

MATERIAL SUPPORTING THE AGENDA

VOLUME XLIVa

This volume contains the Material Supporting the Agenda furnished to each member of the Board of Regents prior to the meetings held on

October 8, 1996  
November 13-14, 1996  
December 20, 1996

The material is divided according to the standing committees and the meetings that were held and is color coded as follows:

White paper - for documentation of all items that were presented before the deadline date.

Blue paper - all items submitted to the Executive Session and distributed only to the Regents, Chancellor and Executive Vice Chancellors of the System.

Yellow paper - emergency items distributed at the meeting.

Material distributed at the meeting as additional documentation is not included in the bound volume, because sometimes there is an unusual amount and other times some people get copies and some do not get copies. If the Executive Secretary was furnished a copy, then that material goes into the appropriate subject file.



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Material Supporting the Agenda  
of the  
Board of Regents  
The University of Texas System

Meeting No.: 897

Date: November 13-14, 1996

Location: Dallas, Texas

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BOARD OF REGENTS  
OF  
THE UNIVERSITY OF TEXAS SYSTEM

CALENDAR

Host Institution: The University of Texas Southwestern  
Medical Center at Dallas

Date: Wednesday, November 13, 1996

Time: 3:00 p.m.

Place: Cambridge Room  
Le Meridien Hotel  
650 North Pearl Street  
Dallas, Texas

Purpose: Convene in Open Session, Recess to  
Executive Session per the Agenda on  
Pages Ex.S 1 - 2, Reconvene in Open  
Session, and Recess

See Pages B of R 1 - 2,  
Items A - D

Date: Thursday, November 14, 1996

Time: 9:30 a.m.

Place: Room NA8.102, Hamon Biomedical Research  
Building (Open Session and Briefing  
Session)  
The University of Texas Southwestern  
Medical Center at Dallas  
6000 Harry Hines Boulevard  
Dallas, Texas

Purpose: Reconvene in Open Session and Recess to  
Briefing Session and Lunch

See Pages B of R 3 - 18,  
Items E - J

Date: Thursday, November 14, 1996 (continued)

Time: 1:00 p.m. or Upon Recess of Briefing Session

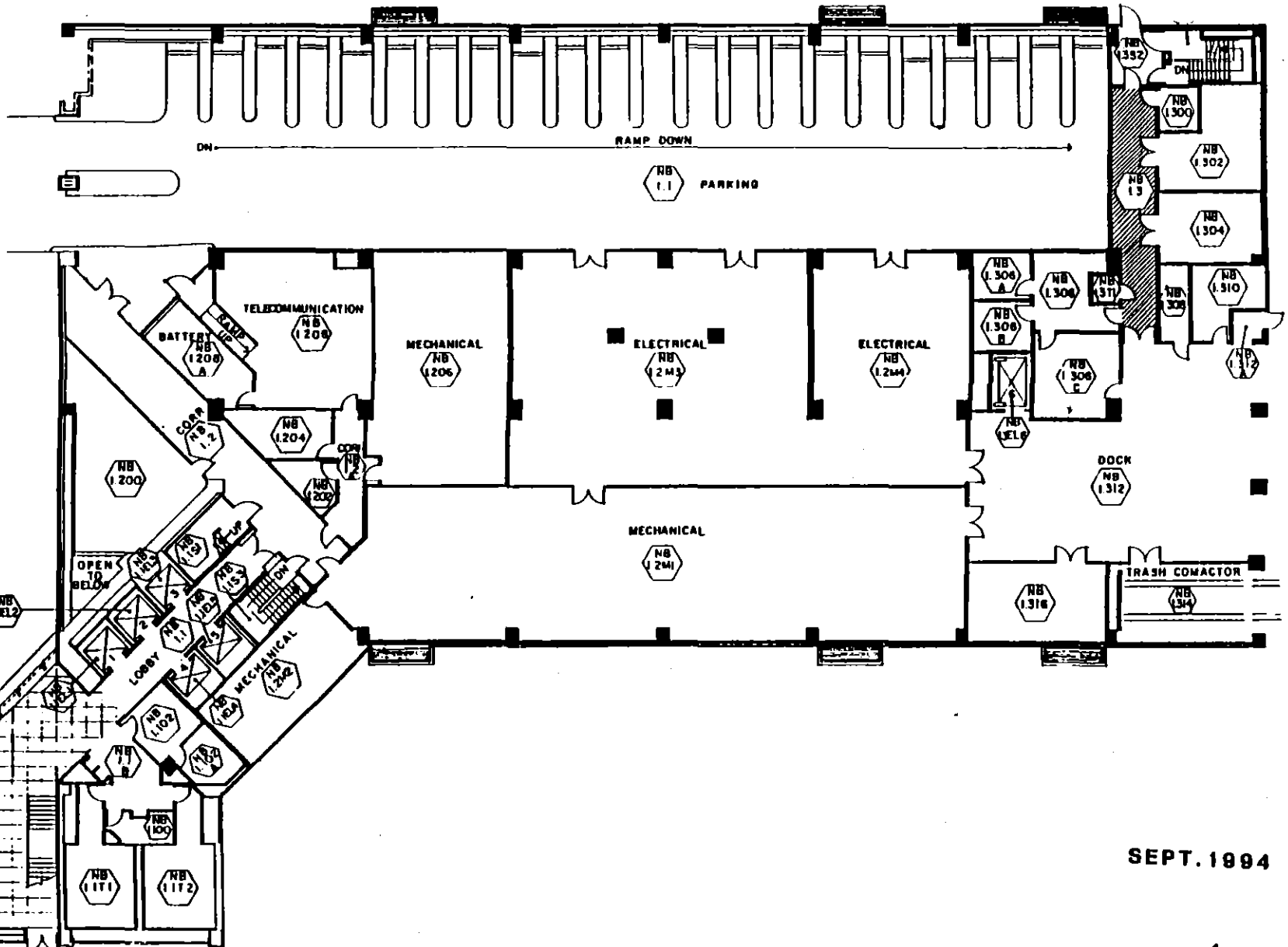
Place: Rooms NB2.402 and NB2.403, Simmons Biomedical Research Building (Open Session)  
The University of Texas Southwestern Medical Center at Dallas  
6000 Harry Hines Boulevard  
Dallas, Texas

Purpose: Reconvene in Open Session Through Adjournment

See Pages B of R 18 - 28,  
Items K - T

Telephone Numbers

President Wildenthal's Office	(214) 648-2508
Grants Management Office, Simmons Biomedical Research Building (for calls during the meeting)	(214) 648-5100
Le Meridien Hotel 650 North Pearl Street	(214) 979-9000

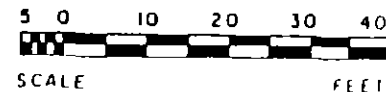


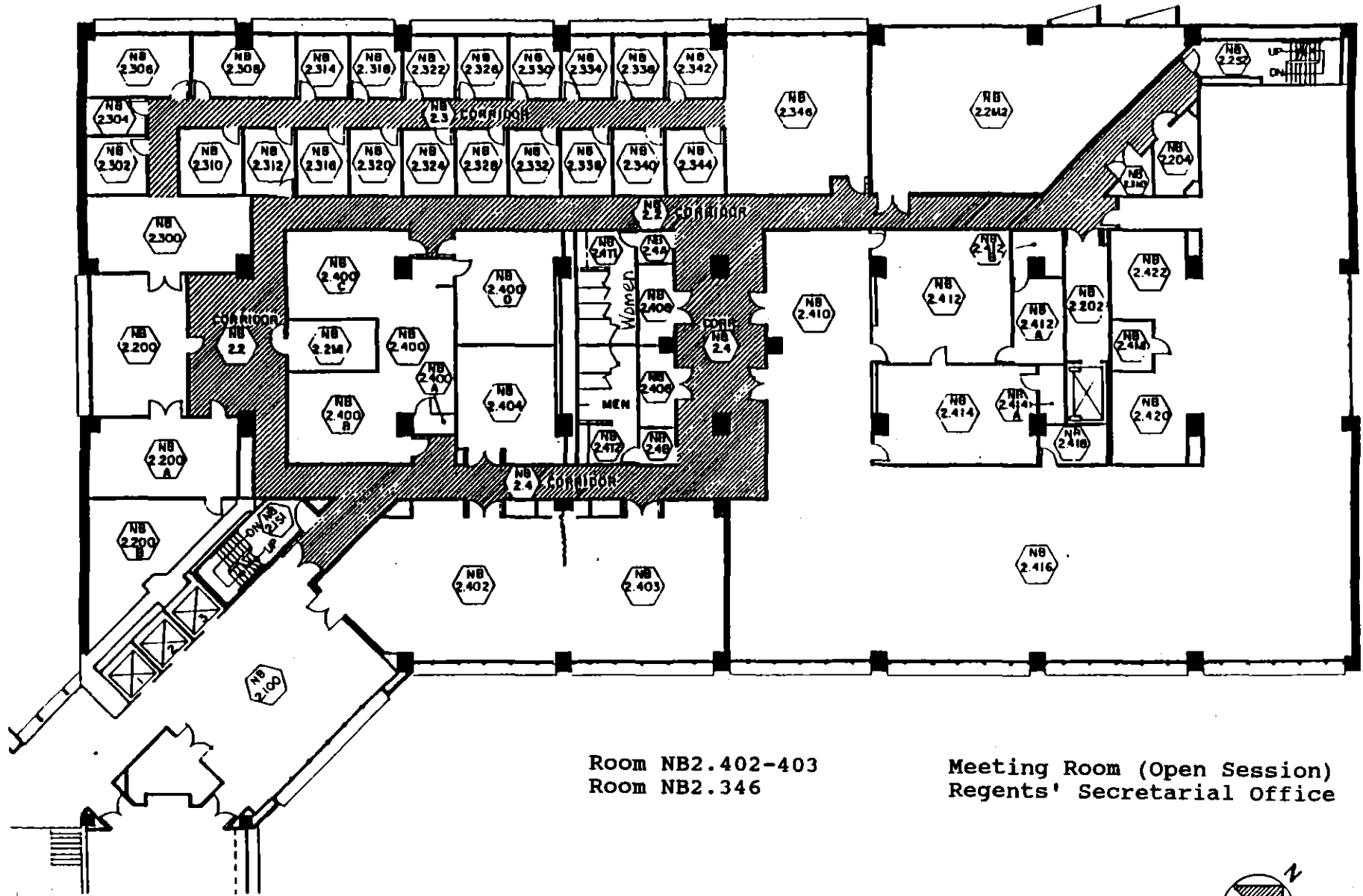
SEPT. 1994

LEVEL I

BUILDING "NB"

SIMMONS BIOMEDICAL RESEARCH BLDG.





