



04 October 2023

## **A PROPOSAL TO THE CITY OF DRIPPING SPRINGS**

to complete a

### **HISTORIC RESOURCES SURVEY AND BUILDING INVENTORY**

for the

### **OLD FITZHUGH ROAD HISTORIC DISTRICT**

in

### **DRIPPING SPRINGS, TX**

for a

**Fee of \$16,250**

*Post Oak Preservation Solutions, LLC (Post Oak Preservation Solutions/Consultant) proposes to provide the following services on behalf of the City of Dripping Springs (Client) in conjunction with the ongoing preservation efforts of the Old Fitzhugh Road Historic District in Dripping Springs, Texas. The scope of work shall include field work, research, photography, preparation of forms to be submitted to the City of Dripping Springs. The proposed scope of work is as follows:*

### **Task 1: Historic District Survey & Research**

*The first phase of this project is to research the development of Dripping Springs and all of the buildings within the Old Fitzhugh Road Local Historic District. An intensive-level historic resources survey will be conducted to document changes and integrity within the District. Scope includes:*

- Historic research and windshield survey to determine survey boundaries
- Review of existing surveys
- Verification of boundaries with City and community members
- 2-3 days of intensive-level surveying within survey boundaries
- Intensive-level research on individual properties

#### Timing

Research will begin upon execution of this agreement. Survey fieldwork will occur at a mutually agreed upon time over the course of a few days in winter 2023/2024. Later fieldwork may be completed on an as needed basis.



## Task 2: Historic Resources Survey Report

The second phase of the project is to analyze, organize, and synthesize the information and research gathered during Task 1 and to generate a Historic Resources Survey Report (HRSR). The report will include:

- Data analysis
- Historic context statement
- Identification of contributing and non-contributing resources
- Inventory table of all surveyed historic-age resources within the survey boundary
- Designation recommendations & mapping

### Timing

Draft 1 of the survey report will be submitted to the City within two months of field work completion. The City will have two weeks to provide consolidated feedback on Draft 1 to Post Oak. A final report will be submitted within one month of receipt of consolidated feedback.

## Task 3: Historic Preservation Recommendations

The final phase of this project will include analysis of the existing conditions, pressures, strengths, and weaknesses of the historic preservation program in the City of Dripping Springs. Post Oak will provide a recommendations memo to the City pertaining to, but not limited to, the following subjects:

- Historic Preservation Ordinance
- Implementation Standards
- Design Guidelines & Visions Statements
- Future survey and/or designation opportunities (both locally and nationally)

### Timing

The preservation recommendations will be delivered to the City within one month of fieldwork completion.

## Billing

The fee of **\$16,250** covers historic resource survey services.

Post Oak Preservation Solutions will bill for the services provided according to the billing milestones described below:

1. Retainer due upon execution of this agreement	\$1,625
2. Completion of survey fieldwork	\$3,250
3. Submit HRSR draft to city for comments	\$6,500
4. Revise and finalize HRSR	\$3,250
5. Submit historic preservation recommendations to the city	\$1,625

