

# *memorandum*

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TO: Mayor & City Council

FROM: John Godwin, City Manager

SUBJECT: **LEASE RENEWAL FOR GENEALOGY LIBRARY AT DEPOT**

DATE: September 29, 2017

BACKGROUND: The southern end of the city's old depot building at 11<sup>th</sup> SW and Kaufman has been leased for a number of years to the Lamar County Genealogical Society for use as a library and occasional meeting space. The existing lease expires October 13, and in any case is outdated because it was executed between the society and the Lamar County Chamber of Commerce. At that time, the chamber leased the entire building, then subleased it to other entities, including the genealogical society and the PEDC.

STATUS OF ISSUE: I have re-written the lease to update it and also to delete references to the chamber. I have otherwise left it pretty much as I found it, with no substantive changes. Basically, they take care of the inside, our parks division takes care of the outside and major repairs, and we share use of the restrooms and sometimes the Community Room. The library is an excellent public good, provided to the community at minimal cost to the city. In addition, our valuable historical asset is used, shared, and taken care of, so we should continue to support this group.

BUDGET: N/A

RECOMMENDATION: Authorize city manager to execute attached lease agreement.

**LEASE AGREEMENT**

**STATE OF TEXAS**                   §

§           **KNOW ALL MEN BY THESE PRESENTS:**

**COUNTY OF LAMAR**           §

**THIS AGREEMENT IS MADE AND ENTERED INTO** this \_\_\_ day of \_\_\_\_\_, 2017, by and between the CITY OF PARIS, TEXAS, a municipal corporation, acting by and through its Mayor, duly authorized, hereinafter referred to as LESSOR, and the LAMAR COUNTY GENEALOGICAL SOCIETY, a corporation, acting by and through its President, duly authorized, hereinafter referred to as LESSEE, **WITNESSETH:**

For and in consideration of the payment to LESSOR, of the sum of One and no/100 Dollars (\$1.00), and other good and valuable consideration, LESSOR does hereby lease, rent, and let unto the LESSEE that portion of the property known as the Santa Fe-Frisco Depot, described on Exhibit A, attached hereto and made a part hereof for all legal purposes, hereinafter referred to as PREMISES.

**IN CONSIDERATION WHEREOF**, it is mutually agreed by and between LESSOR and LESEE:

1. LESSEE will use and maintain the described PREMISES for Lamar County Genealogical Society activities, including maintaining genealogical records, providing genealogical records for the general public, and other related genealogical activities, subject to the requirements specified herein.

2. That the initial term of this Lease shall be for five (5) years, beginning on the 14th day of October, 2017 and ending on the 13th day of October, 2022; provided, however, that this Lease shall be extended and automatically renewed for an additional two (2) consecutive five (5) year terms, unless either party to the agreement provides written notice to the other party of intent to terminate said Lease, said notice to be provided by or before August 14th of the fifth year of the then current five (5) year term. In the event that all automatic renewals are extended this Lease shall have a final termination date of the 13<sup>th</sup> day of October, 2032.

3. That LESSEE, at LESSEE's sole cost and expense, shall keep the interior (including all structural and non-structural) portions of the Leased PREMISES, not including plumbing, electrical, HVAC, and any other similar systems, in good order and condition,

ordinary wear and tear excepted. LESSEE shall be responsible for all cleaning, custodial and janitorial work, and LESSOR shall be responsible for all landscaping services and shall keep PREMISES in a neat, safe, sanitary, orderly, and sightly condition, and in good working order at all times.

In the event LESSEE fails to comply with this paragraph, LESSOR may notify LESSEE in writing that such maintenance shall be done, and in the event that LESSEE fails to correct the condition within thirty (30) days of LESSOR's written notice, LESSOR or its authorized designee may enter the PREMISES and provide the necessary maintenance, and LESSEE agrees to pay LESSOR such expenses within fifteen (15) days upon receipt of an invoice. This is not to be construed as a duty or obligation of LESSOR to make any repair or perform any work or cleaning which the LESSEE is required to make or perform.

