

TEXAS HISTORICAL COMMISSION

**Texas Main Street Locally Designated Program
2020 Contract****I. PARTIES TO THE CONTRACT**

This contract and agreement concerning **Seguin Main Street Program** (“**Agreement**”) is entered into between the **City of Seguin** (hereinafter referred to as “**Participant**”) and the **Texas Historical Commission** (hereinafter referred to as “**THC**”). **Seguin Main Street Program** (hereinafter referred to as “**Local Program**”) is part of a larger program within the **Texas Main Street Program** (hereinafter referred to as “**TMSP**”), as defined in 13 TAC sec. 19.3(1), wherein the Participant qualifies as a **Texas Main Street Small City**, as defined in 13 TAC sec. 19.3. The purpose of the Local Program is to assist Participant with the development, revitalization, restoration, and preservation of its historic downtown or commercial neighborhood districts in accordance with the national Main Street Approach. This Agreement shall be governed by Texas Government Code, Section 442.014, and Texas Administrative Code, Title 13, Part 2, Chapter 19.

II. NATIONAL MAIN STREET CENTER BRAND AND NETWORK

This Agreement constitutes a designation of Participant as an official Texas Main Street City (as defined in 13 TAC sec. 19.3(2)) and allows the use of the National Main Street Center, Inc. brand, including MAIN STREET AMERICA™ controlled by National Main Street Center, Inc. 53 West Jackson Blvd., Suite 350 Chicago IL 60604. If Participant’s participation in the TMSP ceases, Participant may no longer use the term ‘Main Street’ to describe its local development, restoration, and preservation program; nor utilize or display the trademarks or branding of the National Main Street Center, Inc. The designation as a Texas Main Street City allows for full participation in the TMSP network, which includes eligibility to receive Texas Main Street publications and participate in Texas Main Street networking opportunities. Designated Texas Main Street Cities, such as Participant, shall execute and submit to the TMSP office the National Main Street Center’s Trademark Sublicense Agreement (“**TM Sublicense Agreement**”), which grants the right to use the registered trademark, logos and brand of National Main Street Center’s membership program - MAIN STREET AMERICA™. Participant hereby agrees to, and shall comply with, all terms and conditions of the TM Sublicense Agreement, which is attached hereto as Exhibit A, and incorporated herein by reference. Additionally, Participant acknowledges and agrees that in the event National Main Street Center develops and/or releases an updated TM Sublicense Agreement (“**Updated TM Sublicense Agreement**”) during the Term of this Agreement, Participant shall be required to execute, and comply with, the Updated TM Sublicense Agreement or otherwise be subjected to termination pursuant to the terms of VII. (B) below. In the event National Main Street Center develops and/or releases an Updated TM Sublicense Agreement, THC will provide Participant with sixty (60) days’ notice for Participant to consider, prepare and execute an updated Sublicense Agreement. Furthermore, the parties acknowledge and agree that the execution of such Updated TM Sublicense Agreement shall not require amendment of this Agreement and shall become part of this Agreement upon its execution. In the event of conflict between multiple TM Sublicense Agreements, the most recently executed version shall control.

III. RESPONSIBILITIES OF THE PARTICIPANT AND LOCAL PROGRAM

A. Staffing.

In operation of the Local Program, Participant shall employ a full-time paid program manager who will attend at least two professional development segments annually as outlined in subsection B below. If necessary, a Texas Main Street Small City may, after the first three years of participating in the TMSP, permit the program manager position to also perform specific economic development, tourism, and other relevant duties while remaining as a full-time paid program manager. For the purposes of this Agreement, full-time employment means that the program manager works at least forty (40) hours per week dedicated toward the Local Program and downtown revitalization. Employees of the Participant shall be subject to the sole control and direction of the Participant. Participant shall move forward in an efficient manner to fill a program manager vacancy and the THC's State Coordinator shall be kept apprised of progress in filling vacancies. A Texas Main Street Urban City (as defined by 13 TAC 19.3(4)) shall additionally employ a full-time assistant program manager who shall also participate in the professional development under subsection B below.

B. Professional development.

The program manager will attend two professional development opportunities in their entirety per year from the list below:

1. Real Places Conference of the Texas Historical Commission.
2. TMSP Basic Training. Required orientation for new program managers.
3. TMSP Summer Professional Development for all program managers.
4. Texas Downtown Association/Texas Main Street Annual Conference.
5. National Main Street Now Conference.
6. PastForward Conference of the National Trust for Historic Preservation.
7. Texas Downtown Association Roundtables
8. Workshops, certification programs, and webinars of the THC or MAIN STREET AMERICA™.

