

# Joint Commission Meeting with the Antiquities Advisory Board

September 22, 2020

Videoconference



## TEXAS HISTORICAL COMMISSION

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### **AGENDA** Videoconference Meeting September 22, 2020 9 a.m.

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Pursuant to the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act due to the Coronavirus (COVID-19), the September 22, 2020 joint meeting of the Texas Historical Commission and the Antiquities Advisory Board will be held by videoconference as authorized under Texas Government Code section 551.127.

Zoom meeting registration link: [https://zoom.us/webinar/register/WN\\_TRZIHMTMRMGzRQoK\\_2pAmQ](https://zoom.us/webinar/register/WN_TRZIHMTMRMGzRQoK_2pAmQ)  
or for audio only access via telephone: 1(346) 248-7799 Webinar ID: 931 8548 5524.

Agenda and meeting materials will be available at [www.thc.texas.gov/teleconferences](http://www.thc.texas.gov/teleconferences) after September 15, 2020.

\*Public comment registration is available at: <https://bit.ly/3ifeEjU>. You must register no later than 8 p.m. on September 21, 2020. A recording of the meeting will be available after September 23, 2020 by contacting Esther Brickley at 512-463-5768.

The members may discuss and/or take action on any of the items listed in the agenda.

Note: The Commission may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

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*\*The Commission will convene and meet concurrently with the Antiquities Advisory Board.*

#### **1. Call to Order and Introductions – Chairman Nau**

- 1.1 Welcome
- 1.2 Pledge of Allegiance
  - A. United States
  - B. Texas
- 1.3 Commissioner roll call
- 1.4 Establish quorum
- 1.5 Recognize and/or excuse absences

#### **2. Consider approval of easement renewal with Equistar Chemicals, LP at San Jacinto Battlegrounds State Historic Site, Harris County**

#### **3. Consider approval of easement renewal for underground facilities with Southwestern Bell Telephone Company at San Jacinto Battleground State Historic Site, Harris County**

#### **4. Ratification of action approved by the Executive Committee on August 17, 2020:**

- A. Contract amendment (808-19-00360 with Phoenix 1 Restoration and Construction, Ltd. – increase up to \$75,000 and extend contract through November 30, 2020
- B. Contract amendment (808-18-0652) with Hutson Gallagher, Inc. – extend contract through November 30, 2020

#### **5. Public comment**

Members of the public may address the Commission concerning any matter within the authority of the Commission. The Chairman may limit the length of time available to each individual.

**6. Discussion and possible action regarding the Historic Buildings and Structures Permit Application #1033 for The Alamo Plan—Phase 1, including restoration and possible relocation of the Cenotaph, Alamo Plaza, San Antonio, Bexar County**

**7. Chairman's Report**

7.1 Report on the ongoing projects and operations of the Commission including updates on meetings held, consultations, contacts and planned travel/events

**8. Adjourn**

# COMMITTEE LIST

TEXAS HISTORICAL COMMISSION  
 COMMITTEE STRUCTURE AND ASSIGNMENTS  
 04/16/2020

		THC COMMITTEES								OTHER ASSIGNMENTS			
LAST	FIRST	EXECUTIVE	FINANCE & GOV. RELTIONS	ARCHEOLOGY	ARCHITECTURE	HISTORY PROGRAMS	COMM. HERITAGE DVLPMT	HISTORIC SITES	COMM. DIVISION	LIAISONS/ FRIENDS OF THE THC	FRIENDS OF GOV'S MANSION	ADMIRAL NIMITZ FOUND.	ANTIQUITIES ADVISORY BOARD
BROUSSARD	EARL	X		X	X				X				
BRUSETH	JIM			CHAIR				X	X				CHAIR
BURDETTE	MONICA				X	X	X	X		X			
CRAIN	JOHN	X	CHAIR					CHAIR		X			
DONNELLY	GARRETT		X		X		X		X				
DUTIA	RENEE		X			X	X		X				
GARCIA	LILIA				X	X	X						X
GRAVELLE	DAVID		X					X	CHAIR				
JEFFERSON	WALLACE				X		X		X				
LIMBACHER	LAURIE				X	X		X					X
McKNIGHT	CATHERINE		X			X		X	X				
NAU	JOHN	CHAIR	X							X	X	X	
PERINI	TOM			X	CHAIR	X							
PETERSON	PETE	X		X			CHAIR	X			X		
WHITE	DAISY	X	X			CHAIR	X						

		THE HISTORIC SITES SUB COMMITTEES			
LAST	FIRST	DEVELOPMENT & FRIENDS	FACILITIES & MAINTENANCE	MARKETING, PROMOTION & MERCHANDISING	VISITOR EXPERIENCE
BROUSSARD	EARL		X		
BRUETH	JIM				X
BURDETTE	MONICA			X	
CRAIN	JOHN				X
DONNELLY	GARRETT	X	CHAIR		
DUTIA	RENEE			CHAIR	
GARCIA	LILIA				X
GRAVELLE	DAVID			X	
JEFFERSON	WALLACE	X			
LIMBACHER	LAURIE		X		
McKNIGHT	CATHERINE				CHAIR
NAU	JOHN				
PERINI	TOM	X			
PETERSON	PETE		X		
WHITE	DAISY	CHAIR			

TAB 2

## TEXAS HISTORICAL COMMISSION

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**Item #2**  
Texas Historical Commission  
September 22, 2020

### **Consider approval of easement renewal with Equistar Chemicals, LP at San Jacinto Battlegrounds State Historic Site, Harris County**

#### **Background:**

An existing easement between Texas Parks and Wildlife Department (TPWD) and Equistar Chemical, LP, (Equistar) expired March 7, 2020 and has been extended month to month until renewal can be approved by the property steward. TPWD has transferred the real property at San Jacinto Battleground State Historic Site located in Harris County to the Texas Historical Commission (THC) and THC has negotiated a ten-year renewal of the easement for a 8-inch OD pipeline for the purpose of transporting Ethyl Tertiary Butyl Ether ("ETBE") The term of this agreement is April 1, 2020 to March 31, 2030 with the signing of the agreement by both parties.

THC's draft easement developed by the Office of the Attorney General has been forwarded to Equistar Chemical for review and approval.

#### **Suggested motion:**

Move that the Commission approve the renewal of an easement grant and authorize Executive Director to sign the finalized easement for pipeline with Equistar Chemical, LP.



**TEXAS HISTORICAL COMMISSION EASEMENT ON STATE**

**HISTORIC SITES LAND MISCELLANEOUS EASEMENT**

STATE OF TEXAS

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§

NOW BY ALL THESE PRESENTS:

COUNTY OF HARRIS

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This Miscellaneous Easement (the “Easement”) is granted by virtue of the authority granted in, and is subject to, Texas Government Code Sections 442.0056, .0058, and .251, as the same may be amended from time to time, and all other applicable rules and applicable statutes and regulations, as amended from time to time.

**ARTICLE I. PREMISES**

1.01 In consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Texas Historical Commission (the “GRANTOR”), does hereby grant unto Equistar Chemicals, LP, (the “GRANTEE”), whose address is One Houston Center 1221 McKinney Street, Houston, TX 77010, a non-exclusive easement for purposes of construction, installation and maintenance of one (1) 8-inch O.D. pipeline for the purpose of transporting Ethyl tertiary butyl ether (“ETBE”) on the following public land as depicted and located in San Jacinto Battlegrounds Historic Site located in Harris County, Texas:

BEING a centerline description of an 8-inch pipeline on, over and across two tracts of land owned by the Texas Historical Commission both being situated in the Arthur McCormick Survey, Abstract Number 46 in Harris County, Texas. The first tract being that certain called 20.90-acre tract of land (Vista Road) referred to as parcel 2 conveyed to the State of Texas in deed recorded in Volume 1087, Page 296 of the Deed Records of Harris County, Texas and the second tract being that certain called 77.11-acre tract of land conveyed to the State of Texas in deed recorded under County Clerk’s file No. J944797 of the Official public Records of Real Property of Harris County Texas. Said centerline being more particularly described as follows and referred to herein as the “Premises”:

