

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Department of the City Manager
AGENDA DATE: June 27, 2006
CONTACT PERSON/PHONE: Patricia D. Aauto, Deputy City Manager
Development & Infrastructure Services
(915) 541-4853
DISTRICT(S) AFFECTED: District 8

SUBJECT:

That the City Manager be authorized to sign a Conservation Easement Agreement for a Save America's Treasures Grant (Historic Building) by and between the City of El Paso as Grantor of a conservation easement, and the State Historic Preservation Officer ("SHPO/Covenant Holder"), as Grantee of the conservation easement. This Conservation Easement Agreement is granted as a condition for the receipt of funds from the National Park Service and the Historic Preservation Fund for the Save America's Treasures Grant Program.

BACKGROUND / DISCUSSION:

This Conservation Easement Agreement is entered under Section 102(a)(5) of the National Historic Preservation Act for the purpose of preserving the Plaza Theatre Performing Arts Center, a building that is important culturally, historically, and architecturally. Under this grant program, the City received \$197,535.00 in grant-in-aid financial assistance that was utilized for construction purposes. In consideration of this amount, the city is required to convey a conservation easement for the purposes of assuring preservation of the property for a period of fifty (50) years. The funding is from the National Park Service of the United States Department of the Interior appropriated from the Historic Preservation Fund for the Save America's Treasures Grant Program. The grant expires June 30, 2006 and all project documentation must be forwarded prior to the expiration date, in addition to the Conservation Easement Agreement.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

N/A.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A.

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also
Information copy to appropriate Deputy City Manager)

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Conservation Easement Agreement for a Save America's Treasures Grant (Historic Building) by and between the City of El Paso as Grantor of a conservation easement, and the State Historic Preservation Officer ("SHPO/Covenant Holder"), as Grantee of the conservation easement. This Conservation Easement Agreement is granted as a condition for the receipt of funds from the National Park Service and the Historic Preservation Fund for the Save America's Treasures Grant Program.

ADOPTED this the _____ day of June 2006.

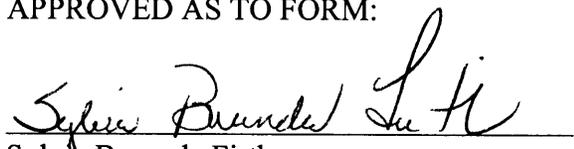
THE CITY OF EL PASO

John Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Sylvia Borunda Firth
Assistant City Attorney

STATE OF TEXAS) **CONSERVATION EASEMENT AGREEMENT**
) **For a Save America’s Treasures Grant**
 COUNTY OF EL PASO) **(Historic Building)**

INTRODUCTION. This Conservation Easement Agreement is made the ___ day of June 2006, between City of El Paso, as GRANTOR of a conservation easement (hereafter referred to as the “Grantor”), and the State Historic Preservation Officer (“SHPO/Covenant Holder”), as GRANTEE of the conservation easement (hereafter referred to as the “Grantee”). This Conservation Easement Agreement is entered under Section 102(a)(5) of the National Historic Preservation Act for the purpose of preserving The Plaza Theatre, a building that is important culturally, historically, and architecturally.

1. **The Subject Property.** This agreement creates a conservation easement in real estate legally described as a portion of Block 17, Mills Map, an Addition to the City of El Paso, El Paso County, Texas. The Subject Property is the site of the Plaza Theatre, located at 125 Pioneer Plaza, El Paso, El Paso County, Texas (hereafter referred to as the “Property”).

2. **Grant of conservation easement.** In consideration of the sum of \$197,535.00 received in grant-in-aid financial assistance from the National Park Service of the United States Department of the Interior, the Grantor hereby grants to the Grantee a conservation easement in the Subject Property for the purpose of assuring preservation of the Property.

3. **Easement required for Federal grant.** This conservation easement is granted as a condition of the eligibility of the Grantor for the financial assistance from the National Park Service of the United States Department of the Interior appropriated from the Historic Preservation Fund for the Save America’s Treasures Grant Program.

4. **Conditions of easement:**

a. *Duration.* This conservation easement is granted for a period of fifty (50) years commencing on the date when it is filed with the El Paso County Recorder.

b. *Documentation of condition of the Property Name at time of grant of this easement.* 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 character-defining materials, features and spaces is incorporated as Exhibit “A” at the end of this agreement. The Grantor has provided to the Grantee architectural drawings of the floor plans. To complement Exhibit “A”, Grantee personnel have compiled a photographic record, including photographer’s affidavit, black and white photographs and negatives, color digital prints, photograph logs, and a keyed location map. The 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.

