



City of Galveston

DEVELOPMENT SERVICES
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January 12, 2022

To: Hon. Mayor and City Council Members
Brian Maxwell, City Manager

From: Catherine Gorman, AICP
Assistant Director/Historic Preservation Officer, Development Services Department

RE: Consider for approval an easement from the Texas Historic Commission in conjunction with a previously accepted Hurricane Harvey Disaster Assistance grant for repairs to the windows in the City Hall building, 823 Rosenberg, and authorize the City Manger to sign all necessary documents upon final approval by the City Attorney.

I. Background

The City of Galveston applied for funding through the Texas Historic Commission (THC) for Hurricane Harvey Disaster Assistance in May 2020 for repairs the windows in the City Hall building, 823 Rosenberg. THC has been awarded a Hurricanes Harvey, Irma, and Maria Emergency Supplemental Historic Preservation Fund grant (HIM ESHPF grant) from the National Park Service (NPS). The purpose of the HIM ESHPF NPS grant program is to assist Texas' historic property owners with recovery from Hurricane Harvey by addressing historic property needs unmet through other funding sources. The City Council approved the acceptance of the grant on June 24, 2021.

The THC requires an easement in order to ensure the long-term preservation of the grant-assisted property. At the time of the acceptance of grant, the time period for the easement was 20 years. The THC has since reduced the time period of the easement to 10 years.

II. Current Situation

- a. The City has been awarded grant funding of \$250,000 and has entered into a contract with the THC.
- b. The project has been bid and the contractor selection process is underway.
- c. The THC requires an easement in order to ensure the long-term preservation of the grant-assisted property. The easement is for 10 years and requires that the exterior of the building be kept in good and sound condition and that any modification to the exterior will require review and approval by the THC. Please note the easement time period has been reduced from 20 years to 10 years by the THC since the original approval.
- d. Staff has reviewed the easement and concurs with its contents.

III. Issues

The acceptance of the easement from THC.

1. Funding source – there is no match requirement for this grant.
2. Timing – The need is immediate.
3. Impact or ramifications – The project will fund needed repairs to the City Hall windows. The easement will require review by the THC of any exterior modifications for 10 years. The City Hall

building has been a designated Galveston Landmark since 1999 and exterior modifications are reviewed by the Landmark Commission. Due to the fact that modifications to the building are currently subject to a historic review, Staff finds that the additional review by the THC is not burdensome.

IV. Alternatives in order of priority

- a. Accept the easement
 - i. Funding Source – there is no match requirement for this grant.
 - ii. Timing – Immediate effort needed.
- b. Do not accept the easement
 - i. Cost – The grant would be forfeited and the City of Galveston would need to identify the funds for the project.
 - ii. Timing – Immediate effort needed.
 - iii. Impact or Ramifications – The City will not have the federal funding to complete the project and will forfeit participation in this grant that does not have a match requirement.

V. Recommendation

Concur with Alternative A and accept the easement from THC and authorize the City Manager to execute the final documents after review by the City Attorney.

VI. Fiscal Impact Report

Requested by: Catherine Gorman, Assistant Director/HPO
Funding Source: None – no match requirement

STATE OF TEXAS

COUNTY OF GALVESTON

GRANT OF EASEMENT

The City of Galveston (“Grantor”), owner of certain real property and improvements known as the Galveston City Hall (“Property”), located at 823 Rosenberg, Galveston, Galveston County, Texas, more particularly described in Attachment A to this document, which is incorporated for all purposes as if it were set forth fully herein. In consideration of funds made available to Grantor through the **Emergency Supplemental Historic Preservation Fund** administered by the U.S. Department of the Interior, National Park Service (“Program”), receipt of which Grantor acknowledges, Grantor does hereby grant, bargain, sell, and convey to the Texas Historical Commission, an agency of the State of Texas, (“Grantee”) the following Easement (“Easement”). This Easement is subject and subordinate to any terms and conditions of the underlying Program grant conditions and/or grant agreement. Grantee is the entity responsible for administering/managing Easements required by this grant program, as a condition of Grantor receiving grant funding from the Program.

Grantor has legal and equitable fee simple title to the Property and has the right and power to grant this Easement as the sole owner of the Property. If improvements to the Property are owned separately from the fee simple title, or if the Property is otherwise owned by more than one entity, then all owners shall signify the right and power to grant this Easement by signing below or by inference as Grantor under Section 15. Grantor warrants that the Property is free and clear of all rights, restrictions, and encumbrances, other than those subordinated to this Easement under Section 13 or otherwise specifically agreed to in writing by the Grantee. Grantee has the legal authority to accept this Easement pursuant to Chapter 442 of the Texas Government Code and Chapter 183 of the Texas Natural Resources Code. Grantee considers the Property and the improvements thereon to represent a significant example of a historic, architectural, archeological, or cultural site important to the State of Texas, as further described in Attachment B. Grantor desires to grant to Grantee, and Grantee desires to accept, the Easement on the terms and conditions set forth below.