Room NB2.402-403  
 Room NB2.346

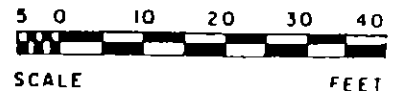
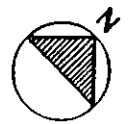
Meeting Room (Open Session)  
 Regents' Secretarial Office

*Media Room*

LEVEL 2

BUILDING "NB"

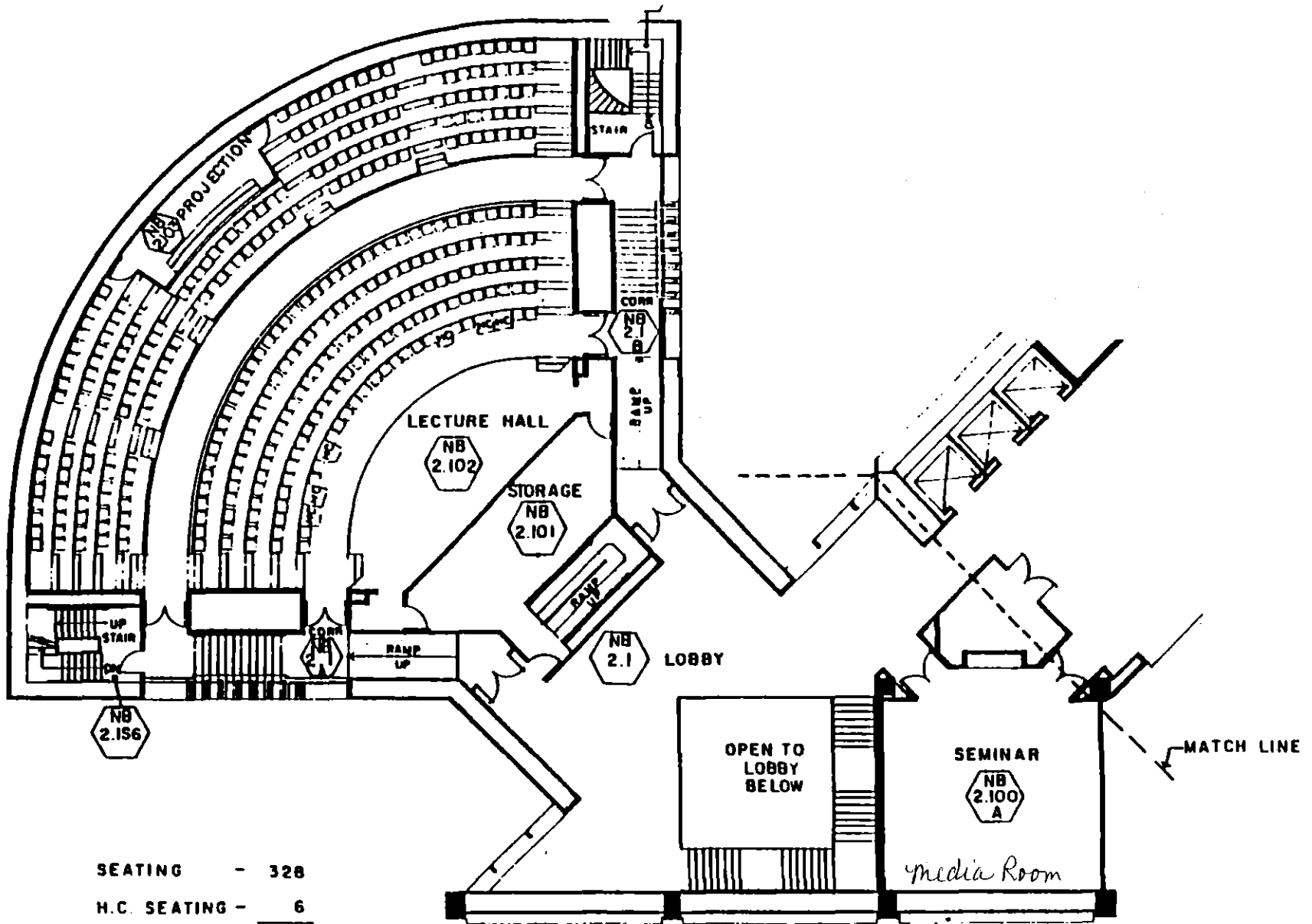
SIMMONS BIOMEDICAL RESEARCH BLDG.



SEPT 1994

Room NB 2.100A

Telephones for Staff/Press

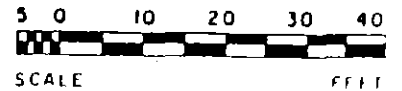


SEATING	-	328
H.C. SEATING	-	6
TOTAL		334

LEVEL - 2

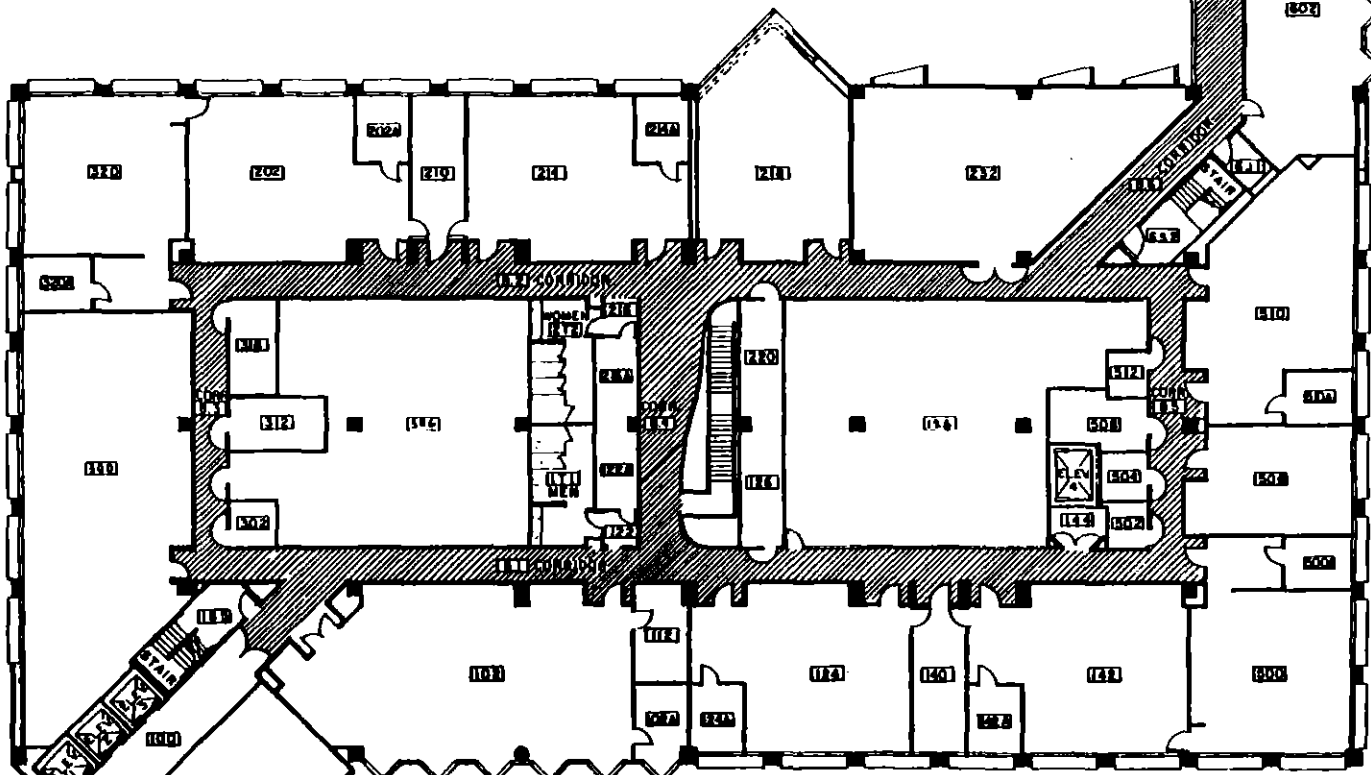
BUILDING "NB"

SIMMONS BIOMEDICAL RESEARCH BLDG.



Room NA8.102

Briefing Session



**LEVEL 8**

— BUILDING DESIGNATION LETTER  
— CORRIDOR

— ROOM NUMBER  
— CONNECTING ROOMS  
— FLOOR LEVEL



SCALE: 1/16" = 1'-0"  
0 10 20 30 40  
SCALE FEET

OF 11 SHEETS  
DRAWING NO. 10

PROJECT NO.  
ISSUE DATE  
MARCH 1995  
DRAWN BY  
S.P.A.R.I.H.H.

