

THE STATE OF TEXAS
COUNTY OF BASTROP
CITY OF BASTROP

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MUNICIPAL LAND/FACILITY
LEASE AND CONSTRUCTION
FUNDING AGREEMENT

This is a Lease and Construction Funding Agreement ("Lease" or "Agreement") made this 28th day of April 2009 ("Effective Date"), by and between the City of Bastrop hereinafter referred to as "City" or "Lessor", the owner of the real property and improvements (locally known as the "Old City Hall") located at 904 Main Street, Bastrop, Texas ("Property"), and the Bastrop County Historical Society, hereinafter referred to as "Society" or "Lessee" a 501(c)(3) organization operating pursuant to the Laws of Texas.]. The purpose of this Lease is for Lessee to lease real property and the improvements thereon for the renovation and construction of a new facility to be used as the Bastrop Historical Museum ("Museum") and Bastrop Old Town Visitor Center ("Center"), upon terms and conditions agreeable to the Parties. The City and the Society may be jointly referred to herein as "Parties" and singularly as "Party." The Museum and the Center and the structures housing same, and appurtenances appertaining thereto, may be jointly referred to herein as the "Improvements," and/or "Leased Premises." The definitional titles referred to herein are for purposes of the Agreement, and the Parties acknowledge the Society may desire to 're-name' the Museum and/or Center in the future, which re-naming may be done upon notice to the City.

RECITALS

The City and the Society find it mutually advantageous for the Society to renovate and repurpose the City owned structure, locally known as the "Old City Hall" into a facility featuring a Historic Museum to house historical artifacts and documents related to Bastrop County and the City, and to house and operate the Bastrop Old Town Visitor's Center that will provide information regarding the community of Bastrop to visitors and tourists. (Referred to herein as the "Project").

At the time of this Agreement, the City is in the initial stages of planning and construction a new City Hall Facility at another location. While definite dates related to that effort have not been established, it is the City's goal, at this time, to occupy the new City Hall Facility within approximately eighteen (18) months of the date of this Agreement. However, the Parties agree that nothing contained herein is intended to or will obligate the City to vacate the Old City Hall on any date specific. The City will keep the Society apprised of progress on the planning, design and construction of the new City Hall facility. Conversely, the Society will keep the City apprised of the status of its fundraising efforts as they relate to the Capital Campaign Account, by providing the City Manager with periodic written reports on the status of the Society's fund raising efforts.

In preparation for this Project, the Parties have cooperated in gathering information, prepared a survey of the Leased Premises and conducted various studies and evaluations of the property and structures (such as a Phase I Environmental Assessment and Asbestos Survey) to determine the condition of the Old City Hall and the overall feasibility of the Project.

To accomplish the goals of the City and the Society, the Society has agreed to undertake a major renovation of the Old City hall, to make it suitable for the public uses and purposes stated herein. To assist with this effort, the City has agreed to provide conditional funding from the City's HOT revenue fund, as set forth in more detail herein below.

Further, in order to accomplish the goals of the City and the Society, the Parties agree it is necessary to enter into this Agreement, which addresses: (1) the terms of the lease from the City to the Society of the City's property, and (2) the terms related to funding contributions by the City and the construction of the renovated/repurposed facility by the Society.

NOW THEREFORE, for consideration acknowledged to be adequate and sufficient, the Parties hereby agree as follows:

THE LEASE

ARTICLE I. LEASED PREMISES AND PRIVILEGES

1.01 Leased Premises. For and in consideration of the term, conditions and covenants of this Lease to be performed by Lessee, City hereby leases, demises and lets unto Lessee, on the Lease Initiation Date noted herein in Sec. 3.01, certain real property known locally as the Old City Hall, physically located at 904 Main Street, Bastrop, Texas, as shown on attached Exhibit "A," which is incorporated herein for all purposes (the "Leased Premises.") The Parties specifically agree and acknowledge that no other real property or improvements other than those specifically identified on Exhibit "A" and the Improvements to be constructed therein as per this Lease, are subject to this Lease. The Leased Premises is generally comprised of: (1) real property with an area covering 0.227 acres, and (2) an existing structure (i.e., the Old City Hall) of approximately 4634 [see 8.01, 4875 includes non HVAC] square feet of HVAC and storage space, which will ultimately become the renovated and expanded structure (i.e., construction of the elevator core, as per Sec. 8.01, below) that will be occupied by Lessee.

1.02 Use of Premises. Beginning on the Lease Initiation Date, Lessee shall be entitled to occupy the Lease Premises to renovate/reconstruct the existing Old City Hall located on the Leased Premises, pursuant to City approval, as detailed herein below, for the sole purposes of: (1) operating and maintaining an historical museum open to the public ("Museum"), (2) operating a museum retail shop limited to selling materials and publications related to the museum, and (3) operating the Bastrop Old Town Visitor Center ("Center"), under the terms and provision more fully set forth herein. Except as noted in more detail herein, in Section 4.14, below, Lessee is prohibited from using the Leased Premises for any purpose that is not in the best interest of the City's and consistent with the Society's mission, without obtaining prior City Council permission for such additional uses. Prior to any use not authorized herein, Lessee shall first secure the written consent of City. Lessee warrants, covenants and agrees that it shall not occupy or use the Leased Premises for any other purposes and, further, acknowledges and agrees that such use could result in automatic termination of the Lease in accordance with Article 7.01. Further, Lessee agrees that, at all times, the use of the Leased Premises shall be in conformity with all existing applicable ordinances, rules and

regulations of City, all future ordinances, rules and regulations of City necessary for health, safety and welfare of the public, and in conformity with all statutes, ordinances, regulations or other requirements of any government authority having jurisdiction over the Leased Premises. Lessee shall not make or permit any use of the Leased Premises which constitutes a public or private nuisance as a direct result of scheduled activities/functions or which may render void, voidable or unenforceable any insurance in force, pursuant to the provisions of this Agreement.

- 1.03 Access to Lessor; Authority and Quiet Possession. During all periods of this Lease, Lessee shall allow immediate, open and unfettered access to the Leased Premises by Lessor for inspection, upon request of Lessor. The Parties acknowledge and agree that the City has full right and lawful authority to enter into and perform the City's obligations under this Lease for the full term of the lease.

City covenants that if Lessee shall discharge the obligations herein set forth to be performed by Lessee, Lessee shall have and enjoy, during the term hereof, and all extensions hereinafter provided, quiet and undisturbed possession of the Leased Premises and all appurtenances appertaining thereto, together with the right to occupy and use the Leased Premises as contemplated herein. Provided, however, that this Lease is subject to the legal right of the City, as provided herein below in Section 7.09, related to overarching public need or necessity.

- 1.04 Ownership of Leased Premises and Improvements. The Parties acknowledge and agree that the City shall have, at all times, the exclusive ownership right to the Leased Premises, all Improvements and the appurtenances thereto, at all times and, further, that Lessee's rights under this Agreement are strictly limited to those of a tenant with temporary use and occupation rights as set forth herein.
- 1.05. Ownership of the Collection. The Parties acknowledge and agree that the Society shall have, at all times, the exclusive ownership right to the artifacts, object documents and items that make up the Museum's permanent collection ("Collection"), except for any items that explicitly belong to the City (or others, such as collections on loan), that are housed by the Society in the Museum.