TERMS AND CONDITIONS

1. GRANT

In consideration of the grant award to Grantor under the Program, Grantor hereby grants and conveys to Grantee an interest and Easement in the Property for the conservation and preservation of historic, architectural, archeological, or cultural values, of the nature and character and to the extent set forth in this Easement, to constitute a servitude upon the Property running with the land, for the benefit of and enforceable by Grantee, to have and to hold the said interest and Easement subject to and limited by the provisions of this Easement, to and for Grantee’s proper uses for a 10 year term beginning on the date of execution of this Easement.

2. DEFINITIONS

These terms shall have the following meaning as used throughout the Easement.

- a. “Character-defining Features” means those components of the Structure and its Site that, collectively, convey its significance and make it eligible for listing in the National Register of Historic Places. These constitute the most significant aspects of the Property and are protected by the Easement in addition to the Property as a whole.
- b. “Maintenance” means in-kind repair using like materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Structure(s). Maintenance does not include changes in appearance, materials, colors, and workmanship from that existing prior to the Maintenance.
- c. “Property” means the real property protected by the Easement, as described in Attachment A, together with the “Structure(s)” as defined below.
- d. “Standards” means the Secretary of the Interior’s Standards for the Treatment of Historic Properties, as set forth in Part 68, Title 36, Code of Federal Regulation (CFR), and the Standards for Archeology and Historic Preservation, administered at the sole judgement of the Grantee. The Standards applied and referenced in this document shall be those in effect at the time this Easement was executed.
- e. “Structure(s)” means the historic structure or structures and other historic improvements located within the Property boundary, as listed in Attachment B.
- f. “Legal Description”, the legal description of the Property and the boundaries of the Property protected by the Easement as provided in Attachment A.
- g. “Initial Property Condition”, a description of the Property as provided in Attachment B, including its Character-defining Features and the overall condition of those features as well as the overall Property when the Easement is executed and prior to the completion of the grant-funded Scope of Work. The potential for archeology within the Property and/or existing archeology within the Property will also be included in this description.
- h. “Scope of Work” is the work to be completed using the grant funds as described in Attachment C.
- i. “Baseline Condition” is the condition of the Property at the end of the grant funded scope of work, as described in the Completion Report, in addition to any subsequent work approved by the Grantee and undertaken by Grantor. The Baseline Condition changes each time a scope of work approved by Grantee and undertaken by the Grantor is completed. Grantor must maintain the Property in this condition.
- j. “Baseline Condition Form”: a form that describes the current Baseline Condition and includes other pertinent information needed for cyclical monitoring of the Property. The Grantee will update the Baseline Condition Form after the completion of any approved scopes of work or alterations to the Property.

3. SCOPE OF GRANTEE’S INTEREST AND EASEMENT

The Easement herein granted conveys to Grantee an interest in the Property encompassing the following covenants and undertakings by Grantor.

- a. Grantor shall maintain and repair the Property in a good and sound state of repair and maintain the subject Property according to the Standards so as to prevent deterioration and preserve the architectural and historical, and if applicable, archeological integrity, of the Property in ways that

protect and enhance those qualities that make the Property eligible for listing in the National Register of Historic Places.

- b. Without the prior written consent of Grantee, which approval may be withheld or conditioned in the sole discretion of the Grantee, Grantor shall not cause or permit any construction, alteration, remodeling, dismantling, destruction, demolition, or other activity that would affect or alter in any material way the appearance, the historic architectural integrity of the Property, or otherwise disturb potential or known prehistoric and/or historic archeological deposits. Prior written consent from Grantee is not required for routine Maintenance, unless it affects or alters in any material way the historic or architectural integrity of the Property. Activities requiring Grantee's written approval include but are not limited to the following:
 - i. Any changes that affect the overall historic, archeological, or architectural integrity of the Property or its Character-defining Features as identified in Attachment B including the alteration, partial removal, construction, remodeling, demolition or other physical or structural change to the appearance or construction of such features. This shall include, but is not limited to, the painting of previously unpainted surfaces or removal of any paint or other finishes from historic materials.
 - ii. Erection of anything on the Property that would encroach on the open land area surrounding the Structure(s) or obstruct the public view of the Structure(s) (except for temporary structures such as construction trailers or scaffolding necessary during the performance of approved work). This shall include, but is not limited to, the installation of signs or awnings on the Property, and installation of any transmission lines on or across the Property.
 - iii. Substantial ground-disturbing activity or topographical changes, such as by example excavation for the construction of a parking lot or roads, or any work that might affect the structural soundness of the Structure(s).
 - iv. Vacating or abandoning any Structures on the Property; mothballing any Structures on the Property such as temporary closure to protect it from weather and to secure it from vandalism during vacancy; or cessation of standard Maintenance procedures on the Property.
 - v. Any subdivision of the Property.
- c. Substantial changes in use to the Structures(s) or Property that may affect how the public and/or historically, archeologically, or architecturally significant spaces are used and/or preserved must receive prior approval in writing from the Grantee.

