

STATE OF TEXAS

COUNTY OF POLK

GRANT OF EASEMENT

Polk County ("Grantor"), a political subdivision of the State of Texas, is the owner of certain real property and improvements known as Polk County Courthouse and Grounds ("Property"), located at 101 West Church Street, Livingston, more particularly described in Attachment A to this document [Grantor to attach legal description of property], which is incorporated for all purposes as if it were set forth fully herein. In consideration of funds made available to Grantor through the Texas Historic Courthouse Preservation Program ("Program"), receipt of which Grantor acknowledges, Grantor does hereby grant, bargain, sell, and convey to the Texas Historical Commission, an agency of the State of Texas, ("Grantee") the following Easement ("Easement").

Grantor has legal and equitable fee simple title to the Property, and has the right and power to grant this Easement. Grantee has the legal authority to accept this Easement. Grantee considers the Property and the improvements thereon to represent a significant example of a historic, architectural, or cultural site important to the State of Texas. Grantor desires to grant to Grantee, and Grantee desires to accept, the Easement on the terms and conditions set forth below.

TERMS AND CONDITIONS

1. GRANT

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

2. SCOPE OF GRANTEE'S INTEREST AND EASEMENT

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

- a. Without the prior written consent of Grantee, which consent shall not unreasonably be withheld, Grantor shall not cause or permit any construction, alteration, remodeling, dismantling, destruction, demolition, or other activity that would affect or alter in any material way the appearance or the historic architectural integrity of the Property. Grantee need not give prior written consent for routine maintenance that does not affect or alter in any material way the historic architectural integrity of the Property. Activities requiring Grantee's written approval include but are not limited to the following:
  - i. Any changes to the character-defining features identified in Attachment B including the alteration, partial removal, construction, remodeling, demolition or other physical or structural change to the appearance or construction of such features.

- ii. Erection of anything on the Property that would encroach on the open land area surrounding the structures or obstruct the public view of the structures (except for temporary structures such as construction trailers or scaffolding necessary during the performance of approved restoration work).
  - iii. Installation of signs or awnings on the Property.
  - iv. Painting of previously unpainted surfaces or removal of any paint or other finishes from historic materials.
  - v. Topographical changes to the Property.
  - vi. Any work that might affect the structural soundness of the Property.
  - vii. Any subdivision of the Property.
  - viii. Installation of any transmission lines on or across the Property.
  - ix. Vacating or abandoning any structures on the Property.
  - x. Mothballing any structures on the Property such as temporary closure to protect it from weather and to secure it from vandalism during vacancy.
  - xi. Cessation of standard maintenance procedures on the Property.
- b. Grantor shall maintain and repair the Property in a good and sound state of repair and maintain the subject Property according to the Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995, as administered by the Texas Historical Commission ("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.
- c. Significant changes in use to the building that may affect how the public spaces are used and/or preserved must receive prior approval in writing from the Grantee.

### 3. INITIAL LEVEL OF PRESERVATION

The level of preservation that the Grantor is to maintain, as specified in this Easement is the state of preservation of the Property on the date on which the parties executed this agreement, as altered by any subsequent authorized improvements to the property.

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 Attachment B at the end of this agreement together with a narrative describing the condition of these features. To complement Attachment B, Grantor has provided to the Grantee architectural drawings, if prepared as part of the project or otherwise available, and has compiled a current photographic record of identified features and areas where work will occur including, black and white photographs and/or color digital prints, photograph logs, and a keyed location map. Grantor agrees that the nature and condition of the Property on the date of execution of this Easement is accurately documented by the architectural drawings and photographic record, which shall be maintained for the life of this Easement in the Grantee's conservation easement file for the Property.

The Scope of Work to be performed under the grant to restore the Property is as outlined in Attachment C, although that Scope of Work may be modified if Grantee approves of such modification in writing during the course of planning and/or construction. Once the Scope of Work has been completed, Grantor shall provide a Completion Report following the grant program requirements. Grantor agrees that the nature and condition

of the Property on the date of submission of the Completion Report will be accurately documented by the revised architectural drawings and revised photographic record included in or attached to the Completion Report, which shall also be maintained for the life of this Easement in Grantee's conservation easement file for the Property. The condition of the Property documented in the Completion Report shall become the level of preservation to which the Property shall be maintained in accordance with this Easement.