**This proposal expires in ninety (90) days if not accepted by the Client.**

**The Standard Terms and Conditions below apply to this proposal.**



## Standard Terms And Conditions

1. **ARTICLE 1: PROFESSIONAL SERVICES**
  - 1.1. Parties. "Client" refers to the Client on page one and "Professional" refers to Post Oak Preservation Solutions, LLC.
  - 1.2. Services. In connection with the property described in the Proposal ("Property"), Professional shall render the professional services ("Services") for the project described in the Proposal ("Project") as outlined in the Proposal and any Amendments.
  - 1.3. Agreement. The Professional Services Agreement includes the Proposal, Amendments to the Proposal, and these Terms and Conditions (collectively, the "Agreement").
2. **ARTICLE 2: PROPOSALS**
  - 2.1. Scope. The Proposal(s) shall identify the specific scope of Services to be performed and the amount and type of compensation for the specific Services ("Basic Services"). Additional Services are services expressly denominated as Additional Services. Additionally, any services not expressly included in Basic Services are considered "Additional Services". Professional is entitled to be paid additional compensation for all Additional Services and as well as additional time to perform. Compensation for Additional Services shall be charged on an hourly basis at Professional's customary hourly rates unless a fixed fee is agreed upon in writing. Such fees and expenses will be billed monthly to Client.
  - 2.2. Acceptance of Agreement. Client shall authorize and Professional shall commence work upon Professional's receipt of the properly executed and signed Proposal(s), as may be amended from time to time. If the Agreement is not executed by Client within ninety (90) days of the date tendered, it shall become invalid unless: (1) Professional extends the time in writing; or (2) at the sole option of Professional, Professional accepts Client's oral authorization to proceed with the Services, in which event the terms of the oral authorization shall be presumed to include all the terms of this Agreement. Professional's performance of the Services under the oral authorization shall be in reliance on the inclusion of all the terms of this Agreement in the oral authorization.
3. **ARTICLE 3: CHANGES**
  - 3.1. Changes. The Professional and Client may at any time, by written amendment, make changes within the general scope of individual Proposal(s) or relating to Services to be performed. If Client revises its designs for the construction of the Project after issuance of the Client's Plans for Submittal for the Project then any additional services necessary as a result of such change shall be considered an Additional Service. If such changes cause an increase or decrease in the Professional's cost of, or time required for, performance of any Services under individual Proposals, an equitable adjustment shall be made and reflected in a properly executed Amendment or Additional Services Proposal.
  - 3.2. Regulatory Changes. In the event that there are modifications or additions to regulatory requirements relating to the Services to be performed under this Agreement after the date of execution of this Agreement, the increased or decreased cost of performance of the Services provided for in this Agreement and subsequent Proposals shall be reflected in an appropriate Proposal Amendment.
4. **ARTICLE 4: THE TERM**
  - 4.1. Term. Professional shall be retained by Client as of the date Client executes the attached Proposal until the Services have been fully performed or until the Professional's Services are terminated under provisions of the Agreement. Professional will pursue completion of Services in accordance with the timely completion specified in the Proposal and any amendments thereto. Professional shall not be liable or responsible for any delays caused by circumstances beyond Professional's control, including, without limitation, previously unknown conditions, market factors, acts or omissions of third parties, decisions by governing jurisdictions, or other factors which may affect the future progress of the Project. In the event the Basic Services are not completed within 48 months after execution of the Agreement through no fault of Professional then all services thereafter shall be considered Additional Services.
5. **ARTICLE 5: DUTIES**
  - 5.1. Access. Client will provide Professional with access to the Property or to any other site as required by Professional for performance of the Services.
  - 5.2. Client-Furnished Data. Client shall provide all criteria and full information as to Client's requirements for the Project, designate a person to act with authority on Client's behalf in respect to all aspects of the Project, examine and respond promptly to Professional's submissions, coordinate communications with Client's consultants, and give prompt written notice to Professional whenever he/she observes or otherwise becomes aware of any defect in the Services. Client shall designate a representative to be its authorized representative and person with whom Professional can communicate.
  - 5.3. Other Information. Professional shall be entitled to rely on the accuracy and completeness of information, services, and work provided by others and shall not be liable for same, even when incorporated into Professional's Services. Professional does not warrant the accuracy of the information obtained from those sources and has not been requested to independently verify such information.
  - 5.4. Reporting Obligations. Client has responsibility for complying with all legal reporting obligations. Nothing in the Agreement precludes Professional from providing any notices or reports that it may be required by law to give to governmental entities.



6. ARTICLE 6: COMPENSATION OF SERVICES

- 6.1. Compensation of Services. Professional's compensation for Basic Services is set forth in individual Proposal(s).
- 6.2. Compensation. Client agrees to pay Professional for Basic Services in accordance with the Agreement. Expenses directly related to these services, including reproduction, travel, long distance telephone bill, express mail, and special deliveries and subcontractor expenses shall be billed to Client..
- 6.3. Payments. Professional will invoice Client in accordance with the terms of the Proposal, and amendment(s) for Services and reimbursables. Client agrees to promptly pay Professional at PO Box 12747, San Antonio, Texas 78212, the full amount of each such invoice upon receipt.
- 6.4. Right to Stop Performance. If Client does not pay any amount due to Professional within thirty (30) days after the invoice date, Professional may, upon three (3) additional days verbal or written notice to Client, stop performance of the Services until payment of the amount owed has been received.
- 6.5. Interest. Payments due and unpaid to Professional under the Agreement shall bear interest at the rate of five percent (5%) per annum, or lesser if required by law, calculated from the date of the invoice, if the payment is not made within thirty (30) days of the date of the invoice.
- 6.6. Attorney's Fees. In the event Professionals' invoices for Services are given to any attorney for collection, or if suit is brought for collection, then Client shall pay Professional all cost of collection, including the maximum attorney's fees allowed by law and court costs, in addition to other amounts due.

7. ARTICLE 7: TERMINATION OF SERVICES

- 7.1. Termination. This Agreement may be terminated without cause at any time prior to completion of Professional's services, either by Client or by Professional, upon seven (7) days written notice to the other at the address of record. Upon receipt of written notice from Client to discontinue work, Professional shall discontinue work under this Agreement. Notice of termination shall release Professional from any further obligation to provide Services to Client on this Agreement, but all obligations of Client shall continue in regards to payment to Professional for services rendered prior to termination.. In the event Client terminates the Agreement based on Client's reasonable opinion that Professional has failed or refused to prosecute the Services efficiently, promptly or with diligence, Professional shall have ten (10) days, from the receipt of written notification by Client, to cure such failure to perform in accordance with the terms of this Agreement or Proposal(s). Client waives any and all claims it has against Professional arising out of termination of this Agreement by Professional. Client waives any and all claims, causes of action, or damages that it has or may have against Professional for failure to perform further Services under this or any other Agreement with Client.
- 7.2. Compensation in Event of Termination. Upon termination by either Client or Professional, Client shall pay Professional with respect to all contracted Services rendered and expenses incurred before termination an amount fixed by applying Professional's standard hourly rates, in force at the time of termination, to all Services performed to date, in addition to termination settlement costs Professional reasonably incurs relating to commitments which had become firm before the termination. If a Part of the services rendered by Professional is not complete at the time notice of termination is given, then Client shall pay the fee for such Part multiplied by the percentage of the services completed.