4. PROPERTY CONDITION

The condition of the Property that the Grantor is to maintain, as specified in this Easement, is the condition as defined as the Initial Property Condition as described in Attachment B, at the time the Easement is executed, until such time as the grant-funded work under Attachment C is completed.

In order to make more certain the full extent of Grantor's obligations and the restrictions on the subject Property, and in order to document the nature and condition of the Property, including significant interior elements in spatial context, a list of site, exterior and interior character-defining materials, features and spaces, and archeology is incorporated as Attachment B at the end of this Easement together with a narrative describing the condition of these features. To complement Attachment B, Grantor has provided to the Grantee architectural drawings, if prepared as part of the project or otherwise available, and a current

Grant of Easement

photographic record that documents the Property overall, the area where work will occur and identified features. The photographic record will be provided digitally and include color digital images, an image log, and a keyed location map. Grantor agrees that the nature and condition of the Property on the date of execution of this Easement is accurately documented by the architectural drawings and photographic record, which shall be maintained for the life of this Easement in the Grantee's conservation easement file for the Property. This documentation might not depict every unique Character-defining Feature or detail.

The Scope of Work to be performed under the grant to restore the Property is as outlined in Attachment C, although that Scope of Work may be modified if Grantee approves of such modification in writing during the course of planning and/or construction. Once the Scope of Work as described in Attachment C has been completed, Grantor shall provide a Completion Report, following the grant Program requirements. Grantor agrees that the nature and condition of the Property on the date of submission of the Completion Report will be accurately documented by the revised architectural drawings and revised photographic record included in or attached to the Completion Report, which shall also be maintained for the life of this Easement in Grantee's conservation easement file for the Property.

Once the grant-funded Scope of Work, as described in Attachment C, has been completed, Grantor shall maintain the Property in the Baseline Condition, as described in the Completion Report, in addition to any subsequent alterations or scopes of work approved by Grantee on the Property. For purposes of cyclical monitoring of the Property, Grantee will complete a Baseline Condition Form which includes a description of the current Baseline Condition, and elements from Attachments A: Legal Description, Attachment B: Initial Property Condition, Attachment C: Scope of Work, subsequent approved scopes of work and other information necessary for understanding the Property and its condition. The Baseline Condition Form will be used for conducting cyclical monitoring to ensure the Property's condition is maintained as required by the Easement.

5. REVIEW AND APPROVAL PROCESS

Until this Easement expires or terminates, the Grantor and any and all successors in interest further agree to deliver to the Grantee, for review and approval, information (including plans, specifications, and designs where appropriate) identifying any proposed permanent changes to the Property along with digital photographs, at 1600 x 1200 pixels or larger, of the areas to be affected. Grantee may request additional information, as required to understand the proposed changes. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity. Grantor shall make no change or take any action subject to the approval of Grantee until Grantor has received written approval of such action by an authorized representative of Grantee. Whenever such consent or written approval of Grantee is required, it shall not be unreasonably withheld or delayed. Any changes or work undertaken on the Property shall conform to the Standards in effect at the time the Easement was executed.

6. UNANTICIPATED DISCOVERIES

If historic or prehistoric artifacts or features are inadvertently discovered during construction or Maintenance activities, Grantor shall cease all work in the immediate vicinity and notify Grantee. Grantee shall consult with Grantor on steps to document and preserve the cultural remains, if warranted. Work shall resume only after the inadvertent discovery has been fully assessed and coordinated. In addition, if human remains or burial shafts are found, Grantor shall immediately notify Grantee and adhere to all provisions of the Texas Health

and Safety Code, Title 8, Chapter 711 or subsequent federal or state legislation protecting human remains or burial shafts.

Grantor agrees to ensure that any data and material recovered will be placed in a repository that will care for the data in the manner prescribed in the Standards or will comply with the requirements of the Native American Graves Protection and Repatriation Act, and with 36 CFR 79 and 43 CFR 10 or subsequent federal or state legislation protecting Native American remains.