NO.	DATE	DESCRIPTION	BY
REVISIONS			
DRAWING TITLE: <b>LEVEL 8<sup>th</sup> FLOOR PLAN</b>			

**BUILDING NA<sup>1</sup>**  
HAMON BIOMEDICAL RESEARCH BLDG.  
AT:  
**UNIVERSITY OF TEXAS SOUTHWESTERN  
MEDICAL CENTER AT DALLAS**  
5325 HARRY HINES BLVD DALLAS, TEXAS 75238

**U T SOUTHWESTERN  
PHYSICAL PLANT  
ARCHITECTS**  
5325 HARRY HINES BLVD.  
DEPT. OF PHYSICAL PLANT  
DALLAS, TEXAS 75238



Rockingbird L

# SOUTHWESTERN

THE UNIVERSITY OF TEXAS  
SOUTHWESTERN MEDICAL CENTER  
AT DALLAS



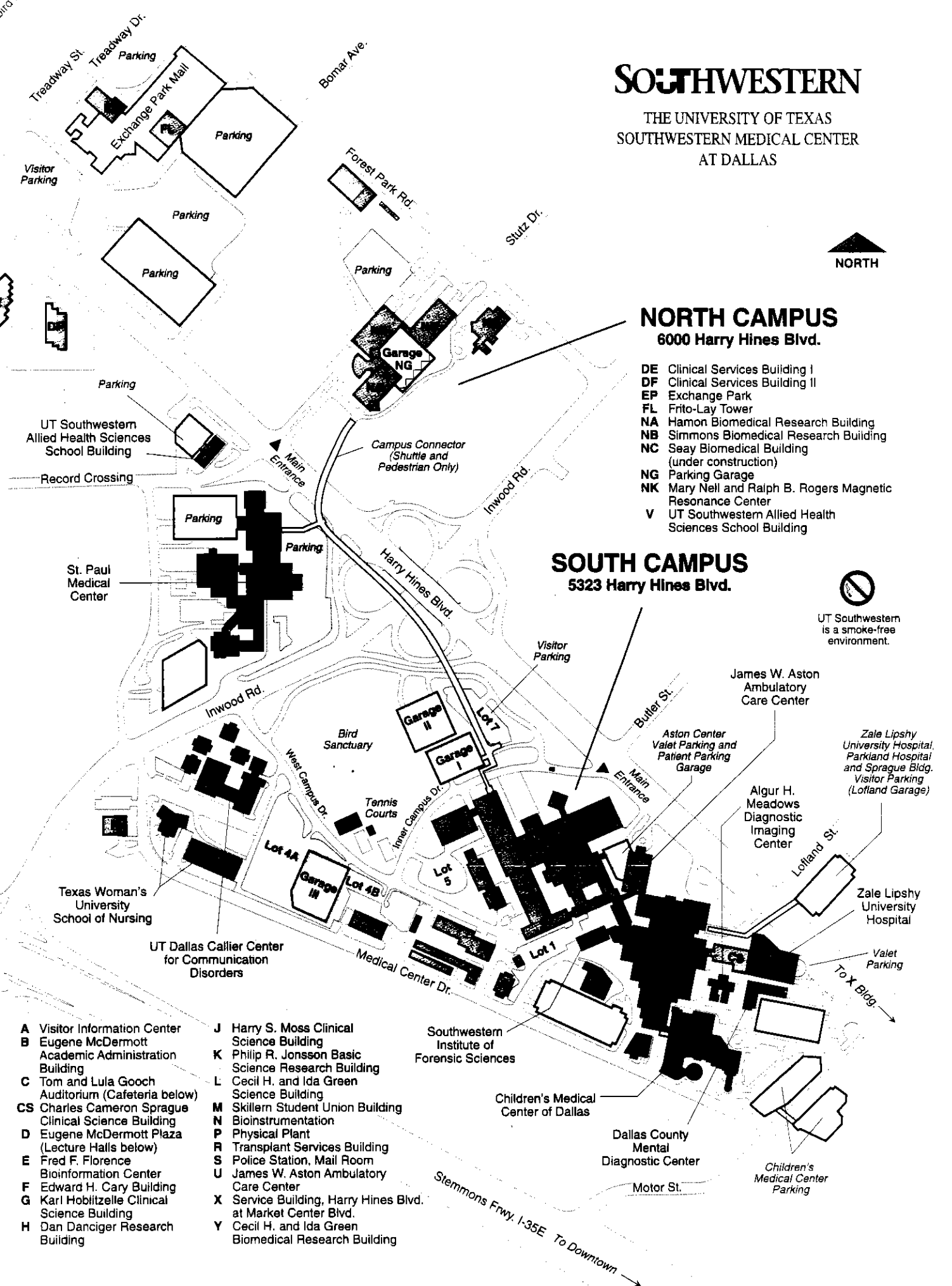
## NORTH CAMPUS 6000 Harry Hines Blvd.

- DE** Clinical Services Building I
- DF** Clinical Services Building II
- EP** Exchange Park
- FL** Frito-Lay Tower
- NA** Hamon Biomedical Research Building
- NB** Simmons Biomedical Research Building
- NC** Seay Biomedical Building  
(under construction)
- NG** Parking Garage
- NK** Mary Nell and Ralph B. Rogers Magnetic  
Resonance Center
- V** UT Southwestern Allied Health  
Sciences School Building

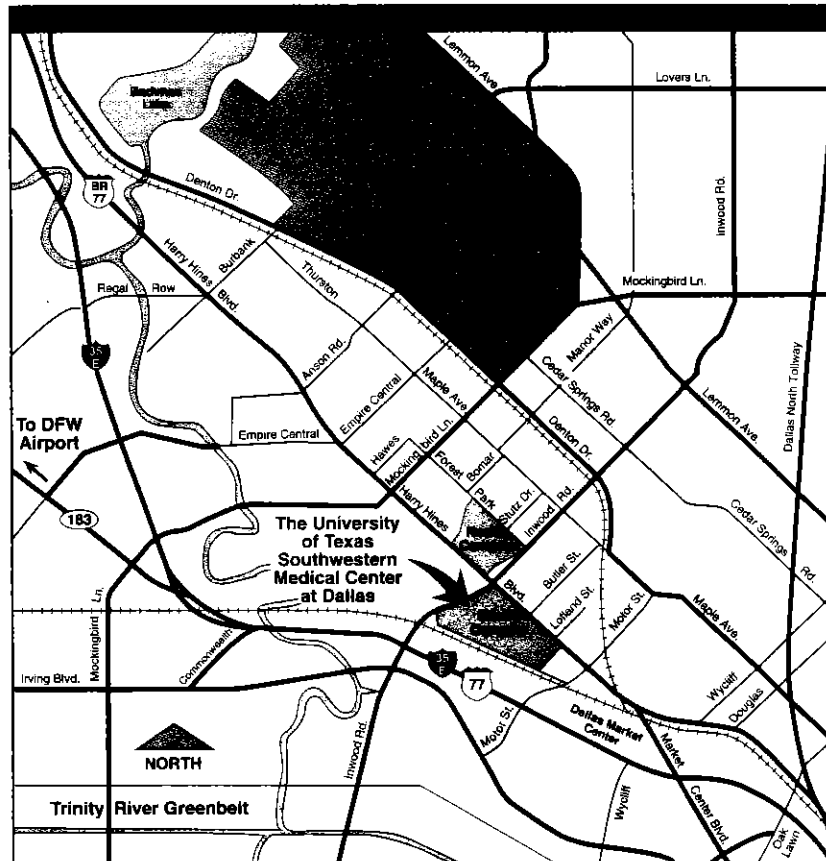
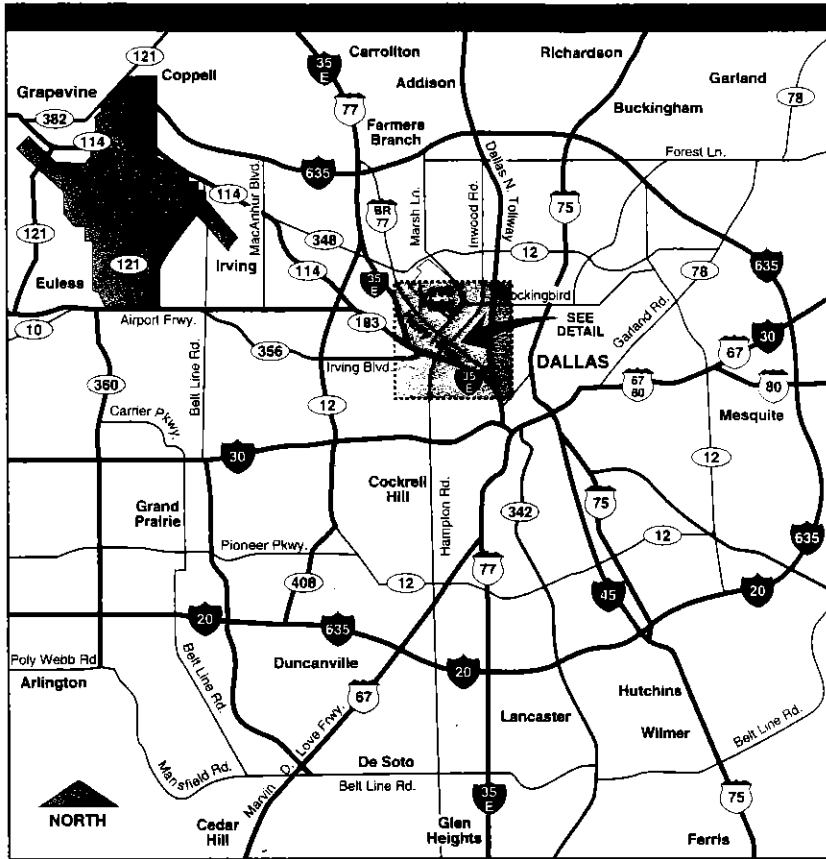
## SOUTH CAMPUS 5323 Harry Hines Blvd.



UT Southwestern  
is a smoke-free  
environment.



- A** Visitor Information Center
- B** Eugene McDermott Academic Administration Building
- C** Tom and Lula Gooch Auditorium (Cafeteria below)
- CS** Charles Cameron Sprague Clinical Science Building
- D** Eugene McDermott Plaza (Lecture Halls below)
- E** Fred F. Florence Bioinformation Center
- F** Edward H. Cary Building
- G** Karl Hoblitzelle Clinical Science Building
- H** Dan Danciger Research Building
- J** Harry S. Moss Clinical Science Building
- K** Philip R. Jonsson Basic Science Research Building
- L** Cecil H. and Ida Green Science Building
- M** Skillern Student Union Building
- N** Bioinstrumentation
- P** Physical Plant
- R** Transplant Services Building
- S** Police Station, Mail Room
- U** James W. Aston Ambulatory Care Center
- X** Service Building, Harry Hines Blvd. at Market Center Blvd.
- Y** Cecil H. and Ida Green Biomedical Research Building



# Meeting of the Board

AGENDA FOR MEETING  
OF  
BOARD OF REGENTS  
OF  
THE UNIVERSITY OF TEXAS SYSTEM

Date: Wednesday, November 13, 1996

Time: 3:00 p.m.