Experienced program managers, as determined by THC, may substitute non-Main Street specific, relevant professional development for one of the above events with prior approval of THC. New managers shall attend the TMSP Basic Training, listed second on the list above, within their first year of employment. If there is an assistant Main Street employee in addition to the program manager/s referenced above, that person should also attend at least one segment of Main Street professional development annually.

If a replacement program manager is hired who has not previously attended TMSP Basic Training or does not have a background in Main Street, as determined by THC, the manager is required to attend one series of Basic Training/Professional Development. A \$500 stipend shall be charged to Participant for the training series required under these circumstances.

To help ensure an effectively-functioning local program, local program boards/volunteers are encouraged to attend TMSP educational opportunities or to contact TMSP for on-site training. No stipend is charged for their participation.

C. Commitment.

Participant agrees to carry out their Local Program work according to the Main Street Approach as promulgated by the National Main Street Center and displayed at <https://www.mainstreet.org/mainstreetamerica/theapproach>. Participant agrees to incorporate into their Local Program work, the following Main Street Community Accreditation Standards:

1. Broad-based Community Commitment
2. Leadership & Organizational Capacity
3. Diverse and Sustainable Funding
4. Strategy-Driven Programming
5. Preservation-Based Economic Development
6. Demonstrated Impact & Result

D. Reporting.

To measure progress, Participant shall track statistics such as reinvestment and job/business creation along with a quarterly activity report and submit them to the TMSP office by the 10th of the month following the end of each calendar quarter. Even if there has not been reinvestment activity in a quarter, Participant shall still submit a report noting such. Additionally, Participant shall submit an annual accreditation report that includes an evaluation of the Local Program implementation of the Main Street Community Accreditation Standards outlined in Section III. C above for the previous calendar year.

E. Probation.

Participant agrees that their Local Program may be placed on probation, which may result in the suspension of TMSP services or possible removal from the TMSP, for any of the following reasons:

1. Failure to submit an annual accreditation report pursuant to Section III. D above;
2. Failure to achieve accreditation objectives more than two (2) consecutive years;
3. Failure to submit activity reports for more than two (2) consecutive quarters;
4. Failure to submit reinvestment reports for more than two (2) consecutive quarters;
5. Failure to adequately staff or fund the program
6. Failure to abide by this Agreement.

THC shall notify Participant in writing prior to implementing probation in accordance with Texas Administrative Code, Title 13, Part 2, Chapter 19. In the case of probation, Participant will work with the THC's State Coordinator or delegate to overcome any deficiencies. THC may terminate the Local Program's participation in the TMSP if Participant fails to remediate identified deficiencies within a reasonable time. No fees will be refunded in cases of probation and any outstanding fees under this Agreement will remain due. During probationary status, the stipulations called for in sections III and IV of this Agreement may be temporarily altered or suspended upon THC's discretion.

F. National Main Street America™ membership.

Participant shall budget for and maintain membership in the National Main Street Center.

IV. SERVICES TO BE PERFORMED BY TMSP

A. On-site visits and technical expertise.

TMSP services are available to designated Texas Main Street Cities in good standing, including those provided through site visits to address design/planning, economic development and organizational/program capacity issues. Services may include, but are not limited to: downtown economic development assistance, façade renderings/technical reports, planning, preservation and historic building expertise by licensed architects and other design professionals; business development and funding advice, program manager and board training, program capacity-building, and strategic planning.

B. Securing a Main Street Manager.

Should a replacement program manager be needed, the TMSP office can assist with elements of the hiring process, including creating job descriptions, job posting and interviewing. Upon Participant's request, the TMSP office will assist in the hiring process; however, the responsibility for selection, salary, employment and employee-related legal matters will remain with Participant. Participant is responsible for, and shall hold THC and TMSP harmless from, all acts and omissions of its managers and all of its employees, agents, representatives, contractors and/or subcontractors.

V. GENERAL TERMS AND RESPONSIBILITIES.

A. Confidentiality and Public Information Act.

Notwithstanding any provisions of this Agreement to the contrary, Participant and THC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. THC and Participant agree to notify each other in writing within a reasonable time from receipt of a request for information related to Participant's work under this Agreement. Participant and THC will cooperate in the production of documents responsive to the request. Participant will notify THC within twenty-four (24) hours of receipt of any third-party requests for information that was provided by the State of Texas for use in performing the Agreement. This Agreement and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Subject to the Texas Public Information Act, Participant agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Agreement, including information which discloses confidential personal information.

