

June 16, 2020

Steve Parker, City Manager
City of Seguin
205 N. River Street
Seguin, TX 78155
830.401.2302

Re: Sebastopol House Master Plan Agreement

Note: This Agreement is contingent upon the City of Seguin receiving a THC Preservation Trust Fund grant to prepare this Master Plan or providing funds from other sources, and may be cancelled by the City with no obligation if such funds are not received.

OVERVIEW

The Texas Historical Commission's Preservation Trust Fund Program has announced funding availability for the Fiscal Year 2021 grants and the City of Seguin will be applying for the Sebastopol House. Architexas will prepare a Master Plan for the Sebastopol House in Seguin, Texas. The Master Plan prepared by Architexas will address current building, health and safety codes, comply with the ADA requirements and analyze the current condition and functional requirements of the Sebastopol House. It will also comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties and the Texas Historical Commission's requirements for the Preservation Trust Fund Program.

SCOPE OF SERVICES

- TASK 1 – ASSIST THE CITY IN THE DEVELOPMENT OF THE THC PROJECT PROPOSAL SUBMITTAL FORM; A DRAFT OF THIS FORM WILL BE PROVIDED TO THE CITY BY JULY 3, 2020
- TASK 2 – REVIEW CURRENT GENERAL INFORMATION AND SUMMARIZE THE CURRENT PROJECT
- TASK 3 – EVALUATION OF THE SITE'S HISTORICAL RESEARCH/DESIGNATIONS AND REEVALUATE PERIODS OF SIGNIFICANCE AS REQUIRED
- TASK 4 - EVALUATE EXISTING CONDITIONS INCLUDING STRUCTURAL AND MECHANICAL/ELECTRICAL AND PLUMBING SYSTEMS
- TASK 5 - PROVIDE RECOMMENDATIONS FOR NECESSARY RESTORATION/REHABILITATION AND DEVELOP ESTIMATES OF PROBABLE CONSTRUCTION COSTS AND PROJECT PHASING
- TASK 6 – PROVIDE APPENDICES AS REQUIRED
- TASK 7 – PROVIDE FULL ARCHITECTURAL SERVICES FOR ANY DEVELOPMENT WORK THE CITY CHOOSES TO IMPLEMENT BASED ON THE MASTER PLAN RECOMMENDATIONS.

CONSTRUCTION BUDGET

- 1.1 Architexas will develop a probable construction cost and budget that will be based upon the Building Conditions survey. The budget will be divided according to CSI Format.

MASTER PLAN COMPILATION

- 2.1 Compile the findings of the research, evaluation, cost estimates and phasing strategy in a Preservation Master Plan.
- 2.2 Present the Master Plan to the City for review and approval, as well as the Texas Historical Commission.

COMPENSATION

Architexas agrees to prepare a Master Plan for the Sebastopol House for a fixed fee of \$60,000 including reimbursable expenses. Based on the grant program's requirements, the City of Seguin's portion of this fee is estimated to be \$30,000. TASK 7 will be implemented at the direction of the City as an Amendment to this Agreement.

REIMBURSABLES

Expenses incurred in the interest of the project are included in the compensation for professional fees, and include: Photographic supplies, printing, copying, postage, mileage, travel expenses (including rental car, lodging and meals), delivery expenses.

PLAN ITEMS AND SCOPE OF WORK TO BE PROVIDED BY THE CITY

In order to keep the costs of the Master Plan to a minimum, the City will provide the following items for the development of the Master Plan :

- Collect and provide Architexas a copy of historic drawings, photographs, published information such as newspaper articles, maps and any other available data on the historic building and grounds
- Floor plans, if available, of existing building and grounds
- If the City decides to undergo a comprehensive Environmental Survey of hazardous materials, a copy should be provided to Architexas for inclusion in the Master Plan. Architexas can coordinate this survey for an additional fee
- Any lifts or ladders needed for building access/inspection over 8'-0"
- Current Site Survey if available
- Review deliverables and provide feedback and necessary approvals to proceed with subsequent tasks

ADDITIONAL SERVICES & HOURLY RATES

Senior Principal	\$250.00
Principal	\$200.00
Architect/Designer/Project Manager	\$140.00
Senior Historic Preservation Specialist	\$140.00
Architectural Intern/CAD Technician	\$100.00
Historic Preservation Specialist	\$100.00
Administrative	\$ 75.00