ARTICLE II. COMPENSATION FOR LEASE

- 2.01 Rent. Beginning on the Lease Initiation Date, Lessee shall pay Rent in the sum of \$10.00/per year for said Leased Premises with the first and last year's rental paid in advance. Thereafter such rental shall be paid annually, in advance, due and payable on the first of each year, following the Lease Initiation Date.
- 2.02 Delinquent Payment/Place of Payment. Lessee agrees that all rental payments are due and payable and shall be paid by Lessee without demand or notice in writing from City. Failure of Lessee to pay any rental may, at the City's discretion, constitute Lessee's default of this Lease, unless expressly waived, in writing, by the Lessor.

All payments made hereunder by Lessee shall be made to City at the offices of the City of Bastrop; Attn: City Manager; P. O. Box 427; Bastrop, TX 78602, unless notified in writing to the contrary by City.

ARTICLE III. COMMENCEMENT, TERM AND TERMINATION OF LEASE

- 3.01 Lease Initiation Date. The Lease Initiation Date shall be sixty (60) days following the City's vacation of the Leased Premises. ["Lease Initiation Date"]
- 3.02 Term of Lease. The term of this Lease for the property described in Exhibit "A", shall commence on the Lease Initiation Date and shall continue for twenty (20) years ("Primary Term") unless sooner terminated or extended as hereinafter provided. At the expiration of the Primary Term of this Lease, and Lessee not being in default in any rental payments required to be paid and/or other obligations required of Lessee by the terms of this Lease, the City may, at its sole discretion, approve (if requested in writing by Lessee), subsequent renewals of the Lease for two (2) additional ten (10) year terms. ("Renewal Terms"), which Renewal Terms shall commence on the day following the expiration of the Primary Term or the preceding Renewal Term. Any Renewal Term shall be based upon the conditions specified herein; any additional or amended requirements set by the Lessor for the Extended Term(s) and upon the rental schedule, as stated herein, unless otherwise agreed to by the Parties at the time of the Renewal. Lessee shall give to City notice of its intention to request an option for any Renewal, in writing, on or before one hundred twenty (120) days prior to the end of the Primary Term or subsequently approved Renewal Terms. Lessee's failure to provide this notice shall be deemed to be notice to City that Lessee desires not to renew, and thus, no renewal shall occur.

The Parties acknowledge and agree that all permanent Improvements and appurtenances thereto located on the Leased Premises, as well as the Leased Premises itself are owned exclusively by the City.

The Parties agree that Lessee shall timely and peaceably vacate the Premises within ninety (90) days of the termination or expiration of the applicable Lease period with any "holding over" to be as a tenant at will.

- 3.03 Holding Over. Any holding over by Lessee after the expiration or termination of this Lease, including the agreed upon time to vacate noted in 3.02, supra, in whatever manner its termination may be brought about, shall not operate as a renewal of this Lease, but during the period of such holding over Lessee shall be a holdover tenant at will of City and shall pay to City a Hold Over Rental of \$100.00, per day, for each day Lessee occupies the Leased Premises after the termination of this Lease.

Notwithstanding anything herein, the City retains all rights allowable by law and equity to remove Lessee from the Leased Premises and recover damages, in the event such action is necessary to protect the best interest of the public, in the City's sole discretion.

- 3.04 Termination for Failure to Operate Museum and Center. In the event that Society fails to meet any of its obligations as set forth in this Agreement and Exhibits attached hereto, or ceases to operate the Leased Premises as a Museum and Visitor's Center in accord with the City's standards for same, then the Lease shall terminate and control of the

Leased Premises and Improvements thereon shall revert solely to the City, subject to the City's Buy-Out Obligations, as detailed in Article IX, and the Default and Opportunity to Cure, as detailed in Article VII 7.01, below.

ARTICLE IV. COVENANTS AND CONDITIONS

- 4.01 Non-Discrimination. The Lessee, for itself, its personal representatives, successors in interest, and approved assigns, if any, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
- (A) No person on the grounds of race, color, sex, religion, or national origin shall be excluded from participation in, denied the benefits or, or be otherwise subjected to discrimination under any program or activity that shall occur on the Leased Premises; and,
 - (B) That in the renovation of the Old City Hall and/or the construction of any improvements on, over, or under the Leased Premises, and the furnishing of services thereon, no person on the grounds of race, color, sex, religion or nation origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and
 - (C) That the Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Code of Federal Regulations, Title 49, Transportation Subtitle A, Office of the Secretary of Transportation, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964, Section 21.5 Discrimination prohibited; and
 - (D) That the Lessee shall at all times use the Leased Premises in compliance with all Non-Discrimination policies, laws and regulations either in effect at the present time or those promulgated in the future, of the United States of America, the State of Texas, the City of Bastrop, or their successors.
- 4.02 Abide by All Laws. Lessee agrees to abide by all laws, statutes, policies, ordinances, rules and regulations of the United States, the State of Texas, the City of Bastrop and of all other duly constituted public authorities having jurisdiction. No provision in this Lease Agreement shall be construed as being in conflict with same.
- 4.03 Non-Assignment/Subletting. Lessee may not assign this Lease or sublease any part or the entire Leased Premises or Improvements without the prior written consent of the City. Any attempt to do so without City's consent shall be null and void. Neither the acceptance or rent from any assignee or sublessee, nor the passage of time after any such assignment or sublease, shall constitute a waiver of this express prohibition. City's written approval to any particular such assignment or sublease shall not constitute City's approval of any subsequent assignment or sublease and shall not relieve Lessee from the performance of its obligations hereunder, including, but not limited to, the payment of Rent.
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- 4.04 Acceptance of Premises. Lessee agrees to accept and occupy the Leased Premises and all improvements thereon on an "**AS IS**" basis; further, City hereby disclaims, and Lessee accepts such disclaimer, as to warranty, either express or implied, of the condition, use, or fitness for purpose of the Leased Premises and all existing or future Improvements thereon. Except as specifically detailed herein in Article VIII, related to construction contributions by the City, Lessee assumes full responsibility for any renovations, repairs and/or construction, at its own and sole expense, as may be necessary for the safe and/or efficient use of the Leased Premises and Improvements and to furnish any equipment necessary to properly use the Leased Premises and operate the Museum and Visitor's Center thereon.
- 4.05 Utilities. Lessee agrees to pay all charges for gas, water, wastewater, electricity, telephone, telecommunication services and other utilities used on or furnished to the Leased Premises.
- 4.06 Operation and Maintenance of Leased Premises and Improvements by Lessee. Lessee agrees to be responsible for all operations, maintenance and repair of all items on the Leased Premises including all Improvements, buildings, structures, grounds, pavements, utilities, grass cutting, landscaping, trash collection and removal and all other maintenance requirements that may arise. Lessee agrees that the Property, together with all Improvements, shall be maintained in a safe, clean and attractive condition at all times. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal of all trash, garbage and other refuse caused as a result of Lessee's activities. Lessee shall provide and use approved receptacles for all such garbage, trash, and other refuse. Piling of boxes, cartons, barrels, crates, packing materials or other similar items in an unattractive or unsafe manner, on or about the Leased Premises, shall not be permitted.