8. ARTICLE 8: RELATIONSHIP OF PARTIES

- 8.1. Independent Contractor. It is understood that the relationship of Professional to Client shall be that of an independent contractor. Neither Professional nor employees of Professional shall be deemed to be employees of Client.

9. ARTICLE 9: LIMITATION OF LIABILITY

- 9.1. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF PROFESSIONAL, ITS EMPLOYEES AND AGENTS, TO CLIENT FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES, OR DAMAGES WHATSOEVER FROM ANY CAUSE OR CAUSES, INCLUDING, BUT NOT LIMITED TO, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR ERRORS OR OMISSIONS SHALL NOT EXCEED THE TOTAL FEE PAID TO PROFESSIONAL. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCURRED DUE TO THE FAULT OF THE OTHER PARTY, REGARDLESS OF THE NATURE OF THIS FAULT OR WHETHER IT WAS COMMITTED BY CLIENT OR BY PROFESSIONAL, THEIR EMPLOYEES OR AGENTS, SUBCONSULTANTS. CONSEQUENTIAL DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF USE, LOSS OF TAX BENEFITS OR CREDITS AND LOSS OF PROFIT.
- 9.2. No Certification. Professional shall not be required to sign any documents, no matter by whom requested, that would result in Professional having to issue a certification, guarantee, or warranty. Client also agrees not to make resolution of any dispute with Professional or payments of any amount due to Professional in any way contingent upon Professional's signing any such certification.
- 9.3. Delays. Professional is not responsible for delays caused by factors beyond Professional's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of Client to furnish timely information or approve or disapprove of Professional's Services or work product promptly, or delays caused by faulty performance by Client or by contractors of any level. When such delays beyond Professional's reasonable control occur, Client agrees Professional is not responsible for damages, nor shall Professional be deemed to be in default of this Agreement. In the event such delay



exceeds ninety (90) days and such delay is not due to the fault of Client or Professional, Professional shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation as an Additional Service. In the event Professional is delayed by Client and such delay exceeds thirty (30) days, Professional shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.

10. ARTICLE 10: MISCELLANEOUS

- 10.1. Entire Agreement. The Agreement contains the entire agreement between Professional and Client, and no oral statements or prior written matter shall be of any force or effect. The Agreement may be modified only by written document executed by both parties.
- 10.2. Modifications. No one has authority to make variations in, or additions to, the terms of this Agreement on behalf of Professional other than one of its officers, and then only in writing.
- 10.3. Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- 10.4. Venue. Professional and Client agree that the Services will be performed or partially performed in Bexar County, Texas, and the venue of any legal action or lawsuit under the Agreement shall be exclusively in the courts of Bexar County, Texas.
- 10.5. Severability. If any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a party hereof, and the remaining provisions shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision, there shall be added automatically as a part of the Agreement, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- 10.6. Construction of Agreements. The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement or any amendments or exhibits.
- 10.7. Successor and Assigns. Client, for him/herself and partners, if any, and Professional, for itself, each binds him/herself or itself and its successors, executors, administrators and assigns to the other party to this Agreement and to partners, successors, executors, administrators and assigns of such other party in respect to all covenants of the Agreement. Neither Client nor Professional shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than Client and Professional. Client's representative signing below warrants that s/he or she has full authority to bind Client to this Agreement and further warrants that Client has an ownership interest in the real property that is part of the Project. Client's representative signing below agrees to indemnify, save, and hold Professional harmless for any and all claims, causes of action, and damages that may arise against Professional if the representations contained in this Paragraph are not correct.
- 10.8. Mediation. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to the institution of legal proceedings by either party. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Bexar County, Texas.
- 10.9. If such matter relates to or is the subject of a lien arising out of Professional's Services, Professional may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or other legal proceedings.
- 10.10. No Warranty or Guarantee. Professional makes no warranty, either expressed or implied, as to its services which constitute professional judgment. Client recognizes that neither Professional nor any of Professional's subconsultants or subcontractors owes any fiduciary responsibility to Client. Professional makes no guarantee as to its services and makes no guarantee that any governmental authority will approve or grant any tax credits, rebates, approvals or other relief.
- 10.11. Survival of Provisions. Termination of the Services for any reason whatsoever shall not affect (a) any right or obligation of any party that is accrued or vested prior to such termination, and any provision of the Agreement relating to any such right or obligation shall be deemed to survive the termination of the Services or (b) any continuing obligation, liability or responsibility of Professional and of Client which would otherwise survive termination of the Services.



**The above proposal is agreed upon and accepted.**

City of Dripping Springs (Client)  
For the City, \_\_\_\_\_

Post Oak Preservation Solutions  
For the firm, Ellis Mumford-Russell

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Initials \_\_\_\_\_