B. Dispute Resolution.

The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall be used by THC and Participant to resolve any dispute arising under the Agreement.

If Participant's claim for breach of Agreement cannot be resolved in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Participant shall submit written notice, as required by Chapter 2260, to

the individual identified in the Agreement for receipt of notices. Compliance by Participant with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is Participant's sole and exclusive process for seeking a remedy for an alleged breach of Agreement by THC if the parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Agreement by Participant and THC nor any other conduct of any representative of the Participant or THC relating to the Agreement shall be considered a waiver of sovereign immunity to suit by THC or any governmental immunity to which Participant is otherwise entitled under Texas law.

C. Indemnification.

TO THE EXTENT ALLOWABLE BY LAW, PARTICIPANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF PARTICIPANT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND THE TM SUBLICENSE AGREEMENT AND/OR UPDATED TM SUBLICENSE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY PARTICIPANT WITH THE OFFICE OF THE ATTORNEY GENERAL ("OAG") WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND PARTICIPANT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. PARTICIPANT AND THC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

TO THE EXTENT ALLOWABLE BY LAW, PARTICIPANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, THC AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF PARTICIPANT PURSUANT TO THIS AGREEMENT AND/OR UPDATED TM SUBLICENSE AGREEMENT. PARTICIPANT AND THC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. PARTICIPANT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY PARTICIPANT WITH THE OAG WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND

PARTICIPANT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG.

D. Independent Contractor.

Participant or Participant's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing goods or services. Participant or Participant's employees, representatives, agents and any subcontractors shall not be employees of THC. Should Participant subcontract any of the services required in this Agreement, Participant expressly understands and acknowledges that in entering into such subcontract(s), THC is in no manner liable to any subcontractor(s) of Participant. In no event shall this provision relieve Participant of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this Agreement and the TM Sublicense Agreement or Updated TM Sublicense Agreement.

E. Ownership of Intellectual Property.

For the purposes of this Agreement, the term "Work Product" is defined as all reports, analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, knowledge, know-how, ideas, improvements, plans, advice, research, materials, intellectual property or other property developed, produced, or generated in part or in full by THC and/or in cooperation with Participant, in connection with this Agreement. Work Product specifically excludes pre-existing material owned by Participant, or material developed during the Term of this Agreement independently and exclusively by Participant without any THC involvement or contribution, and that does not include or incorporate any Work Product or Work Product components ("Independent Participant Material"). All Work Product generated pursuant to this Agreement is made the exclusive property of THC. All right, title and interest in and to said Work Product shall vest in THC upon creation and shall be deemed to be, and is expressly intended by the parties to be, a work made for hire and made in the course of the services rendered pursuant to this Agreement. To the extent that title to any such Work Product may not, by operation of law, vest in THC, or such Work Product may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to THC. THC shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the Work Product subject matter, and any extensions and renewals thereof.

Furthermore, if and to the extent THC provides Participant any Work Product and/or other property owned by THC ("THC Property") to assist Participant to further the Local Program and the purpose of this Agreement, THC hereby grants Participant, commencing upon the date that Participant is designated as a Texas Main Street City, a nonexclusive, revocable, worldwide, fully paid, royalty-free, license, for the Term of this Agreement while Participant remains designated as a Texas Main Street City, to reproduce, modify, distribute, publicly perform, publicly display and use the THC Property only to the extent such use is in furtherance of the Local Program. To the extent Participant provides any Independent Participant Material to THC in connection with this Agreement, Participant hereby grants THC, and THC accepts, a nonexclusive, perpetual, irrevocable, worldwide, fully paid, royalty-free license to use, reproduce, copy, modify distribute, publicly perform, publicly display, store, post on the Internet and creative derivative works of such Independent

Participant Material, and to sublicense and transfer such Independent Participant Material to third parties to use in accordance with these license terms for THC purposes.

F. State Auditor.

In addition to and without limitation on the other audit provisions of this Agreement, and to the extent applicable, pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office may conduct an audit or investigation of Participant or any other entity or person receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by Participant or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the State Auditor's Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative Audit Committee, Participant or other entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. Participant further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Participant shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Participant and the requirement to cooperate is included in any subcontract it awards. The State Auditor's Office shall at any time have access to and the right to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Participant related to this Agreement.