Lessee herein agrees not to utilize or permit others to utilize areas on the Leased Premises which are located on the outside of the Leased Premises in any manner that would distract from the appearance of, access to, or utility of the Leased Premises and Improvements.

- 4.07 Taxes. Lessee agrees to pay, in addition to the Rent provided for herein, all taxes, including general and special assessments, ad valorem taxes and other charges of any kind levied on or assessed on the Leased Premises and all interests in the premises and all improvements and other property on them during the Lease term(s), whether belonging to Lessee or City, if any are assessed. Lessee will pay all taxes, charges and assessments directly to the public officer charged with their collection not fewer than fifteen (15) days before they become delinquent, and Lessee will indemnify City and hold it harmless from all such taxes, charges and assessments, if any. Lessee may, in good faith at its own expense, contest any such taxes, charges and assessments and must pay the contested amount, plus any penalties and interest imposed, if and when finally determined to be due.

- 4.08 No Liens. Lessee covenants and guarantees that it shall take no action that shall result in the imposition of any lien, including mechanic and materialmen's liens, upon the Leased Premise, Property or Improvements, without the express written permission of the City.
- 4.09 Operation/Staffing. Lessee acknowledges and agrees that it shall be solely responsible for employing, compensating or otherwise obtaining (e.g., through hiring and/or volunteer efforts) staff sufficient to professionally operate the Museum and Center, during all times noted herein.
- 4.10 Hour of Operation of Museum and Center. The Lessee shall operate and properly staff the Museum and Center a minimum of twenty hours a week, and shall be open to the public a minimum of six (6) days per week. The Museum and Center may be closed on the locally recognized holidays.
- 4.11 Signage. All signage related to the Museum and Center shall be in conformance with City Code and cost for same shall be borne by the Lessee. The design of the signage shall be presented to and approved by the City Council prior to manufacture and installation.
- 4.12 Inspection. City shall have the right to enter the Leased Premises at reasonable times during normal business hours, for inspection and to make written request that repairs be made to the Premises and Improvements as may be necessary for the safe and efficient use of the Leased Premises and Improvements; or, at City's option, City shall have the right to make repairs, additions or alterations as may be necessary for the safety or preservation of the Leased Premises and Improvements at Lessee's expense.
- 4.13 Security. The Lessee shall be responsible for the installation and operation of appropriate security devices, equipment and programs for the Leased Premises and shall maintain same, in good repair through out the term of the Lease.
- 4.14 Approved Activities on Leased Premises: The Parties acknowledge and agree that the following activities will be permitted on the Leased Premises, so long as sponsored by and supervised by the Society:
- Fund raising events,
 - Ceremonial events related to Bastrop cultural and natural history,
 - Education activities related to Bastrop's cultural, fine arts and natural history,
 - Community events related to activities on Main Street and the Riverwalk,
 - Traditional music performance (with potential sale of related recordings),
 - Audio-visual performances, exhibits / events / activities / related to Texas history (if these created a "regional draw" of visitors for example), and
 - Others which are consistent with the Society's Mission and in the best interest of the City.

- 4.15 Alcoholic Beverage Service/Sales: Sale, service or availability of alcoholic beverages on the Leased Premises shall be in compliance with the then existing City polices (in concurrence with other similarly situated City owned properties), procedures and applicable Texas Alcoholic Beverage Commission (TABC) permitting/licensing regulations and laws.

ARTICLE V. INSURANCE

- 5.01 Insurance. As a condition precedent to Lessee's right to operate the Museum and Center on the Leased Premises, Lessee shall be solely responsible for and shall continuously maintain in effect during the term of this Agreement and any extension thereof, at Lessee's sole expense, the following insurance coverage:

- (A) Comprehensive General (Public) Liability Insurance. Covering the Leased Premises, the Lessee, and its activities at the Premises, including any construction performed thereon. Liability insurance limits shall be in the following minimum amounts:
- (B) Bodily Injury, including Death and Property Damage: \$1,000,000 combined single limit coverage on a per occurrence basis or on a 'claims made' basis with a \$1,000,000 aggregate limit.
- (C) Fire and extended coverage. In amounts sufficient to cover the replacement value of any building, museum displays, appurtenances or other facilities erected during this Lease or currently existing on the Property and the Leased Premises. In addition, the Lessee shall obtain insurance to cover the Society's liability on any collection or individual piece of art, artifact and/or historical object stored, displayed, or existing in the Museum at any time. This coverage shall include theft, vandalism, malicious mischief, as well as damages caused from weather conditions, and acts of God.
- (D) Collection and Contents. Lessee is solely responsible for obtaining and maintaining insurance in amounts sufficient to cover liability on all Collections, (whether permanent or on loan) and all other contents at or on the Leased Premises.
- (E) All policies shall name the City of Bastrop as an 'additional named insured' and provide for a minimum of thirty (30) days written notice to the City prior to the effective date of any cancellation, material change, or lapse of such policies.
- (F) All policies entered into by the Lessee must be approved by the City in writing prior to the execution of same to ensure that the provisions of this section are fully satisfied.

(G) The City shall be provided with a copy of any insurance policy existing on the Leased Premises, Improvements, collections, contents, historical objects, artifacts and/or art stored or displayed in the Museum.

(H) Any insurance policy herein required or procured by Lessee shall contain an express waiver of any right or subrogation by the insurance company against the City.

(I) In the event of payment of any loss covered by any insurance policies, City shall be paid first by the insurance company for its loss. Lessee shall provide Certificates of Insurance and enforcement to the City for approval before work commences.

(J) The Parties agree and acknowledge that nothing herein shall act as Lessee's waiver of subrogation to the City and its insurer.

5.02 Destruction of the Leased Premises.

If the Leased Premises, Improvements or facilities located thereon, are partially damaged by any casualty insurable under Lessee's insurance policy, Lessee shall, upon receipt of the insurance proceeds, repair the same in a manner approved by the City.

If the Leased Premises or Improvements are damaged as a result of a risk which is not fully covered by Lessee's insurance, Lessee shall either (a) repair or rebuild the damaged Improvements to the extent of available insurance proceeds, or (b) terminate this Lease and assign the insurance proceeds to City. If Lessee fails to repair or rebuild the damaged Improvements to the extent of available insurance proceeds or terminate this Lease and assign insurance proceeds to City, the City, at its sole option, shall have the right to terminate this Lease and resume sole control of the Leased Premises and Improvements thereon.

5.03 Independent Contractor. During all times that this Lease is in effect, the Parties agree that Lessee is and shall be deemed to be an independent contractor and/or operator and further, Lessee is expressly not an agent, representative, department, contractor or employee of the City with respect to Lessee's acts or omissions hereunder. It is mutually agreed that nothing contained herein shall be deemed or construed to constitute a partnership or joint venture between the Parties hereto.

5.04 Lessee expressly agrees that all art, artifacts and historical items are to be stored and/or displayed at Lessee's sole risk.