COMMENCING FOR REFERENCE at a 3-inch aluminum cap stamped “SJ 14” found for the northwest corner of the residue of said 220.28-acre tract and also for the southwest corner of a certain called 155.31-acre tract of land conveyed by deed to [Texas Parks and Wildlife Department recorded under County Clerk’s Files No. J802803 and transferred to the Texas Historical Commission as recorded under County Clerk’s Files No. RP-2020-310680] of the Official Records of the Real Property of Harris County, Texas said corner also being located in the easterly boundary line of said 20.90-acre tract of land

same being the easterly right-of-way line of Vista Road (based on a width of 200 feet);

THENCE South 22 degrees 54 minutes 01 seconds West, along an easterly right-of-way line and the westerly boundary line of the residue of said 220.28-acre tract, a distance of 30.9 feet to the POINT OF BEGINNING of the herein described centerline, and having grid coordinate values (in feet) of X = 3,210,516.53 and Y = 13,837,484.62 NAD83:

THENCE North 57 degrees 00 minutes 25 seconds West a distance 203.06 feet to a POINT OF EXIT of the herein described centerline, having grid coordinate values (in feet) of X = 3,210,346.21 and Y = 13,837,595.19 NAD83, and being located in the westerly boundary line of said 20.90-acre tract same being the westerly right-of-way of Vista Road, from which a found 3-inch aluminum cap stamped "SJ-2" bears north 22 degrees 54 minutes 01 seconds east, 3.05 feet for the south corner of that certain of that certain called 77.1-acre tract of land conveyed by deed to the State of Texas Parks and Wildlife Department as recorded under County Clerk's Files No. J944797 and transferred to the Texas Historical Commission as recorded under County Clerk's Files No. RP-2020-310680 of the Official Public Records of the Real Property of Harris County, Texas:

THENCE entering at a point on the southwest boundary line of said 77.11-acre tract of land from which the southwest corner bears North 57 degrees 00 minutes 25 seconds West a distance of 59.30 feet, said point being a POINT OF RE-ENTRY into property owned by the State of Texas Historical Commission, and having grid coordinate values (in feet) of X = 3,209,104.61 and Y = 13,838,404.86 NAD83, North 02 degrees 31 minutes 34 seconds West a distance of 1,151.37 feet to a TERMINAL POINT in the northwest boundary line of said 77.11-acre tract, having grid coordinate values (in feet) of X = 3,209,053.87 and Y = 13,839,555.11 NAD83, said centerline being a total distance of 1,354.43 feet, or 82.09 rods.

For a total length of 82 rods and 20 feet wide, being 10 feet either side of a centerline formed by the Improvements (as herein defined), as constructed and as shown on Exhibit A attached to this agreement and made a part hereof.

1.02 GRANTEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE PREMISES AND ACCEPTS THE SAME "AS IS", IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. GRANTOR DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER WARRANTY WHATSOEVER NOT EXPRESSLY SET FORTH IN THIS EASEMENT. GRANTOR AND GRANTEE HEREBY AGREE AND ACKNOWLEDGE THAT THE USE OF THE TERM "GRANT" IN NO WAY IMPLIES THAT THIS EASEMENT IS FREE OF LIENS,

ENCUMBRANCES AND/OR PRIOR RIGHTS. GRANTEE ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION OF THE TEXAS HISTORICAL COMMISSION AS GRANTOR, INCLUDING ANY OFFICIAL, AGENT, REPRESENTATIVE OR EMPLOYEE OF THE TEXAS HISTORICAL COMMISSION, WITH RESPECT TO THE PROPERTY CONDITION, BUT IS RELYING ON GRANTEE'S OWN EXAMINATION OF THE PROPERTY. NOTICE IS HEREBY GIVEN TO GRANTEE THAT ANY PRIOR GRANT AND/OR ENCUMBRANCE MAY BE OF RECORD AND GRANTEE IS ADVISED TO EXAMINE ALL LAND TITLE RECORDS OF THE COUNTY OR COUNTIES IN WHICH THE PREMISES ARE LOCATED. THE PROVISIONS OF THIS SECTION 1.02 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS EASEMENT.

## **ARTICLE II. TERM**

2.01 This Easement is for a term of ten (10) years, beginning on April 1, 2020 and terminating on March 31, 2030, unless earlier terminated as provided herein; provided, GRANTOR and GRANTEE agree that this Easement shall automatically terminate if GRANTEE ceases to use the Premises for the purposes set forth in Article IV hereof.

## **ARTICLE III. CONSIDERATION**

3.01 As consideration ("Consideration") for the granting of this Easement, Grantee shall pay an annual fee to the Grantor in the sum of Three Thousand and NO/100 Dollars (\$3,000.00) ("Annual Fee") payable to the Texas Historical Commission by cashier's check made out to Texas Historical Commission and delivered to THC Staff Services, 1511 Colorado St., Austin, Texas 78701. Payment of the Annual Fee shall be made no later than October 31 of each calendar year during this term of this Easement, beginning in 2020 for the term of this Easement.

3.02 GRANTEE shall pay and discharge any and all taxes, general and special assessments, and other charges which may be levied on or assessed against the Premises or any improvements constructed thereon on account of GRANTEE's use of the Premises. GRANTEE shall pay such taxes, charges and assessments not less than fifteen (15) days prior to the date of delinquency thereof directly to the authority or official charged with the collection thereof.

3.03 GRANTEE agrees to and shall protect, defend, and hold GRANTOR harmless from liability for any and all such taxes, charges, and assessments, together with any penalties and interest thereon, and from any sale or other proceeding to enforce payment thereof. GRANTEE shall have the right, in good faith, at its sole cost and expense, to contest any such taxes, charges, or assessments.

3.04 All sums provided to be paid by GRANTEE under this Easement shall be due and payable without demand or notice by GRANTOR. Past due payments to GRANTOR shall bear

interest at the rate of 10% per annum from the date due until paid. Failure of GRANTEE to make any payment when due shall entitle GRANTOR to exercise the rights provided in Section 8.01.

#### **ARTICLE IV. USE**

4.01 Subject to the terms and conditions of this Easement, GRANTEE and GRANTEE'S officers, representatives, employees, agents, contractors and subcontractors shall have the right to use the Premises, together with a right of ingress and egress, solely to install, construct, erect, maintain, operate, and repair of (a) one (1) 30-inch O.D. pipeline for the purpose of transporting ETBE; and (b) a service road (hereinafter "Permissible Use"). GRANTEE shall not use the Premises for any other purpose without prior written consent of GRANTOR, which consent may be granted or withheld by GRANTOR in its sole discretion.

4.02 GRANTOR, its officers, representatives, employees and agents shall have the right to enter upon the Premises at all reasonable times for the purpose of inspection and for any other reasonable purpose necessary to protect GRANTOR'S interests therein. Further, GRANTOR shall have the right to use any or all of the Premises for any purpose not inconsistent with this Easement.

4.03 GRANTEE shall not use, or permit the use of, the Premises for any illegal purpose or in any manner that is not a Permissible Use hereunder. GRANTEE shall comply and will cause its officers, employees, representatives, agents, contractors, subcontractors and invitees to comply, with the provisions of this Easement and all applicable laws, ordinances, rules and regulations of authorities with jurisdiction over the Premises.

4.04 GRANTEE shall not transfer, assign, or sublease the Premises, or any of the rights granted herein, in whole or part, to any third party for any purpose without the prior written consent of GRANTOR, which consent may be granted or withheld in GRANTOR'S sole discretion.

#### **ARTICLE V. CONSTRUCTION AND IMPROVEMENTS**

5.01 Subject to the terms and conditions set forth below, GRANTEE shall have the right to install, construct, erect, maintain, operate and repair (a) one (1) 30-inch O.D. pipeline for the purpose of transporting ETBE; and (b) a service road (the "Improvements").

5.02 The location of the Premises is fixed at the location of the Improvements and neither the location of the Premises nor the Improvements shall be changed without the prior written consent of the GRANTOR and any other authority with jurisdiction over the Premises.

5.03 In accomplishing any installation, construction, maintenance, repair or operation of the Improvements, GRANTEE agrees to comply with the terms and conditions set forth and with the following special conditions:

- a. To install, construct, maintain, repair and operate the Improvements in a manner that results in the least possible surface disturbance and the least possible removal of natural vegetation; provided, however, GRANTOR may grant a waiver of this

requirement if deemed in its sole discretion to be in the best interest of the State.

- b. To limit clearing of natural vegetation to only that which poses a hazard or hindrance to construction or operation of the Improvements.
- c. To dispose of brush and other materials cleared from the Premises by methods such as sale, removal, on-site stacking, or piling of brush for wildlife cover instead of by burning.
- d. To leave a screen of natural vegetation where the Premises are visible from any road or highway.
- e. To exercise reasonable care during installation, construction, maintenance, repair and operation of the Improvements so as to cause the least amount of disturbance to the natural features of the Premises and to re-vegetate disturbed areas using a seed drill or Hydromulch, on a suitably prepared bed, of a minimum of 30lbs per acre of pure live seed of species native to the Texas coastal prairie; to install erosion control structures; and to mitigate and repair surface damages resulting from activities authorized hereunder in a manner satisfactory to GRANTOR or its designated representative.
- f. To repair or replace, within a reasonable time, any fence, bridge, building or other structure, other than GRANTEE'S own structures, damaged or destroyed by GRANTEE'S activities on the Premises.
- g. In light of the pipeline industry's indicated willingness to improve safety standards, as well as regulations promulgated by the Department of Transportation's Office of Pipeline Safety, and also any federal pipeline health and safety legislation pending in the U.S. Congress, this Easement is granted upon condition of GRANTEE's specific compliance with all applicable federal, state and local statutes, rules and regulations, and generally accepted industry practices and standards presently in force and as amended in the future.
- h. GRANTEE is required to provide the GRANTOR an "as built " survey of the Improvements within one hundred eighty (180) days of execution of this Easement. GRANTEE agrees to provide the documentation depicting location of the Improvements that shall include spatial coordinates sufficient for determining that the Improvements lie within the approved Premises. Upon receipt and acceptance by the GRANTOR, the "as built" survey shall be attached to and become a part of this Easement as Exhibit "B-1" and shall be included in the Premises as described in Section 2.01 of this Easement. Notwithstanding the foregoing, and provided that the Improvements have been in place for at least twenty (20) years ("a legacy Improvement"), GRANTEE may, in lieu of providing such actual dimensions, provide the GRANTOR an "as built" survey

of the Improvements within one hundred eighty (180) days of execution of this Easement. GRANTEE agrees to provide the documentation showing the current location of the Improvements. This documentation shall include spatial coordinates sufficient for determining that the Improvements lie within the approved Premises. Upon receipt and acceptance by the GRANTOR, the "as built" survey shall be attached to and become a part of this Easement as Exhibit "B-1" and shall be included in the Premises as described in Section 2.01 of this Easement. Notwithstanding the foregoing, and provided that the Improvements have been in place for at least twenty (20) years ("a legacy Improvement"), GRANTEE may, in lieu of providing such actual dimensions and spatial coordinates, provide a certified written statement by a Professional Engineer which states that the engineer, despite having employed best efforts to do so, cannot ascertain the burial depth and/or location coordinates of such legacy Improvement from GRANTEE's existing records and documentation. Any such certified statement shall also include any documentation in GRANTEE's possession relating to either the actual dimensions or spatial coordinates of the Improvements. If GRANTEE, at any time, later discovers or determines the actual burial depth and/or location coordinates of a legacy Improvement, GRANTEE agrees to submit such documentation to GRANTOR. If it is determined that the Improvements or legacy Improvements are not actually located within the Premises as described in this Easement, the GRANTEE shall, at the time of submission of the as built survey or other documentation, provide written notice to GRANTOR of the discrepancy. The GRANTOR will then provide written notice to the GRANTEE of the amount of additional consideration, if any, due to the GRANTOR as a result of the discrepancy. GRANTEE agrees to pay the additional consideration within thirty (30) days of receipt of the written notice from GRANTOR. Failure to pay the additional consideration within the time specified will constitute an event of default under Article IX of this Easement. GRANTEE acknowledges that GRANTEE's failure to submit the as built survey of the Improvements, or certified statement by a Professional Engineer for legacy Improvements, within one hundred eighty (180) days, or for new projects, upon completion of construction, will result in a waiver by GRANTEE of any claim to a reduction or refund of consideration tendered or to be tendered under this Easement that may have resulted from any discrepancy. In addition, GRANTOR may, at its discretion, require an amendment to this Easement with regard to the description of the Premises.

5.04 GRANTEE shall notify any contractor performing work or services related to this Easement of all general and special conditions applicable to such work or services, shall require all contractors to comply with the GRANTEE's obligations under this Easement, and shall provide GRANTOR with a copy of such notice or contract. Further, GRANTEE shall be liable for any action of such contractor or its subcontractor which is inconsistent with the provisions of this Easement.

5.05 GRANTEE shall provide written notice to GRANTOR of planned installation, construction, maintenance or repairs contemplated hereunder at least 48 hours in advance of the initiation of such activity so that GRANTOR'S field inspectors may arrange to be present, if desired.

5.06 Upon completion of such installation, construction, maintenance or repair activities permitted under this Easement, GRANTEE shall notify GRANTOR in writing, by certified mail, that all such work has been completed. Within thirty (30) days after receipt of such notice, GRANTOR may inspect the Premises and require such additional work as GRANTOR may determine, in its sole discretion, is necessary to conform it to the requirements set forth herein.

**5.07 GRANTEE IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966, (PB-89-66, 80 STATUTE 915; 16 U.S.C.A. §470) AND THE ANTIQUITIES CODE OF TEXAS, CHAPTER 191, TEX. NAT. RES. CODE ANN. (VERNON 1999 SUPP.). BEFORE COMMENCING CONSTRUCTION AT THE PREMISES, GRANTEE SHALL NOTIFY GRANTOR. THE GRANTOR SHALL MAINTAIN THE SOLE DISCRETION AND AUTHORITY TO REQUIRE AN ARCHEOLOGICAL SURVEY BE COMPLETED BEFORE CONSTRUCTION CAN COMMENCE. FURTHER, IN THE EVENT THAT ANY SITE, OBJECT, LOCATION, ARTIFACT OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL OR HISTORIC INTEREST IS ENCOUNTERED DURING THE ACTIVITIES AUTHORIZED BY THIS EASEMENT, GRANTEE WILL IMMEDIATELY CEASE SUCH ACTIVITIES AND WILL IMMEDIATELY NOTIFY GRANTOR SO THAT ADEQUATE MEASURES MAY BE UNDERTAKEN TO PROTECT OR RECOVER SUCH DISCOVERIES OR FINDINGS, AS APPROPRIATE.**

## **ARTICLE VI. OPERATION AND MAINTENANCE**

6.01 Subject to the terms and conditions set forth below, GRANTEE shall have the right to operate, maintain, inspect, replace, rebuild and repair the Improvements in accordance with the terms and conditions of this Easement.

6.02 GRANTEE shall use the highest degree of care and all appropriate safeguards to prevent pollution of air, ground and water in and around the Premises and shall comply with all applicable rules and regulations of the State of Texas, including, without limitation, the Texas Historical Commission and other authorities with jurisdiction over the Premises for the protection and preservation of public lands and waters.

6.03 In the event of an incident that results or may result in pollution of the Premises and/or the adjacent property of GRANTOR or others, GRANTEE shall use its best efforts to recapture any pollutants which have escaped or may escape as promptly as practicable and "in the most expeditious manner practicable. THE PROVISIONS OF THIS SECTION 6.03 SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS EASEMENT.

6.04 GRANTEE shall be fully liable and responsible for any and all damage to the Premises, the Improvements, or any other property, of any nature, arising or resulting from its own acts or omissions, or those of its officers, representatives, employees, agents, contractors, subcontractors and invitees, related to its exercise of the rights granted herein. GRANTEE agrees to repair or replace, as required, such damage to land or Improvements to the satisfaction of GRANTOR or, at GRANTOR'S option, to compensate GRANTOR for a reasonable amount for such damage.

## **ARTICLE VII. INDEMNITY**

**7.01. GRANTOR SHALL BE RESPONSIBLE FOR AND DOES 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 PREMISES 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 PREMISES, 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.**

## **ARTICLE VIII. DEFAULT AND TERMINATION**

8.01 In the event GRANTEE fails to make any payment due hereunder or is in breach of any term or condition hereof, GRANTOR shall have the right, at its option and its sole discretion, to terminate this Easement and all rights inuring to GRANTEE herein by sending written notice of such termination to GRANTEE as provided in Article X below. This Easement shall terminate upon the expiration of thirty (30) days following such notice and all rights granted herein to GRANTEE shall revert to GRANTOR; provided, however, that should



GRANTEE pay or tender any such delinquent payment or cure any default within the time period above, this Easement shall not terminate and shall continue in full force and effect. Any such termination shall not prejudice the rights of GRANTOR to collect any payments due or to seek recovery on any claim arising hereunder. GRANTOR shall also retain a right to terminate this Easement in the event GRANTOR determines, in its sole discretion, that such termination is in the best interest of the GRANTOR, the State of Texas, or any of its agencies, although in such instance GRANTEE shall have the right to invoke dispute resolution under Paragraph 12 below no later than thirty (30) days after GRANTEE receives notice of termination.