SERVICES NOT INCLUDED AS PART OF THIS PROPOSAL

Below is a list of services that are not included:

- Increased services resulting from changes in the project scope
- Civil Engineering services
- Hazardous material surveys, abatement or related cost estimates
- Security, data or telephone system design
- Professional services relating to variance requests by jurisdictional authorities
- Construction documents, bidding or construction administration services unless authorized by the City for an additional fee of 15% of estimated construction costs.
- Geotechnical services
- Testing laboratory services, including materials testing and historic finish analysis

APPROVAL

If you approve of this Agreement, please sign below.

Authorized Owner Representative:



Steve Parker, City Manager

Steve Parker

Print

June 17, 2020

Date

ARCHITEXAS:



Stanley O. Graves FAIA, Senior Principal

Stanley O. Graves

Print

June 16, 2020

Date

The services above will be performed in accordance with the following Terms and Conditions, and Exhibit 2 (attached):

Terms and Conditions

The Firm (Architexas) shall perform the services outlined in this Agreement for the stated fee arrangement.

Access to Site:

Unless otherwise stated, the Firm will have access to the site for activities necessary for the performance of the services. The Owner (Client) acknowledges that some exploratory work may be required to examine concealed conditions and the Owner will be notified of potential areas of work before any work is performed. The Firm will take precautions to minimize damage due to exploratory activities, but has not included in the fee the cost of restoration of any resulting damage.

Dispute Resolution:

Any claims or disputes made during design, construction or post-construction between the Client and Firm shall be submitted to non-binding mediation. Client and Firm agree to include a similar mediation agreement with all contractors, subcontractors, sub consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties.

Billings/Payments:

Invoices for the Firm's services shall be submitted on a monthly basis for services performed to date. Invoices shall be payable within 30 days of receipt. If the invoice is not paid within 30 days, the Firm may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of the service.

Late Payments:

Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% (or the legal rate) on the then unpaid balance. In the event any portion or all of an account remains unpaid 90 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

Indemnification:

The Client and Firm shall, to the fullest extent permitted by law, indemnify and hold harmless the Firm, his or her officers, directors, employees, agents and sub consultants from and against all damage, liability and cost, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance by any of the parties above named of the services under this agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of the Firm.

Certifications:

Guarantees and Warranties: The Firm shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence the Firm cannot ascertain.

Termination of Services:

This Agreement may be terminated by the Client or the Firm should the other fail to perform its obligations hereunder. In the event of termination, the Client shall pay the Firm for all services rendered to the date of termination, all reimbursable expenses, and reimbursable termination expenses.

Hazardous Materials Indemnity

The Client agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, partners, employees and subconsultant's (collectively, Consultant) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability, regulatory or any other cause of action, except for the sole negligence or willful misconduct of the Consultant.

Information Provided by Others

The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The Consultant shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client and/or the Client's consultants and contractors.

Third Party Beneficiaries

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client and Consultant agree to require a similar provision in all contracts with contractors, subcontractors, subconsultant's, vendors and other entities involved in this Project to carry out the intent of this provision.

Consequential Damages

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultant's shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

Limitation of Liability

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Design Professional and the Design Professional's officers, directors, partners, employees, agents and subconsultants, and any of them, to the Client and anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied of the Design Professional or the Design Professional's officers, directors, employees, agents or subconsultants, or any of them, shall not exceed the total compensation received by the Design Professional under this Agreement, or the total amount of \$60,000.00, whichever is less. Liability due to gross negligence is not limited by this paragraph.

Proprietary Information

Proprietary Information: All portions of this proposal are considered by the ARCHITEXAS team to be trade secrets and proprietary information which if released without ARCHITEXAS permission, would give advantage to competitors. As such, these records are exempt for disclosure under Section 3(A)(4) and 3(A)(10) of the Texas Open Records Act. Release and utilization of this project shall be only under conditions established with the ARCHITEXAS team.

Licensure: In accordance with State law, you are hereby notified of the following: The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701, Telephone (512) 305-9000, has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas.