4. That LESSEE acknowledges and recognizes the historical significance and character of PREMISES, and agrees to take all measures necessary to preserve and protect the historical character thereof. To that end, LESSEE agrees not make any additions, changes, improvements, or modifications to PREMISES without the prior written approval of LESSOR. In the event of such consent, all improvements or modifications shall be made at the expense of LESSEE and, at the expiration of this Lease, shall become the property of the City of Paris.

Prior to construction of any additions, changes, modifications, or other improvements, the LESSEE shall obtain the LESSOR's and the City's written approval of the plans and specifications for such construction. The preliminary submission by the LESSEE shall employ essentials of aesthetics, convenience, function and design, and shall be compatible in all respects with the historical character and nature of the PREMISES. Upon approval of such preliminary plans, LESSEE shall prepare complete plans and specifications for the proposed construction. A construction application and final plans and specifications, when rendered, shall be submitted to the LESSOR for approval. The LESSEE shall include in all construction contracts entered into by it, in connection with any or all of the construction work, a provision requiring all contractors to indemnify, hold harmless, defend and insure the City of Paris, its officers, agents, and employees, against the risk of death, injury, or damage to persons or property, direct or consequential, arising out of or in connection with the performance of any or all of such construction work. The LESSEE shall require all contractors to furnish liability insurance in such reasonable amounts as may be required by the LESSOR and the City of Paris. In the alternative, the LESSEE itself may provide the indemnity and liability insurance otherwise required of contractors.

All plans and specifications referred to above and all construction, renovation, remodeling, or refurbishing to or upon PREMISES shall maintain the historical character of the depot and shall meet all current codes required by the LESSOR, the City of Paris, the State of Texas, or any other entity with jurisdiction, and shall provide for the construction to be from material satisfactory and acceptable to the City. During the progress of all work, the City's duly authorized representative may enter upon the Leased PREMISES and make such inspections as

may be reasonably necessary for the purpose of satisfying LESSOR that the work or construction meets such requirements and standards.

The LESSEE further covenants that all construction work to be performed by it or its contractors, including all workmanship or materials, shall be of first-class quality and shall be performed in accordance with the plans and specifications approved by the City. LESSEE agrees that it shall deliver to the LESSOR "as built " drawings, of the improvements constructed by it and shall, during the term of this Lease keep such drawings, if any, current, showing thereon any changes or modifications which may be made in or to the improvements. LESSEE shall also provide a detailed cost summary of the costs incurred in such construction.

In the event that LESSEE fails to comply with the provisions of this section of this Lease, the LESSOR may, in addition to any other remedies available under the law, terminate this Lease.

5. That LESSEE shall, at LESSEE's sole cost and expense, be responsible for providing all furniture, furnishings, office equipment, and other similar equipage necessary to the use of PREMISES. That all such personal property belonging to LESSEE located on PREMISES and/or in the improvements located thereon shall be there at the sole risk of the LESSEE. LESSOR shall have no liability or responsibility for any theft, misappropriation, or damage to any personal property belonging to the LESSEE, any customer or other invitee of the LESSEE. LESSEE shall remove all items of personal property from the PREMISES upon termination or expiration of this Lease. If LESSEE fails to remove such property from PREMISES upon termination or expiration of this Lease, then LESSOR retains the right to remove or have removed at the expense of LESSEE all such property, and LESSEE agrees to pay LESSOR for such expense of removal within fifteen (15) days after receipt of an invoice from LESSOR.

6. That LESSEE will take good care of the PREMISES and be responsible for and make good to LESSOR for all injuries and damages to the same and will deliver same to LESSOR at the expiration or termination of this Lease in as good condition as when leased, ordinary wear and tear excepted; and LESSEE will, upon the expiration of this Lease, peaceably yield up to LESSOR or the City of Paris, all and singular PREMISES and all future modifications, additions, or repairs to or upon same, in good repair.

7. That LESSEE agrees that it will at all times keep PREMISES clean and free of trash and litter, and will at all times adhere to and be in strict conformance with all state and local laws and ordinances.