8.02 In addition to the foregoing, each of the following acts by GRANTEE shall constitute an event of default hereunder:

- a. Abandonment or vacating of the Improvements or Premises or any significant part thereof.
- b. Failure to tie into a functioning pipeline system.
- c. Bankruptcy, insolvency or other such act resulting in appointment of a receiver, liquidator, custodian, or other such fiduciary charged with liquidating or winding-up of GRANTEE'S affairs.
- d. Refusal to timely perform or fulfill any covenant, duty, or obligation hereunder within thirty (30) days following written notice or demand from GRANTOR to do so. Such notice or demand shall be given by certified mail as provided in Section 11.02 below.

8.03 Except as otherwise provided in subsection 8.04, GRANTEE shall, within one hundred twenty (120) days from the date of expiration or sooner termination of this Easement, remove all personal property and the Improvements, and take all available measures necessary to restore the Premises (and any other property affected by such removal activities) to the same condition that existed before GRANTEE entered thereon. Such removal and restoration activities shall be conducted in accordance with Texas Historical Commission guidelines in effect at the time of removal/restoration which may include, without limitation, specific removal techniques required for protection of natural resources, and mitigation or payment in lieu of mitigation for any and all damages resulting from removal activities. GRANTEE shall notify the GRANTOR at least ten (10) days before commencing removal/restoration activities so that a field inspector may be present.

8.04 The GRANTOR may waive the removal/restoration requirements in subsection 8.03 if, in the GRANTOR's sole opinion and discretion, such waiver is in the best interest of the State. No such waiver is effective unless such waiver is in writing and may be conditioned upon factors including, without limitation, the nature and sensitivity of the natural resources in the area, potential damage to or destruction of property, beneficial uses of the existing improvement(s), and other factors considered to be in the best interest of the State.

## **ARTICLE IX. HOLDOVER**

9.01 If GRANTEE holds over and continues in possession of the Premises after expiration or earlier termination of this Easement, GRANTEE will be deemed to be occupying the Premises on the basis of a month-to-month tenancy subject to all of the terms and conditions of this Easement, except that as liquidated damages by reason of such holding over, GRANTEE shall be required to pay GRANTOR rent in the amount of One Thousand and NO/100 Dollars (\$1,000.00) per month during such holdover period. GRANTEE acknowledges that in the event it holds over, GRANTOR'S actual damages will be difficult, if not impossible, to ascertain, and the liquidated damages herein agreed to be paid are reasonable in amount and are payable in lieu of actual damages and are not a penalty. GRANTEE further acknowledges that acceptance of holdover consideration does not imply GRANTOR consent to holdover.

9.02 The tenancy from month-to-month described in Section 9.01 of this Easement may be terminated by either party upon thirty (30) days written notice to the other.

9.03 The consideration due after notice of termination has been given is to be calculated according to Section 9.01 hereinabove on a pro rata basis. If upon notice of termination by the GRANTOR, GRANTEE pays consideration in excess of the amount due and payable and the GRANTOR accepts such payment, the acceptance of such payment will not operate as a waiver by the GRANTOR of the notice of termination unless such waiver is in writing and signed by the GRANTOR. Any such excess amounts paid by GRANTEE and accepted by the GRANTOR shall be promptly refunded by the GRANTOR after deducting therefrom any amounts owed to the GRANTOR.

## **ARTICLE X. RESERVATIONS**

10.01 To the extent not previously conveyed, GRANTOR reserves to itself all rights to all minerals, ores and metals of any kind and character found at the surface and in, on or under the Premises and to all geothermal resources.

## **ARTICLE XI. NOTICE**

11.01 Each party shall keep the other informed of its current address. The initial addresses for notice are as follows:

GRANTOR:  
Texas Historical Commission  
1511 Colorado Street  
Austin, Texas 78711  
san-jacinto-battleground@thc.texas.gov

GRANTEE:  
Equistar Chemical, LP  
Attn: Charles Davis  
15055 Fairfield Meadows Dr. Ste 130-75

Cypress, Texas 77433  
ctdavisjr6@gmail.com

11.02 Any notice which may or shall be given under this Easement shall be in writing and shall be sent by U.S. Mail, postage prepaid, registered or certified, with return receipt requested, to the respective addresses stated above or as changed by a party from time to time by the giving of notice to the other. Any notice given under this Easement shall also be sent by email at the address listed above or as changed by a party from time to time by giving notice to the other by U.S. Mail, postage prepaid, registered or certified, with return receipt requested.

11.03 No change of address of either party shall be binding on the other until notice of such change is given as provided herein. A post office receipt for such notice or a signed return receipt shall be conclusive that such notice was delivered in due course if mailed as provided above. Any notice mailed in the above manner shall be deemed completed upon the earlier to occur of (1) actual receipt, as indicated on a signed return receipt or (2) three days after posting such notice as provided above.

#### **ARTICLE XII. DISPUTE RESOLUTION**

12.01 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 to resolve it promptly by negotiation between respective representatives who have authority to settle the Dispute and this process should be completed within 30 days (the “Negotiation”).

b. Non-binding Mediation

If the Dispute has not been resolved by Negotiation in accordance with subsection 12.01(a), then the parties shall proceed to non-binding mediation (the “Mediation”) unless the parties mutually agree to a different timeframe. The parties shall agree on a mediator, however, any mutually agreed mediator must be an impartial third party pursuant to the requirements of Sec. 154.052, Title 7 of the Texas Civil Practice and Remedies Code. The non-binding mediation session shall be held within 45 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the Mediation process beyond one day, until there is a settlement agreement, or one party or the mediator states that there is no reason to continue because of an impasse that cannot be overcome and sends a “notice of termination of mediation.” All reasonable efforts will be made to complete the Mediation within 30 days of the first Mediation session.

To the extent permissible under Texas law and subject to the requirements of Chapter

552 of the Texas Government Code, all communications, both written and oral, during the Mediation are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process.

c. Condition Precedent

Compliance with the dispute resolution process provided for above is a condition precedent to the GRANTEE seeking judicial intervention of any kind to resolve the Dispute.

d. Sovereign Immunity

Nothing in the foregoing shall be construed as a waiver of the State of Texas' or the GRANTOR's sovereign immunity. 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. GRANTOR does not waive any privileges, rights, defenses, or immunities available to GRANTOR by granting this Easement or by its conduct, or by the conduct of any representative of GRANTOR, prior to or subsequent to granting this Easement.

### **ARTICLE XIII. MISCELLANEOUS PROVISIONS**

13.01 Terminology, Headings, and Severability. With respect to terminology in this Easement, each number (singular or plural) shall include all numbers, and each gender (male, female or neuter) shall include all genders. If any provision of this Easement shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of the Easement, but such other provisions shall continue in full force and effect. The titles of the Articles in this Easement shall have no effect and shall neither limit nor amplify the provisions of the Easement itself. The words "hereof," "herein," "hereunder," "hereinafter" and the like refer to this entire instrument, not just to the specific article, section or paragraph in which such words appear.

13.02 Binding Effect. This Easement shall be binding upon and shall accrue to the benefit of the GRANTOR, its successors and assigns, GRANTEE, GRANTEE'S successors and assigns (or heirs, executors, administrators and assigns, as the case may be).

13.03 Non-waiver. Neither acceptance of consideration (or any portion thereof) or any other sums payable by GRANTEE hereunder (or any portion thereof) to the GRANTOR nor failure by GRANTOR to complain of any action, non-action or default of GRANTEE shall constitute

a waiver as to any breach of any covenant or condition of GRANTEE contained herein nor a waiver of any of the GRANTOR'S rights hereunder. Waiver by the GRANTOR of any right for any default of GRANTEE shall not constitute a waiver of any right for either a prior or subsequent default of the same obligation or for any prior or subsequent default of any other obligation. No right or remedy of the GRANTOR hereunder or covenant, duty or obligation of GRANTEE hereunder shall be deemed waived by the GRANTOR unless such waiver be in writing, signed by a duly authorized representative of the GRANTOR.