EXHIBIT 2

City of Seguin, Texas

Terms and Conditions for Architect/Engineer Agreements

1. Standards of Performance

- (a) The performance of all services by the Consultant under this Agreement will be by persons appropriately licensed or registered under State, local and Federal laws.
- (b) In performing all services under this Agreement, the Consultant will use that degree of care and skill ordinarily exercised for similar projects by professional consulting firms who possess special expertise in the types of services involved under this Agreement.
- (c) Any provisions in this Agreement pertaining to the City's review, approval and /or acceptance of written materials prepared by the Consultant and/or its subconsultants in connection with this Agreement will not diminish the Consultant's responsibility for the materials.
- (d) The Consultant will perform all of its services in coordination with the City. The Consultant will advise the City of data and information the Consultant needs to perform its services, and the Consultant will meet with City representatives at mutually convenient times to assemble this data and information.
- (e) In performing all services under this Agreement, the Consultant will comply with all local, state and federal laws.

2. City's Responsibilities

- (a) The City will provide information to the Consultant regarding the City's requirements for the Consultant's services under this Agreement. The City will furnish the Consultant with copies of official City design standards and construction standards, and other data and information in the City's possession needed by the Consultant, at the Consultant's request.
- (b) The City will designate an authorized representative to act on the City's behalf with respect to this Agreement. The City will examine documents and information submitted by the Consultant, and promptly render responses to the Consultant on issues requiring a decision by the City.

3. Consultant's Records

- (a) All expense records of the Consultant will be kept on a recognized accounting basis acceptable to the City and will be available to the City at mutually convenient times.
- (b) The City, its auditors and federal and state agencies that have monitoring or auditing responsibilities for this Agreement will have access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, copying and transcriptions.
- (c) The Consultant will furnish to the City at such time and in such form as the City may require, financial statements including audited financial statements, records, reports, data and information, as the City may request pertaining to the matters covered by this Agreement.

4. Ownership and Use of Documents

- (a) All documents prepared by the Consultant in connection with this Agreement will become the property of the City whether any project related to this Agreement is executed or not.

(b) The Consultant will retain all of its records and supporting documentation relating to this Agreement, and not delivered to the City, for a period of three years, except that in the event the Consultant goes out of business during that period, it will turn over to the City all of its records relating to the Project for retention by the City.

5. Term; Termination of Agreement; Default

(a) The term of this Agreement begins upon its execution by the City, and will end upon the Consultant's completion, and the City's acceptance, of all services described in this Agreement.

(b) This Agreement may be terminated by either party upon 15 days prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

(c) This Agreement may be terminated at will by the City upon at least 15 days prior written notice to the Consultant.

(d) In the event of termination as provided in this Section, the Consultant will be compensated for all services performed to the termination date which are deemed by the City to be in accordance with this Agreement. This amount will be paid by the City upon the Consultant's delivering to the City all information and materials developed or accumulated by the Consultant in performing the services described in this Agreement, whether completed or in progress. The expense of the reproduction of these items will be borne by the City.

(e) In the event of a default or breach of this Agreement by the Consultant, the City reserves the right to choose among the remedies for the default or breach available to the City. These remedies may be used in conjunction with one another or separately, and together with any other statutory or common law remedies available to the City. Any failure by the City to enforce this Agreement with respect to one or more defaults by the Consultant will not waive the City's ability to enforce the Agreement after that time.

6. Insurance and Indemnity

(a) The Consultant will hold harmless, indemnify and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts, errors or omissions of the Consultant, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims, demands and causes of action for personal injuries, death or damages to property.

(b) The Consultant will procure and maintain at its expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by the Consultant or its agents, subcontractors or employees. Before commencing the work the Consultant will furnish to the City a certificate or certificates in a form satisfactory to the City, showing that Consultant has complied with this paragraph. All certificates will provide that the policy will not be canceled until at least 30 days written notice has been given to the City, and will name the City as an additional insured on all coverages except workers' compensation and professional liability. The kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance: In accordance with the provisions of the Workers' Compensation Act of the State of Texas that meets the minimum requirements defined in the Texas Workers' Compensation Commission Rule 28 TAC 110.110..

Liability Insurance: (1) Commercial general liability insurance with a combined single limit of \$500,000 for each occurrence and \$500,000 in the aggregate, (2) Motor Vehicle liability insurance in an amount not less than \$250,000 for injuries to any one person, \$500,000 on account of any one accident and in an amount of not less than \$250,000 for property damage (3) professional liability coverage to cover lawful claims arising in connection with this Project in the combined single limit amount of at least \$500,000.00.