VI. INDEMNIFICATION, WAIVER AND HOLD HARMLESS

6.04 Indemnity, Waiver and Hold Harmless. Lessee agrees to indemnify, waive and hold harmless the City and its agents, employees, and representatives from and against all liability for any and all claims, suits, demands, and/or actions arising from or based upon intentional or negligent acts or omissions which may arise out of or result from this Agreement and/or from Lessee's occupancy, use renovation or construction of the Leased Premises, Improvements and/or facilities, located thereon, including any and all activities arising out of or connected in anyway with or incidental to this Lease Agreement. Such indemnification shall include, but is not limited to, acts or omissions on the part of Lessee's contractors, subcontractors, employees, volunteers, agents and/or representatives. Lessee shall also indemnify City against any and all mechanic's and materialmen's liens or any other types of liens imposed upon the Leased Premises demised hereunder arising as a result of Lessee's conduct or activity.

This Indemnity, Waiver and Hold Harmless provision extends to any and all such claims, suits, demands, and/or actions regardless of the type of relief sought thereby, and whether such relief is in the form of damages, judgments, and costs and reasonable attorney's fees and expenses, or any other legal or equitable form of remedy. This Indemnity provision shall apply regardless of the nature of the injury or harm alleged, whether for injury or death to persons or damage to property, and whether such claims by alleged at common law, or statutory or constitutional claims, or otherwise. This Indemnity provision shall apply whether the basis for the claim, suit, demand, and/or action may be attributable in whole or in part to the Lessee, or to any of its agents, servants, representatives, employees, members, volunteers, clients, trustees, patrons, visitors, contractors, and subcontractors (if any) or to anyone directly or indirectly employed by any of them. This indemnity provision shall apply whether or not any percentage of the negligence may be attributed to the City.

Further, City assumes no responsibility or liability for harm, injury, or any damaging events which are directly or indirectly attributable to premise defects of conditions which may now exist or which may hereafter arise upon the Leased Premises or Improvements, any and all such defects being expressly waived by Lessee. Lessee understands and agrees that this Indemnity provision shall apply to any and all claims, suits, demands, and/or actions based upon or arising from any such claim asserted by or on behalf of Lessee or any of its members, patrons, visitors, agents, employees, contractors and subcontractors (if any).

It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of Lessee, its agents, servants, employees, volunteers, members, visitors, clients, patrons, board members, trustees, customers, contractors and subcontractors. Lessee further agrees that it shall at all times exercise reasonable precautions for the safety of, and shall be solely responsible for the safety of its agents, servants, employees, volunteers,

members, visitors, clients, patrons, board members, customers, contractors and subcontractors (if any), and/or other persons, as well as for the protection of supplies, fixtures and equipment and the property of Lessee or other persons. Lessee further agrees to comply with all applicable provisions of Federal, State, and municipal safety laws, regulations, and ordinances.

Provided further, that the Lessee and the City each agree to give the other Party prompt and timely notice of any claim made or suit instituted which in any way, directly or indirectly, contingently or otherwise, affects or might affect the Lessee or the City. Lessee further agrees that this Indemnity Provision shall be considered as an additional remedy to City and not an exclusive remedy.

ARTICLE VII. DEFAULT AND OPPORTUNITY TO CURE

- 7.01 If Lessee does not timely pay all Rent sums when due, or if Lessee abandons, or in the sole judgment of the City, materially neglects the Leased Premises or Improvements for a period of thirty (30) days or more, or if Lessee is not performing its obligations set forth herein, or is in breach of any terms, provisions, covenants or conditions of this Lease, then the Parties acknowledge and agree that such acts or omissions shall constitute a default by Lessee. In the event of a default or breach by the Lessee, City may immediately (or any time thereafter), initiate termination of this Lease by giving Lessee notice in writing of the default. If default continues for more than fifteen (15) days after notice was provided by the City, the City shall have the right to terminate the Lease. Provided, however, that as to those actions or circumstances which Lessee should do or discontinue doing or correct which create a danger or are detrimental to the public health, safety and welfare, the delinquency shall be cured by Lessee immediately, without need or obligation of notice by City or opportunity to cure by Lessee. Conditions or circumstances creating a dangerous situation or that otherwise imperil the health, safety and welfare of the public shall be conclusive as to Lessee if the determination that they are such is made by the State or City. The terms danger and/or detrimental as herein used, shall mean those things which do or reasonably appear to pose health, safety or welfare concerns for the public, in the discretion of the City. In the event completion of a cure of the default cannot be accomplished by Lessee within the period noted herein, but Lessee is able to demonstrate a concerted and continuous effort and material progress to correct the cure, then City may agree to extension in the length of time to cure, as determined to be reasonable in the judgment of the City.
- 7.02 In case of any default which continues for more than fifteen (15) days after notice is given as herein required, City may, at its option, instead of canceling this Lease, take possession of the Leased Premises and Improvements thereon and re-let or otherwise use or devise all interest in the same. In the event of such an uncured default, the Parties acknowledge that the Lessee shall retain ownership of the collection owned/controlled by Lessee, and City shall not take possession of same. Lessee will be given ninety (90) days to remove its collection, unless circumstances relate to a dangerous situation as noted herein above at 7.01.

Lessee hereby waives all claims for damages which maybe caused by the re-entry of City and the taking of possession of the Leased Premises or removal or storage of the furniture, fixtures, equipment and property as herein provided, and will save City harmless from any loss, costs or damages occasioned by City thereby, and no such re-entry shall be considered or construed to be a forcible entry. No such re-entry or taking possession of the Leased Premises by City shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given Lessee or unless the termination thereof be decreed by a court of competent jurisdiction.

- 7.03 Waiver of Statutory Notice to Quit. In the event City exercises its option to cancel this Lease upon the happening of any or all of the events set forth herein, a notice of cancellation given pursuant to the Lease and sent to the address specified in Section 10.06, Notice, or subsequent address provided shall be sufficient to cancel this Lease; and upon such cancellation, Lessee hereby agrees that it will forthwith surrender possession of the Leased Premises and Improvements to the City.
- 7.04 Surrender of Premises. Lessee covenants and agrees that it will, at the termination or expiration of this Lease, in whatever manner such termination may be brought about, promptly surrender and deliver the Leased Premises and Improvements to City in good condition, ordinary wear and tear and damage by any casualty excepted. Lessee, having paid all rent and not in default thereof, shall be given an reasonable time, not to exceed ninety(90) days after the termination or expiration of this Lease, to remove all of Lessee's personal property.
- 7.05 Rights of Mortgagee. Any person, corporation or institution that lends money to Lessee for construction of any structure, building or improvement and retains a security interest in said structure, building or improvement shall, upon default of Lessee's obligations to said mortgagee, have no right to enter upon said Leased Premises or Improvements nor may it operate or manage the Museum and/or Center, or other Improvement, if any.
- 7.06 Effect of Condemnation. If the whole or any part of the Leased Premises shall be condemned or taken by eminent domain proceedings by any city, county, state, federal or other authority for any purpose, then the term of this Lease shall cease on the part so taken from the day the possession of that part shall be require for any purpose and the rent shall be paid up to that day, and from that day, Lessee shall have the right to continue in the possession of the remainder of the Leased Premises under the terms herein provided, except that the rent shall be adjusted to such amount as the Parties hereto shall negotiate. All damages awarded for such taking of land for any public purpose shall be apportioned between the parties based upon their proportionate financial contribution toward the part taken in the proceeding.
- 7.07 Non-Waiver for Breach. No acceptance of Rent by City after it is due, and no delay on the part of City in enforcing any obligation of the Lessee, shall be construed as a waiver or any default then, theretofore, or thereafter existing in the performance of any other obligation undertaken by Lessee. No lawful termination of this Lease shall release Lessee from responsibility or liability to the City for rents due and unpaid, nor from the

contractual obligation to perform any and all of the covenants, agreements, or stipulations by the Lessee herein undertaken to be kept and performed.