7. RESPONSIBILITIES OF GRANTOR IF PROPERTY IS DAMAGED, DESTROYED OR CONDEMNED

- a. In the event that the Structure or other site improvements located on the Property is damaged or destroyed by fire, flood, windstorm, earth movement, or other disaster or casualty of any kind whatsoever, Grantor's responsibilities shall be as follows:
 - i. Grantor shall notify Grantee in writing within seven (7) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and to protect public safety, shall be undertaken by Grantor without Grantee's prior written approval indicating that the proposed work will meet the Standards. Grantee shall give its written approval, if any, of any proposed work within thirty (30) days of receiving the request from Grantor.
 - ii. Partially damaged. If the Structure is partially damaged (i.e., damaged to such an extent or of such nature that the historic architectural integrity of the Structure can reasonably be restored to its prior condition), then Grantor shall restore the historic architectural integrity of the Structure to the condition that existed just prior to the damage, consistent with the Standards, if economically feasible within the limits of the funds available, including grants, and any other funds known to be available for the restoration of the Property.
 - iii. Totally destroyed. If the Structure is totally destroyed (i.e., destroyed to such an extent that it is not possible to reasonably repair or restore the historic architectural integrity of the Structure), the Grantor shall so notify Grantee, who shall have the right to inspect the Structure within thirty (30) days of its receipt of notice. Grantee and Grantor shall work together to verify the damage meets the definition of totally destroyed and determine the cause of damage. If after reviewing the condition of the Property, the Grantee determines that the features, materials, appearance, workmanship, and environment which made the Property eligible for listing in the National Register of Historic Places has been lost or so damaged that its continued National Register listing is in question, the Grantee shall notify the Keeper of the National Register in writing of the loss. The Keeper of the National Register will evaluate the findings and notify the Grantee in writing of any decision to remove the Property from the National Register. If the damage or destruction that warrants the Property's removal from the National Register is caused by fire, flood, windstorm, earth movement, or other disaster or casualty of any kind whatsoever, this Easement shall expire. If the Property is removed, the Grantee shall then notify the Grantor that the agreement is null and void. If the damage or destruction that warrants the Property's removal from the National Register is deliberately caused by the gross negligence of the Grantor or future owner, then the Grantee shall initiate

requisite legal action to recover, at a minimum, the Federal grant funds applied to the Property, which will then be returned to the U.S. Treasury.]

- b. If the damage of or destruction to the Property is caused by the gross negligence, willful neglect, or intentional act of Grantor or a successor to Grantor, then Grantor shall reimburse Grantee the amount of all Program funding received by Grantor under this Easement and any and all prior superseded easements related to this property. GRANTEE shall provide written notice and demand for reimbursement required under this subsection within a reasonable period of time after discovery of damage or destruction to the Property contemplated hereunder. GRANTOR shall thereafter deliver reimbursement of Program funding required by this subsection no later than thirty (30) days from the date of GRANTOR'S receipt of GRANTEE'S written notice and demand for reimbursement. Grantee may pursue any other remedies in equity or at law Grantee may have as provided by Section 12 of this Easement.
- c. If the Structure is required to be altered, removed, or demolished through the legal condemnation process of any governmental entity, Grantor shall give Grantee written notice at least thirty (30) days in advance of the impending action. Grantor shall not be liable for any damages under the Easement and shall apply the proceeds of any such condemnation proceeding in accordance with the dispute resolution process in Section 23.

8. RIGHT TO INSPECT

Grantor agrees that Grantee, its employees, agents and designees shall have the right to inspect the Property at all reasonable times and on reasonable notice to Grantor for the purpose of inspecting, photographing, and surveying all portions of the Property, including the site, and the exterior and interior of Structures, as may be necessary for Grantee to determine whether the Grantor is in compliance with the provisions of this Easement. Grantee shall provide prior notice of the date and time of an inspection to Grantor, unless Grantee determines that immediate entry is necessary to prevent, terminate, or mitigate a suspected or actual violation of this Easement which poses a serious or potentially permanent threat to the historic, archeological, or architectural integrity of the Property, in which cases prior notice is not required.

9. USE OF PHOTOGRAPHY

Inspection pursuant to Section 8 of this Easement shall, as deemed necessary by Grantee, include photographic or video documentation of the Property. Grantor grants Grantee a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the photographs or videos, and any other photographs, videos, drawings, or visual depictions of the Property possessed by the Grantee, in each case without any restrictions and without accounting to Grantee; and to (b) to sublicense any or all such rights to third parties..

