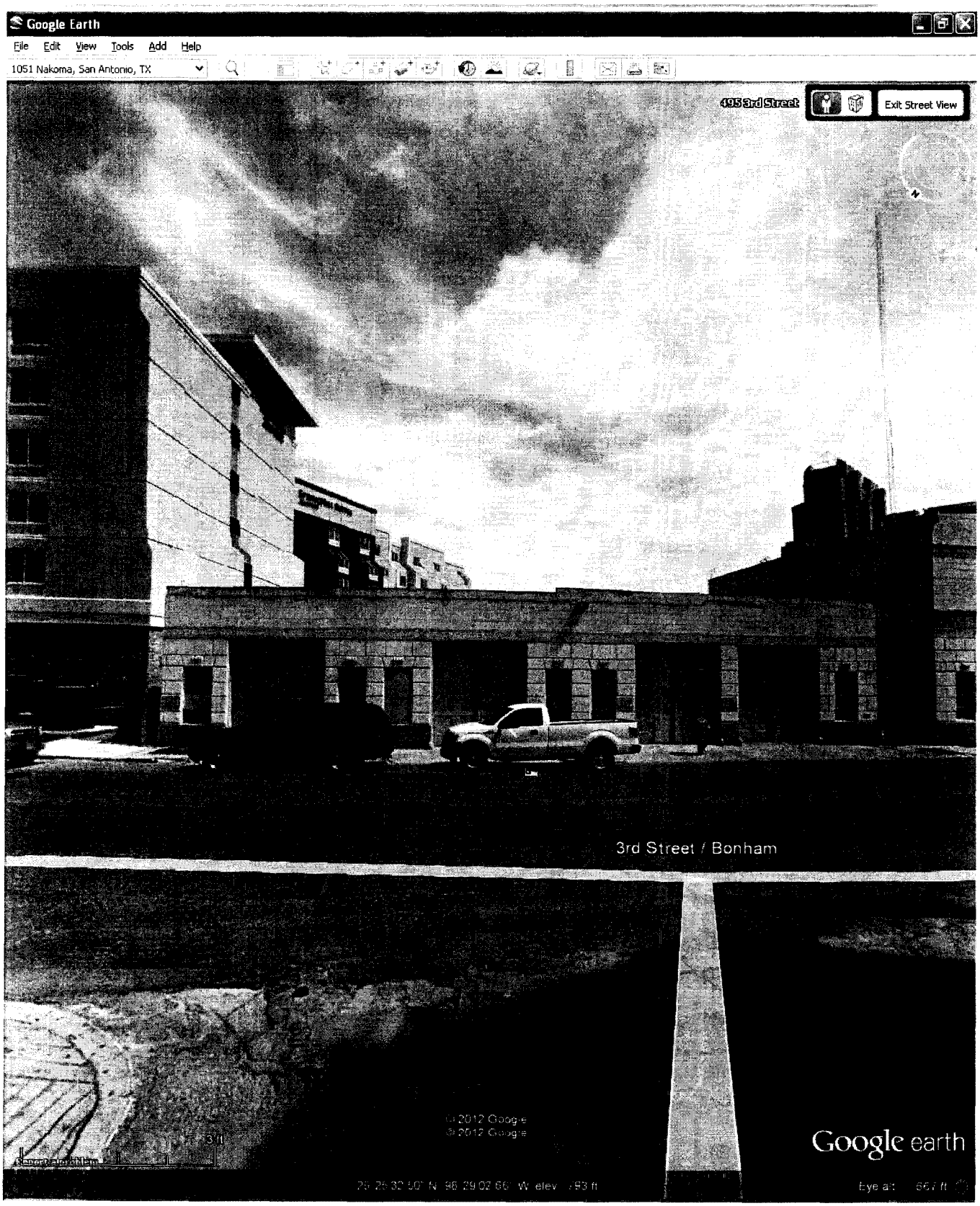
Google earth

Exhibit B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1051 Nakoma, San Antonio, TX
495 3rd Street
Exit Street View
3rd Street / Bonham
© 2012 Google
© 2012 Google
Google earth

Attachment II

Memorandum of Understanding re Fire Museum

This Memorandum of Understanding re Fire Museum is entered into between the City of San Antonio ("City") and the San Antonio Fire Museum Society ("Society") as of the later of the signatures at the end of this memorandum.

Background:

Society wants to establish a Fire Museum at the site of the current Fire Station #1, located at 801 East Houston Street in San Antonio, Bexar County, Texas.

City is amenable that plan on the terms and conditions of this memorandum.

Rights and Obligations:

1. Subject Property.

1.01. The basement and the first floor of Fire Station #1 represent approximately 10,593 square feet. The accompanying Emergency Building represents approximately 11,030 square feet. The combined square footage, exclusive of the second floor which will remain within the domain and use by the Fire Prevention Division, is thus approximately 21,623 square feet.

1.02. There are three major components to the deactivated fire station. The first is the basement and first floor bay area/kitchen ("Component 1"), where the fire engines, ladder trucks and rescue units were housed. The second is the second floor of the fire station ("Component 2"), which will remain with the Fire Prevention Division. The third is the facility that houses the EMS medical supplies ("Component 3").

2. Phase I.

2.01. Upon effective date of this memorandum, the City will deliver the keys to the Society to deactivated Fire Station #1. Phase I encompasses the clean-up and conversion of Component 1 into an exhibit area to house and display artifacts and to store and restore decommissioned Fire Department equipment, artifacts, and ancillary exhibits for eventual public display.

2.02. The exhibits will convey the story of the evolution of the fire department and will chronicle the legacy of those fire fighters who were part of the fabric of the culture of San Antonio.

2.03. The Society intends on a soft opening of the Museum for exhibition, incorporating a gift shop to raise funds for upkeep and maintenance of the Exhibit area. The soft opening of the museum will be no later than February 15, 2013. If the Society does not meet the criteria outlined in Phase I, then the City may dispose of the deactivated Fire Station #1 as it deems appropriate.

3. Phase II

Phase II relates to Component 2, which will remain under the domain and use of the Fire Prevention Division of the Fire Department for utilization as a Children's Fire Educational Center. As conceived, the Society will partner with Fire Prevention to create a full time

curriculum for fire safety education for children of all ages. In addition, the center will also serve as an educational venue, providing fire safety education to private citizen groups and to the members of San Antonio's business community.

4. Phase III

Phase III of the fire museum involves the possible future use of the building currently housing the EMS medical supply facility, which will be subject to later agreement of the parties and approval by council. It is anticipated that this structure will not be available until the latter part of 2012. The intended use by the Society of this facility is for a theatre that will convey the perils of fire and provide education on fire suppression and prevention . Funding for this Phase III will be sought from corporate donor and will anchor and complement the other Phases of the Museum.

5. Sources of Funding

The Society is not precluded from seeking funding by any means, such as obtaining any grants, pledges, CDBG monies, or District One funding, or from requesting the inclusion of the museum in a citywide restoration solicitation.

6. Lease.

Contemporaneously with the execution and delivery of this memorandum, City and the Society are entering into a lease agreement. The terms of that lease agreement control over any conflicting statements in this memorandum.

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

City of San Antonio, a Texas municipal corporation

Signature:_____

Printed Name:_____

Title:_____

Date:_____

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

Signature:_____

Printed Name:_____

Title:_____

Date:_____

Approved as to Form:

_____
City Attorney