- 7.08 Attorney Fees. If it becomes necessary for City to secure and/or use the services of an attorney or agent in order to collect any amount due hereunder, or to enforce any of the provisions hereof, Lessee agrees and binds itself to pay to City a reasonable attorney's fee and court costs, which shall bear interest from the date of its accrual at the legal rate for judgments.
- 7.09 Termination Due to Public Interest. Lessee agrees and acknowledges that because the Lease relates to publicly owned real property and structures, pursuant to State law, in the event that the governing body of the City determines that the continuation of the Lease is not in the best interest of the public, then the City may terminate the Lease, with or without cause, upon providing the Lessee with one-hundred eighty (180) days written notice of such termination, stating therein the public purpose that necessitates the termination. Compensation to Lessee due to public interest termination will be subject to the terms set forth in Article IX, "City's Buy-Out Obligations".

DEVELOPMENT AGREEMENT

ARTICLE VIII. PROJECT FUNDING AND CONSTRUCTION

- 8.01 The Project. The Parties acknowledge that as of the Effective Date of the Agreement numerous uncertainties exist related to the Project. Nevertheless, the "Project" as referred to in this Agreement means the redevelopment, reconstructing and renovation of the Old City Hall, pursuant to plans approved by the Council, similar in nature to those shown in Exhibit B, attached hereto, except that Exhibit B shows an approximately 1075 square feet western extension of the "River Room," an approximately 714 square feet exit stair adjacent to this extension, and changes in the location of the Alley, which would require future agreements between the City and Society before becoming parts of the Project.

Further, the Parties acknowledge and agree that all of the Project Components that are the subject of this Agreement are as follows:

PROJECT COMPONENTS	BUDGET ¹
Redevelop the Old City Hall into a Museum and Visitor Center	
a- Renovate existing two floor structure (4,634 HVAC Sq Ft + 240 Sq ft storage) ²	\$325,000
b- Build bathroom – elevator core (1135 sq ft + 180 sq ft covered entry) ³	\$240,000
c – Main-floor exhibit & Lower-floor work/storage space (1265 sq ft) ⁴	\$190,000
Total	\$755,000

8.02 City Contribution to Construction Costs. In support of the proposed construction of the Improvements and the operation of the Museum and Center, the City Council conditionally agrees to contribute certain HOT funds in the future, to be used solely for the construction of the Improvements, as approved by the City Council, on the Leased Premises as detailed in 8.01, supra. All other costs related to the construction of the Improvements, fixtures, displays or other interior equipment related to the Museum and Center shall be borne entirely by the Lessee. As of the Effective Date of this Agreement, the Parties anticipate that funding by both Parties will be in accord with the following:

- A. Within ten (10) business days of final execution of this Agreement by both Parties, the City will provide to Society a total of \$500,000 in HOT revenue funds, (“City’s HOT Contribution”) which shall be held by Society in a dedicated, interest bearing trust account in the City’s approved depository institution, until Society meets its funding obligations as set forth in (B) below.
- B. Upon Society’s acceptance of the HOT funds, Society shall have a maximum time of one (1) year from the date that the City vacates the Old City Hall, but in no event less than two (2) years from the date of the Effective Date of this Agreement, to fund its Capital Campaign Account (referred to herein as the “Funding Deadline”) in the minimum amount of \$250,000 (“Society’s Matching

¹ The Budget figures provided herein are those prepared and presented as a preliminary plan and budget to the City by the Society in its letter to the Mayor and Members of the City Council dated February 24, 2009, and the City has specifically relied upon same in agreeing to enter into this Agreement. Further, the Parties agree that any costs above the budgeted amounts shall be borne solely by the Society. The square footage figures are measured off drawings of the kind presented in Exhibit B, and the Budget amounts are based upon construction costs current in February 2009.

² Includes 258 sq ft of vaults at \$74 per sq. ft, excluding vaults and storage; the Society’s preliminary plan and budget assumes a modest cost for asbestos removal and other environmental mitigation.

³ Main floor bathrooms, elevator and vestibule, and lower floor elevator, additional storage and entry; at \$183 per sq. ft including covered entry.

⁴ The Society’s Preliminary plan and budget assumes normal foundation conditions, at \$150 per sq. ft..

Funds”), which amount shall be comprised of a minimum of fifty percent (50%) in cash contributions. Permissible sources of Contributions to the Capital Campaign Account include, but are not limited to: earned funds, gifts, grants, donations, either in cash or in-kind goods or services, whether from the federal, state, or county governments, foundations or other granting agencies, and businesses and other corporate entities, either for-profit or non-profit, or from individuals or the estates of individuals. Up to fifty percent (50%) of the Society’s Matching Funds may be comprised of “in-kind” contributions of goods and services, so long as such “in-kind” contributions are for services and materials that are related to the construction of Improvements, and such contributions will directly result in a reduction of the net cash cost of the Improvements. The value of the “in-kind” contributions to be credited toward the Society’s Matching Funds shall be certified to the satisfaction of the City.

- C. In the event that Society has not fully funded its Capital Campaign Account on or before the Funding Deadline set out in subsection (A) above, then Society shall return the entire City’s HOT Contribution, plus interest collected on same, to the City within five (5) business days after the deadline.
- D. Every three months during the time that the City’s HOT contribution is held in trust [i.e., prior to final release of same upon Society’s certification of having raised Society’s Matching Funds], or more frequently if requested by the City for any reason, Society shall provide to the City Manager (or his designee) a written statement from the depository institution providing the City a detailed accounting of the funds held in trust, pursuant to this Agreement.
- E. The Parties agree and acknowledge that Society is prohibited from using, accessing or otherwise expending any portions of the City’s HOT Contribution for any purpose other than construction of Improvements and before it demonstrates to the City that it has raised and has on hand 100% of Society’s Matching Funds. Failure to comply with this provision shall be deemed a material breach of this Agreement that the Parties agree and acknowledge will result in termination of the Agreement.

8.03 Contingency of HOT Funding. It is expressly agreed that by executing this Agreement with the Society, the City does not bind itself in the future as to any action or the City or City Council in connection with the alteration, repeal, amendment of funding pursuant to the Texas HOT ordinance or contribution, nor does it bind the City to future contributions of HOT funds for the Project or related activities. Such future funding will be subject to separate negotiations, discussion, grants and agreements, if any.

8.04 Fiduciary Duty of Society. It is understood and agreed by and between the Parties that a fiduciary duty is created in the Society with respect to expenditure of the Hotel Occupancy Tax (“HOT”) revenue provided by the City in accordance with this Agreement. Therefore, the Society shall provide the City Manager with periodic reports, at least every three (3) months during the term of the Agreement, on the activities that are conducted by the Society related to the Project and the Museum and Center, and

expenditures made hereunder, as well as an annual financial statement listing the expenditure made for HOT revenue provided by the City as per this Agreement. It is further agreed by the Society that it shall maintain all HOT revenue provided by the City in a separate account established for that purpose only, and that it shall not commingle that revenue with any other money or maintain it in any other account .