13.04 No Authority to Act on Behalf of or Bind Grantor. No provision of this Easement shall be construed in such a way as to constitute the GRANTOR and GRANTEE joint venturers or co-partners or to make GRANTEE the agent of GRANTOR or make the GRANTOR liable for the debts of GRANTEE.

13.05 Time is of the Essence. In all instances where GRANTEE is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

13.06 Limitation of Liability. Under no circumstances whatsoever shall GRANTOR ever be liable hereunder for consequential damages or special damages. The terms of this Easement shall only be binding on GRANTOR during the period of its ownership of the Premises and in the event of the transfer of such ownership interest, GRANTOR shall thereupon be released and discharged from all covenants and obligations thereafter accruing, but such covenants and obligations shall be binding during the Easement term upon each new owner for the duration of such owner's ownership.

13.07 Governing Law and Venue. This Easement shall be construed and interpreted in accordance with the laws of the State of Texas without regard to the provisions pertaining to conflicts of law. This Easement is performable in Harris County, Texas. All monetary obligations of the GRANTOR and GRANTEE (including, without limitation, any monetary obligation for damages for any breach of the respective covenants, duties or obligations of either party hereunder) are performable exclusively in Austin, Travis County, Texas. The venue of any suit arising under the Easement 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 GRANTOR.

13.08 No Offset. The obligation of GRANTEE to pay all consideration and other sums hereunder and the obligation of GRANTEE to perform GRANTEE'S other covenants and duties under this Easement constitute independent, unconditional obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is expressly provided for in this Easement and not otherwise. GRANTEE waives and relinquishes all rights which GRANTEE might have to claim any nature of lien against, or withhold or deduct from or offset against, any consideration or other sums provided hereunder to be paid to the GRANTOR by GRANTEE. GRANTEE waives and relinquishes any right to assert, either as a claim or as a defense, that the GRANTOR is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of the GRANTOR not expressly

set forth in this Easement.

13.09 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.

13.10 Texas Public Information Act. 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, GRANTEE 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.

#### **ARTICLE XIV. INFORMATIONAL REQUIREMENTS**

14.01 GRANTEE shall provide written notice to the GRANTOR of any change in GRANTEE's name, address, corporate structure, legal status or any other information relevant to this Easement.

14.02 GRANTEE shall provide to the GRANTOR any other information reasonably requested by the GRANTOR in writing within fifteen (15) days following such request or such other time period approved by the GRANTOR (such approval not to be unreasonably withheld).

14.03 GRANTEE hereby acknowledges that late submission by GRANTEE to the GRANTOR of information or documentation (including, without limitation, as-built and/or burial surveys) required under this Easement will cause the GRANTOR to incur various expenses not contemplated by this Easement, the exact amount of which are presently difficult to ascertain. Accordingly, if any information required to be submitted within a certain time under the terms of this Easement shall not be received by the GRANTOR on or before five (5) days after the date when due, then, GRANTEE shall pay to the GRANTOR a "Late Charge" equal to one hundred dollars (\$100.00) for each day so past due. The GRANTOR and GRANTEE agree that such Late Charge represents a fair and reasonable estimate of the expenses that the GRANTOR will incur by reason of such late submission of information by GRANTEE. Acceptance of such Late Charge by the GRANTOR shall not constitute a waiver of GRANTEE's default with respect to any such past due information, nor prevent the GRANTOR from exercising any other rights and remedies granted under this Easement, at law, or in equity.

#### **ARTICLE XV. ENTIRE AGREEMENT**

15.01 This Easement, including exhibits, constitutes the entire agreement between GRANTOR and GRANTEE and no prior written or prior or contemporaneous oral promises or representations shall be binding.

15.02 This Easement shall become effective only upon execution by all parties hereto and delivery of a fully executed counterpart to each party.

15.03 Within thirty (30) days following execution of the Easement, GRANTEE shall record the Easement or a memorandum thereof in the real property records of Harris County and provide a certified copy of the recorded instrument to GRANTOR. Should GRANTEE fail to do so, GRANTOR may cause the Easement to be recorded, at GRANTEE'S expense, and to have the cost thereof reimbursed upon advising GRANTEE of such cost.

15.04 This Easement shall not be amended, changed, altered, or extended except by written instrument signed by all parties hereto, provided the amendment shall be consistent with the purpose of this Easement. 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 GRANTEE in the deed records of Harris County, with official filed copy of amendment provided by GRANTEE to GRANTOR.

15.05 Upon expiration or earlier termination of this Easement, GRANTEE agrees to execute documents, in recordable form, reasonably required by GRANTOR to evidence expiration or termination of this Easement. GRANTEE'S OBLIGATION TO EXECUTE SUCH DOCUMENTS SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS EASEMENT.

**GRANTOR: THE STATE OF TEXAS**

**GRANTEE:**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Mark Wolfe  
Executive Director, Texas Historical  
Commission

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**(ACKNOWLEDGEMENT PAGES TO FOLLOW)**



**ACKNOWLEDGEMENT**

STATE OF TEXAS §

§

COUNTY OF \_\_\_\_\_ §

On this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_ before me, the undersigned Officer, personally appeared \_\_\_\_\_, known to me as the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as such officer.

IN WITNESS WHEREOF, I hereunder set my hand and official seal.

\_\_\_\_\_

Notary Public of the State of Texas

My commission expires:

STATE OF TEXAS §

§

COUNTY OF HARRIS §

On this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_ before me, the undersigned Officer, personally appeared \_\_\_\_\_, known to me as the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as such officer.

IN WITNESS THEREOF, I hereunder set my hand and official seal.

\_\_\_\_\_

Notary Public of the State of Texas

My commission expires:\_\_\_\_\_

TAB 3

## TEXAS HISTORICAL COMMISSION

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**Item #3**

Texas Historical Commission  
September 22, 2020

### **Consider approval of easement renewal for underground facilities with Southwestern Bell Telephone Company at San Jacinto Battleground State Historic Site, Harris County**

#### **Background:**

An existing easement between Texas Parks and Wildlife Department (TPWD) and Southwestern Bell Telephone Company, expired April 30, 2020 and has been extended month to month until renewal can be approved by the property steward. TPWD has transferred the real property at San Jacinto Battleground State Historic Site located in Harris County to the Texas Historical Commission (THC) and THC has negotiated a ten-year renewal of the easement for underground utilities, a data transmission cable serving the Occidental Chemical Corporation of La Porte facilities on Juan Seguin BLVD. The term of this agreement will begin on the date signed by both parties and terminate after a period of ten years.

THC's draft easement developed by the Office of the Attorney General has been forwarded to Southwestern Bell Telephone Company for review and approval.

#### **Suggested motion:**

Move that the Commission approve the renewal of an easement grant and authorize Executive Director to sign the finalized easement for underground facilities with Southwestern Bell Telephone Company.

**Texas Historical Commission**

**EASEMENT FOR UNDERGROUND FACILITIES**

THE STATE OF TEXAS                   §  
  §  
COUNTY OF HARRIS                   §

This Easement for Underground Facilities (the “Easement”), is granted by virtue of the authority granted in, and is subject to, Texas Government Code Sections 442.0056, .0058, and .251 , as the same may be amended from time to time, and all other applicable rules and applicable statutes and regulations, as amended from time to time.