G. Assignment.

Participant may not assign this Agreement, in whole or in part, and may not assign any right or duty required under it, without the prior written consent of THC. Any attempted assignment in violation of this provision is void and without effect.

VI. CONTRACT AMOUNT

In accordance with Texas Government Code, sec.442.014(d) and 13 TAC sec.19.5(d), Participant shall pay THC a fee in the amount of **\$535.00** to defray cost of staff time and expenses for services provided under the Local Program. THC shall invoice for the fee and Participant shall tender payment within 60 days.

VII. TERM and TERMINATION

A. Term.

This Agreement begins upon the latest date the Agreement becomes fully executed by individuals who have the authority to bind the party on whose behalf he or she is signing ("Effective Date") and shall expire on December 31, 2020 unless terminated at an earlier date pursuant to subsection B below.

B. Termination.

1. Either party shall have a right to terminate all performances to be rendered under this Agreement by notifying the other party in writing at least ten (10) days in advance of the termination date.
2. In the event Participant refuses or fails to execute any Updated TM Sublicense Agreement pursuant to the terms of Section II. above within sixty (60) days of receipt thereof, THC shall have the right to immediately terminate this Agreement by written notice to the Participant.
3. Upon termination of this Agreement under subsections 1 and 2 above, Participant will no longer be designated as an official Texas Main Street City (as defined in 13 TAC sec. 19.3(2)), and will no longer be allowed the use of any Work Product or THC Property, as defined herein, or the registered trademark, logos and brand of National Main Street Center's membership program MAIN STREET AMERICA™. In such event, Participant agrees to return to THC any Work Product and THC Property in its possession.
4. No funds paid under Section VI. Above shall be refunded in any case of termination.

VIII. CHANGES AND AMENDMENTS

Any alterations, additions, or deletions to the terms of this Agreement shall be in writing and signed by both parties.

IX. APPLICABLE LAW AND VENUE; NO WAIVER; SEVERABILITY

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Agreement is fixed in any court of competent jurisdiction of Travis County, Texas.

Nothing in this Agreement shall be construed as a waiver of THC's sovereign immunity or any governmental immunity to which Participant is entitled under Texas law. This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Participant, THC or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to Participant, THC or the State of Texas under this Agreement 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.

In the event that any provision of this Agreement is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

X. PROHIBITED FOREIGN BUSINESSES

In accordance with Texas Government Code, Chapter 2252, Subchapter F, Participant hereby represents and warrants that it is not a company identified on the lists prepared and maintained under Texas Government Code §§ 806.051 (companies with business operations in Sudan), 807.051 (companies with business operations in Iran), or 2252.153 (companies known to have contracts with or provide supplies or services to a foreign terrorist organization).

Notwithstanding the foregoing, a company that the United States government affirmatively

declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or to a foreign terrorist organization, is not subject to contract prohibition under this clause. A company claiming such exemption must submit the official copy of the declaration.

XI. FORCE MAJEURE

THC shall not be responsible for performance under this Agreement should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of THC.

Participant shall not be liable to THC for non-performance or delay in performance of a requirement under this Agreement if such non-performance or delay is due to one of the following occurrences, which occurrence must not be preventable through the exercise of reasonable diligence, be beyond the control of Participant, cannot be circumvented through the use of alternate sources, work-around plans, or other means and occur without its fault or negligence: fire; flood; lightning strike; weather damage; earthquake; tornado; hurricane; snow or ice storms; equipment break down; acts of war, terrorism, riots, or civil disorder; strikes and disruption or outage of communications, power, or other utility.

In the event of an occurrence under the above paragraph, Participant will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail, and Participant continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Participant shall immediately notify the THC's State Coordinator by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

XII. NOTICES.

Any notices and/or documents required hereunder shall be deemed to have been duly provided if in writing and delivered personally or by pre-paid guaranteed overnight delivery service, or sent postage prepaid by United States certified mail, return receipt requested. Any such notice shall be effective on the date of delivery if delivered personally, on the next business day following delivery to the guaranteed overnight delivery service if the notice was so delivered and the charges were prepaid, or on the date the recipient signed for the notice if sent by certified mail.

Notices shall be addressed as follows, or at such other address as any party hereto shall notify the other of in writing:

If to THC.:
Texas Historical Commission
P.O. Box 12276
Austin, TX 78711

If to Participant:

