

ATTACHMENT 7.5 TO RFQ No. REO 02-05-2008 BOR

AGREEMENT FOR MASTER PLANNING SERVICES

This Agreement for Master Planning Services (“Agreement”) is made and entered into effective as of _____, 2008 (the “Effective Date”), by and between the Board of Regents of The University of Texas System (the “Owner”) and _____ with a principal place of business at _____ (“Contractor”), taxpayer ID _____.

WHEREAS, the Owner sought, through the Request for Qualifications process, master planning services for the performance of numerous tasks culminating in the creation of a minimum of two conceptual master plans for the development of approximately 346-acres along Lady Bird Lake in Austin, Texas (the “Project”); and

WHEREAS, the Contractor submitted its qualifications and proposal (collectively, the “Contractor’s Proposal”) during the Request for Qualifications Process and the Owner desires to accept the Contractor’s Proposal; and

WHEREAS, the Contractor represents that the Contractor has the experience, expertise, and appropriate skills necessary to perform the services described herein.

NOW THEREFORE, for and in consideration of the mutual promises and covenants expressed herein, the parties agree as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date and terminate on the final completion of the Contractor’s Services unless terminated earlier as provided herein. Final completion of the Contractor’s Services is anticipated to occur between March and June 2009.

2. CONTRACTOR’S SERVICES

2.1 Contractor agrees to perform the services specifically described in **Schedule A** and all other services reasonably inferable from **Schedule A** and necessary for complete performance of Contractor’s obligations under this Agreement (collectively, the “Contractor’s Services”) in accordance with the Project Milestone Schedule attached as **Schedule B**. To the extent of any conflict between the terms in **Schedule A** and this Agreement, the terms of this Agreement shall prevail.

2.2 The Owner and Contractor agree and acknowledge that the Owner is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing Contractor’s Services. Contractor accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Contractor covenants with the Owner to use its best efforts, skill, judgment, and abilities to perform Contractor’s Services and to further the interests of the Owner in accordance with the Owner’s requirements and procedures, in accordance with professional standards of care

- and the orderly progress of the Project, and in compliance with all applicable national, federal, state and municipal, laws, regulations, codes, ordinances and orders and with those of any other body or authority having jurisdiction. Contractor warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the Project.
- 2.3 Contractor warrants, represents, covenants, and agrees to maintain a staff of properly trained, credentialed, and experienced personnel to ensure satisfactory performance under this Agreement. Contractor shall manage its services, administer the Project and coordinate other professional and consulting services as necessary for the complete performance of Contractor's obligations under this Agreement. Contractor shall not replace or substitute other staff or consultants for those Contractor has identified to the Owner without the Owner's prior written consent.
 - 2.4 Contractor's Services shall be reasonably accurate and free from material errors or omissions. Contractor shall promptly correct any known or discovered error, omission, or other defect in the plans, data, reports, or other services provided by Contractor without any additional cost or expense to Owner.
 - 2.5 Contractor shall use reasonable efforts to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Contractor by Owner or any other party and used by Contractor for the Project.
 - 2.6 Contractor shall designate a representative primarily responsible for Contractor's Services under this Agreement. The designated representative shall act on behalf of Contractor with respect to all phases of Contractor's Services and shall be available as required for the benefit of the Project and Owner. The designated representative shall not be changed without prior approval of the Owner, which approval shall not be unreasonably withheld.
 - 2.7 The Contractor shall fully document its Project activities in drawings, reports or other methods as appropriate and as identified in the Contractor's Proposal. The Contractor shall bear the cost of providing all plans, specifications and other documents used by the Contractor and its subcontractors.
 - 2.8 All work performed under this Agreement shall be completed to the satisfaction of the Owner's representative assigned to the Project. The Owner's representative shall decide all questions regarding Contractor's performance under the Agreement and such decisions shall be final and conclusive.
 - 2.9 Should Contractor's services not conform to the requirements of this Agreement and the Contractor's Proposal as determined by the Owner's representative, Owner may order the Contractor to re-perform such services at no additional expense to the Owner or deduct the fees for such services from any other fees payable to the Contractor.
 - 2.10 Additional Services are services not included in the Contractor's Services and not reasonably inferable from Contractor's Services. Additional Services shall be provided only if authorized or confirmed in writing by the Owner. Prior to commencing any Additional

Service, Contractor shall prepare for acceptance by the Owner an Additional Services Proposal detailing the scope of the Additional Services and the proposed fee for those services. Contractor shall proceed to perform Additional Services only after written acceptance of the Additional Services Proposal by Owner. Upon acceptance by Owner, each Additional Services Proposal and the services performed by Contractor pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement.