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

- a. In the event that the Structure or other site improvements located on the Property is damaged or destroyed by fire, flood, windstorm, earth movement, or other disaster or casualty of any kind whatsoever, Grantor's responsibilities shall be as follows:
  - i. Grantor shall notify Grantee in writing within 7 days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and to protect public safety, shall be undertaken by Grantor without Grantee's prior written approval indicating that the proposed work will meet the Standards. Grantee shall give its written approval, if any, of any proposed work within thirty (30) days of receiving the request from Grantor.
  - ii. Partially damaged. If the Structure is partially damaged (i.e., damaged to such an extent or of such nature that the historic architectural integrity of the Structure can reasonably be restored to its prior condition), then Grantor shall restore the historic architectural integrity of the Structure to the condition that existed just prior to the damage, consistent with the Standards.
  - iii. Totally destroyed. If the Structure is totally destroyed (i.e., destroyed to such an extent that it is not reasonably possible to repair or restore the historic architectural integrity of the Structure), Grantee and Grantor shall work together to determine whether it is economically and otherwise feasible to reconstruct the Structure in a substantially similar manner. If the Structure is reconstructed in a substantially similar design, this Easement shall continue in force and apply to the reconstructed Structure. If the Structure is not reconstructed in a substantially similar design, this Easement shall terminate upon agreement by Grantee that reconstruction in a substantially similar design will not take place.
  - iv. If the damage of or destruction to the Property is caused by the gross negligence, willful neglect, or intentional act of Grantor or a successor to Grantor, then Grantor will pay to Grantee the amount of the Program funds applied to the Property. Grantee may pursue any other remedies in equity or at law Grantee may have in as provided by Section 6 of this Easement.

#### 5. RIGHT TO INSPECT

Grantor agrees that 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 or not the terms and conditions of this Easement are being observed.

## 6. REMEDIES OF GRANTEE

Grantee shall have all remedies available to it at law or equity, and Grantor stipulates that money damages shall be insufficient compensation to Grantee for any breach of this Easement by Grantor. Grantor also agrees that, if it is found to have materially violated any of its obligations, Grantor shall reimburse Grantee for all costs or expenses incurred in connection with enforcing this Easement, including Court costs and reasonable architect's and attorney's fees. Grantor understands and agrees that one of Grantee's remedies is the right to require the Grantor to restore the Property to the condition required by this Easement (i.e., specific performance). If Grantee, upon inspection of the property, finds what appears to be a violation, it may exercise its discretion to seek injunctive relief in a court of appropriate jurisdiction. Except when an ongoing or imminent violation will irreversibly diminish or impair the cultural, historical and architectural importance of the Property, Grantee shall give 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. The exercise by Grantee of one remedy and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

## 7. ASSIGNMENT, SUCCESSORS AND ASSIGNS

- a. This Easement shall extend to and be binding upon Grantor and all persons hereafter claiming by, under or through Grantor, and the word "Grantor" when used herein shall include all such entities or persons whether or not such entities or persons have signed this instrument or had any other interest in the Property at the time this Easement was signed. A person shall have no obligation, pursuant to this Easement, if and when such person shall cease to have any (present, partial, contingent, collateral or future) interest in the Property or any portion thereof by reason of a bona fide transfer for value. Notwithstanding the foregoing, however, the obligation under section 2. b. of this Easement to maintain and repair the Property may be enforced against such person if it is determined that such person permitted the architectural integrity of the Property to deteriorate in a material way during the period during which the person had an interest in the Property.
- b. Grantor acknowledges that in the event it contemplates transferring its ownership of all or a portion of the Property, or leasing all or a portion of the Property, Grantor shall notify Grantee of the intent to transfer and the proposed successor to Grantor's title or part thereof no less than thirty (30) days prior to the contemplated transfer, in writing, by certified mail with postage prepaid and return receipt requested, addressed to the Grantee as follows:

Texas Historical Commission  
Post Office Box 12276  
Austin, Texas 78711-2276

Or to such other address as Grantee may from time to time designate in writing to the Grantor. A copy shall also be sent to the chair of the Polk County Historical Commission. Upon receipt of notice of the contemplated transfer, the Grantee shall consider the purpose and effect of the proposed transfer and may approve or, if Grantee determines that the transfer would be inconsistent with the purposes of this Easement, disapprove of the contemplated transfer. This provision shall expire either when this Easement expires or fifty years from the date this Easement takes effect, whichever event occurs first.

- c. Grantee agrees that it will hold this Easement exclusively for preservation purposes; that is, it will not transfer this Easement in exchange for money, other property or services.

## 8. RESERVATION

- a. Grantor reserves the free right and privilege to the use of the Property for all purposes not inconsistent with the grant made herein.
- b. Nothing contained in this Easement shall be interpreted to authorize, require or permit Grantor to violate any ordinance relating to building materials, construction methods or use. In the event of any conflict between any such ordinance and the terms hereof, Grantor shall promptly notify Grantee of such conflict and Grantor and Grantee shall agree upon such modifications consistent with sound preservation practices, the Standards, and consistent with the requirements of such ordinance.