Place: Cambridge Room  
Le Meridien Hotel  
650 North Pearl Street  
Dallas, Texas

A. CALL TO ORDER

B. RECESS TO EXECUTIVE SESSION (Texas Government Code, Chapter 551)

1. Consultation with Attorney Regarding Pending and/or Contemplated Litigation or Settlement Offers - Section 551.071

a. U. T. Southwestern Medical Center -  
Dallas: Proposed Settlement of  
Medical Liability Litigation

b. U. T. Health Science Center -  
Houston: Proposed Settlement of  
Medical Liability Litigation

c. U. T. M.D. Anderson Cancer Center:  
Proposed Settlement of Medical  
Liability Claim

2. Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property - Section 551.072
  - a. U. T. Dallas: Consideration of the Report of the Special Committee on UTD Lands Regarding the Disposition of Surplus Real Property Located in Dallas, Richardson, and Plano, Texas, and Authorization to Implement the Recommendations of the Committee
  - b. U. T. Southwestern Medical Center - Dallas: Request for Authorization to Purchase Two Tracts of Land Out of Exchange Park in Dallas, Dallas County, Texas; Authorization to Submit the Purchases to the Coordinating Board for Approval; and Authorization to Execute All Documents Related Thereto
  - c. U. T. Medical Branch - Galveston: Request for Authorization to Purchase Real Property Located in Block 676 East of the 1700 Strand Building and in Blocks 426 and 427 South of the Rebecca Sealy Hospital in Galveston, Galveston County, Texas, and Authorization to Execute All Documents Related Thereto
3. Negotiated Contracts for Prospective Gifts or Donations - Section 551.073
4. Personnel Matters Relating to Appointment, Employment, Evaluation, Assignment, Duties, Discipline, or Dismissal of Officers or Employees - Section 551.074

U. T. Permian Basin: Consideration of Recommendation of Hearing Tribunal Regarding Termination of Tenured Faculty Member

- C. RECONVENE IN OPEN SESSION TO CONSIDER ACTION ON EXECUTIVE SESSION MATTERS (ITEM B ABOVE)
- D. RECESS

AGENDA FOR MEETING  
OF  
BOARD OF REGENTS  
OF  
THE UNIVERSITY OF TEXAS SYSTEM

Date: Thursday, November 14, 1996

Time: 9:30 a.m. Reconvene in Open Session to Consider Items F, G, H, and I and Recess to a Briefing Session and Lunch

Place: Room NA8.102, Hamon Biomedical Research Building, U. T. Southwestern Medical Center - Dallas

Time: 1:00 p.m. or Reconvene in Open Session to upon recess continue until completion of of Briefing business Session

Place: Rooms NB2.402 and NB2.403, Simmons Biomedical Research Building, U. T. Southwestern Medical Center - Dallas

- E. RECONVENE IN OPEN SESSION
- F. MEETING WITH REPRESENTATIVES OF STUDENT ADVISORY GROUP
- G. MATTERS RELATED TO THE UNIVERSITY OF TEXAS INVESTMENT MANAGEMENT COMPANY (UTIMCO)
  - 1. U. T. System: Report on Investments as of August 31, 1996.--

REPORT

Pages B of R 6 - 9 contain the Summary Reports on Investments for the fiscal year ended August 31, 1996.

Item a on Page B of R - 6 presents the summary report for Permanent University Fund (PUF) investments. The PUF began the year with a market value of \$4.958 billion. During the year, income from the production of minerals on PUF Lands added \$65.7 million of new contributions to the Fund versus \$57.1 million for the previous year. In addition, total investment return was \$521.5 million of which \$253.6 million was income return and \$267.9 million was price return. Income return of \$253.6 million was distributed to the Available University Fund (AUF) resulting in a year-end market value of \$5.292 billion.

During the period, \$65.7 million of new cash was allocated to international equities. Assets will continue to be reallocated from new cash and bonds to equities over time in order to increase the exposure to equities and dividend growth. The allocation to bonds, at 44% of the PUF, continues to be reduced gradually although it remains overweighted versus the Fund's long-term target of 30%. This overweighting is the result of the objective to maintain income at current levels. As of year-end, 50% of the PUF was allocated to equities with 40% in U. S. large and mid cap stocks, 4% in U. S. small cap stocks, and 6% in non-U. S. equities. The balance of 6% was allocated to alternative assets such as venture capital and private equities.

Income distributions to the AUF of \$253.6 million for the year increased by a nominal rate of 1.6% and by an inflation adjusted rate of -1.3%. Interest income from fixed income securities, which represents approximately 75% of total income generated, declined by 2.0% to \$186.1 million from \$190.0 million. Replacement of existing coupon rates on maturing bonds during this phase of the interest rate cycle continues to represent a major impediment to preservation of income purchasing power. During the year, \$156.5 million bonds with an average yield of 9.08% ran off and were reinvested at an average yield of 7.21%. Dividend income, on the other hand, continued to grow increasing by 10.2% to \$59.5 million from \$54.0 million. Finally, income from alternative assets increased by 40% from \$4.7 million to \$6.6 million during the period.

Total investment return for the year was 10.7%. Fixed income as an asset class continued to perform poorly with the Salomon Broad Bond Index generating a total return of 4.1%. The Fund's fixed income portfolio at 3.9% underperformed the index due to the longer average maturity of the portfolio versus the index. Equities, as an asset

class, continued to generate higher relative returns with the S&P 500 Index posting an 18.7% return. The PUF's equity (including international) portfolios under performed this index generating a 16.3% return. Finally, private investments produced a 25.9% return for the year, above its benchmark return of 23.7%.

Item b on Page B of R - 7 reports summary activity for the Long Term Fund (LTF). During the year, net contributions totaled \$54.1 million. Net investment return was \$178.6 million of which \$76.4 million was paid to the endowment and other funds underlying the LTF. The Fund's market value closed the year at \$1.712 billion versus \$1.559 billion for the preceding year-end. On a per unit basis, each endowment's ownership in the LTF increased from \$3.66 per share to \$3.90 per share.

Asset allocation at year-end was 29% fixed income, 66% equities (of which 55% was U. S. domestic equities and 11% was international equities), and 5% alternative assets. Total investment return for the Fund was 11.6% and net 3.9% after expenses of 0.22%, inflation of 2.88%, and spending of 4.54%.

Item c on Page B of R - 8 presents annual activity for the Short/Intermediate Term Fund. During the quarter, the Fund received net contributions of \$216.7 million. It earned \$58.2 million in total return, incurred expenses of \$0.2 million, and distributed \$72.1 million to U. T. System component institutions. Total return on the Fund was 4.78% for the year versus the Fund's performance benchmark of 5.16%.

Item d on Page B of R - 9 presents book and market value of cash, fixed income, equity and other securities held in funds outside of internally managed investment pools. Total cash and equivalents consisting primarily of component operating funds held in the money market fund increased from \$559 million to \$602 million at year-end. Asset values for the remaining asset types were fixed income securities: \$82.2 million; equities: \$20.9 million; and other assets of \$5.1 million.



a. PERMANENT UNIVERSITY FUND

Summary Investment Report at August 31, 1996.--

**PERMANENT UNIVERSITY FUND (1)**  
**INVESTMENT SUMMARY REPORT**  
**(\$ millions)**

	FY94-95	FY95-96				
	Full Year	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Full Year
Beginning Market Value	4,428.0	4,958.5	5,153.7	5,280.7	5,343.6	4,958.5
PUF Lands Receipts(2)	57.1	16.4	13.8	19.0	16.5	65.7
Investment Income	249.5	64.6	60.1	67.1	61.8	253.6
Investment Income Distributed	(249.5)	(64.6)	(60.1)	(67.1)	(61.8)	(253.6)
Realized Gains (Losses)	105.5	46.3	34.2	73.3	43.0	196.8
Change in Unrealized						
Gains (Losses)	367.9	132.5	79.0	(29.4)	(111.0)	71.1
Ending Market Value	4,958.5	5,153.7	5,280.7	5,343.6	5,292.1	5,292.1
<b>AUF Income</b>						
Investment Income	249.5	64.6	60.1	67.1	61.8	253.6
Surface Income	3.9	0.4	1.7	0.9	1.8	4.8
<b>Total</b>	<b>253.4</b>	<b>65.0</b>	<b>61.8</b>	<b>68.0</b>	<b>63.6</b>	<b>258.4</b>

Report prepared in accordance with Sec. 51.0032 of the Texas Education Code.

(1) Excludes PUF Lands mineral and surface interests with estimated values of \$410.1 million and \$158.7 million, respectively.

(2) As of August 31, 1996: 818,252 acres under lease; 513,456 producing acres; 2,714 active leases; and 2,027 producing leases.

b. LONG TERM FUND

Summary Investment Report at August 31, 1996.--

**LONG TERM FUND  
SUMMARY REPORT  
(\$ millions)**

	FY94-95	FY95-96				
	Full Year	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Full Year
Beginning Net Assets	1,226.3	1,558.8	1,628.5	1,694.9	1,733.3	1,558.8
Net Contributions	202.3	19.6	17.9	(0.9)	17.5	54.1
*Investment Return	203.4	69.9	68.8	62.0	(18.4)	182.3
Expenses	(2.8)	(0.7)	(0.9)	(1.0)	(1.1)	(3.7)
Distributions (Payout)	(68.5)	(18.9)	(19.1)	(19.2)	(19.2)	(76.4)
Distribution of Loss on						
*Participant Withdrawals	(1.9)	(0.2)	(0.3)	(2.5)	-	(3.0)
Ending Net Assets	1,558.8	1,628.5	1,694.9	1,733.3	1,712.1	1,712.1
Net Asset Value per Unit	3.661	3.778	3.890	3.985	3.897	3.897
No. of Units (End of Period)	425,751,253	431,062,475	435,717,737	434,972,374	439,352,911	439,352,911
Distribution Rate per Unit	0.175	0.04375	0.04375	0.04375	0.04375	0.175

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O  
F  
R  
-  
7

Report prepared in accordance with Sec. 51.0032 of the Texas Education Code.