10. PUBLIC ACCESS AND INFORMATION

- a. The Grantor agrees to provide public access to view the grant-assisted work or Property no less than 12 days a year on an equitably-spaced basis if the Property is not clearly visible from a public right of way or includes interior work assisted with funds from the Program. In such case, the dates and times when the Property will be open to the public must be annually published. Documentation of dates and times of public access, with public notices, shall be provided annually to the Grantee. Properties

that are regularly open to the public during normal business hours do not need to provide annual documentation. At the Grantor's option, the Property may also be open at other times by appointment, in addition to the scheduled 12 days a year. If the Property is an archeological site with no visible features above ground, public access requirements are satisfied by providing access to interested parties on selected days of the year. Nothing in this Easement will prohibit a reasonable nondiscriminatory admission fee, comparable to fees charged at similar facilities in the area.

- b. The Grantor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 (d)), the Americans with Disabilities Act (42 U.S.C. 12204), and with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). These laws prohibit discrimination on the basis of race, religion, national origin, or disability. In implementing public access, reasonable accommodations to qualified persons with disabilities shall be made in consultation with the Grantee.
- c. Information, documentation, and other material in connection with this Easement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Grantor is required to make any information created or exchanged with the State pursuant to the Easement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

11. EVIDENCE OF COMPLIANCE

Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with any obligation of Grantor contained in this Easement within thirty (30) days of request or according to a reasonable timeframe approved by the Grantee.

12. REMEDIES OF GRANTEE

Grantee shall have all remedies available to it at law or equity, and Grantor stipulates and Grantee acknowledges and agrees that money damages and/or the reimbursement of Program funding contemplated by Section 7(b) above shall be insufficient compensation to Grantee for any breach of this Easement by Grantor. Grantor also agrees that, if it is found to have materially-violated any of its obligations, Grantor shall reimburse Grantee for all costs or expenses incurred in connection with enforcing this Easement, including Court costs and reasonable design consultant's and attorney's fees. Grantor understands and agrees that one of Grantee's remedies is the right to require the Grantor to restore the Property to the condition required by this Easement (i.e., specific performance). Grantee reserves the right to require proceeds acquired by Grantor during condemnation processes, as insurance settlements, or similar proceedings to be refunded to Grantee as remedy for loss of grant funding applied to the affected Property that has been altered, destroyed, or demolished due to these processes, events or similar circumstances.

If Grantee, upon inspection of the Property, finds what appears to be a violation, it may exercise its discretion to seek injunctive relief in a court of appropriate jurisdiction. Except when an ongoing or imminent violation will irreversibly diminish or impair the cultural, historical, archeological or architectural importance of the Property, Grantee shall give Grantor written notice of the violation and allow sixty (60) days to correct the violation before taking any formal action, including, but not limited to, legal action. The exercise by Grantee of one remedy and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

13. SUBORDINATION

Grantor certifies that all mortgages, deeds of trust, or other liens (collectively "Liens"), if any, affecting the Property are subordinate to, or shall at time of recordation of such Lien become subordinate to, the rights of Grantee under this Easement. Grantor has provided, or shall provide, a copy of this Easement to all mortgagees of mortgages and to all beneficiaries and/or trustees of deeds of trust (collectively "Lienholders") currently encumbering the Property or which may affect the Property prior to the recording of this Easement and shall also provide notice to Grantee of all such Liens. Each of the Lienholders shall agree to subordinate its Lien to this Easement prior to recordation of this Easement by signing below as a party to this Easement, which subordination agreement shall become a part of this Easement and recorded with it, or by recording a separate subordination agreement pertaining to any liens.

14. REAL PROPERTY TAXES AND OTHER FEES

Except to the extent that may be provided for by State or local law, nothing in this Easement shall relieve the Grantor of the obligation to pay taxes, utility fees, ownership dues or other levies in connection with the ownership or transfer of the Property that may result in liens or otherwise jeopardize the condition of the Property or validity of this Easement.