## 9. ACCEPTANCE

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

## 10. GRANTOR'S INSURANCE

- a. Grantor shall maintain, at its own cost, historical replacement value insurance against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage in such amounts as would normally be carried on a property such as the Property subject to this Easement. Such insurance shall include Grantee's interest and shall expressly name Grantee as an additional insured and shall provide for at least thirty (30) days' notice to Grantee before cancellation of the coverage and that the act or omission of one insured will not invalidate the policy as to any other insured. Furthermore, Grantor shall deliver to Grantee certificates or other such documents evidencing the purchase of the aforesaid insurance coverage at the commencement of this grant and a new certificate at least ten (10) days prior to the expiration of each such policy.
- b. Grantee may waive the requirement that Grantor maintain historical replacement value insurance if Grantee determines, in its sole discretion, that Grantor is financially unable to procure and maintain historical replacement value insurance on the Property, so long as Grantor maintains a standard fire and extended coverage insurance policy on the Property. A request for waiver must be made in writing to the Grantee and must include documentation of the inability to procure and maintain historical replacement value insurance as well as evidence of the standard fire and extended coverage insurance policy on the Property. Grantee will provide Grantor with a written determination on the waiver within 30 days of receipt of the written request.

## 11. RELEASE

Grantor shall be responsible for and does hereby release and relieve Grantee, its officers, directors, agents and employees, and will defend and hold Grantee, its officers, directors, agents and employees, harmless of, from and against any and all liabilities, obligations, damages, penalties, claims, costs, charges 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 the negligence of Grantor, its agents or employees.

## 12. REVIEW, APPROVAL AND ENFORCEMENT CLAUSE

Until this Easement expires, the Grantor and any and all successors in interest further agree to deliver to the Grantee for review and approval the information (including plans, specifications, and designs where appropriate) identifying any proposed permanent changes to the property along with 4" x 6" or larger color photographs of the areas to be affected. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity. Grantor shall make no change or take any action subject to the approval of Grantee until Grantor has received written approval of such action by an authorized representative of Grantee. Whenever such consent or written approval of Grantee is required, it shall not be unreasonably withheld or delayed. Changes must conform to the Standards.

## 13. NO THIRD PARTY BENEFICIARY

Anything to the contrary in this Agreement 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.

## 14. WORK DONE AS A CONDITION OF ACCEPTING THE GRANT

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

## 15. TERM OF AGREEMENT

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

## 16. PRIOR AGREEMENTS SUPERSEDED

This Easement and the provisions contained herein shall supersede all previous easements granted by the Grantor to the Grantee on the Property described herein. Any previous easement shall hereafter be null and void as of the date this Easement is filed in the deed records of Polk County.

## 17. SEVERABILITY

It is understood and agreed by the parties hereto that if any part, term or provision of this agreement 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.

18. PUBLIC ACCESS

The Grantor agrees to provide public access to view the grant-assisted work or Property no less than 6 days a year on an equitably spaced basis if the property is not clearly visible from a public right of way or includes interior work assisted with funds from the Program. At the Grantor's option, the property may also be open at other times by appointment, in addition to the scheduled 6 days a year. If the property is an archeological site with no visible features above ground, public access requirements are satisfied by providing access to interested parties on selected days of the year. Nothing in this agreement will prohibit a reasonable nondiscriminatory admission fee, comparable to fees charged at similar facilities in the area.

The Grantor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 (d)), the Americans with Disabilities Act (42 U.S.C. 12204), and with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). These laws prohibit discrimination on the basis of race, religion, national origin, or disability. In implementing public access, reasonable accommodations to qualified disabled persons shall be made in consultation with the Texas Historical Commission.

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

In witness, this GRANT is executed on the 10th day of July, in the year 2018.

Grantor: Polk County

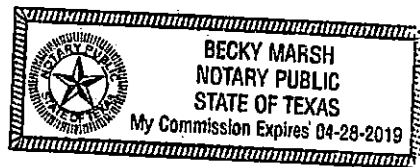
By: *Sydney Murphy*  
Sydney Murphy  
County Judge

STATE OF TEXAS:

On this the 10 day of July, in the year 2018, before me, a Notary Public in and for the State of Texas, Sydney Murphy, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the Grant of Easement acknowledged that they executed the same for the purposes therein contained.

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

*Becky Marsh*  
Notary Public



Grantee: Texas Historical Commission

By: \_\_\_\_\_  
Mark Wolfe  
Executive Director

STATE OF TEXAS:

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

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

\_\_\_\_\_  
Notary Public