\*Prior period reporting has been restated to conform with current period.

c. SHORT/INTERMEDIATE TERM FUND

Summary Investment Report at August 31, 1996.--

**SHORT/INTERMEDIATE TERM FUND  
SUMMARY REPORT  
(\$ millions)**

	FY94-95	FY95-96				
	Full Year	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Full Year
Beginning Net Assets	945.3	1,129.5	1,232.9	1,266.8	1,278.6	1,129.5
Net Contributions	175.7	94.4	39.8	29.7	52.8	216.7
*Investment Return	68.7	25.8	12.0	0.4	20.0	58.2
*Expenses	(0.2)	-	-	(0.1)	(0.1)	(0.2)
*Distributions of Income	(60.0)	(16.8)	(17.9)	(18.2)	(19.2)	(72.1)
Ending Net Assets	1,129.5	1,232.9	1,266.8	1,278.6	1,332.1	1,332.1

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8

Report prepared in accordance with Sec. 51.0032 of the Texas Education Code.

\*Prior period reporting has been restated to conform with current period.

d. SEPARATELY INVESTED ASSETS

Summary Investment Report at August 31, 1996.--

**SEPARATELY INVESTED ASSETS  
SUMMARY REPORT  
(\$ thousands)**

ASSET TYPES	FUND TYPE													
	CURRENT PURPOSE				ENDOWMENT &		ANNUITY & LIFE		AGENCY FUNDS		OPERATING FUNDS		TOTAL	
	DESIGNATED		RESTRICTED		SIMILAR FUNDS		INCOME FUNDS							
	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET
<b>Cash &amp; Equivalents:</b>														
Beginning value 6/1/96	24,492	24,492	1,364	1,364	19,483	19,483	440	440	2,547	2,547	618,553	618,553	666,879	666,879
Increase/(Decrease)	(21,820)	(21,820)	1,273	1,273	15,776	15,776	(44)	(44)	(2,527)	(2,527)	(57,121)	(57,121)	(64,463)	(64,463)
Ending value 8/31/96	2,672	2,672	2,637	2,637	35,259	35,259	396	396	20	20	561,432	561,432	602,416	602,416
<b>Debt Securities:</b>														
Beginning value 6/1/96	12,604	12,573	7	4	45,921	45,762	7,796	7,902	-	-	40,695	40,673	107,023	106,914
Increase/(Decrease)	(2,013)	(2,028)	-	-	(11,043)	(11,102)	48	10	-	-	(11,577)	(11,579)	(24,585)	(24,699)
Ending value 8/31/96	10,591	10,545	7	4	34,878	34,660	7,844	7,912	-	-	29,118	29,094	82,438	82,215
<b>Equity Securities:</b>														
Beginning value 6/1/96	52	82	571	560	13,770	18,042	1,084	1,603	-	-	-	-	15,477	20,287
Increase/(Decrease)	-	906	67	93	154	(132)	67	(267)	-	-	-	-	288	600
Ending value 8/31/96	52	988	638	653	13,924	17,910	1,151	1,336	-	-	-	-	15,765	20,887
<b>Other:</b>														
Beginning value 6/1/96	-	-	-	-	39	39	5,137	5,137	-	-	-	-	5,176	5,176
Increase/(Decrease)	-	-	485	485	(462)	(462)	(50)	(50)	(1)	(1)	-	-	(28)	(28)
Ending value 8/31/96	-	-	485	485	(423)	(423)	5,087	5,087	(1)	(1)	-	-	5,148	5,148

Report prepared in accordance with Sec. 51.0032 of the Texas Education Code.  
Details of individual assets by account furnished upon request.

2. Permanent University Fund: Report on Investments for the Fiscal Year Ended August 31, 1996.--

#### RECOMMENDATION

Under separate bound cover, The University of Texas Investment Management Company presents a report on Permanent University Fund investments for the fiscal year ended August 31, 1996. The report summarizes the investment transactions and balances, the investment objectives, performance, and asset allocation information for the fiscal year ended August 31, 1996.

Since Section 66.05 of the Texas Education Code requires that the report be approved by the U. T. Board of Regents prior to its distribution to the Governor, members of the Legislature, and other State Officials, such approval is recommended.

H. ITEMS FOR THE RECORD

1. U. T. System: Report on Status of Degree Programs and Academic Organization Requests Approved by the U. T. Board of Regents and Submitted to the Texas Higher Education Coordinating Board for the Period September 1, 1995 Through August 31, 1996.--

REPORT

Following is a report for the record on the status of degree programs and academic organization requests which have been approved by the U. T. Board of Regents for submission to the Texas Higher Education Coordinating Board. Included are items which have been acted upon by the Coordinating Board since September 1, 1995, were still pending before the Coordinating Board as of August 31, 1996, or have been withdrawn temporarily from Coordinating Board consideration since September 1, 1995. Four regular Coordinating Board meetings have occurred since the last report. Full approval has been given for 18 programs and administrative change requests and 22 requests are now pending or withdrawn.

- a. Degree Programs and Academic Administrative Changes Approved by the Coordinating Board for Implementation

U. T. Austin

Ph.D. in Operations Research and Industrial Engineering

U. T. Brownsville

B.A. in Chemistry  
B.A. in Music (This program was erroneously listed in a previous report as having been approved.)  
B.A. in Physics  
B.S. in Computer Science  
B.S. in Engineering Technology

U. T. Dallas

B.S. in Neuroscience

U. T. El Paso

M.S. in Kinesiology and Sports Studies  
Ed.D. in Educational Leadership and Administration

U. T. Permian Basin

M.S. in Criminal Justice Administration

U. T. San Antonio

Divided the Division of Art and Architecture into  
the Division of Visual Arts and the Division of  
Architecture and Interior Design

U. T. Tyler

B.S. in Computer Information Systems

U. T. Southwestern Medical Center - Dallas

Established a Department of Molecular Biology and  
Oncology

U. T. Health Science Center - Houston

Doctor of Science in Nursing

U. T. Health Science Center - San Antonio

M.S. in Clinical Laboratory Science  
Established a Department of Molecular Biomedical  
Sciences

U. T. Austin Cooperative with U. T. Pan American

Ed.D. in Educational Administration (Step II)

U. T. Health Science Center - San Antonio  
Cooperative with U. T. Pan American

B.S. in Occupational Therapy

b. Requests Approved by the U. T. Board of Regents and Pending with the Coordinating Board

U. T. Austin

B.S. in Geosystems Engineering and Hydrogeology

U. T. Brownsville

B.S. in Health Promotion  
M.A. in History

U. T. El Paso

B.S. in Occupational Therapy  
Master of Physical Therapy  
M.S. in Computer Science

U. T. Pan American

Ed.D. in Educational Leadership (Step III)  
Master of Fine Arts with Major in Art  
M.S. in Rehabilitation Counseling  
M.Ed. in Special Education for Culturally and Linguistically Diverse Learners

U. T. Permian Basin

Master of Professional Accountancy

U. T. San Antonio

M.A. in Political Science  
M.S. in Sociology

U. T. Tyler

B.S. in Electrical Engineering  
B.S. in Mechanical Engineering  
Master of Engineering  
M.A. in Political Science

U. T. Medical Branch - Galveston

Ph.D. in Nursing (passed first reading, pending second reading)



U. T. Health Science Center - San Antonio

M.S. in Nursing, Pediatric Nurse Practitioner

- c. Items Approved by the U. T. Board of Regents and Pending Submission to the Coordinating Board

U. T. Pan American

M.A. in Criminal Justice

- d. Items Approved by the U. T. Board of Regents, Sent to the Coordinating Board, and Subsequently Withdrawn by the Institution

U. T. El Paso

M.S. in Health Education and Promotion (Formerly Health Science)

M.A. in Criminal Justice

2. U. T. System: Report on Status of Administratively Approved Academic Program Changes for the Period September 1, 1995 Through August 31, 1996.--

REPORT

Under U. T. Board of Regents' guidelines, the appropriate Executive Vice Chancellor is authorized to forward certain academic program changes to the Texas Higher Education Coordinating Board for approval at the staff level, subject to periodic reporting to the U. T. Board of Regents for the record. These changes, considered to be "nonsubstantive" according to the Coordinating Board's terminology, must be consistent with institutional Tables of Programs approved by the U. T. Board of Regents and the Coordinating Board. Four regular Coordinating Board meetings have occurred since the last report.

A report for the record of 16 such nonsubstantive approvals granted by the staff of the Coordinating Board for ten U. T. System component institutions during the period from September 1, 1995 through August 31, 1996, is set forth on Pages B of R 15 - 16.

U. T. Arlington (3 items)

1. Changed the Master of Arts in Criminal Justice to the Master of Arts in Criminology and Criminal Justice
2. Added the B.S. to the existing B.A. in Interdisciplinary Studies
3. Added an Option in Political Institutions and Processes to the M.A. in Political Science

U. T. Austin (2 items)

4. Renamed the Department of Oriental and African Languages and Literature to the Department of Middle Eastern Languages and Cultures (which includes a Center for Middle East Studies), created a Department of Asian Studies (that includes a Center for Arabic Studies), and realigned degree programs in the new departments
5. Renamed the Option II of the M.A. in Curriculum and Instruction to the M.A. in Human Resource Development

U. T. Dallas (1 item)

6. Changed the M.S. in Management and Administrative Sciences to the M.S. in Accounting

U. T. El Paso (1 item)

7. Added the following interdisciplinary science programs:
  - a. B.S. in Earth Science
  - b. B.S. in Life/Earth Science
  - c. B.S. in Natural Sciences
  - d. B.S. in Physical Sciences

and designated the Office of Vice President for Academic Affairs as an academic unit to administer approved interdisciplinary programs

U. T. San Antonio (2 items)

8. Changed the Master of Professional Accounting to the M.S. in Accounting
9. Changed the Division of English, Classics, and Philosophy to the Division of English, Classics, Philosophy, and Communication

U. T. Tyler (1 item)

10. Realigned the master's degree programs in psychology and counseling with the following designations:  
(a) M.S. in Clinical Psychology, (b) M.A. in Counseling Psychology, (c) M.A. in Counseling Psychology with a program in Marriage and Family, and (d) M.A. in School Counseling

U. T. Medical Branch - Galveston (1 item)

11. Changed the name of the Department of Orthopaedic Surgery to the Department of Orthopaedic Surgery and Rehabilitation

U. T. Southwestern Medical Center - Dallas (2 items)

12. Renamed the Department of Allied Health Education to the Department of Health Services Administration
13. Established the Department of Plastic Surgery

U. T. Health Science Center - Houston (2 items)

14. Created an area of concentration in Medical Physics leading to the existing Ph.D. in Biomedical Sciences
15. Created areas of concentration in Integrative Biology leading to the existing M.S. in Biomedical Sciences and the Ph.D. in Biomedical Sciences

U. T. Health Science Center - San Antonio (1 item)

16. Transferred the Post-Baccalaureate Certificate Program in Cytogenetics from U. T. Health Science Center - Houston to U. T. Health Science Center - San Antonio

3. Robertson Poth Foundation: Report of Dissolution.--

REPORT

At its November 1995 meeting, the U. T. Board of Regents amended the Regents' Rules and Regulations, Part One, Chapter VII, Section 5 relating to Trust Foundations by deletion of this Section in its entirety. It had previously been determined that Section 5 was outdated with regard to current Internal Revenue Service terminology and with reference to current management by The University of Texas System of the three charitable trusts identified therein (Hogg Foundation for Mental Health, Winedale Stagecoach Inn Fund, and Robertson Poth Foundation). A formal recommendation for the dissolution of the Robertson Poth Foundation was approved by the Board of Trustees on August 12, 1993, and that process has been accomplished.

