

AGREEMENT

This Agreement (“Agreement”) is entered into by and between the State of Texas, acting by and through the Texas Historical Commission (“Commission”) and Tyler County, a political subdivision of the State of Texas (“County”).

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby contract, covenant, and agree as follows:

ARTICLE I **PURPOSE**

- 1.01 The purpose of this Agreement is to resolve a dispute concerning modifications to the Tyler County Courthouse (the “Property”) undertaken by the County.

ARTICLE II **AUTHORITY**

- 2.01 This Agreement is authorized under Texas Government Code §§ 442.008 and 442.011, 13 Texas Administrative Code § 17.2, and the Interlocal Cooperation Act, Texas Government Code ch. 791.

ARTICLE III **PERIOD OF THE AGREEMENT**

- 3.01 This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the completion of the rehabilitation and restoration work on the Property, as provided in Article VI hereof, and the Commission’s final approval of such work, or until earlier terminated as provided in Article VIII hereof.

ARTICLE IV **AUTHORITY AND POSITION OF THE COMMISSION**

- 4.01 Texas Government Code § 442.008 (a) provides as follows: County Courthouses. (a) A county may not demolish, sell, lease, or damage the historical or architectural integrity of any building that serves or has served as a county courthouse without notifying the commission of the intended action at least six months before the date on which it acts.
- 4.02 Texas Government Code § 442.011 provides as follows: Penalty. A person who violates this chapter is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation.

4.03 Tyler County did commence to make substantive physical modifications and alter the appearance of its Courthouse, the Property, between November 2015 and April 2018 without providing notice to the Commission or conducting such work in a manner which was consistent with its own preservation plans. Such modifications included the following:

- 1) removal of numerous original 1891 and 1936 windows and replacement with non-conforming vinyl windows;
- 2) extensive damage to historic brick caused by mechanical removal of the exterior stucco in large quantities as opposed to a small amount for investigatory purposes;
- 3) installation of a new mechanical equipment, ductwork and furr-downs;
- 4) extensive removal of original 1891 wood beadboard ceilings throughout the building;
- 5) complete removal of all original 1891 features in the first floor vault room such as corrugated metal ceiling and structural members including decorative cast iron capitals;
- 6) extensive removal of historic plaster from interior wall surfaces and its partial replacement;
- 7) removal of original 1930s door trim and other features, and replacement with reproduction 19th century style trim and features, in some cases where it never existed historically;
- 8) installation of new wood paneling of non-historic design in the district courtroom and first floor public corridor; and
- 9) re-use of historic materials salvaged from the building to create a new “historic-look” in the form of elaborate new ceilings, door trim, furnishings and décor.

ARTICLE V AUTHORITY AND POSITION OF THE COUNTY

- 5.01 The County is responsible for the maintenance and preservation of the Property.
- 5.02 The County elected not to provide notification to the Commission under Texas Government Code § 442.008 for any work undertaken since 2015.

ARTICLE VI COUNTY’S RESPONSIBILITIES

6.01 The County shall be responsible for addressing changes to the Property, as mentioned in 4.03, by executing the remedial measures described in 6.03 below ~~reversing the changes to the Property specified in 4.03~~ no later than ~~one year from the date this Agreement is executed~~ eighteenth (18) months after this agreement is executed or May 1, 2020 whichever is earlier. Such Work shall be performed at the expense of the County, and shall be subject to the inspection and approval of the Commission. The County shall demonstrate regular progress toward this goal by hiring a preservation architect to design and produce construction documents for the work reference below no later than three months from the date this Agreement is executed. The County shall submit architectural

Comment [SF1]: New text to clarify that the remedial work is described in 6.03 and the unauthorized work is described in 4.03. THC is not requiring all the unauthorized work to be reversed.

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plans and specifications to the Commission for review no later than six months from the date this Agreement is executed or May 1, 2019 whichever is earlier.