15. ASSIGNMENT, SUCCESSORS AND ASSIGNS

- a. This Easement shall extend to and be binding upon Grantor. "Grantor" when used herein shall include not only the party so named in the first paragraph of this Easement, but also all entities or persons hereafter claiming an interest in the Property by, under, or through Grantor, whether or not such entities or persons have signed this Easement or had any other interest in the Property at the time this Easement was signed. A Grantor shall have no obligation, pursuant to this Easement, if and when the Grantor shall cease to have any (present, partial, contingent, collateral or future) interest in the Property or any portion thereof by reason of a bona fide transfer for value. Notwithstanding the foregoing, however, the obligation under Section 3 of this Easement to maintain and repair the Property may be enforced against a Grantor if determined that Grantor permitted the architectural integrity of the Property to deteriorate in a material way during the period during which the person had an interest in the Property.
- b. Grantor acknowledges that in the event it contemplates transferring its ownership of all or a portion of the Property, or leasing all or a portion of the Property, Grantor shall notify Grantee of the intent to transfer to the proposed successor to Grantor's title or part thereof no less than thirty (30) days prior to the contemplated transfer, in writing, by certified mail with postage prepaid and return receipt requested, sent to the Grantee's Address. A copy shall also be sent to the chairman of the Galveston County Historical Commission. Upon receipt of notice of the contemplated transfer, the Grantee shall consider the purpose and effect of the proposed transfer and may approve or, if Grantee determines that the transfer would be inconsistent with the purposes of this Easement, disapprove of the contemplated transfer. This provision shall expire either when this Easement expires or fifty years from the date this Easement takes effect, whichever event occurs first.

- c. Grantor agrees to insert an appropriate reference to this Easement in any deed or other legal instrument by which it divests itself of either the fee simple title or other lesser estate in the Property or any part thereof.
- d. Grantee agrees that it will hold this Easement exclusively for preservation purposes; that is, it will not transfer this Easement in exchange for money, other property, or services. This easement shall survive any termination of Grantee's existence. The rights of the Grantee under this instrument shall run for the benefit of and may be exercised by its successors and assigns, or by its designees duly authorized in a deed of appointment.

16. RESERVATION

- a. Grantor reserves the free right and privilege to the use of the Property for all purposes consistent with the grant made herein. As determined by Grantee, any proposed modification by Grantor shall either enhance or have no adverse effect on the Property and upholds the intent of the obligation of Grantor to protect the Property for the term of this Easement.
- b. Nothing contained in this Easement shall be interpreted to authorize, require, or permit Grantor to violate any ordinance relating to building materials, construction methods or use. In the event of any conflict between any such ordinance and the terms hereof, Grantor shall promptly notify Grantee of such conflict and Grantor and Grantee shall agree upon such modifications consistent with sound preservation practices, the Standards, and with the requirements of such ordinance.

17. ACCEPTANCE

Grantee hereby accepts the right and interest granted to it in this Easement.

18. GRANTOR'S INSURANCE

- a. Grantor shall maintain, at its own cost, insurance against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage in such amounts as would normally be carried on a property such as the Property that is subject to this Easement. Grantor shall obtain insurance coverage in the amount of the estimated replacement cost of the Structure (fire and extended coverage insurance) and Grantor and Grantee shall agree in writing on the estimated replacement cost. Such insurance shall include Grantee's interest and shall expressly name Grantee as an additional insured and shall provide for at least thirty (30) days' notice to Grantee before cancellation of the coverage and that the act or omission of one insured will not invalidate the policy as to any other insured. Furthermore, Grantor shall deliver to Grantee certificates or other such documents evidencing the purchase of the aforesaid insurance coverage at the commencement of this grant and a new certificate at least ten (10) days prior to the expiration of each such policy.
- b. If Grantor is a self-insured public owner, Grantor must provide evidence of financial ability to repair or reconstruct the Structure in the event of any potential loss.]

19. INDEMNIFICATION AND RELEASE OF LIABILITY

GRANTOR AGREES THAT GRANTEE HAS NO AFFIRMATIVE OBLIGATION RELATING TO MAINTENANCE OF THE PROPERTY. GRANTOR SHALL BE RESPONSIBLE FOR AND DOES

Grant of Easement

HEREBY RELEASE RELIEVE, AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND GRANTEE, AND/OR THEIR OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, PENALTIES, CHARGES, COSTS, ATTORNEY FEES, AND EXPENSES WHICH MAY BE IMPOSED UPON OR INCURRED BY GRANTEE BY REASON OF LOSS OF LIFE, PERSONAL INJURY AND/OR DAMAGES TO PROPERTY OCCURRING IN OR AROUND THE PROPERTY OCCASIONED IN WHOLE OR IN PART BY ANY NEGLIGENCE, ACTS, OR OMISSIONS OF GRANTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE EASEMENT, OR DUE TO THE PRESENCE OR RELEASE IN, ON, OR ABOUT THE PROPERTY, AT ANY TIME, OF ANY SUBSTANCE NOW OR HEREAFTER DEFINED, LISTED, OR OTHERWISE CLASSIFIED PURSUANT TO ANY LAW, ORDINANCE OR REGULATION AS A HAZARDOUS, TOXIC, POLLUTING OR CONTAMINATING SUBSTANCE. THE DEFENSE SHALL BE COORDINATED BY GRANTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND GRANTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. GRANTOR AND GRANTEE AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

20. NO THIRD PARTY BENEFICIARY

Anything to the contrary in this Easement notwithstanding, all rights, privileges and benefits conveyed by this Easement are for the exclusive use of the parties hereto, and there shall be no third-party beneficiary hereof.