(c) The stated limits of insurance required by this Paragraph are **minimum only**--they do not limit the Consultant's indemnity obligation, and it will be the Consultant's responsibility to determine what limits are adequate. These limits may be met by basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of certificates of insurance that do not comply with these requirements in any respect does not release the Consultant from compliance with these requirements.

(d). City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by City, Consultant shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

(e). Consultant agrees with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions.

- a. Name, the City of Seguin and its officers, employees, and elected representatives as additional insured(s), (as the interest of each insured may appear) to all applicable coverage.
- b. Provide for 30 days' notice to City for cancellation, non-renewal, or material change.
- c. Provide for notice to City at the address shown below by registered mail.
- d. Consultant agrees to waive subrogation against the City of Seguin, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance.
- e. Provide that all provisions of this agreement concerning liability, duty, and standard of care together shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- f. For coverages that are only available with claims made policies, the required period of coverage will be determined by the following formula: Continuous coverage for the life of the contract, plus one year (to provide coverage for the warranty period) and an extended discovery period for a minimum of five years which shall begin at the end of the warranty period.

(f) **Waiver of Subrogation.** Consultant, its agents, employees and subcontractors, hereby waive any and all rights of subrogation against the City of Seguin arising out of any claim or incident for which insurance coverage or indemnification is required under the Contract Documents.

7. No Waiver of Immunity

The City's execution of and performance under this Agreement will not act as a waiver by the City of any immunity from suit or liability to which it is entitled under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

8. Remedies; No Waiver

In the event of a default or breach of this Agreement by the Consultant, the City reserves the right to choose among the remedies for the default or breach available to the City. These remedies may be used in conjunction with one another or separately, and together with any other statutory or common law remedies available to the City. Any failure by the City to enforce this Agreement with respect to one or more defaults by the Consultant will not waive the City's ability to enforce the Agreement after that time.

9. Miscellaneous Provisions

(a) This Agreement is governed by the law of the State of Texas. Exclusive venue for any dispute arising under this Agreement is in Hays County, Texas.

(b) As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act or failure to act.

(c) The Consultant agrees not to use funds received by it under the terms of this Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.

(d) The Consultant hereby affirms that Consultant and Consultant's firm have not made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of consultants to provide professional services to the City within the two years preceding the execution of this Agreement. A campaign contribution, as defined by the Texas Election Code or the Seguin City Code will not be considered as a valuable gift for the purposes of this Agreement.

(e) In performing the services required under this Agreement, the Consultant will not discriminate against any person on the basis of race, color, religion, sex, national origin, age, disability or ancestry. The Consultant agrees not to engage in employment practices which have the purpose or effect of discriminating against employees because of race, color, sex, religion, national origin, age, disability or ancestry. A breach of this covenant may be regarded as a default of the Consultant of the Agreement.

(f) All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term "will" is mandatory in this Agreement.

(g) Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing the provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

(h) All services provided pursuant to this Agreement are for the exclusive use and benefit of the City.

(i) The City of Seguin is governed by the Texas Public Information Act (the "Act"), Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this agreement may be subject to release under the Act. The Consultant shall not make any reports, information, data, etc. generated under this Agreement available to any individual or organization without the written approval of the City.

(j) In the event that the performance by either the City or the Consultant of any of its obligations under this Agreement is interrupted or delayed by events outside of their control such as acts of God, war, riot or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of such events.

(k) The City and the Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The City and the Consultant may not assign, sublet or transfer any interest in this Agreement without the written consent of the other.

(l) This Agreement represents the entire and integrated Agreement between the City and the Consultant and supersedes all prior negotiations, representations or agreements either written or oral. Except as to a change in the scope of services, the compensation for which does not exceed \$25,000.00, this Agreement may be amended only by written instrument approved by the City's governing body and signed by both the City and the Consultant.

(m) Any exhibits and/or attachments attached to this Agreement are incorporated by reference into this Agreement as though included verbatim herein.

(n) In the event of any conflict between these Terms and Conditions and the provisions of any exhibit or attachment to this Agreement, these Terms and Conditions will govern and control.