**ARTICLE I. PROPERTY**

1.01 In consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Texas Historical Commission (the “GRANTOR”), does hereby grant unto SOUTHWESTERN BELL TELEPHONE COMPANY, a Missouri corporation, its affiliates and subsidiaries, and their successors, assignees, lessees, licensees and agents (hereinafter collectively referred to as “GRANTEE”), a nonexclusive easement (hereinafter referred to as the “Easement”) as described herein below for the purposes of construction, installation and maintenance of one (1) buried communications cable for the purposes of providing telecommunications services to Occidental Chemical Corporation of La Porte, Texas on the public land as depicted and located in San Jacinto Battleground State Historic Site located in Harris County Texas, (hereinafter called "the Property"), and described as follows, to wit:

**BEING a 0.292-acre tract of land out of the Arthur McCormick Survey, A-46.  
See Survey and Field Notes that are attached as Exhibit “A”**

1.02 GRANTEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE PROPERTY AND ACCEPTS THE SAME “AS IS”, IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. GRANTOR DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER WARRANTY WHATSOEVER NOT EXPRESSLY SET FORTH IN THIS EASEMENT. GRANTOR AND GRANTEE HEREBY AGREE AND ACKNOWLEDGE THAT THE USE OF THE TERM “GRANT” IN NO WAY IMPLIES THAT THIS EASEMENT IS FREE OF LIENS, ENCUMBRANCES AND/OR PRIOR RIGHTS. GRANTEE ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION OF THE TEXAS HISTORICAL COMMISSION AS GRANTOR, INCLUDING ANY OFFICIAL, AGENT,

REPRESENTATIVE OR EMPLOYEE OF THE TEXAS HISTORICAL COMMISSION, WITH RESPECT TO THE PROPERTY CONDITION, BUT IS RELYING ON GRANTEE'S OWN EXAMINATION OF THE PROPERTY. NOTICE IS HEREBY GIVEN TO GRANTEE THAT ANY PRIOR GRANT AND/OR ENCUMBRANCE MAY BE OF RECORD AND GRANTEE IS ADVISED TO EXAMINE ALL LAND TITLE RECORDS OF THE COUNTY OR COUNTIES IN WHICH THE PROPERTY ARE LOCATED. THE PROVISIONS OF THIS SECTION 1.02 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS EASEMENT.

1.03 This Easement does not constitute a conveyance of the Property, nor of the minerals therein and thereunder, but grants only an Easement subject to the terms, conditions, and mutual covenants contained herein.

1.04 The Easement granted hereby is subject to all valid and subsisting oil, gas, sulfur, and mineral leases, unitization agreements, deeds, easements, rights-of-way, restrictive covenants, mineral and royalty grants and reservations, or other instruments now of record which affect the Easement.

1.05 GRANTOR warrants that he/she/they are the owners of the Property occupied by the Easement herein granted, and that GRANTOR has the right to make this conveyance and receive the consideration therefor. In addition, GRANTOR hereby warrants and represents he/she/they have no knowledge of the existence of past or present production, storage, treatment or disposal of any toxic or hazardous waste or substance, or of hazardous/toxic waste contamination conditions applicable to either the Easement or the Property.

## **ARTICLE II. TERM**

2.01 This Easement is for a term of ten (10) years, beginning on September 1, 2020 and terminating on August 31, 2030 unless earlier terminated as provided herein; provided, GRANTOR and GRANTEE agree that this Easement shall automatically terminate if GRANTEE ceases to use the Property for the purposes set forth in Article IV hereof.

## **ARTICLE III. CONSIDERATION**

3.01 As consideration ("Consideration") for the granting of this Easement, Grantee shall pay a one-time fee to the Grantor in the sum of Ten Thousand and NO/100 Dollars (\$10,000.00) payable to the Texas Historical Commission by cashier's check made out to Texas Historical Commission and delivered to THC Staff Services, 1511 Colorado St., Austin, Texas 78701. Payment of the fee shall be made no later than October 1, 2020.

3.02 GRANTEE shall pay and discharge any and all taxes, general and special assessments, and other charges which may be levied on or assessed against the Property or any Facilities constructed thereon on account of GRANTEE's use of the Property. GRANTEE shall pay such taxes, charges and assessments not less than fifteen (15) days

prior to the date of delinquency thereof directly to the authority or official charged with the collection thereof.

3.03 GRANTEE agrees to and shall protect, defend, and hold GRANTOR harmless from liability for any and all such taxes, charges, and assessments, together with any penalties and interest thereon, and from any sale or other proceeding to enforce payment thereof. GRANTEE shall have the right, in good faith, at its sole cost and expense, to contest any such taxes, charges, or assessments.

#### **ARTICLE IV. USE**

4.01 Subject to the terms and conditions included herein, this Easement is granted for the purpose of permitting GRANTEE to construct, operate, maintain, protect, repair, relocate, upgrade, replace, and remove such underground communications, data, video and information systems and lines, circuits, and conduits, together with such other appurtenances thereto (collectively, the "Facilities"), as GRANTEE may from time to time require upon, across, over, above, under and within the Easement.

4.02. GRANTOR further conveys to GRANTEE the following incidental rights and powers: the right of pedestrian and vehicular ingress to and egress from said Easement utilizing reasonable routes across the Property, including but not limited to the right to use existing and future roads, parking lots, entrances and exits and all other paved areas of the Property; the right to drain or sheet flow storm water runoff from the Easement into existing and future storm water collection and drainage facilities located within the Property; the right to clear and keep cleared trees, brush, and all other obstructions from the surface and subsurface of said Easement; the right to place on the surface of the Easement manholes, cable risers, connector terminals, repeaters, testing terminals and route markers; the right to construct, operate and maintain, or license others to do so, service lines for electric power.

4.03 During the period of installation, removal or replacement of the Facilities by GRANTEE within the Easement herein granted, GRANTEE shall have the right to use as temporary construction easements so much of the surface of the Property as may be reasonably necessary for GRANTEE'S construction, installation, removal or replacement of said Facilities. Following the initial installation of GRANTEE'S Facilities, and after any later activities by GRANTEE which affect the Property, GRANTEE shall promptly restore the grounds affected thereby to as nearly as practicable the same condition that existed prior to such activity.

4.04 The purposes and use of the Property contemplated by Subsections 4.01-4.03 shall hereinafter be "Permissible Uses" under this Easement. GRANTEE shall not use, or permit the use of, the Property for any illegal purpose or in any manner that is not a Permissible Use hereunder. GRANTEE shall comply and will cause its officers, employees, representatives, agents, contractors, subcontractors and invitees to comply, with the provisions of this Easement and all applicable laws, ordinances, rules and regulations of authorities with jurisdiction over the Property. In accomplishing any

installation, construction, maintenance, repair or operation of the Facilities, GRANTEE agrees to comply with the following special conditions:

- a. To install, construct, maintain, repair and operate the Facilities in a manner that results in the least possible surface disturbance and the least possible removal of natural vegetation; provided, however, GRANTOR may grant a waiver of this requirement if deemed in its sole discretion to be in the best interest of the State.
- b. To limit clearing of natural vegetation to only that which poses a hazard or hindrance to construction or operation of the Facilities.
- c. To dispose of brush and other materials cleared from the Premises by methods such as sale, removal, on-site stacking, or piling of brush for wildlife cover instead of by burning.
- d. To exercise reasonable care during installation, construction, maintenance, repair and operation of the Facilities so as to cause the least amount of disturbance to the natural features of the Premises and to re-vegetate disturbed areas using a seed drill or Hydromulch, on a suitably prepared bed, of a minimum of 30lbs per acre of pure live seed of species native to the Texas coastal prairie; to install erosion control structures; and to mitigate and repair surface damages resulting from activities authorized hereunder in a manner satisfactory to GRANTOR or its designated representative.

4.05 GRANTEE shall not transfer, assign, or sublease the Property, or any of the rights granted herein, in whole or part, to any third party for any purpose without the prior written consent of GRANTOR, which consent may be granted or withheld in GRANTOR'S sole discretion.

4.06 GRANTOR, its/their successors and assigns, shall have the right to use the surface of the Easement herein granted insofar as such use does not, in the reasonable judgment of the GRANTEE, impair, interfere with or obstruct the use of the Easement by GRANTEE, or its successors and assigns. GRANTOR hereby covenants that no excavation, building, structure or other obstruction will be constructed, erected, built or permitted on surface of the Easement and no change will be made in the grade, elevation or contour of the Easement, nor any tree planted thereon, without the prior written consent of GRANTEE, which consent will not be unreasonably denied, delayed or conditioned.

4.07 GRANTEE shall notify any contractor performing work or services related to this Easement of all general and special conditions applicable to such work or services, shall require all contractors to comply with the GRANTEE's obligations under this Easement, and shall provide GRANTOR with a copy of such notice or contract. Further, GRANTEE shall be liable for any action of such contractor or its subcontractor which is inconsistent with the provisions of this Easement.

4.08 GRANTEE shall provide written notice to GRANTOR of planned installation, construction, maintenance or repairs contemplated hereunder at least 48 hours in advance of the initiation of such activity so that GRANTOR'S field inspectors may arrange to be present, if desired.