8. That, in addition to use of PREMISES, LESSEE shall have access to the restroom and kitchen facilities, subject to any rules for use of same which LESSOR may impose.

9. That LESSOR shall pay or cause to be paid all charges for water, heat, gas, electricity, sewer, trash, and all other utilities used on PREMISES throughout the term of this Lease, including any connection fees; provided, however, that LESSEE shall in all things cooperate with LESSOR to prevent the unnecessary or undue use, misuse, or over-use of any such utilities or services.

10. That it shall be lawful for LESSOR's designated representatives to enter upon and into the PREMISES, and every part thereof, at all times for the purpose of inspecting and examining the condition thereof.

11. That LESSEE shall not erect, paint upon, attach, exhibit or display in, on, or about said PREMISES any sign without the prior express written consent of the LESSOR's designated representative.

12. That LESSEE agrees to obtain and maintain construction liability insurance at all times when demolition, excavation, or construction work is in progress on the PREMISES. This insurance shall be carried by insurance companies authorized to transact business in the state of Texas, selected by LESSEE and approved by LESSOR, and shall be paid for by LESSEE. This insurance shall have limits of not less than \$100,000 for property damage and \$250,000 for one person and \$500,000 for one accident for personal injury or death, or such other limits as the LESSOR shall specify, and shall protect LESSOR. LESSEE, as well as any other person or persons LESSEE may designate, against all liability for injury or damage to any person or property in any way arising out of demolition, excavation, or construction work on the PREMISES.

13. Except as otherwise provided herein, LESSOR shall maintain all appropriate insurance coverage on PREMISES without cost to LESSEE, provided LESSEE shall cooperate fully with LESSOR in the pursuit or defense of any claims thereunder.

14. LESSEE shall at no time permit the foreclosure of any tax liens to LESSEE's Leasehold interest in PREMISES or the buildings, fixtures, or other improvements thereon. LESSEE shall have the right in good faith and at its own sole cost and expense to contest any such taxes, charges, and assessments, and shall be obligated to pay the contested amount, plus any penalties and interest imposed, only if and when finally determined to be due. At any time that the payment of any item of taxes, special assessments, or governmental charges which LESSEE is obligated to pay under the provisions of this paragraph remain unpaid and uncontested later than fifteen (15) days before the same shall become delinquent, LESSOR may declare this Lease, and all rights and interest created by it, to be terminated.

15. That LESSEE will not sublet PREMISES, or any part thereof, without the consent, in writing, of LESSOR first had and obtained, in hand.

16. That LESSOR shall have the right and privilege of using any portion of said property so Leased for functions sponsored by LESSOR or any department thereof, and which such use shall be conducted with notice to LESSEE and on a non-interfering basis with the LESSEE's activities.

17. That the following events shall be deemed to be events of default by LESSEE under this Lease.

- A. Failure of LESSEE to comply with any term, condition, or covenant of this Lease, and such failure is not cured within thirty (30) days after written notice thereof to LESSEE, by LESSOR.
- B. Insolvency, the making of a transfer in fraud of creditors, or the making of an assignment for the benefit of creditors by LESSEE or any guarantor of LESSEE's obligations.
- C. Filing of a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof by LESSEE or any guarantor of LESSEE's obligations, or adjudication as a bankrupt or insolvent in proceedings filed against LESSEE or such guarantor.
- D. Appointment of a receiver or trustee for all or substantially all of the assets of LESSEE or any guarantor of LESSEE's obligations.
- E. Abandonment by LESSEE of any substantial portion of PREMISES or cessation of use of PREMISES for the purposes leased, as identified herein above.
- F. The filing of any lien against PREMISES resulting from any act or omission of LESSEE which is not discharged or contested in good faith as determined by LESSOR by proper legal proceedings within fifteen (15) days of receipt of actual notice by LESSEE, unless LESSEE posts a bond within this time period equal to the amount of the lien.

In the event of any default by the LESSEE that is not cured within thirty (30) days of receiving notice from LESSOR, LESSOR may, in addition to any other remedies available to it, terminate this Lease.