3. INSURANCE, LICENSES, PERMITS, TAXES, FEES, LAWS AND REGULATIONS

- 3.1 Contractor shall carry such professional liability and errors and omissions insurance, covering the services provided under this Agreement, with a minimum limit of \$500,000 each claim and \$500,000 aggregate. The fees for such insurance will be at the expense of the Contractor. Contractor shall deliver a certificate of insurance indicating the expiration date and existence of the Contractor’s professional liability insurance before commencement or continuation of performance of the services under this Agreement.
- 3.2 Contractor will obtain, maintain in effect, and pay the cost for all licenses, permits, or certifications that may be necessary for Contractor’s performance of this Agreement.
- 3.3 Contractor will be responsible for the payment of all taxes, excises, fees, payroll deductions, employee benefits (if any), fines, penalties or other payments required by federal, state, or local law or regulation in connection with Contractor’s performance of this Agreement.
- 3.4 Contractor will comply with, and will be responsible for requiring its officers, employees, and subcontractors to comply with, all applicable federal, state, and local laws and regulations; the *Rules and Regulations* of the Board of Regents of The University of Texas System; and the rules and regulations of The University of Texas System (the “System”).
- 3.5 For services performed on Owner's premises, the Contractor and each subcontractor engaged by Contractor on the Project shall furnish to Owner evidence of insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement.

Worker's Compensation	Statutory Limits
Employer's Liability	
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 policy limit
Bodily Injury by Disease	\$1,000,000 each employee
Commercial General Liability	\$1,000,000 each occurrence
	\$1,000,000 aggregate
Business Auto Liability	
Combined Single Limit	\$1,000,000 each occurrence

The Owner shall be an additional insured on the General Liability policy, and the Worker's Compensation policy shall include a waiver of subrogation in favor of the Owner.

Required insurance shall not be cancelable without thirty (30) days' prior written notice to Owner.

Upon request, the Contractor shall furnish complete sets of all required insurance policies to Owner for review.

4. PATENTS, COPYRIGHT, AND TECHNOLOGY

Contractor expressly assigns all rights and interests it may have, including copyrights, in any plan, report, invention, discovery, technology, the improvement to any existing invention, discovery, or technology, or the data, notes, and records that result from Contractor's performance of this Agreement (collectively, the "Intellectual Property"). All right and interest in or to the Intellectual Property shall be determined by the *Rules and Regulations* of the Board of Regents of The University of Texas System and the provisions of any System contracts or grants that relate to the services performed by Contractor. If this assignment of rights in the Intellectual Property is judged ineffective, Owner shall have an irrevocable, paid-up, and perpetual non-exclusive license and right, which shall survive the termination of this Agreement, to use the Intellectual Property, including the originals thereof, and the ideas and designs contained therein, for any purpose, regardless of whether Contractor remains as the Contractor, has resigned, this Agreement has been terminated, Contractor's scope of services has been modified, or the services herein have been completed. Upon termination of this Agreement, Contractor shall deliver to the appropriate representative of the Owner all data, notes, records, and other material related to the services performed by Contractor together with any keys, identification badges, or equipment owned by the Owner.