4.09 Upon completion of such installation, construction, maintenance or repair activities permitted under this Easement, GRANTEE shall notify GRANTOR in writing, by certified mail, that all such work has been completed. Within thirty (30) days after receipt of such notice, GRANTOR may inspect the Property and require such additional work as GRANTOR may determine, in its sole discretion, is necessary to conform it to the requirements set forth herein.

#### **ARTICLE V. OPERATION AND MAINTENANCE**

5.01 Subject to the terms and conditions set forth below, GRANTEE shall have the right to operate, maintain, inspect, replace, rebuild and repair the Facilities in accordance with the terms and conditions of this Easement.

5.02 GRANTEE shall use the highest degree of care and all appropriate safeguards to prevent pollution of air, ground and water in and around the Property and shall comply with all applicable rules and regulations of the State of Texas, including, without limitation, the Texas Historical Commission and other authorities with jurisdiction over the Property for the protection and preservation of public lands and waters.

5.03 In the event of an incident that results or may result in pollution of the Property and/or the adjacent property of GRANTOR or others, GRANTEE shall use its best efforts to recapture any pollutants which have escaped or may escape as promptly as practicable and "in the most expeditious manner practicable. THE PROVISIONS OF THIS SECTION 5.03 SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS EASEMENT.

5.04 GRANTEE shall be fully liable and responsible for any and all damage to the Property, the Facilities, or any other property, of any nature, arising or resulting from its own acts or omissions, or those of its officers, representatives, employees, agents, contractors, subcontractors and invitees, related to its exercise of the rights granted herein. GRANTEE agrees to repair or replace, as required, such damage to land or Facilities to the satisfaction of GRANTOR or, at GRANTOR'S option, to compensate GRANTOR for a reasonable amount for such damage.

#### **ARTICLE VI. INDEMNITY**

**GRANTOR SHALL BE RESPONSIBLE FOR AND DOES 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.**

#### **ARTICLE VII. DEFAULT AND TERMINATION**

7.01 In the event GRANTEE is in breach of any term or condition hereof, GRANTOR shall have the right, at its option and its sole discretion, to terminate this Easement and all rights inuring to GRANTEE herein by sending written notice of such termination to GRANTEE as provided in Article VIII below. This Easement shall terminate upon the expiration of thirty (30) days following such notice and all rights granted herein to GRANTEE shall revert to GRANTOR; provided, however, that should GRANTEE cure any default within the time period above, this Easement shall not terminate and shall continue in full force and effect. Any such termination shall not prejudice the rights of GRANTOR to seek recovery on any claim arising hereunder. GRANTOR shall also retain a right to terminate this Easement in the event GRANTOR determines, in its sole discretion, that such termination is in the best interest of the GRANTOR, the State of Texas, or any of its agencies, although in such instance GRANTEE shall have the right to invoke dispute resolution under Article IX below no later than thirty (30) days after GRANTEE receives notice of termination.

7.02 In addition to the foregoing, each of the following acts by GRANTEE shall constitute an event of default hereunder:

- a. Abandonment or vacating of the Facilities or Property or any significant part thereof.

b. Bankruptcy, insolvency or other such act resulting in appointment of a receiver, liquidator, custodian, or other such fiduciary charged with liquidating or winding-up of GRANTEE'S affairs.

c. Refusal to timely perform or fulfill any covenant, duty, or obligation hereunder within thirty (30) days following written notice or demand from GRANTOR to do so. Such notice or demand shall be given by certified mail as provided in Section 9.02 below.

7.03 Except as otherwise provided in subsection 7.04, GRANTEE shall, within one hundred twenty (120) days from the date of expiration or sooner termination of this Easement, remove all personal property and the Facilities, and take all available measures necessary to restore the Property (and any other property affected by such removal activities) to the same condition that existed before GRANTEE entered thereon. Such removal and restoration activities shall be conducted in accordance with Texas Historical Commission guidelines in effect at the time of removal/restoration which may include, without limitation, specific removal techniques required for protection of natural resources, and mitigation or payment in lieu of mitigation for any and all damages resulting from removal activities. GRANTEE shall notify the GRANTOR at least ten (10) days before commencing removal/restoration activities so that a field inspector may be present.

7.04 The GRANTOR may waive the removal/restoration requirements in subsection 7.03 if, in the GRANTOR's sole opinion and discretion, such waiver is in the best interest of the State. No such waiver is effective unless such waiver is in writing and may be conditioned upon factors including, without limitation, the nature and sensitivity of the natural resources in the area, potential damage to or destruction of property, beneficial uses of the existing improvement(s), and other factors considered to be in the best interest of the State.

#### **ARTICLE VIII. NOTICE**

GRANTOR 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 GRANTOR may from time to time designate in writing to the GRANTEE.

GRANTEE shall be notified at a location designated for delivery by U.S. mail, described as **[INSERT ADDRESS]**, unless GRANTOR has received notice otherwise

#### **ARTICLE IX. DISPUTE RESOLUTION**

9.01 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 to resolve it

promptly by negotiation between respective representatives who have authority to settle the Dispute and this process should be completed within 30 days (the “Negotiation”).

b. Non-binding Mediation

If the Dispute has not been resolved by Negotiation in accordance with subsection 9.01(a), then the parties shall proceed to non-binding mediation (the “Mediation”) unless the parties mutually agree to a different timeframe. The parties shall agree on a mediator; however, any mutually agreed mediator must be an impartial third party pursuant to the requirements of Sec. 154.052, Title 7 of the Texas Civil Practice and Remedies Code. The non-binding mediation session shall be held within 45 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the Mediation process beyond one day, until there is a settlement agreement, or one party or the mediator states that there is no reason to continue because of an impasse that cannot be overcome and sends a “notice of termination of mediation.” All reasonable efforts will be made to complete the Mediation within 30 days of the first Mediation session.

To the extent permissible under Texas law and subject to the requirements of Chapter 552 of the Texas Government Code, all communications, both written and oral, during the Mediation are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process.

c. Condition Precedent

Compliance with the dispute resolution process provided for above is a condition precedent to the GRANTEE seeking judicial intervention of any kind to resolve the Dispute.

d. Sovereign Immunity

Nothing in the foregoing shall be construed as a waiver of the State of Texas’ or the GRANTOR’s sovereign immunity. 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. GRANTOR does not waive any privileges, rights, defenses, or

immunities available to GRANTOR by granting this Easement or by its conduct, or by the conduct of any representative of GRANTOR, prior to or subsequent to granting this Easement.

## **ARTICLE X. MISCELLANEOUS PROVISIONS**

10.01 Texas Public Information Act. 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, GRANTEE 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.

10.02 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.

10.03 Amendments. The parties may by mutual written agreement jointly amend this Easement, provided the amendment shall be consistent with the purpose of this Easement. 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 Harris County, with official filed copy of amendment provided to Grantee by Grantor.

10.04 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.

10.05 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.

10.06 Limitation of Damages. NOTWITHSTANDING ANY PROVISION OF THIS EASEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES, OR CLAIMS OF ANY OTHER THIRD PARTIES, OCCASIONED BY ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

10.07 Within thirty (30) days following execution of the Easement, GRANTEE shall record the Easement in the real property records of Harris County and provide a certified copy of the recorded instrument to GRANTOR. Should GRANTEE fail to do so, GRANTOR may cause the Easement to be recorded, at GRANTEE'S expense, and to have the cost thereof reimbursed upon advising GRANTEE of such cost.

TO HAVE AND TO HOLD the above described Easement, together with all and singular the rights and appurtenances thereto belonging, unto GRANTEE, its successors and assigns, forever, and GRANTOR does hereby bind its self, and its heirs and assigns, to warrant and forever defend all and singular the Easement unto GRANTEE and its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

SIGNED AND EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Texas Historical Commission

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

Title: \_\_\_\_\_

\_\_\_\_\_  
Southwestern Bell Telephone Company

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

Title: \_\_\_\_\_

**INDIVIDUAL ACKNOWLEDGMENT(S)**

THE STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is/are subscribed to the foregoing instrument and acknowledged to me that he/they executed the same for purposes and considerations therein expressed and in the capacity so stated.

Given under my hand and seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My Commission Expires

THE STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is/are subscribed to the foregoing instrument and acknowledged to me that he/they executed the same for purposes and considerations therein expressed and in the capacity so stated.