A judgment was entered on July 3, 1996, in the 201st District Court of Travis County, Texas, terminating the Robertson Poth Foundation and transferring the assets to the various medical schools named in the Trust instrument establishing the Robertson Poth Foundation.

The distribution of assets was as follows:

The University of Texas Medical Branch at Galveston	\$975,855.00
University of Pennsylvania	\$975,855.00
Johns Hopkins University	\$975,855.00
Stanford University	\$700,149.00

All past grants and gifts of approximately \$1,000,000 made by the Foundation to the U. T. Medical Branch - Galveston were also approved by the Court in the judgment.

I. REPORT OF BOARD FOR LEASE OF UNIVERSITY LANDS

REPORT

The Board for Lease of University Lands last met on May 14, 1996, at the Center for Energy and Economic Diversification in Midland, Texas. A Board for Lease meeting and lease sale is scheduled for November 12, 1996.

A total of 86,550 acres of Permanent University Fund lands have been advertised for lease in Regular Oil and Gas Lease Sale No. 90, and 467,926 acres will be offered for lease in Frontier Oil and Gas Lease Sale No. 90-A. Bids submitted for the lease sales will be opened at the Center for Energy and Economic Diversification in Midland, Texas, on Monday, November 11, 1996, and lease awards will be made on Tuesday, November 12, 1996, in Austin, Texas, at the meeting of the Board for Lease of University Lands.

J. RECESS FOR BRIEFING SESSION AND LUNCH

K. RECONVENE IN OPEN SESSION

L. WELCOME BY PRESIDENT WILDENTHAL

M. APPROVAL OF MINUTES OF REGULAR MEETING  
HELD AUGUST 7-8, 1996, AND SPECIAL MEETINGS  
HELD AUGUST 29, 1996, AND OCTOBER 8, 1996

N. SPECIAL ITEMS

1. U. T. Board of Regents: Proposed Amendments to the Regents' Rules and Regulations, Part One, Chapter II (Administration) to Add a New Section 10 Relating to the Vice Chancellor for Telecommunications and Information Technology.--

RECOMMENDATION

The Chancellor recommends that the Regents' Rules and Regulations, Part One, Chapter II (Administration) be amended by adding a new Section 10 as set forth below and renumbering present Sections 10 through 13 as Sections 11 through 14:

Sec. 10. Vice Chancellor for Telecommunications and Information Technology.

The Vice Chancellor for Telecommunications and Information Technology reports to the Chancellor and will lead the System-wide efforts in all aspects of information technology initiatives and activities. The Vice Chancellor for Telecommunications and Information Technology provides staff assistance to the Chancellor and the Executive Vice Chancellors in the exercise of their responsibilities.

10.1 Appointment and Tenure.

The Vice Chancellor for Telecommunications and Information Technology shall be appointed by the Board after nomination by the Chancellor. The Vice Chancellor for Telecommunications and Information Technology shall hold office without fixed term, subject to the pleasure of the Chancellor. The Chancellor's actions regarding the Vice Chancellor for Telecommunications and Information Technology are subject to review and approval by the Board.

10.2

Duties and Responsibilities.

The primary responsibilities of the Vice Chancellor for Telecommunications and Information Technology include:

- 10.21 The implementation of an infrastructure that will permit information technology to enhance the effectiveness of initiatives related to the basic missions of the U. T. System, including standards for creation, distribution, and storage of information.
- 10.22 The management of the U. T. System Network to include planned growth, standards, and operating procedures and the coordination of administrative videoconferencing.
- 10.23 The coordination of training workshops and seminars, activities related to a virtual university, purchase of System-wide software licenses, assessment of distance education effectiveness, and evaluation of pilot projects related to information technology.
- 10.24 The formation of a U. T. System information technology committee.
- 10.25 The performance of such other duties and responsibilities as may be assigned by the Chancellor.

BACKGROUND INFORMATION

During the preparation of the U. T. System strategic plan for the period 1995-1999, it became clear that many of the plan's strategic initiatives will rely increasingly on technology in order to be realized. In December 1994, the Chancellor established the U. T. System Office of Telecommunications and Information Technology to provide System-wide direction and coordination in the areas of telecommunications and information technology.

In June 1995, the U. T. System Task Force on Information Technology, appointed at the request of the U. T. System Process Review Committee, recommended that a consultant firm

be hired to work with the U. T. System to determine how information technology can best be used to enhance the basic mission of the U. T. System. Andersen Consulting is in the process of concluding this study and developing various recommendations, including the establishment of an organization structure to lead the effective implementation and future directions of System-wide information technologies, services, and delivery mechanisms.

To increase the visibility and importance of the current Office of Telecommunications and Information Technology, the title for the head of that office has been changed from Director to Vice Chancellor for Telecommunications and Information Technology. The change in title for this position became effective September 1, 1996, and should enhance the ability of the U. T. System and its component institutions to develop, coordinate, and administer programs and activities related to telecommunications and information technology initiatives. The Vice Chancellor for Telecommunications and Information Technology will report directly to the Chancellor.

The addition of a new Section 10 to Chapter II, Part One of the Regents' Rules and Regulations describes this new Vice Chancellor for Telecommunications and Information Technology position and outlines the duties and responsibilities.

2. U. T. System: Report of Summary of Gift Acceptance and Related Administrative Actions Conforming to Board Policy for June 1, 1996 Through August 31, 1996.--

(See Pages B of R 22 - 26.)



**ACCEPTANCE OF GIFTS HELD BY BOARD**

# ALL ITEMS	COMPONENT INSTITUTION	ASSET TYPES							MATCHING FUNDS	TOTAL VALUE
		CASH	SECURITIES	REAL ESTATE	PLEDGES	OTHER	TRANSFERS			
1	U. T. Arlington	\$ 10,000	--	--	--	--	--	--	\$ 10,000	
85	U. T. Austin	\$ 1,548,964	\$ 75,605	\$ 240,000	\$ 1,260,398	\$ 35,695	\$ 146,859	\$ 779,805	\$ 3,633,160 *	
3	U. T. Dallas	\$ 100,000	--	--	\$ 50,000	--	--	--	\$ 150,000	
1	U. T. El Paso	\$ 339,452	\$ 110,664	--	--	--	--	--	\$ 450,116	
1	U. T. Permian Basin	\$ 10,000	--	--	--	--	--	--	\$ 10,000	
6	U. T. San Antonio	\$ 190,000	--	--	--	--	--	--	\$ 190,000	
2	U. T. Tyler	\$ 325,000	--	--	\$ 275,000	--	--	--	\$ 600,000	
9	U. T. SWMC-Dallas	\$ 945,328	\$ 50,299	--	\$ 150,000	--	--	\$ 600,000	\$ 1,145,627 *	
4	U. T. M.B.-Galveston	\$ 10,000	--	--	--	--	\$ 469,288	--	\$ 479,288	
10	UTHSC-Houston	\$ 452,082	--	--	\$ 678,450	\$ 300,000	\$ 581,018	--	\$ 2,011,550	
2	UTHSC-San Antonio	\$ 34,008	--	--	--	--	--	--	\$ 34,008	
9	UTMDACC	\$ 1,062,119	--	--	--	--	--	--	\$ 1,062,119	
3	UTHC-Tyler	\$ 164,117	--	--	\$ 475,000	--	\$ 103,500	--	\$ 742,617	
136	TOTAL	\$ 5,191,070	\$ 236,568	\$ 240,000	\$ 2,888,848	\$ 335,695	\$ 1,300,665	\$ 1,379,805	\$ 10,518,485 *	

\* Not included in total: U. T. Austin - \$454,166 of Board-held matching funds; U. T. SWMC-Dallas - \$600,000 of Board-held matching funds.