21. WORK DONE AS A CONDITION OF ACCEPTING THE GRANT

Grantee acknowledges that substantial corrective and restoration work has been done or will be done by Grantor to preserve the historic architectural integrity of the Property. Grantor shall complete the corrective and restoration work in accordance with the grant, Funding Agreement, and this Easement.

22. TERM OF EASEMENT

This Easement shall become valid on the date of the last signature included herein and remain in effect for the term indicated in Section 1 above, unless terminated earlier by agreement of the parties under the terms of this Easement. Notwithstanding any other provision of this Easement, the Easement shall terminate if either the Funding Agreement or Grantee's participation in the Program is terminated before Grantor receives any amount of the grant award.

23. DISPUTE RESOLUTION PROCESS

Any dispute arising out of or relating to this Easement, including the alleged breach, termination, validity, interpretation and performance thereof ("Dispute") shall be resolved pursuant to the following procedure.

- a. *Negotiation.* Upon written notice of any Dispute, the parties shall attempt, in good faith, to resolve it promptly by negotiation between respective representatives who have authority to settle the Dispute. Negotiation required by this section shall be completed within 30 days (the "Negotiation") following

receipt of all requested information or materials relevant to the Dispute as determined in the sole discretion of the Grantee, unless the parties mutually agree to a different timeframe or if the dispute resolution requires approval from any other governmental entity or regulatory body.

- b. *Condition Precedent.* Compliance with the Negotiation required by Subsection A above is a condition precedent to the Grantee seeking judicial intervention of any kind to resolve the Dispute. Notwithstanding the foregoing, the parties may, upon mutual agreement seek non-binding mediation in a further effort to resolve any dispute arising under this Easement.,
- c. *Sovereign Immunity.* Nothing in the foregoing shall be construed as a waiver of the State of Texas' or the Grantee's sovereign immunity or any potential Governmental immunity of the Grantor. This Easement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Easement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. Grantee does not waive any privileges, rights, defenses, or immunities available to Grantee by accepting this Easement or by its conduct, or by the conduct of any representative of Grantee prior to or subsequent to accepting this Easement.

24. AMENDMENTS

The parties may by mutual written agreement jointly amend this Easement, provided the amendment shall be consistent with the preservation purpose of this Easement and shall not reduce its term of duration. Any such amendment shall not be effective unless it is executed in the same manner as this Easement, refers expressly to this Easement, and is filed by the Grantor in the deed records of Galveston County, with official filed copy of amendment provided to Grantee by Grantor.

Grantee shall consult with the National Park Service or other governmental grant funders in advance of amendment to or termination of this Easement under Section 25 below in order to preserve the right to reduce, eliminate or recover Federal grant funds applied to the Property by initiating requisite legal action in order to redirect funding to other federal program projects or return funds to the U.S. Treasury]

25. TERMINATION

The parties may by mutual written agreement jointly terminate this Easement, provided termination shall be based on the inadvertent loss of integrity of the Property due to natural disasters under Section 7, cumulative adverse effects, mitigation or abatement of hazardous materials, ineligibility for the National Register of Historic Places, or upon such other loss of preservation purpose determined to be sufficient at the sole discretion of the Grantee. Any such termination shall not be effective unless it is executed in the same manner as this Easement, refers expressly to this Easement, and is filed by the Grantor in the deed records of Galveston County, with official filed copy of nullification of this Easement provided to Grantee by Grantor.

Grantee reserves the right to terminate this Easement at any time, in whole or in part, without cost, penalty or reimbursement of grant funding, by providing thirty (30) calendar days' advance written notice, if Grantee determines that such termination is in the best interest of the state. Grantee shall have no other liability, including no liability for any costs associated with the termination.

26. PRIOR EASEMENT AGREEMENTS

By signing below, the Grantor affirms the right to enter into this Easement without conflict with any other previously-held preservation agreement on the Property. Notwithstanding any terms within the underlying Program grant agreement signed by Grantor, this Easement and the provisions contained herein shall supersede all previous preservation easements granted by the Grantor to the Grantee on the Property described herein when the scope of the easement conflicts or overlaps with the previous Easement. In any case, notwithstanding any terms within the underlying Program grant agreement signed by Grantor, this Easement shall not supersede prior preservation easements between the Grantor and Grantee of a longer duration, complimentary scope, or funded by an entity other than the Grantee. Notwithstanding any terms within the underlying Program grant agreement signed by Grantor, any previous preservation easement issued to the Grantee by the Grantor with conflicting or overlapping scope shall hereafter be null and void as of the date this Easement is filed in the deed records of Galveston County.