- 8.05 Activities Related to HOT Contribution. The Society shall obtain and provide to the City on or before May 1st, of each year (or partial year) of this Agreement after the Lessee begins to occupy the Leased Premises, an accounting by numbers, samples, registrations or other method acceptable to the City Manager detailing the visitors attracted to the City by the exhibits and activities of the Museum.
- 8.06 Society's Obligation to Commence and Complete Construction of Improvements. Society shall begin construction on the renovations to the Old City Hall no later than sixty (60) days after notifying the City that it has collected 100% of the Society's Matching Funds and placed them in its Capital Campaign Account, as set forth in Section 8.01(A), if at that time the City has vacated the old City hall. If the City has not yet vacated the old City Hall, then construction shall begin no later than sixty (60) days from the date the City vacated the old City Hall. On or before three (3) years after the Funding Deadline, the Society shall complete construction of all Improvements as set forth in Exhibit B, and obtain a Certificate of Occupancy for same.
- A. All improvements and alterations made by Lessee on the Leased Premises are subject to approval by City, in writing, prior to construction to determine that such construction is in accordance with the various building ordinances, electrical codes and the uses and purposes contemplated by the Lease Agreement and approved by the City.
 - B. Society shall apply and use all funds in Society's Capital Campaign Account for Improvements to the Project prior to accessing and using any portion of the City's contributed HOT funds.
 - C. In the event that at any time during the construction and renovation of the Old City Hall the Society ceases to continue work on the Project related to constructing the Improvements, then the City shall regain possession and control of the Leased Premises and the Society shall immediately return to the City all unused City HOT Contribution funds and any remaining portion of the Society's Matching Funds, which the City may use, in its sole discretion to make the Leased Premises habitable, saleable or otherwise usable for City purposes.
- 8.07 Annual Operation and Maintenance Budget. On or before June 1st of each year after the Lease Initiation Date, the Society shall prepare and present to the Council the operations and maintenance budget ("O&M Budget") for the upcoming year, detailing all anticipated expenditures and noting the source and amount of funds that will be available to pay for same. The Parties acknowledge and agree that the Society shall be solely responsible for the operations, maintenance and staffing of the Museum and Center during all terms of the Lease.
-

8.08 Society's Obligation to Fund Operations. On or before the anniversary date of this Agreement, of each year after the Lease Initiation Date, the Society shall obtain and place in a dedicated operations account funds in the minimum amount of \$50,000.00, which shall be committed solely to the annual Operation and Maintenance of the Museum and Center.

8.09 Nature/Scope of Construction of the Project. Lessee agrees that it shall renovate and construct Improvements on the Leased Premises generally in conformance with the proposed plans shown on Exhibit "B," but shall renovate and construct only as expressly approved by the City. No demolition, renovation or construction may be done without the express formal consent and approval of the City of the plans and designs that will be used for the Improvements. For purposes of this Agreement the Scope of Construction encompasses and is strictly limited to the construction activities and Improvements noted in 8.01 above.

8.10 Construction Scheduling. In consideration for the granting of this Lease for the term provided for above, Lessee agrees to renovate and/or otherwise construct on the Leased Premises a building that will house the Museum and the Center with all necessary appurtenances and improvements reasonably necessary for the efficient operation for those facilities no later than three (3) years after the Funding Deadline.

The City Council, at its sole option, may grant an extension to the deadlines for obtaining a Building Permit or Certificate of Occupancy if the Lessee (i) makes a written request for an extension and delivers the written application for an extension together with \$100.00 non-refundable application fee to the City at least forty-five (45) days before the expiration of the deadline(s) set forth above; and (ii) provides evidence that the Lessee has made reasonable and demonstrable progress towards obtaining a Building Permit or a Certificate of Occupancy (as applicable) and documentation of the reasons that the extension(s) are necessary. The request for an extension shall be considered by the City Council, which shall render a final determination as to whether the request for extension should be granted and, if granted, for how long the extension will be approved.

8.11 Oversight of Construction. Society shall contract for, and oversee the construction of the renovations of Improvements, and shall utilize, as appropriate, competitive bidding procedures and bonding requirements, as set forth in State law. The City shall have the right to approve all construction plans, contractors, and materials. Further the Society acknowledges that it shall comply with all applicable City Codes and that it shall be subject to the City's standard construction regulations, inspections and processes as they relate to the Project.

8.12 Future Alterations/Improvements to Premises. Lessee covenants and agrees that it will make no structural alterations, material changes or additions in or to the Leased Premises without the prior written approval and consent of City. Such alterations or changes as are approved by City shall be made at Lessee's expense, except as otherwise agreed by the City, as set forth in 8.02 "City Contribution to Construction"

Costs." Except as herein provided, all permanent improvements and fixtures installed by Lessee are and shall remain the exclusive property of the City in accordance with the terms and provisions of this Lease, unless otherwise agreed in writing. All fixtures, internal structures, and equipment installed by Lessee and removable without structural injury to the Leased Premises or Improvements, may be removed by Lessee at the expiration or termination of this Lease, provided Lessee is not then in default with respect to any of its obligations hereunder, and provided further that Lessee shall repair any damage done to the Leased Premises in removing said fixtures, internal structures and equipment and shall remain responsible for any such damage.

ARTICLE IX. CITY'S BUY-OUT OBLIGATIONS

9.01 Compensation Due to Voluntary Termination of Lease by the City. In the event that the City determines for any reason (that is not related to a default of non-performance by the Society) that it is necessary to terminate the Agreement after the Lease Initiation Date, the City shall compensate the Society for its then existing amount of contribution to the cost of construction of the Improvements, up to a maximum of \$250,000, in the levels and amounts noted below, as follows:

On or before the end of each Lease Year, during the Primary Term	Percentage of \$250,000 of Society's Matching Funds (if such funds have been expended on the Construction of the Improvements at the time of Termination/Expiration) that will be Reimbursed by City
1	95%
2	90%
3	85%
4	80%
5	75%
6	70%
7	65%
8	60%
9	55%
10	50%
11	45%
12	40%
13	35%
14	30%
15	25%
16	20%
17	15%
18	10%
19	5%
20	0%

- 9.02 Maximum Amount of Potential Buy-Out Obligation. The Parties acknowledge and agree that the maximum amount of the City's Buy-Out Obligation at any time shall be 95% of \$250,000 (i.e., the Society's Matching Funds) and, further, that the City shall not be obligated to pay any percentage of any portion of the Society's Matching Funds that have not been directly spent on construction of the Improvements at the time of the termination.
- 9.03 Termination as a Result of Society's Acts or Omissions: The Parties acknowledge and agree that the City will have no obligation to reimburse the Society for any portion of the Society's Matching Funds if the termination or expiration of the Lease/Agreement is the result of the acts or omissions of the Society, as set forth herein or by operation of law.

