

**BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM
CITY OF SAN ANTONIO**

**MASTER DEVELOPMENT
AGREEMENT**

November __ 2018

**MASTER DEVELOPMENT AGREEMENT
BETWEEN BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS
AND THE CITY OF SAN ANTONIO**

This Master Development Agreement (hereinafter referred to as this “Agreement”) is made and entered into by and between the City of San Antonio (the “CITY”), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee, and Board of Regents of the University of Texas System (hereinafter referred to as “UTS”) and whom together may sometimes be referred to as the “Parties.”

RECITALS

WHEREAS, UTS is seeking to initiate a 10-year vision and strategy for its downtown campus that would relocate its College of Business, develop a new School of Data Science and Digital Solutions, and locate its new National Security Collaboration Center on approximately 6.5 acres of land in the downtown urban core (the “Project”); and

WHEREAS, Phase 1 of the Project is anticipated to ultimately result in the investment of approximately \$341 million in real property improvements to the downtown area; and

WHEREAS, in order to implement this initiative, the CITY and Bexar County must provide for the sale and transfer of certain City- and County-owned property; and

WHEREAS, it is the intention of the CITY to facilitate the development of the Project to enhance the downtown area and assist UTS in achieving Tier 1 status; and

WHEREAS, the CITY is the owner of approximately 4.615 acres of property located at 506 Dolorosa and 702 Dolorosa respectively, as depicted on “**Exhibit A**” attached hereto (the “City-owned Properties”); and

WHEREAS, CITY has agreed to the sale of the City-owned properties to UTS as consideration for undertaking and completing the Project; and

WHEREAS, the City Council has authorized the City Manager or her designee to enter into this Agreement in accordance with City Ordinance No.2018-10-__-____, passed and approved on _____, 2018 to sell the City-owned Properties; **NOW THEREFORE:**

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

ARTICLE I. AGREEMENT PURPOSE

UTS shall undertake the Project which is anticipated to promote a public purpose related to UTS’s 10-year downtown vision.

ARTICLE II. AGREEMENT PERIOD

This Agreement shall commence upon the Effective Date listed on the signature page and terminate upon the earlier of: (A) _____; (B) _____ (the “Outside Termination Date”), or (C) termination of this Agreement as otherwise provided herein (the “Term”).

ARTICLE III. PROJECT REQUIREMENTS

A. The Project.

1. Development: UTS shall initiate its ten (10) year vision and strategy for the expansion of its downtown campus which shall include:
 - (a) the relocation of its College of Business;
 - (b) the development of a new School of Data Science and Digital Solutions;
 - (c) the development of a new National Security Collaboration Center.

UTS shall periodically demonstrate to CITY that it is in the process of or has secured funding to execute the development of the Project.

2. Milestones. Prior to invoking the right to purchase the City-owned Properties, the City and UTS shall mutually agree that the Project is being developed in accordance with Section A(1) above.

B. Pre-Closing Activities.

1. City shall provide a current Metes and Bounds Survey for each City-owned parcel.
2. City shall provide UTS with reasonable access to the City-owned Properties for due diligence with coordination and proper notice.
3. UTS shall be responsible for any and all costs associated with due diligence on the City-owned Properties including but not limited to appraisals and environmental studies.
4. UTS shall notify the City and the appropriate regulatory agencies of issues that may arise during due diligence period.

C. Purchase of CITY Property.

1. UTS shall purchase the City-owned Properties described below:
 - (a) 2.583 acres of land located at 506 Dolorosa, San Antonio, TX 78204 for the fair market value which shall not be less than FOUR MILLION NINE HUNDRED FIFTY THOUSAND DOLLARS AND 0 CENTS (\$4,950,000.00).

and

(b) 2.032 acres of land located at 702 Dolorosa, San Antonio, TX 78204 for the fair market value which shall not be less than TWO MILLION FOUR HUNDRED SEVENTEEN THOUSAND DOLLARS AND 0 CENTS (\$2,417,000.00).

The form of Deed Without Warranty for each property is attached as Exhibit B and C, respectively.

2. Closing on the City-owned Properties shall not occur until such time as City has vacated the City-owned Properties, which is anticipated to be as follows:

(a) The 506 Dolorosa site is being utilized for temporary modular offices that will require use until the renovations to City Hall are completed, relocation of City employees has occurred, and the site is decommissioned which is anticipated to be November of 2020;

and

(b) The 702 Dolorosa site is being utilized as a 173 space public parking lot and also includes S. Laredo Street from Dolorosa to Nueva. There are currently 24 metered parking spaces along S. Laredo. The City anticipates availability of the 702 Dolorosa property in October of 2019.

3. UTS shall purchase the City-owned Properties pursuant to applicable provisions under the Texas Local Government Code.
4. City shall pay for the Title Policy and half of escrow fees.
5. UTS shall pay for half of escrow fees and all remaining reasonable closing costs such as Recordation.
6. City shall not be required to provide any indemnification to UTS for the City-owned Properties and shall not be required to warranty that environmental impacts are not to be encountered when disturbing the land.