In addition to the termination and forfeiture right described in the preceding paragraph, LESSOR shall have the following rights and remedies upon default by LESSEE:

- A. The recovery of any damages, costs, fees, and expenses incurred by LESSOR as a result of the breach of the Lease by LESSEE, including reasonable attorneys' fees and expenses.
- B. The removal of all persons from PREMISES, and the removal and storage, at LESSEE's expense, of all property said PREMISES.

C. Any other right or remedy, legal or equitable, that LESSOR is entitled to under applicable law.

No termination shall relieve the LESSEE of the obligation to deliver and perform on all outstanding obligations and requirements prior to the effective date of the termination and LESSEE's liabilities under this Lease shall continue.

In the event of any such termination as above enumerated, LESSOR shall have the right at once and without further notice to LESSEE to enter and take full possession of PREMISES occupied by the LESSEE under this Lease. Upon the termination of this Lease for any reason, LESSEE shall yield up said buildings, facilities, fixtures, and equipment to LESSOR in the same condition as when received.

In the event of the failure on the part of the LESSEE upon the termination of this Lease to immediately remove from PREMISES all property owned by it, LESSOR may effect such removal and store such property at LESSEE's expense. LESSEE further covenants and agrees to pay and discharge all reasonable costs, attorney's fees, and expenses that may be incurred by LESSOR in enforcing the covenants, conditions, and agreements of this Lease, re-entering and/or repossessing PREMISES, restoring the same to good and proper repair/order, and protecting all city property.

The failure of LESSOR to declare this Lease terminated for any of the reasons set out above shall not bar the right of LESSOR to subsequently terminate this Lease for any of the reasons set out above.

18. That the waiver by LESSOR of any breach by LESSEE of the terms, covenants, conditions, or provisions of this Lease shall not be deemed to be a waiver of any other breach of the same or other term, covenant, condition, or provision of this Lease, regardless of when the breach has occurred.

19. That, in case any one or more of the provisions contained in this Lease shall, for any reason, be held by a Court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Lease shall be construed as if the invalid, illegal, or unenforceable provision had never been included herein

20. That this Lease Agreement constitutes the sole and only agreement of the parties to this Lease and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Lease.

21. That no amendment, modification, or alteration of the terms of this Lease shall be binding unless it is in writing, dated subsequent to the date of this Lease, and duly executed by the parties to this Lease.

22. That the rights and remedies provided by this Lease are cumulative, and the use of any one right or remedy by LESSOR shall not preclude or waive its right to use any or all other remedies. These rights and remedies are given in addition to any other rights the LESSOR may have by law, statute, ordinance, or otherwise.

23. That all notices required under this Lease must be given by certified mail or registered mail, at the following addresses:

<b>LESSEE</b>	<b>CITY</b>
Attn: President	Attn: City Manager
Lamar County Genealogical Society	City of Paris
1125 Bonham Street	P.O. Box 9037
Paris, TX 75460	Paris, TX 75461-9037

24. Any party may change the address to which notices are to be sent by giving the other party notice of the new address in the manner provided in this paragraph.

25. That this Lease shall not be assignable by LESSEE without the express written consent of the LESSOR.

26. That this Lease shall be binding upon, and inure to the benefit of, the respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Lease.

27. That this Lease shall be construed under, and in accordance with the laws of the State of Texas, and all obligations of the parties created by this Lease are performable in Lamar County, Texas. Venue for State court actions arising under this Lease shall be exclusively in the courts of Lamar County, Texas; venue for federal court actions arising under this Lease shall be exclusively in the federal courts for the Eastern District of Texas.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement the day and year first above written,

**CITY OF PARIS, PARIS, TEXAS LESSEE**

By: \_\_\_\_\_  
Steve Clifford, Mayor

**ATTEST:**



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Janice Ellis, City Clerk

**APPROVED AS TO FORM:**

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Stephanie H. Harris, City Attorney

**LAMAR CO. GENEALOGICAL SOCIETY**

By: \_\_\_\_\_  
President