NOTE: Compiled by Office of Development and External Relations

**CLASSIFICATION OF GIFTS AND OTHER ACTIONS**

<u>COMPONENT INSTITUTION</u>	<u>ENDOWMENTS</u>	<u>CHARITABLE REMAINDER TRUSTS</u>	<u>POOLED INCOME FUND</u>	<u>REMAINDER INTERESTS</u>	<u>HELD IN TRUST BY OTHERS</u>	<u>CURRENT PURPOSE</u>	<u>OTHER</u>
U. T. Arlington	1	--	--	--	--	--	--
U. T. Austin	83	--	1	--	2	1	--
U. T. Dallas	3	--	--	--	--	--	--
U. T. El Paso	--	1	--	--	--	--	--
U. T. Permian Basin	1	--	--	--	--	--	--
U. T. San Antonio	6	--	--	--	--	--	--
U. T. Tyler	2	--	--	--	--	--	--
U. T. SWMC-Dallas	6	--	--	--	2	1	--
U. T. M.B.-Galveston	4	--	--	--	--	--	--
UTHSC-Houston	7	--	--	--	2	1	--
UTHSC-San Antonio	2	--	--	--	--	--	--
UTMDACC	2	--	--	--	1	6	--
UTHC-Tyler	2	--	--	--	--	1	--
<b>TOTAL</b>	<b>119</b>	<b>1</b>	<b>1</b>	<b>--</b>	<b>7</b>	<b>10</b>	<b>--</b>

**PURPOSES OF GIFTS HELD BY BOARD AND OTHERS**

<u>COMPONENT</u> <u>INSTITUTION</u>	ENDOWMENT								<u>CURRENT</u> <u>PURPOSE</u>	<u>OTHER</u> <u>PURPOSE</u>
	<u>DIST.</u> <u>CHAIR</u>	<u>CHAIR</u>	<u>DIST.</u> <u>PROF'SHIP</u>	<u>PROF'SHIP</u>	<u>FACULTY</u> <u>FELLOWSHIP</u>	<u>GRADUATE</u> <u>FELLOWSHIP</u>	<u>SCHOLARSHIP</u>	<u>OTHER</u>		
U. T. Arlington	--	--	--	--	--	--	1	--	--	--
U. T. Austin	--	2	--	1	1	5	55	8	1	1
U. T. Dallas	--	--	--	1	--	--	--	1	--	--
U. T. El Paso	--	--	--	--	--	--	--	--	--	1
U. T. Permian Basin	--	--	--	--	--	--	1	--	--	--
U. T. San Antonio	--	--	--	1	--	--	4	1	--	--
U. T. Tyler	--	1	--	1	--	--	--	--	--	--
U. T. SWMC-Dallas	1	2	2	1	1	--	--	--	1	--
U. T. M.B.-Galveston	--	--	--	1	--	--	--	2	--	--
UTHSC-Houston	1	1	--	1	--	--	2	2	--	1
UTHSC-San Antonio	--	--	--	--	--	--	1	1	--	--
UTMDACC	--	--	--	--	--	1	--	1	6	1
UTHC-Tyler	--	2	--	--	--	--	--	--	1	--
<b>TOTAL</b>	<b>2</b>	<b>8</b>	<b>2</b>	<b>7</b>	<b>2</b>	<b>6</b>	<b>64</b>	<b>16</b>	<b>9</b>	<b>4</b>

Total purposes may not equal total number of items for each component, due to the fact that some items pertain to multiple purposes.

**OTHER ADMINISTRATIVE ACTIONS**

<u>COMPONENT INSTITUTION</u>	<u>ESTABLISH ENDOWMENT</u>	<u>REDESIGNATE ENDOWMENT LEVEL</u>	<u>OTHER REDESIGNATION</u>	<u>DISSOLVE ENDOWMENT</u>	<u>APPROVE/ALLOCATE MATCHING</u>	<u>ACCEPT TRUSTEESHIP</u>	<u>OTHER</u>
U. T. Arlington	1	--	--	--	--	--	--
U. T. Austin	72	1	6	--	22	--	1
U. T. Dallas	2	--	1	--	--	--	--
U. T. El Paso	--	--	--	--	--	1	--
U. T. Permian Basin	1	--	--	--	--	--	--
U. T. San Antonio	6	--	--	--	--	--	--
U. T. Tyler	2	--	--	--	--	--	--
U. T. SWMC-Dallas	7	1	--	--	6	--	--
U. T. M.B.-Galveston	3	1	--	--	--	--	1
UTHSC-Houston	7	1	--	--	3	--	2
UTHSC-San Antonio	2	--	--	--	--	--	--
UTMDACC	2	--	--	--	--	--	1
UTHC-Tyler	1	1	--	--	2	--	--
<b>TOTAL</b>	<b>106</b>	<b>5</b>	<b>7</b>	<b>--</b>	<b>33</b>	<b>1</b>	<b>5</b>

**COMPARATIVE SUMMARY OF GIFTS ACCEPTED VIA THE OFFICIAL ADMINISTRATIVE PROCESS**

COMPONENT INSTITUTION	FY 1995 FULL YEAR	FISCAL YEAR 1996			
		9/1/95 - 11/30/95	12/1/95 - 2/29/96	3/1/96 - 5/31/96	FULL YEAR
U. T. System	\$ ---	\$ ---	\$ 40,000	\$ ---	\$ 40,000
U. T. Arlington	\$ 476,474	\$ ---	\$ 112,630	\$ 35,000	\$ 157,630
U. T. Austin	\$ 11,154,914	\$ 2,061,600	\$ 1,406,858	\$ 4,820,409	\$ 11,922,027
U. T. Brownsville	\$ 220,000	\$ ---	\$ ---	\$ ---	\$ ---
U. T. Dallas	\$ 10,578	\$ 600,000	\$ 20,000	\$ ---	\$ 770,000
U. T. El Paso	\$ 854,886	\$ 115,328	\$ 25,000	\$ 37,000	\$ 627,444
U. T. Pan American	\$ 524,267	\$ ---	\$ ---	\$ ---	\$ ---
U. T. Permian Basin	\$ 567,500	\$ 10,000	\$ 37,058	\$ 305,019	\$ 362,077
U. T. San Antonio	\$ 150,300	\$ ---	\$ 117,121	\$ 338,838	\$ 645,959
U. T. Tyler	\$ 365,000	\$ 86,046	\$ ---	\$ 200,000	\$ 886,046
U. T. SWMC-Dallas	\$ 4,999,190	\$ 750,151	\$ 11,488,653	\$ 25,000	\$ 13,409,431
U. T. M.B.-Galveston	\$ 3,795,794	\$ 3,150,000	\$ 3,663,082	\$ 99,673	\$ 7,392,043
UTHSC-Houston	\$ 1,068,967	\$ 285,111	\$ 100,000	\$ 476,280	\$ 2,872,941
UTHSC-San Antonio	\$ 273,834	\$ ---	\$ ---	\$ 1,491,000	\$ 1,525,008
UTMDACC	\$ 1,230,048	\$ ---	\$ 154,235	\$ 2,050,745	\$ 3,267,099
U. T. HC-Tyler	\$ 748,608	\$ ---	\$ ---	\$ 321,500	\$ 1,064,117
UTEP and UTMB	\$ ---	\$ ---	\$ ---	\$ 1,028,125	\$ 1,028,125
<b>TOTAL</b>	<b>\$ 26,440,360</b>	<b>\$ 7,058,236</b>	<b>\$ 17,164,637</b>	<b>\$ 11,228,589</b>	<b>\$ 45,969,947</b>

3. U. T. System: Request for Approval of Guidelines for the Periodic Evaluation of Tenured Faculty.--

Proposed Guidelines for the Periodic Evaluation of Tenured Faculty will be discussed at a second meeting of the appointed committee of administrators, faculty, and students on October 29, 1996. It is anticipated that final proposed Guidelines will be ready for recommendation at the November meeting of the U. T. Board of Regents and will be submitted in advance as Supplemental Material on yellow paper.

O. RECESS FOR MEETINGS OF THE STANDING COMMITTEES AND COMMITTEE REPORTS TO THE BOARD

The Standing Committees of the Board of Regents of The University of Texas System will meet as set forth below to consider recommendations on those matters on the agenda for each Committee listed in the Material Supporting the Agenda. At the conclusion of each Standing Committee meeting, the report of that Committee will be formally presented to the Board for consideration and action.

Executive Committee: Chairman Rapoport  
Vice-Chairman Hicks, Vice-Chairman Smiley  
MSA Page Ex.C - 1

Business Affairs and Audit Committee: Chairman Smiley, Regent Deily, Regent Hicks  
MSA Page BAAC - 1

Academic Affairs Committee: Chairman Lebermann  
Regent Evans, Regent Temple  
MSA Page AAC - 1

Health Affairs Committee: Chairman Loeffler  
Regent Deily, Regent Temple  
MSA Page HAC - 1

Facilities Planning and Construction Committee:  
Chairman Temple, Regent Holmes, Regent Lebermann  
MSA Page FPCC - 1

N. SPECIAL ITEMS

SUPPLEMENTAL MATERIAL

NOVEMBER 14, 1996

3. U. T. System: Request for Approval of Guidelines for the Periodic Evaluation of Tenured Faculty.--

RECOMMENDATION

The Chancellor, joined by the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Health Affairs, and the U. T. System chief administrative officers, recommends that the U. T. Board of Regents approve Guidelines for the Periodic Evaluation of Tenured Faculty within the U. T. System as set out below:

U. T. System

Guidelines for Periodic Evaluation of Tenured Faculty

Preamble

The U. T. Board of Regents recognizes the time-honored practice of tenure for university faculty as an important protection of free inquiry, open intellectual and scientific debate, and unfettered criticism of the accepted body of knowledge. Academic institutions have a special need for practices that protect freedom of expression, since the core of the academic enterprise involves a continual reexamination of ideas. Academic disciplines thrive and grow through critical analysis of conventions and theories. Throughout history, the process of exploring and expanding the frontiers of learning has necessarily challenged the established order. That is why tenure is so valuable, not merely for the protection of individual faculty members but also as an assurance to society that the pursuit of truth and knowledge commands our first priority. Without freedom to question, there can be no freedom to learn.

The U. T. Board of Regents supports a system of periodic evaluation of all tenured faculty. Periodic evaluation is

intended to enhance and protect, not diminish, the important guarantees of tenure and academic freedom. The purpose of periodic evaluation is to provide guidance for continuing and meaningful faculty development; to assist faculty to enhance professional skills and goals; to refocus academic and professional efforts, when appropriate; and to assure that faculty members are meeting their responsibilities to the University and the State of Texas. The U. T. Board of Regents is pledged to regular monitoring of this system to make sure that it is serving its intended purposes and does not in any way threaten tenure as a concept and practice. In implementing the plan, component institutions shall maintain an appropriate balance of emphasis on teaching, research, service, and other duties of faculty.

### Guidelines

Each component institution of The University of Texas System will develop an institutional policy and plan consistent with the following guidelines for the periodic evaluation of tenured faculty and will implement the plan no later than September 1997. Institutional policies are to be developed with appropriate faculty input, including consultation with and guidance from faculty governance organizations, and are to be included in each institutional Handbook of Operating Procedures after review and approval by the appropriate Executive Vice Chancellor. Periodic evaluations, while distinct from the annual evaluation process now required of all employees, may be integrated with the annual evaluation process to form a single comprehensive faculty development and evaluation process. Nothing in these guidelines or the application of institutional evaluation policies shall be interpreted or applied to infringe on the tenure system, academic freedom, due process, or other protected rights; nor to establish new term-tenure systems or to require faculty to reestablish their credentials for tenure.