- c. *Restrictions on activities that would affect historically significant components of the Property.* The Grantor agrees that no construction, alteration, or remodeling or any other activity shall be undertaken or permitted to be undertaken on the Subject Property which would affect historically significant interior spaces and features identified in Exhibit "A", exterior construction materials, architectural details, form, fenestration, height of the Property, or adversely affect its structural soundness without prior written permission of the Grantee affirming that such reconstruction, repair, repainting, refinishing, rehabilitation, preservation, or restoration will meet The Secretary of the Interior's *Standards for the Treatment of Historic Properties* (hereinafter referred to as the "Standards").
- d. *Restrictions on activities that would affect archeological resources.* The Grantor agrees that no ground disturbing activity shall be undertaken or permitted to be undertaken on the Subject Property which would affect historically significant archeological resources identified in Exhibit "A" without prior written permission of the Grantee affirming that such work will meet The Secretary of the Interior's *Standards for Archeology and Historic Preservation*.
- e. *Maintenance of recovered materials.* The 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 for Archeology and Historic Preservation* or will comply with the requirements of the Native American Graves Protection and Repatriation Act, and with 36 CFR 79 and 43 CFR 10.
- f. *Duty to maintain the Property.* The Grantor agrees at all times to maintain the Property in a good and sound state of repair and to maintain the subject Property, including the *Other structures or features of the site*, according to the Standards so as to prevent deterioration and preserve the architectural and historical 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.
- g. *Public access.* The Grantor agrees to provide public access to view the grant-assisted work or features no less than 12 days a year on an equitably spaced basis. The dates and times when the property will be open to the public must be annually published and provided to the Grantee. At the option of the Grantor, the relevant portions of the Property may also be open at other times by appointment, in addition to the scheduled 12 days a year. Nothing in this agreement will prohibit a reasonably nondiscriminatory admission fee, comparable to fees charged at similar facilities in the area.
- h. *Right to inspect.* The Grantor agrees that the Grantee, its employees, agents and designees shall have the right to inspect the Property at all reasonable times, with twenty-four hours written notice, in order to ascertain whether the conditions of this easement agreement are being observed.
- i. *Anti-discrimination.* The Grantor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, 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 accommodation to qualified disabled persons shall be made in consultation with the Grantee (*or State Historic Preservation Office if another organization is holding the easement*).

- j. Easement shall run with the land; conditions on conveyance.* This Conservation Easement shall run with the land and be binding on the Grantor, its successors and assigns. The Grantor agrees to insert an appropriate reference to this easement agreement 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, the Subject Property, or any part thereof.
- k. Casualty Damage or Destruction.* In the event that the Property or any part of it shall be damaged or destroyed by fire, flood, windstorm, earth movement, or other casualty, the Grantor shall notify the Grantee in writing within 14 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 the Grantor without the Grantee's prior written approval indicating that the proposed work will meet the Standards. The Grantee shall give its written approval, if any, of any proposed work within 60 days of receiving the request from the Grantor. 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 will notify the Keeper of the National Register (*or the SHPO if the Grantee is not the State*) 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 property is removed, the Grantee will then notify the Grantor that the agreement is null and void. If the damage or destruction that warrants the properties removal from the National Register is deliberately caused by the gross negligence of the Grantor or future owner, then the Grantee will 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.
- l. Enforcement.* The Grantee shall have the right to prevent and correct violations of the terms of this easement. If the 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 having jurisdiction. Except when an ongoing or imminent violation will irreversibly diminish or impair the cultural, historical and architectural importance of the Property, the Grantee shall give the Grantor written notice of the violation and allow thirty (30) days to correct the violation before taking any formal action, including, but not limited to, legal action. If a court, having jurisdiction, determines that a violation exists or has occurred, the Grantee may obtain an injunction to stop the violation, temporarily or permanently. A court may also issue a mandatory injunction requiring the Grantor to restore the Property to a condition that would be consistent with preservation purposes of the grant from the National Park Service. In any case where a court finds that a violation has occurred, the court may require the Property to reimburse the Grantee and the Texas Attorney General for all the State's expenses incurred in stopping, preventing and correcting the violation, including but not limited to reasonable

attorney's fees. The failure of the Grantee to discover a violation or to take immediate action to correct a violation shall not bar it from doing so at a later time.

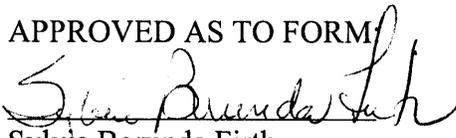
m. *Amendments.* The parties may by mutual written agreement jointly amend this easement, provided the amendment shall be consistent with preservation purpose of this easement and shall not reduce its term of duration. Any such amendment shall not be effective unless it is executed in the same manner as this easement, refers expressly to this easement, and is filed with the El Paso County Recorder.

n. *Effective date; severability.* This Conservation Easement shall become effective when the Grantor files it in the Office of the Recorder of El Paso County, Texas, with a copy of the recorded instrument provided to the Grantee for its conservation easement file. If any part of this Conservation Easement Agreement is held to be illegal by a court, the validity of the remaining parts shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the conservation agreement does not contain the particular part held to be invalid.

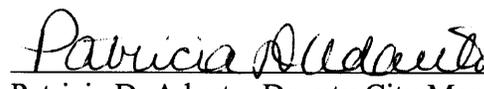
GRANTOR: The City of El Paso, Texas

By: _____
Joyce A. Wilson, City Manager

APPROVED AS TO FORM:


Sylvia Borunda Firth
Assistant City Attorney

APPROVED AS TO CONTENT:


Patricia D. Adauto, Deputy City Manager
Development & Infrastructure Services

STATE OF TEXAS)
)
COUNTY OF EL PASO)

On this ____ day of _____, 2006, before me the undersigned, a Notary Public for said State, personally appeared Joyce A. Wilson, to me personally known, who stated that she is the City Manager of the City of El Paso, Texas, that no seal has been procured by said corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and that as such officer, he acknowledged that he executed the foregoing instrument as her voluntary act and the voluntary act of the corporation.

NOTARY PUBLIC

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

EXHIBIT "A" TO CONSERVATION EASEMENT AGREEMENT

The Plaza Theatre El Paso, Texas

To remain eligible for listing on the National Register of Historic Places, a property must be able to convey its significance. The following character-defining materials, spaces, and features have been identified as those that help convey the significance of the Plaza Theatre. Photo documentation is attached.

Significant Interior Spaces and Features

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Significant Exterior Spaces and Features

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