ARTICLE X. COMPLIANCE

10.01 Acknowledgments.

Notwithstanding any other provisions or terms of the Lease, Lessee acknowledges that the Improvements may be subject to various Federal, State and local laws and regulations. ("Laws") Lessee further acknowledges that it is familiar with all applicable Laws and that it is aware that there are significant penalties for non-compliance with such Laws.

10.02 Permit/Law Compliance.

Lessee agrees to undertake, at its sole expense, unless otherwise agreed to in writing between Lessor and Lessee, all permit and other requirements necessary for full compliance with the Laws. Lessee warrants that it shall meet any and all deadlines that may be imposed or applicable. Lessee acknowledges that time is of the essence.

- 10.03 Indemnification and Hold Harmless. Notwithstanding any other provisions of the Lease, Lessee agrees to indemnify and hold harmless the City, its agents, representatives, officials, contractors and employees, for any and all claims, demands, costs (including attorneys fees), fees, fines, penalties, charges and demands by and liability directly or indirectly arising from Lessee's actions or omissions, including failure to comply with Lessee's obligations under this Article, the applicable Laws and/or permits, unless the result of City's sole negligence. This indemnification and hold harmless shall survive any termination, expiration or non-renewal of the Lease.

ARTICLE XI. MISCELLANEOUS

- 11.01 Lease-Binding on Successors, Assigns. All covenants, agreements, provisions and conditions of this Lease shall be binding upon and inure to the benefit of the respective Parties hereto, that is both City and Lessee jointly and severally, and their legal representatives, successors or assigns, and/or grantee or assignees of the City and Lessee. No modification of this Lease shall be binding upon either Party unless it is in writing and is signed by both Parties. No assignment of the Agreement by Lessee shall be allowed without the express prior, written, consent of the City.

- 11.02 Leasehold Estate. The Parties acknowledge and agree that all of the Improvements made to the Leased Premises, pursuant to the Project are and remain leasehold improvements that are owned by the City, in the event of Termination of the Agreement.
- 11.02 Utilization/Protection of City Property. City reserves the right to take any action it considers necessary to utilize and protect City property, structures or other facilities on or adjacent to the Leased Premises. City reserves the right to further develop City property adjacent to the Leased Premises, as it deems appropriate without any hindrance or interference from Lessee. City expressly reserves the right to grant to others additional Leases and privileges with respect to City property adjacent to the Leased Premises.
- 11.03 Expenses. Lessee agrees that the expenses incident to this Lease shall be paid by Lessee including the City's professional expenses, if any.
- 11.04 Parking. City reserves the right to restrict and designate parking areas for all surface vehicles on all areas of the Leased Premises and adjacent City Property, as the City determines necessary for the public health, welfare and safety.
- 11.05 Entire Agreement. This Lease constitutes the entire understanding between the Parties and as of its Effective Date supersedes all prior or independent agreements between the Parties covering the subject matter hereof. Any change or modification hereof shall be in writing signed by both Parties.
- 11.06 Notice. Any notice given to either party under the terms of this Lease shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, addressed to:

LESSOR:

City of Bastrop
 Attn: Michael H. Talbot
 City Manager
 P.O. Box 427
 Bastrop, TX 78602

LESSEE:

Bastrop County Historical Society
 Attn: President
 702 Main Street
 Bastrop, TX 78602

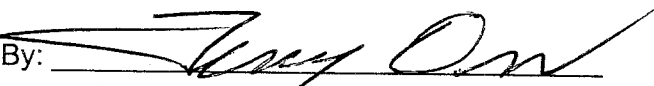
or to such other place as each Party may hereafter designate in writing forwarded in like manner for any other notice.

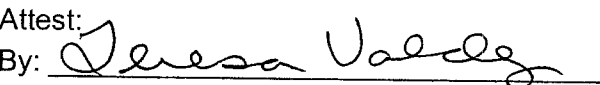
- 11.07 Headings. The headings and subtitles contained in the Lease are for the purpose of clarification and in way are determinative of the intent and purposes of the Lease or the conditions stated herein.

- 11.08 Severability. If any part, provision, term, condition, obligation or portion of this Lease is found to be illegal or void by a court of final jurisdiction, the entire Agreement shall not be void, but the void provision shall be struck and the remainder of the Agreement shall continue in full force and effect as nearly as possible in accordance with the original intent of the parties.
- 11.09 Execution/Authority. It is agreed that this Lease may be executed in multiple copies each having the force and effect of an original. Further, each Party warrants that the individual executing this Lease on its behalf has express legal authority to bind the entity he/she represents.
- 11.10 Force Majeure. The Parties shall not be required to perform any term, condition, or covenant in the Lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, civil riots, floods actions of the State or Federal government and any other cause not reasonably within the control of the Parties.
- 11.11 Governing Law/Venue. This Lease shall be construed and interpreted under the laws of the State of Texas. All Parties agree this agreement is solely performable in Bastrop County, Texas. And venue shall be in Bastrop County, Texas.
- 11.12 Exhibits. All Exhibits hereto are incorporated herein for all purposes and the terms stated therein bind all Parties hereto.

EXECUTED in two counterparts, each of which shall have the force and effect of an original, this 29th day of April, 2009.

LESSOR
CITY OF BASTROP, TEXAS

By: 
Terry Orr, Mayor

Attest:
By: 
Theresa Valdez, City Secretary

Historical Museum Land and Improvements Lease Agreement
Lessor- City of Bastrop, Texas & Lessee - BCHS

LESSEE

BASTROP COUNTY HISTORICAL SOCIETY

By: Mary Maynard McMurrey

President

STATE OF TEXAS §

§ CORPORATE ACKNOWLEDGEMENT

COUNTY OF BASTROP §

This instrument was acknowledged before me on this 1st day of May, 2009, by Mary M. McMurrey in her capacity as President of the Board of Trustees of the Bastrop County Historical Society.

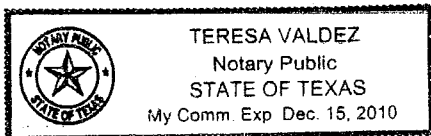
Teresa Valdez

Notary Public

State of Texas

County of Bastrop

My Commission Expires: 12-15-2010



Historical Museum Land and Improvements Lease Agreement
Lessor- City of Bastrop, Texas & Lessee - BCHS