Comment [SF2]: These dates are 18 and 6 months from November 1, 2018, respectively.

6.02 The County shall provide for the procurement of all necessary services related to the Work.

6.03 The County shall ensure that remedial measures are undertaken to mitigate the unauthorized modifications described in section 4.03 of this Agreement. These measures include, but are not limited to the following, and shall be reviewed as provided in 6.01 to ensure that they effectively address the unauthorized work undertaken to date including that described in 4.03.

- 1) ~~Removal of~~ inappropriate new ceiling treatments including, but not limited to, salvaged metal tiles, plastic medallions and wood beams must be removed. Ceilings must be painted wood beadboard to match the original. Limited drywall furr-downs may be used to encase mechanical equipment as needed but must be minimized.
- 2) ~~Removal of~~ nineteenth-century style wood casing on metal vault door in Room 110 must be removed leaving original metal frame to fire-proof vault exposed and intact.
- 3) No brick masonry may be exposed. Interior wall surfaces that were previously plastered must be completely replastered or sheetrocked with no exceptions in keeping with the historic character of the building.
- 4) All exterior brick walls previously stuccoed must be restuccoed ~~until such time that a full restoration is undertaken and a professional analysis can be undertaken to ensure that the strength and integrity of the brick can be maintained upon removal of the stucco.~~
- 5) Vinyl replacement windows including new sash, frames and moldings must be removed and replaced with new wood windows that match the historic windows in design, dimensions and materials in those locations where historic wood windows remained extant.

Comment [SF3]: Apparently, some of the new vinyl windows replaced non-historic aluminum windows.

6.04 Any future restoration or reconstruction work undertaken by the County must be completely consistent with one of the approved restoration philosophies presented in the 2000 or 2007 courthouse preservation master plans which, respectively restore the building to its 1936 appearance or its original 1891 configuration. The selection of the courthouse's period of significance as a target date for restoration will be undertaken in consultation with the Commission.

In the absence of the economic feasibility of a restoration approach, the County will undertake rehabilitation of the building in accordance with the Secretary of the Interior's Standards for Rehabilitation as interpreted by the Commission. Rehabilitation acknowledges the need to alter or add to a historic property to meet continuing or changing uses while retaining the property's historic character. All

proposals for rehabilitation of the courthouse and/or modifications as listed below must be prepared by a qualified historic preservation architect.

Comment [SF4]: This acknowledges an alternative whereby the County does not restore the building. The rehabilitation compromise seems to be a logical approach.

I added a preservation architect's involvement relative to our discussion that immediate plans for the Commissioner's courtroom/judge's office/breakroom, stopped since our last meeting, be included in the remediation plans.

Proposals for any future interior modifications including, but not limited to, replacement of flooring, changes to walls and ceilings, installation of mechanical equipment, interior and exterior door and window replacement, installation of new wood paneling, trim or baseboards, restroom remodeling, relocation of walls or structural members, any exterior alterations, roofing, and new features on the site shall be described in writing and submitted to the Commission at least 60 days in advance for review and approval. No work beyond routine maintenance shall be undertaken without express written approval by the Commission.

6.05 The County shall submit an annual report to the Commission each January documenting deteriorated conditions and work undertaken during the previous calendar year as it relates to preservation interests of the Commission in the building.

Comment [SF5]: clarification

6.06 In accordance with the provisions of Texas Government Code § 442.011, the County shall pay to the Commission the amount of One Thousand Dollars (\$1,000.00) as a civil penalty for the violation of Texas Government Code § 442.008, for failing to notify the Commission of the County's intent to damage the architectural integrity of the Property not less than six months prior to the date on which it intended to act. Such payment shall be tendered to the Commission within 30 days following the execution of this Agreement.

6.07 The County shall submit a Report to the Commission for review upon substantial completion of the remedial work referenced in 6.03 of this agreement on or before May 1, 2020 or eighteen (18) months from the execution of this agreement, whichever is earlier as described in 6.01 of this Agreement.