5. CONFIDENTIAL AND PROPRIETARY INFORMATION

Contractor shall not use, publish, or disclose to any third party any data, notes, information or records related to Contractor's performance of this Agreement or any data or information disclosed to Contractor that is identified by Owner as confidential or proprietary data. In the event that Contractor is required to disclose any data, notes, records, or information that is subject to this **Section 5**, Contractor shall notify Owner prior to such disclosure in order that Owner may take such action as may be available to prohibit the disclosure of the information. All information owned, possessed or used by Owner that is communicated to, learned, developed or otherwise acquired by Contractor in the performance of services for Owner, which is not generally known to the public, shall be confidential and Contractor shall not disclose any such confidential information, unless required by law. Contractor shall not announce or advertise its engagement by Owner in connection with the Project or publicly release any information regarding the Project without the prior written approval of Owner.

6. OWNER'S RESPONSIBILITIES

6.1 Owner will compensate Contractor for services in accordance with **Schedule C**. Total compensation to Contractor for the term of this Agreement, including expense

reimbursement, shall not exceed the Contract Amount stated on **Schedule C**. Contractor shall present monthly applications for payment to the Owner detailing the Contractor's Services and approved Additional Services performed and the approved Reimbursable Expenses incurred for the Project in the previous month. With each application for payment, Contractor shall submit payroll information, receipts, invoices, a completed and signed "HUB Subcontracting Plan Prime Contractor Progress Assessment Report" (see form at page 13 of **Exhibit H**, Policy on Utilization Historically Underutilized Businesses for Professional Services), and such other forms and evidence of payment that Owner or its designated representatives shall deem necessary to support the amount requested. Payment for services performed shall be processed within thirty (30) days of Owner's receipt of an acceptable invoice in accordance with **Schedule C**. The Owner shall not be obligated to make any payment to Contractor if Contractor is in breach or default under this Agreement, or any part of such payment is attributable to Contractor's Services that are not performed in accordance with this Agreement.

- 6.2 Unless approved in advance by the Owner, Contractor shall pay for all consultant or subcontractor services and costs associated with Contractor's Services under this Agreement, out of Contractor's fees. Owner is not responsible for any such consultant or subcontractor fees or costs unless otherwise agreed to in writing.
- 6.3 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Contractor's Services.
- 6.4 The Owner may designate individuals from time to time serve as the Owner's representative authorized to act in the Owner's behalf with respect to the Project.

7. INDEPENDENT CONTRACTOR

Contractor recognizes that it is engaged as an independent contractor and acknowledges that Owner shall have no responsibility to provide insurance or other fringe benefits normally associated with employee status. Contractor, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, and that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner by reason of this Agreement.

8. HISTORICALLY UNDERUTILIZED BUSINESSES

The Owner has adopted **Exhibit H**, Policy on Utilization of Historically Underutilized Business ("Policy"), which is incorporated herein by reference. Contractor, as a material provision of the Agreement, must comply with the requirements of the Policy and adhere to any HUB Subcontracting Plan submitted with Contractor's Proposal. No changes to the HUB Subcontracting Plan can be made by the Contractor without the prior written approval of the Owner in accordance with the Policy.

9. DEFAULT AND TERMINATION

- 9.1 In the event that Contractor fails to carry out or comply with any of the terms and conditions of this Agreement, the Owner may notify Contractor of such failure or default

- in writing and demand that the failure or default be remedied within ten (10) days; and in the event that Contractor fails to remedy such failure or default within the ten (10) day period, the Owner shall have the right to cancel this Agreement upon ten (10) days' written notice.
- 9.2 Without limiting the foregoing, the following shall constitute a material breach by Contractor, upon the occurrence of which Contractor shall immediately notify the Owner: Contractor ceases its business operation, makes a general assignment for the benefit of creditors, is adjudged bankrupt, or becomes insolvent.
- 9.3 The termination of this Agreement, under any circumstances whatsoever, shall not relieve Contractor from liability for violations of this Agreement or any other act or omission of Contractor. Termination of this Agreement by the Owner pursuant to the terms of this Agreement shall not limit any other right or remedy available to the Owner at law or in equity.
- 9.4 This Agreement may be terminated, without penalty, by the Owner without cause by giving thirty (30) days' written notice of such termination to the Contractor, in which event Contractor shall be compensated for the work performed by Contractor through the date of termination.
- 9.5 In no event shall termination by the Owner as provided for under this section give rise to any liability on the part of the Owner including, but not limited to, any claims of Contractor for compensation for anticipated profits, unabsorbed overhead, or interest on borrowing. The Owner's sole obligation hereunder is to pay Contractor for products and/or services ordered and received by the Owner prior to the date of termination.
- 9.6 Performance by the Owner under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, then the Owner shall issue written notice to Contractor and the Owner may terminate this Agreement without further duty or obligation hereunder, other than payment for goods or services ordered and received by the Owner prior to the date of termination. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of the Owner.