Given under my hand and seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My Commission Expires

**CORPORATE ACKNOWLEDGMENT**

THE STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is/are subscribed to the foregoing instrument as \_\_\_\_\_ of \_\_\_\_\_, a corporation, and acknowledged to me that he executed the same for purposes and considerations therein expressed in the capacity stated, and as the act and deed of said corporation.

Given under my hand and seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My Commission Expires

**PARTNERSHIP ACKNOWLEDGMENT**

THE STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is/are subscribed to the foregoing instrument as partner of \_\_\_\_\_, the partnership described herein, and acknowledged to me that he executed the same for purposes and considerations therein expressed in the capacity stated, and as the act and deed of said partnership.

Given under my hand and seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My Commission Expires

TAB 4



# TEXAS HISTORICAL COMMISSION

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## Item 4

Texas Historical Commission  
September 22, 2020

### **Ratification of action approved by the Executive Committee on August 17, 2020**

#### **Background**

Pursuant to the Governor's March 13, 2020 state of disaster declaration due to the Coronavirus (COVID-19) and March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act, several action items that would typically be acted upon by the full commission were instead acted upon by the Executive Committee in a meeting that took place on August 17, 2020. These items are now presented to the Commission for ratification as provided in Texas Administrative Code Title 13, Part 2, Chapter 11, Subchapter A, Section 11.5.

#### **Suggested Motion**

Move to ratify the Executive Committee's decision to approve the following items:

- A. Contract amendment - #808-19-00360 with Phoenix 1 Restoration & Construction, Ltd. to increase contract, if and as necessary, by up to \$75,000 and extend contract through November 30, 2020 for construction services (French Legation SHS)
- B. Contract amendment - #808-18-0652 with Huston Gallagher, Inc., to extend contract through November 30, 2020 for architectural and engineering services (French Legation SHS)

TAB 6

# TEXAS HISTORICAL COMMISSION

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## Item 6

Texas Historical Commission  
Joint Commission / AAB Meeting  
September 22, 2020

### **Discussion and possible action regarding the Historic Buildings and Structures Permit #1033 for The Alamo Plan—Phase 1, including restoration and possible relocation of the Cenotaph, Alamo Plaza, San Antonio, Bexar County**

#### **Background**

The Alamo Cenotaph was commissioned by the State of Texas to commemorate the Texas centennial. Designed by Adams & Adams with sculptural figures carved by Pompeo Coppini, the Cenotaph was dedicated in 1940 “in memory of the heroes who sacrificed their lives at the Alamo, March 6, 1836, in the defense of Texas. They chose never to surrender nor retreat; these brave hearts with flag still proudly waving, perished in the flames of immortality that their high sacrifice might lead to the founding of this Texas.”

The monument is prominently located in Alamo Plaza to the northwest of the Alamo church. The 2017 Alamo Master Plan proposed dismantling of the Cenotaph for conservation and re-erection outside of the historic footprint of the mission courtyard. The current permit request includes the first phase of the Alamo Plaza redesign, including relocation of the Cenotaph south of the courtyard footprint to an area near the 1976 Alamo Plaza Bandstand, which has been removed; paving and landscaping improvements; and underground utility construction. Most of the project area is within City of San Antonio property that is outside of the designated State Antiquities Landmark (SAL) boundaries for the Alamo. The current location of the Cenotaph, as well as grading and tree planting along E. Crockett Street on Texas General Land Office property, are within the Alamo SAL. Relocation as proposed would place the Cenotaph outside of the SAL boundaries.

In 2014, the City commissioned structural engineering firm Jaster Quintanilla San Antonio, LLP and stone conservator Ivan Myjer to assess the condition of the Cenotaph. Based on visual inspection and review of original construction documents, the report identified multiple issues, including movement in the marble cladding, particularly at the top of the tower; use of an overly hard mortar with initial construction and later replacement of the joints with sealants, which have begun to fail; likely degradation of aluminum anchors used to secure the marble cladding to the concrete and brick backup; and potential corrosion of reinforcing steel in the concrete structure. The report recommended investigation to determine if moisture is trapped within the monument, removing and replacing displaced stone, and repointing of the mortar joints to prevent further water infiltration. Options for the amount of stone removal were included, but the report concluded that “removal and replacement of all of the marble units should not be necessary unless the concrete frame is exhibiting a level of deterioration that undermines its structural stability.”

## TEXAS HISTORICAL COMMISSION

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The design team for The Alamo Plan—Phase 1, including architecture firm HKS, Inc. and engineering firm CVM, likewise concludes that deterioration of the aluminum anchors and concrete superstructure is likely. As with the previous report, this is based on nondestructive evaluation, including ongoing comparative modeling of the design and current conditions. Relocation of the Cenotaph would enable its comprehensive restoration, including addressing underlying deficiencies. The new concrete superstructure is to be based on the original dimensions but designed for enhanced durability to resist carbonation-induced corrosion. Aluminum crimps are to be fully replaced with stainless steel or other non-corroding anchors. Mortar is indicated to be softer and more compatible with the marble cladding.

To maintain the relationship between the Cenotaph and the Alamo, the monument is to be rotated 180 degrees such that the Spirit of Sacrifice continues to face the Alamo.

Additionally, the project proposes to address inaccuracies and omitted names in the list of Alamo defenders inscribed on the Cenotaph. Rather than modifying the original inscriptions, the names are to be carved into blank marble surfaces below the band of names at the base of the Cenotaph, with interpretive panels nearby to provide additional historical context. Final design decisions for the names and interpretive panels are to be determined.

During the January 28, 2020 Commission meeting, the HKS design team was charged with providing the following information for the March 24, 2020 Commission meeting (which was subsequently cancelled), including:

- A proposed alternative location of the Cenotaph and associated work;
- The process of dismantling and restoration of the Cenotaph; and
- The length of time the relocation and restoration will take.

The design team has submitted an alternate Cenotaph location for the Commission's consideration (Drawing A, two versions attached) within the boundary of The Alamo Plan – Phase 1. Sealed construction documents for the restoration and reinstallation of the Cenotaph and the related streetscape have been provided for THC review (Appendix A on flash drives provided to Commission and AAB members). An abridged set of these documents is attached as Revision 2 to the Historic Buildings and Structures Permit #1033 application, along with a construction schedule for the Phase 1 scope (Appendix C). A Materials Palette has been added to supplement information on lighting, paving, plantings, bollards, and other street furniture.

### **Staff Recommendation**

Division of Architecture (DOA) staff has reviewed Revision 2 to the Historic Buildings and Structures Permit #1033 application and found the documentation to be sufficiently complete, including the process of dismantling and restoring the Cenotaph within a reasonable construction timeframe.

## TEXAS HISTORICAL COMMISSION

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### Possible Motions

#### Issuance of relocation permit, with SAL nomination of the Cenotaph:

Move to authorize the Executive Director to issue Historic Buildings and Structures Antiquities Permit #1033 for The Alamo Plan—Phase 1, including Cenotaph relocation and restoration, as modified in Revision 2 to the permit application as proposed by the City of San Antonio and require the City of San Antonio to nominate the Cenotaph as a State Antiquities Landmark at its relocation site prior to staff acceptance of the permit completion report.

#### Denial of relocation permit:

Move to deny the Historic Buildings and Structures Antiquities Permit #1033 for restoration and relocation of the Cenotaph as proposed by the City of San Antonio under The Alamo Plan – Phase 1.

#### Issuance of restoration permit at the Cenotaph's current site:

Move to authorize the Executive Director to issue Historic Buildings and Structures Antiquities Permit #1033 for the restoration of the Alamo Cenotaph, to include any necessary disassembly, materials conservation and treatment, reassembly, and the addition of previously omitted names to the monument base, consistent with the plans and specifications submitted to the Commission staff. A complete set of sealed construction documents must be approved by Commission staff prior to beginning the restoration process.

Reassembly at the current location of the Cenotaph is included in this permit. Should the City choose to propose an alternate location for reassembly, on application by the City of amendment to this permit, the Commission may consider such alternate location. Such a proposal must include the City's agreement to continue to recognize the Commission's permitting authority over the Cenotaph and its immediate surroundings at the new location under the State Antiquities Code. This recognition may be achieved through expansion of the current State Antiquities Landmark boundary to encompass the Cenotaph and its immediate surroundings at its new location, or by a separate State Antiquities Landmark designation.