Comment [SF6]: clarification

ARTICLE VII RELEASE OF LIABILITY

7.01 This Agreement shall constitute a full and complete release of liability for the County for all legal obligations under Texas Government Code § 442.008 concerning the Work performed on the Property during the period commencing on November 1, 2015 and ending on June 1, 2018.

ARTICLE VIII AMENDMENTS

8.01 This Agreement is the entire agreement between the parties. Any changes, deletions, extensions, or amendments to this Agreement shall be in writing and signed by all parties hereto prior to the ending date hereof. Any other attempted changes, including oral modifications, written notices that have not been signed by both parties, or other modifications of any type, shall be invalid.

**ARTICLE IX
NOTICES**

9.01 All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U. S. Mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such parties at the following addresses:

Commission: Texas Historical Commission
Post Office Box 12276
Austin, Texas 78711

County: The Honorable Jacques Blanchette
County Judge
100 W. Bluff
Woodville, Texas 75142

**ARTICLE X
SEVERABILITY**

10.01 In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

**ARTICLE XI
RESPONSIBILITIES OF PARTIES**

11.01 The Commission and the County agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**ARTICLE XII
OWNERSHIP OF DOCUMENTS**

12.01 Upon completion or termination of this Agreement, all documents prepared by either party shall remain the property of such party. All documents and data prepared under this Agreement shall be made available to the Commission upon request.

**ARTICLE XIII
COMPLIANCE WITH LAWS**

- 13.01 The parties hereof shall comply with all applicable Federal, State, and Local laws, statutes, ordinances, rules, and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement. When required, either party shall furnish satisfactory proof of their compliance with such requirements stated above.

**ARTICLE XIV
LIMITATION OF LIABILITY**

- 14.01 The Commission shall not be liable for any direct or consequential damages to County or any third party for any act or omission of the County in the performance of this Agreement. The Commission shall neither indemnify nor guarantee any obligation of the County.

**ARTICLE XV
DISPUTE RESOLUTION**

- 15.01 The dispute resolution process provided for in Government Code Chapter 2260 shall be used, as further described herein, by the parties to attempt to resolve any claim for breach of this Agreement made by either party.
- 15.02 A claim by the County for breach of this Agreement that cannot be resolved between the parties in the ordinary course of business shall be submitted to the negotiation process provided in Government Code Chapter 2260, Subchapter B. Compliance by County with Government Code Chapter 2260, Subchapter B is a condition precedent to the filing of a contested case proceeding under Government Code Chapter 2260, Subchapter C.
- 15.03 The contested case process provided in Government Code Chapter 2260, Subchapter C is County's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by Commission if the parties are unable to resolve their disputes under this Article XVII.
- 15.04 Compliance with the contested case process as provided in Article 15.02 hereof is a condition precedent to seeking consent to sue from the Texas Legislature under Civil Practices and Remedies Code Chapter 107. Neither the execution of this Agreement by the Commission nor any other conduct of any representative of Commission relating to the Agreement shall be considered a waiver of sovereign immunity to suit.
- 15.05 The submission, processing, and resolution of any claim by County hereunder is governed by 1 Texas Administrative Code sec.68.1, et seq., now and as hereafter amended.
- 15.06 Neither the occurrence of an event alleged to constitute breach of this Agreement nor the pendency of a claim constitute grounds for the suspension of performance by the County, in whole or in part.

**ARTICLE XVI
SOLE AND ENTIRE AGREEMENT**

16.01 This Agreement constitutes the sole and entire agreement between the parties and supersedes any prior understandings or written or oral agreements.

**ARTICLE XVII
SIGNATORY WARRANTY**

17.01 The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

IN WITNESS WHEREOF, this Agreement is executed in duplicate originals as of the dates herein below.

TEXAS HISTORICAL COMMISSION

TYLER COUNTY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____