D. Post-Closing Obligations.

1. UTS shall work with the City to ensure the development of the City-owned Properties complies with the design standards of the River Improvement Overlay District (RIO-7b).
2. UTS shall complete necessary archaeology work for all ground-disturbing activities.
3. UTS is encouraged to coordinate views and shall provide appropriate access to Casa Navarro which is a State Historic Site, as well as, listed on the National Register of Historic Places.

5. UTS is encouraged to coordinate with the City in its design of the development an alley street, or other unobstructed means of pedestrian passage between Dolorosa St. and Nueva St.
6. UTS shall coordinate with the City to identify any future parking ingress and egress requirements with the City's Development Services at 702 Dolorosa to allow for appropriate access.
7. UTS shall work with the City to identify an appropriate amount of Right Of Way on 702 Dolorosa along S. Santa Rosa Avenue to plan for future widening needs in accordance with the CITY's Major Thoroughfare Plan.
8. UTS shall ensure the development is platted in accordance with UDC Section 35-430, noting allowable platting exceptions.
9. UTS shall work with the City identify options for tree preservation, landscape, and buffer requirements.
10. UTS shall work with the City to identify the appropriate tree mitigation/tree canopy replacement or mitigation measures.
11. UTS shall work with all utility companies for the purpose of maintaining and repairing their respective infrastructure.
12. In relation to a future S. Laredo Street closure from Dolorosa to Nueva, UTS shall coordinate with GSA to ensure there are no conflicts with the Federal Courthouse development across Nueva St.
13. UTS shall be responsible for any required re-location of CPS electric lines prior to CPS Energy removing lines from the City-owned properties, if easements or encroachments are not retained.

E. Other Conditions.

1. City will issue an RFP for the Continental Hotel located at 322 West Commerce in coordination with UTS to support a mixed use housing project for faculty and staff.
2. UTS will develop and submit a Phase 1 capital funding request to the City for FY2020. The capital funding will be considered by the City as part of the Fiscal Year 2020 Budget Process.
3. UTS will do an economic impact study and social economic study for the Phase 2 expansion prior to City Council consideration of any additional properties necessary for Phase 2.

4. UTS and the City are committed to a mutually beneficial build/lease arrangement within the new building for the relocation or placement of City of San Antonio and UTSA public safety resources.
- F. Compliance with Laws. During the Term of this Agreement, UTS shall operate the Project in accordance with the any and all applicable Federal, State and local laws and regulations.

ARTICLE IV. RETENTION AND ACCESSIBILITY OF RECORDS

UTS shall maintain the fiscal records and supporting documentation for investments and expenditures made for the Project under this Agreement (the “Records”). UTS shall retain the Records for the greater of: (1) Eight (8) years; or (2) the period required by other applicable laws and regulations.

ARTICLE V. MONITORING

The CITY reserves the right to confirm UTS's compliance with the terms and conditions of this Agreement. The CITY will provide UTS with a written report of the monitor's findings. If the monitoring report notes deficiencies in UTS's performance obligations under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by UTS. Should UTS fail to fulfill those requirements for UTS to meet its obligations under this agreement, CITY may pursue its remedies provided herein including for suspension or termination of this Agreement.

ARTICLE VI. DEFAULT/CURE PERIOD/SUSPENSION

- A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event UTS fails to comply with the its obligations herein, such non-compliance shall be deemed a default. The CITY shall provide UTS with written notice as to the nature of the default (the “Notice of Default”) and grant UTS a sixty (60) day period from the receipt of Notice of Default to cure such default (the “Cure Period”). Should UTS fail to cure the default within the Cure Period, CITY may, upon written notice (the “Notice of Suspension”), suspend the conveyance of the City-owned properties to UTS under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.
- B. In the case of default for causes beyond UTS’s reasonable control, which cannot with due diligence be cured within the Cure Period, the CITY may extend the Cure Period provided that UTS shall: (1) immediately upon receipt of Notice of Default advise the CITY of UTS's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.
- C. A suspension under this Article VIII shall be lifted by the City upon a showing of compliance by the UTS or written waiver by CITY of the deficiency in question.

D. CITY shall not be liable to UTS or to UTS's creditors for costs incurred during any term of suspension of this Agreement.

ARTICLE VII. TERMINATION

A. The CITY shall have the right to terminate this Agreement in whole or in part should UTS fail to perform under the terms and conditions herein and fails to cure a default in accordance with Article VIII above. Such Termination may occur at any time prior to the end of the Term of this Agreement. CITY may, upon issuance to UTS of written notice (the "Notice of Termination"), terminate this Agreement and withhold conveyance of the City-owned properties. A Notice of Termination shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

B. In addition to the above, this Agreement may be terminated in whole or in part as follows:

1. By the CITY (with the consent of UTS) in which case the two parties shall agree upon the termination conditions, including the repayment of funds and , if any, the effective date and in the case of partial termination, the portion to be terminated; or
2. By the UTS upon written notification to the CITY, setting forth the reasons of such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, CITY determines in its sole discretion that the remaining portion of the Agreement will not accomplish the purpose for which the Agreement was made, then CITY may terminate the Agreement in its entirety.