27. NOTICES

Grantee shall be notified at a location designated for delivery by U.S. mail, described as Texas Historical Commission, Post Office Box 12276, Austin, Texas 78711-2276 or at such address as Grantee may from time to time designate in writing to the Grantor.

Grantor shall be notified by U.S. mail at the location of the Property, unless Grantee has received notice otherwise in writing of the change in address.

28. GOVERNING LAW AND VENUE

The Easement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the Grantee.

29. SEVERABILITY

It is understood and agreed by the parties hereto that if any part, term or provision of this Easement is held to be illegal by the final judgment of a court, the validity of the remaining portions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term, or provision held to be invalid.

The undersigned certifies that I am duly authorized to execute this Easement on my own behalf or on behalf of the Grantor listed below.

In witness, this GRANT is executed on the _____ day of _____, in the year _____.

Grantor: City of Galveston

By: _____
Brian Maxwell
City Manager

STATE OF TEXAS:

On this the ____ day of _____, in the year_____, before me, a Notary Public in and for the State of Texas, _____, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the Grant of Easement acknowledged that they executed the same for the purposes therein contained.

In witness whereof, I here unto set my hand and official seal.

Notary Public

Grantee: Texas Historical Commission

By: _____
Mark Wolfe
Executive Director

STATE OF TEXAS:

On this the ____ day of _____, in the year_____, before me, a Notary Public in and for the State of Texas, the undersigned officer, personally appeared Mark Wolfe, who acknowledged himself to be Executive Director of the Texas Historical Commission, a state agency organized under the laws of the State of Texas, and that he as such Executive Director, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Texas Historical Commission by himself as Executive Director.

In witness whereof, I here unto set my hand and official seal.

Notary Public

ATTACHMENT A

Legal Description

This Easement is for the benefit of and appurtenant to the land, or any portion of the land, in the County of Galveston, State of Texas, described as follows:

Abst 628 M B Menard Survey (0-0), Block 265, in the City and County of Galveston, Texas

ATTACHMENT B

Initial Property Condition

The Galveston City Hall is a four-story buff brick rectangular Classical Revival style building constructed in 1916 with rusticated terra cotta base, regularly spaced windows (some of which are surrounded by terracotta blocks and details) and a central one-story projecting entry defined by equally spaced Doric columns, entablature and decorative balcony railing. The building has a hipped roof, with wide eaves and a simple cornice.

Rainwater from Hurricane Harvey saturated the masonry and terra cotta blocks and affected the grout attaching the blocks to the steel lintel frames, the lintels rusted, resulting in cracks occurring near the lintel beam corners. The terra cotta window lintel was designed to be continuously grouted along a structural steel beam, but the excessive saturation affected this connection and caused the blocks to crack. As a consequence of the water penetration, progressive damage occurred because water migrated into the sills of the windows and into lower walls and beyond the exterior walls causing damage to the ceilings, flooring, and wall finishes at every floor.

Damage has occurred randomly at every floor level and across the width of the north, east and south building facades.

ATTACHMENT C

Scope of Work

The scope of work differs per window but in general terms each window will receive the following treatment:

- Cleaning the terra cotta with non-ionic detergents such as D2 Biological Solution, NP40, Triton X-100, Orvus, or Tween 20.
- Patching existing terra cotta sills with Edison coatings flexi-fill 530 color matched flexivilized acrylate epoxy paste filler covered with Aquathane UA210 Type NCL waterborne aliphatic polyurethane tint and sheen to match adjacent terra cotta surface.
- Deep patch existing terra cotta sills with Edison Coatings Custom System 45 TC, a two component cementitious system and Restoration Latex RL-3. Color matched flexivilized acrylate epoxy paste filler covered with Aquathane UA210 Type NCL waterborne aliphatic.
- Remove mortar to 1/2" depth and repoint with Type N cement mortar. Color to match existing.
- Terra cotta head blocks will be removed and replaced with new or existing intact terra cotta units, as needed.
- Remove oxidation from existing steel lintel and coat with a galvanizing compound- ZRC Cold Galvanizing Compound. Surrounding areas will be protected from damage.
- Remove any existing sealant around windows and apply new sealant.

All work is to be done on the Secretary of the Interior's Standards and any distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the property will be maintained.

Work documenting damage to each window was done on a case-by-case basis.