10. INDEMNIFICATION

Contractor will save and hold harmless the Owner and the Owner's officers and employees from all claims, demands, causes of action, and judgments for taxes, license fees, excises, fines, and penalties; for supplies, services, or merchandise purchased by Contractor; for wages and fringe benefits of Contractor's employees; and for injury or death of any person or damage to property that result directly or indirectly from the negligent or intentional acts or omissions of Contractor or its officers, agents, or employees in the performance of this Agreement.

11. ASSIGNMENT

This Agreement is a personal service contract for the services of Contractor, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without the Owner's prior written consent.

12. NOTICES

Any notices required or permitted to be given shall be in writing and effective upon receipt and shall be sent by certified mail, return receipt requested, postage pre-paid, addressed as follows:

If to Contractor: _____

If to the Owner: Ms. Florence P. Mayne
Executive Director
Real Estate Office
The University of Texas System
201 West 7th Street, Suite 416
Austin, Texas 78701

Notwithstanding any other requirements for notices given by a party under this Agreement, if Contractor intends to deliver written notice to the Owner pursuant to Section 2251.054, *Texas Government Code*, then Contractor shall send that notice to the Owner as follows:

Dr. Scott Kelley
Executive Vice Chancellor for Business Affairs
201 W. 7th, Suite 810A
Austin, Texas 78701
Fax: (512) 499-4289
Email: LegalNotices@utsystem.edu

13. ENTIRE AGREEMENT; MODIFICATIONS

This Agreement supersedes all prior agreements, written or oral, between Contractor and the Owner and shall constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by in writing signed by Owner and Contractor.

14. VENUE; GOVERNING LAW

Travis County, Texas shall be the proper place of venue for suit on or in respect of the Agreement. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with

and governed by and enforced under the laws of the State of Texas without giving effect to principles of conflicts of law.

15. SEVERABILITY

If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not offset any other provision of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included.

16. WAIVER

A delay or omission by either party in exercising any right or power under this Agreement shall not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement shall not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement.

17. REPRESENTATIONS AND WARRANTIES BY CONTRACTOR

If Contractor is a corporation or a limited liability company, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Contractor and has been duly authorized to act for and bind Contractor.

18. FRANCHISE TAX CERTIFICATION

A corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. The Contractor agrees that each subcontractor and supplier under contract will also provide a certification of franchise tax status.

19. ELIGIBILITY CERTIFICATION

Pursuant to Section 2155.004, *Texas Government Code*, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the award or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

20. TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION

Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

21. PAYMENT OF DEBTS OR DELINQUENCY TO THE STATE

Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

22. PRODUCTS AND MATERIALS PRODUCED IN TEXAS

Contractor covenants and agrees that as required by Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under this Agreement, Contractor shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

23. DISPUTE RESOLUTION

To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Owner and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of Owner shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor; (ii) neither the issuance of this Contract by Owner nor any other conduct, action or inaction of any representative of Owner relating to this Contract constitutes or is intended to constitute a waiver of Owner's or the state's sovereign immunity to suit; and (iii) Owner has not waived its right to seek redress in the courts.

24. RECORDS

Records of Contractor's costs, reimbursable expenses pertaining to the Project, and payments shall be available to the Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless the Owner otherwise instructs Contractor in writing.

25. STATE AUDITOR'S OFFICE

Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c) *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including, without limitation, providing all records requested at a location in Austin, Travis County, Texas. Contractor will include this provision in all contracts with permitted subcontractors.