ARTICLE VIII. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified (a "Notice"). Any Notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

If intended for CITY, to:

City of San Antonio
Attn: Director
Center City Development Office
P.O. Box 839966

San Antonio, TX 78283-3966

If by delivery, to:

Director of Central City Development Office
City Clerk
City of San Antonio
100 Military Plaza
San Antonio, TX 78205

If intended for UTS, to:

With copy to

ARTICLE IX. CONFLICT OF INTEREST

A. UTS shall use reasonable business efforts to ensure that no person shall participate in the selection, award or administration of a Project contract when: (1) the Project contract calls for payments to be made to such contractor on terms that are greater than those which are customary in the industry for similar services on similar terms, and (2) any of the following have a financial interest in the firm or person selected to perform the Project contract:

- (1) that person
- (2) any immediate family member of that person;
- (3) any business partner of that person;
- (4) any organization which employs, or is about to employ, any of the above.

C. To the extent UTS hires any former or current official or employee of CITY who would be subject to the CITY's Code of Ethics, as same exists from time to time, UTS shall take reasonable efforts to ensure that such person complies with all applicable requirements of the said Code of Ethics in dealings between CITY and UTS.

ARTICLE X. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. UTS shall use reasonable commercial efforts to ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity located on the City-owned Properties following conveyance.

B. None of the performances rendered by UTS under this Agreement shall involve any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

ARTICLE XI. LEGAL AUTHORITY

A. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

C. CITY will have the right to suspend or terminate this Agreement in accordance with Articles VIII and IX if there is a dispute as to the legal authority, of either UTS or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. UTS is liable to CITY for any money it has received from CITY for performance of the provisions of this Agreement if CITY suspends or terminates this Agreement for reasons enumerated in this Article.

ARTICLE XII. LITIGATION AND CLAIMS

A. UTS shall give CITY prompt notice in writing of any formal legal action, including any proceeding before an administrative agency, filed against UTS directly arising out of this Agreement during the Term of this Agreement. UTS shall notify the CITY promptly of any legal action or of any proceeding filed under the federal bankruptcy code by UTS. UTS shall submit a copy of such notice to CITY within thirty (30) calendar days after receipt. No funds or land provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. Notwithstanding the above notice requirements, it is expressly agreed by the Parties that UTS is not required to notify CITY of any claim or litigation that may arise out of UTS's business operations including without limitation personal injury actions (slip and fall claims), employer-employee disputes, product-related claims or other operational activities or relationships.

B. UTS acknowledges that CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq. and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

ARTICLE XIII. ATTORNEY'S FEES

. In the event UTS should default under any of the provisions of this Agreement and the CITY should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of UTS herein contained, UTS agrees to pay to the reasonable fees of such attorneys and such other expenses so incurred by the CITY.

ARTICLE XIV. CHANGES AND AMENDMENTS

A. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both Parties to this Agreement.

B. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the conveyance of public land including those of Texas Local Government Code Chapter 272 and the terms and conditions of this Agreement.

C. Any alterations, additions, or deletions to the terms of this Agreement retroactively required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

ARTICLE XV. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the Parties hereto that, except as otherwise expressly provided herein, any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between UTS and the CITY or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

ARTICLE XVI. NON-ASSIGNMENT

This Agreement is not assignable by any Party without the written consent of the non-assigning Party. Notwithstanding the foregoing, UTS may assign this Agreement to a parent, subsidiary, affiliate entity or newly created entity resulting from a merger, acquisition or other corporate restructure or reorganization of UTS (a "Permitted Assignee"). In either of such cases, UTS shall give CITY no less than sixty (60) days prior written notice of the assignment or other transfer. Any and all future assignees must be bound by all terms and/or provisions and representations of this Agreement as a condition of assignment. Other than assignments to a Permitted Assignee, any attempt to assign the Agreement without the notification and subsequent consent of CITY shall release CITY from performing any of the terms, covenants and conditions herein. Any assignment of this Agreement in violation of this Article shall constitute a default and permit the CITY to pursue its rights under this Agreement.

ARTICLE XVII. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the Parties to this Agreement relating to the subject matter

of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

ARTICLE XVIII. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

The CITY may grant temporary relief from any deadline for performance of any term of this Agreement if UTS is prevented from compliance and performance by any unavoidable cause not attributed to the fault or negligence of the UTS, including without limitation: an act of war, action or order of legal authority, act of God, or regulatory delay. The burden of proof for the need for such relief shall rest upon UTS. To obtain relief based upon *force majeure*, UTS must file a written request with the CITY. CITY will not unreasonably withhold its consent.

ARTICLE XIX. INCORPORATION OF EXHIBITS

Each of the Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties.

Exhibit A:

Exhibit B:

Exhibit C:

Exhibit D:

Exhibit E:

Exhibit F:

Exhibit G:

[Signatures on Following Page]

WITNESS OUR HANDS, EFFECTIVE as of _____, 2018 (the “Effective Date”):

Accepted and executed in two duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2018-10-__-____, dated _____, 2018, and UTS pursuant to the authority of its _____.

City of San Antonio,
a Texas municipal corporation

University of Texas San Antonio
a _____

By: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved As To Form:

City Attorney