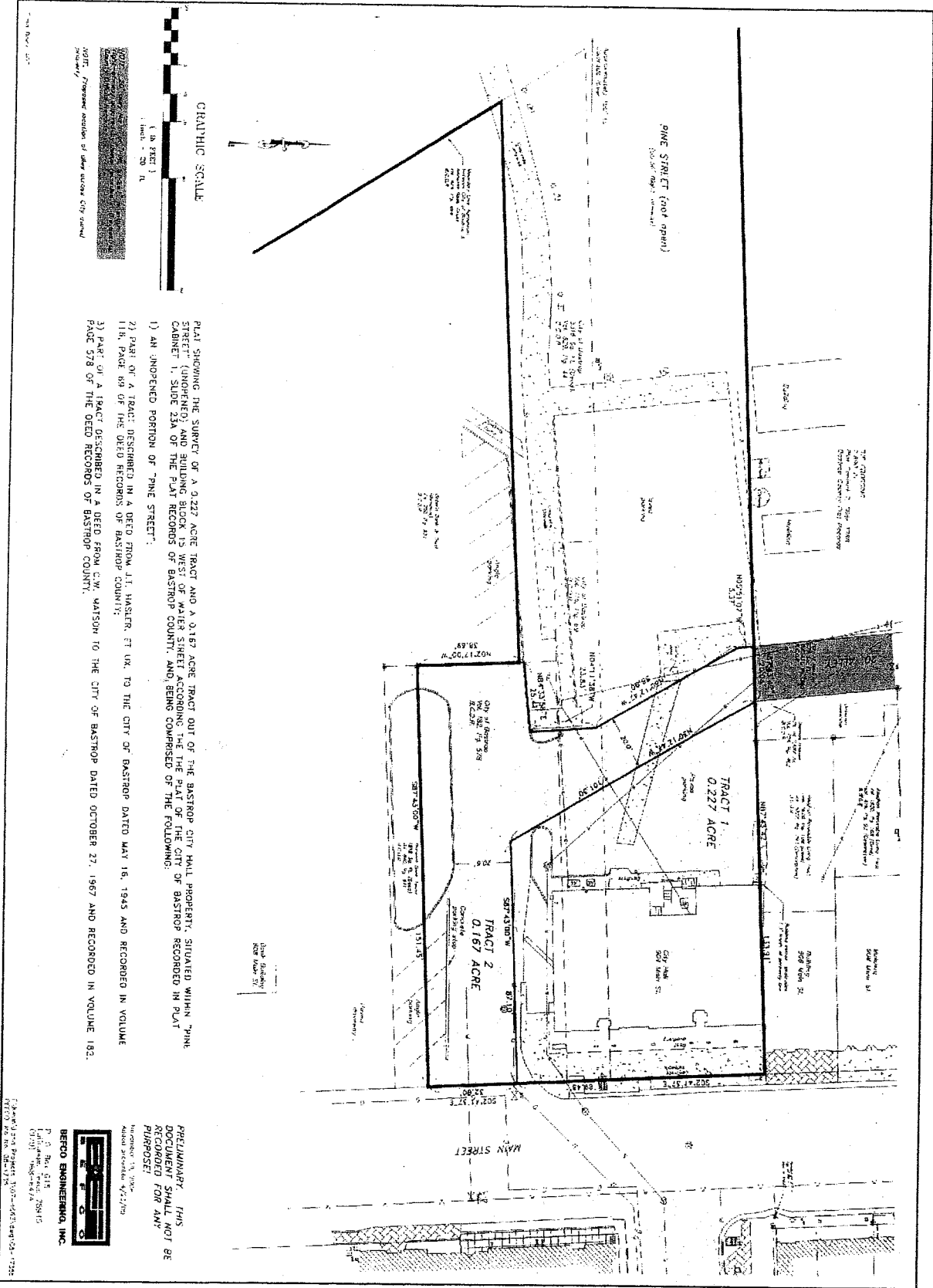
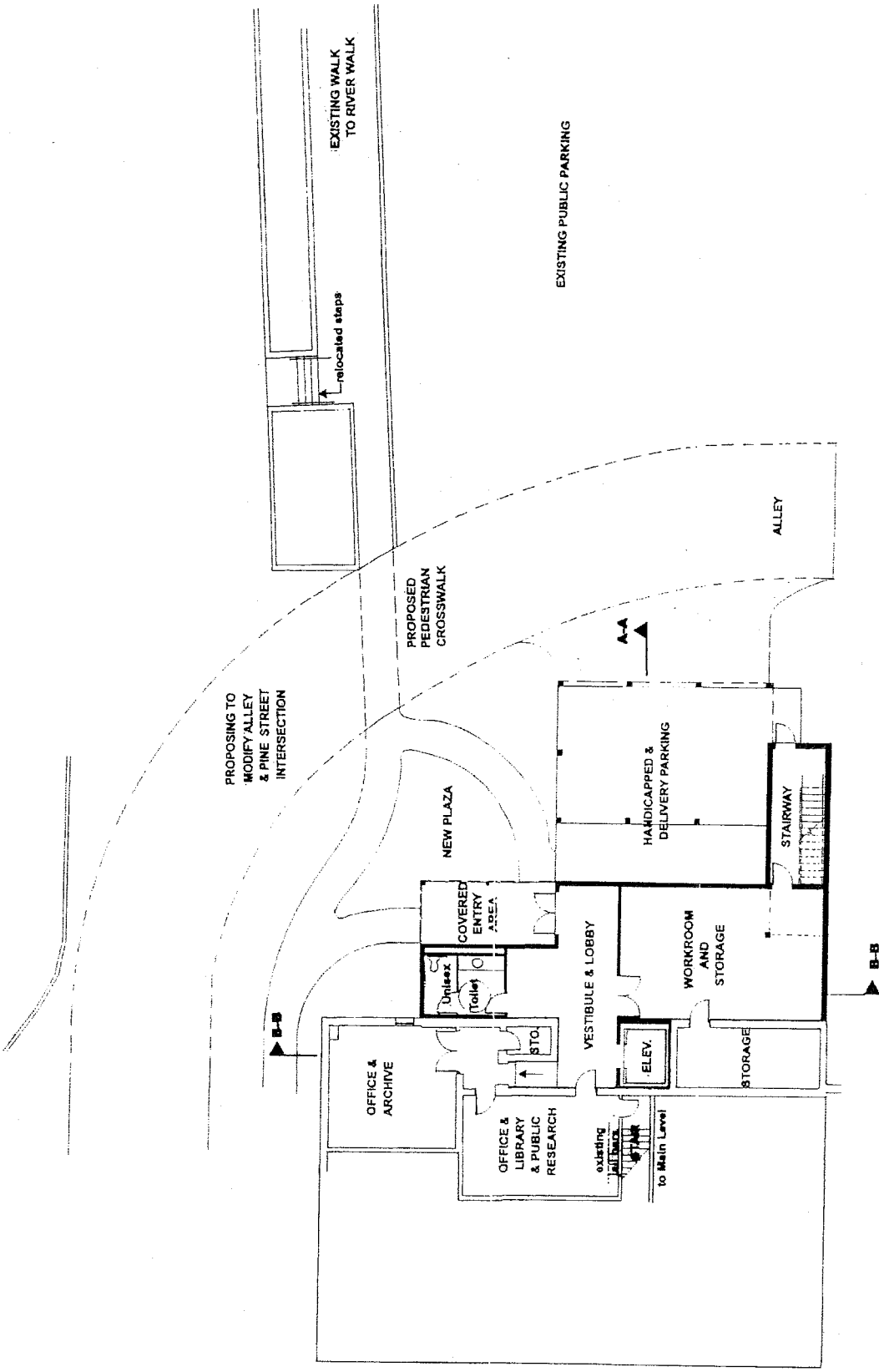


EXHIBIT A

EXHIBIT B [Construction Plans and Diagrams]



KEY
 ——— EXISTING
 ■■■ NEW



NEW LOWER FLOOR
 SCALE 1/8" = 1'-0"

904 MAIN PROJECT
 BASTROP HISTORICAL MUSEUM AND
 VISITOR CENTER

GRAHAM B. LUHN, ARCHITECT F.A.I.A.
 FEB. 24, 2009