26. SCHEDULES AND EXHIBITS

The following Schedules and Exhibits are fully incorporated into this Agreement by reference:

Schedule A - Statement of Contractor’s Scope of Work

Schedule B - Project Milestone Schedule

Schedule C - Payment for Services

Exhibit H - Policy on Utilization – Historically Underutilized Businesses, including

Attachment 1 to Exhibit H – HUB Subcontracting Plan

IN WITNESS WHEREOF, Owner and Contractor have executed and delivered this Agreement to be effective as of the Effective Date.

BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM

[NAME OF CONTRACTOR]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A

SCOPE OF WORK

Contractor will provide the following services:

[Describe services to be provided – to be based on Contractor’s Proposal.]

SCHEDULE B

PROJECT MILESTONE SCHEDULE

[Identify specific tasks to be completed by Contractor by specific dates and identify any approvals required from the Owner before Contractor goes on to other tasks.]

SCHEDULE C

PAYMENT FOR SERVICES

SERVICE FEES: Contractor will charge the following fees for Contractor's Services:

- [Itemize fees]

Notwithstanding the foregoing, the cumulative amount of service fees remitted to Contractor under this Agreement shall not exceed \$ (complete) during the term of this Agreement ("Fee Cap") without the prior written approval of the Owner.

REIMBURSABLE EXPENSES: Reimbursable Expenses are in addition to service fees and include actual and reasonable expenses incurred by the Contractor and its employees solely and directly in connection with the performance of Contractor's Services for the following:

- Reasonable expenses of transportation and living expenses in connection with out-of-state travel and in connection with in-state travel for Contractor's employees and consultants that are located more than 50 miles from the place where they are usually and customarily assigned, but only as directed and approved in advance and in writing by Owner. Contractor shall be reimbursed without mark-up for such travel and living expenses, validly incurred directly and solely in support of the Project and approved by Owner. Provided, however, Contractor agrees and acknowledges that Contractor shall be subject to the Travel Allowance Guide promulgated by the Comptroller of Public Accounts for the State of Texas with regard to meals, lodging, mileage and all other expenses related to travel, and shall be reimbursed for the lesser of the actual cost of coach class airfare or the "average coach airfare," as that term is defined in the Travel Allowance Guide. The Owner advises Contractor that Contractor may be eligible for special fares offered to the Owner by selected airlines when Contractor is traveling to fulfill the purposes of this Agreement; Contractor should contact Owner's travel program director, Nancy Sutherland, at (512) 322-3725 for more information. Contractor agrees and acknowledges that Contractor shall not be reimbursed by the Owner for expenses that are prohibited or that exceed the allowable amounts set forth herein or in the Travel Allowance Guide.
- Professional models and renderings if requested by the Owner.
- Reproductions, printing, binding, collating and handling of reports, and drawings and specifications or other project-related work product, other than that used solely in-house for Contractor and its employees.
- Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project.
- Communication expenses such as long distance telephone, facsimile transmissions, express charges and postage that are directly attributable to the Project.

Contractor shall be reimbursed for the administrative charges in the immediately four preceding categories at the actual, out-of-pocket, reasonable costs for all approved expenses that are incurred by Contractor solely and directly in connection with the performance of the Contractor's Services and duties under this Agreement.

As a condition precedent to receiving reimbursement for expenses and disbursements, Contractor shall submit to the Owner receipts, invoices, and other documentation as required by the Owner within 30 days of the date(s) that the expense was incurred. Notwithstanding the foregoing, reimbursement for expenses and disbursements shall not exceed a maximum of \$ (complete) during the term of this Agreement ("Expense Cap") without the prior written approval of the Owner.

The Fee Cap and the Expense Cap are sometimes collectively referred to as the "Contract Amount." The Contract Amount shall not exceed \$ (complete) during the term of this Agreement.

EXHIBIT H

POLICY ON UTILIZATION – HISTORICALLY UNDERUTILIZED BUSINESSES

Exhibit H is included herein by reference

ATTACHMENT 1 TO EXHIBIT H

HUB SUBCONTRACTING PLAN

(Attach HUB Subcontracting Plan that was included with Contractor's Proposal)