Institutional Handbook policies should be drafted to establish a streamlined, efficient process and should include the following minimum elements for periodic evaluation:

1. Evaluation of tenured faculty will continue to be performed annually with a comprehensive periodic evaluation of all tenured faculty performed every five years (except in rare circumstances such as overlap with approved leave, promotion or other comprehensive review, or review for appointment to an endowed position or in the case of administrators with academic appointments who are subject to review under other policies or procedures). The requirement of periodic review does not imply that



individuals with unsatisfactory annual evaluations may not be subject to further review and/or appropriate administrative action.

2. The evaluation shall include review of the faculty member's duties such as teaching, research, service, and, for faculty with clinical responsibilities, patient care.
3. Reasonable individual notice of at least six months of intent to review will be provided to a faculty member.
4. The faculty member being evaluated shall submit a résumé, including a summary statement of professional accomplishments, and shall submit or arrange for the submission of annual reports and teaching evaluations. The faculty member may provide copies of a statement of professional goals, a proposed professional development plan, and any other additional materials the faculty member deems appropriate.
5. In accordance with institutional policy, initial evaluation of the faculty member's performance may be carried out by the department, department chair (or equivalent), dean, or peer review panel, but in any event must be reported to the chair (or equivalent) and dean for review. Evaluation shall include review of the current résumé, student evaluations of teaching for the review period, annual reports for the review period, and all materials submitted by the faculty member.
6. If peer review is not required by institutional policy, the peer review process may be initiated by the faculty member, department chair (or equivalent) or dean. If peer committees are involved, the members will be appointed, on the basis of their objectivity and academic strength, by the dean in consultation with the tenured faculty in the college/school or pursuant to other process as defined in institutional policies. If peer review is involved, the faculty member will be provided with an opportunity to meet with the committee or committees.
7. Results of the evaluation will be communicated in writing to the faculty member, the department chair/dean, the chief academic officer, and the president for review and appropriate action.

Possible uses of the information contained in the report should include the following:

- For individuals found to be performing well, the evaluation may be used to determine salary recommendations, nomination for awards, or other forms of performance recognition.
- For individuals whose performance indicates they would benefit from additional institutional support, the evaluation may be used to provide such support (e.g., teaching effectiveness assistance, counseling, or mentoring in research issues/service expectations).
- For individuals found to be performing unsatisfactorily, possible review for termination under current Regents' Rules and Regulations may be considered. All proceedings for termination of tenured faculty shall be only for good cause shown and must be conducted in accordance with the due process procedures of the Regents' Rules and Regulations, Part One, Chapter III, Section 6. Such proceedings must include a list of specific charges by the chief administrative officer and an opportunity for a hearing before a faculty tribunal. In all such cases, the burden of proof shall be on the institution, and the rights of a faculty member to due process and academic freedom shall be protected.

The acceptance and success of periodic evaluation for tenured faculty will be dependent upon an objective, critical process and an institutional commitment to assist and support faculty development. Thus, remediation and follow-up review for faculty who would benefit from such support, as well as the designation of an academic administrator with primary responsibility for monitoring such needed follow-up activities, are essential.

#### BACKGROUND INFORMATION

There is increased legislative and public interest in accountability of all State employees, including faculty members with tenure contracts. The recommended Guidelines for the Periodic Evaluation of Tenured Faculty will serve to

assure that faculty members are meeting their responsibilities to the University and the State of Texas while providing guidance for continuing and meaningful faculty development.

The Guidelines were initially drafted following discussions with an appointed committee of administrators, faculty, and students and have been revised based on review and comments by the institutional presidents, the elected institutional faculty and student governance bodies, the U. T. System Faculty Advisory Council, and the U. T. System Student Advisory Group.

The proposed minimum Guidelines are to be incorporated into an institutional policy for inclusion in each Handbook of Operating Procedures with implementation of the evaluation process to begin in September 1997. The proposed U. T. System Guidelines are designed to represent a broad statement of principle and to provide minimum guidelines for component policies recognizing that there are significant differences among U. T. System component institutions. Upon approval, each institution will be asked to develop specific periodic evaluation plans and procedures, and faculty input will be an essential element in the development of specific component policies.

Each component will be charged with developing a policy that is not only fair but which also minimizes bureaucratic activity for the institution and the individual faculty member. The periodic evaluation of tenured faculty is to be performed every five years, except in rare circumstances such as overlap with approved leave, scheduled promotion review, or review for appointment to an endowed position, or in the case of academic administrators who are subject to review under other policies or procedures. The faculty member will be asked to submit a résumé and submit or arrange for the submission of teaching evaluations and annual reports. The faculty member may also provide a statement of accomplishment, as well as a plan for what he or she hopes to accomplish for the future. The review is to include the department chair and dean and is to provide an opportunity for peer review. This allows institutional flexibility as one institution may choose to establish a policy that requires departmental and/or school or college peer review for all faculty while another may not.

The review process will permit the components to judge the performance of faculty members utilizing the already existent annual performance evaluation requirement as a building block. Positive reviews will, in some cases, lead to promotions, salary adjustments, or administrative assignments for faculty members so inclined. In other cases, faculty members and their administrative leadership will conclude that some form

of change in assignment, professional emphasis, or level of support for professional activities would benefit both the institution and the individual faculty member.

In those cases where it is determined that a faculty member's performance merits dismissal, a faculty tribunal would be appointed by the President, as provided for under current policy, to conduct a due process hearing on the specific charges. The tribunal's recommendation would, in turn, be forwarded to the U. T. Board of Regents for final determination. The new review Guidelines do not alter current faculty termination procedures and requirements. Those remain as now defined under the Regents' Rules and Regulations.

Post-tenure review policies have been developed at many other institutions. The University of California System and the University of Wisconsin at Madison require a review at least every five years. Other universities that have developed periodic review policies include Carnegie Mellon University, the University of Colorado, the State University System of Florida, Harvard University (for the Business School), the University of Kansas, Rutgers (The State University of New Jersey), and Texas A&M University.

- P. RECONVENE AS COMMITTEE OF THE WHOLE
- Q. REPORT OF SPECIAL COMMITTEE

Committee on Minorities and Women: Chairman Holmes

This Committee report will include a preliminary report and recommendations from the Committee on the Advancement of Women by Chair Patti Ohlendorf and a review of the following action item which will be distributed to the U. T. Board of Regents in advance of the meeting:

U. T. Board of Regents: Consideration of Amendments to the Regents' Rules and Regulations, Part One, Chapter III, Section 6 to Provide for the Extension of the Tenure-Track Probationary Period Under Certain Limited Circumstances.--

- R. SCHEDULED EVENTS

Board of Regents' Meetings

<u>Dates</u>	<u>Locations/Hosts</u>
February 6, 1997	Austin (No host)
May 8, 1997	U. T. Health Science Center - San Antonio
August 14, 1997	U. T. Dallas
November 13, 1997	U. T. Brownsville

- S. OTHER BUSINESS
- T. ADJOURNMENT

Q. REPORT OF SPECIAL COMMITTEE ON MINORITIES AND WOMEN

SUPPLEMENTAL MATERIAL

NOVEMBER 14, 1996

U. T. Board of Regents: Consideration of Amendments to the Regents' Rules and Regulations, Part One, Chapter III, Section 6 to Provide for the Extension of the Tenure-Track Probationary Period Under Certain Limited Circumstances.--

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs and the Executive Vice Chancellor for Health Affairs that the Regents' Rules and Regulations, Part One, Chapter III, Section 6, Subsection 6.2, Subdivision 6.24, be amended to provide for the extension of the tenure-track probationary period under certain limited circumstances as set forth below in congressional style:

Sec. 6. Tenure, Promotion, and Termination of Employment.

. . . .

6.2 . . .

6.24 For purposes of calculating the period of probationary service, an "academic year" shall be the period from September 1[~~st~~] through the following August 31[~~st~~].

6.241 If a faculty member is initially appointed during an academic year, the period of service from the date of appointment until the following September 1[~~st~~] shall not be counted as academic service toward fulfillment of the maximum probationary period. One year of probationary service is accrued by at least nine months full-time academic service during any academic

year. A faculty member shall be considered to be on full-time academic service when in full compliance with Regental standards pertaining to minimum faculty workloads [~~work loads~~] at general academic institutions or when in compliance with the academic service standard in the Handbook of Operating Procedures of any health-related institution.

6.242

Each component institution with tenured faculty will establish and appropriately communicate a policy for the extension of the maximum probationary period and include the policy in the institutional Handbook of Operating Procedures following the standard review and approval process. In the case of U. T. M.D. Anderson Cancer Center, the institution may establish a policy that allows the extension of a term-tenure appointment consistent with these guidelines and the term-tenure policy. Institutional policies are to be consistent with the following guidelines:

- (a) A faculty member who determines that certain personal circumstances may impede his or her progress toward achieving demonstration of eligibility for recommendation of award of tenure may make a written request for extension specifying the reason(s) for the requested extension. Personal circumstances that may justify the extension include, but are not restricted to, disability or illness of the faculty member; status of the faculty member as a principal caregiver of a

preschool child; or status of the faculty member as a principal caregiver of a disabled, elderly, or ill member of the family of the faculty member. It is the responsibility of the faculty member to provide appropriate documentation to adequately demonstrate why the request should be granted.

(b) The request for extension shall be limited to one academic year. A request for an additional academic year's extension will follow the established request process, with the maximum duration of extension, whether consecutive or nonconsecutive, to be two academic years.

(c) Normally, requests for extension must be made in advance of the academic year or semester for which the extension is desired and may be made no later than three months prior to the deadline for initiation of the mandatory review process to determine recommended award of tenure or notice as provided under Subsection 6.7 of these Rules that the next year will be the faculty member's terminal year of appointment.

(d) The decision regarding the request shall be made by the chief academic officer of the institution, upon recommendation of the department chair and the dean, within a reasonable period of time and in a manner specified by institutional policy.

. . . . .



## BACKGROUND INFORMATION

The U. T. System Committee on the Advancement of Women recommends that a policy be approved that would allow extension of the maximum probationary period for tenure-track faculty when certain personal circumstances have the potential to impact a faculty member's progress toward demonstrating eligibility for recommendation for the award of tenure.

The proposed amendments to the Regents' Rules and Regulations have been reviewed by the chief administrative officers, and, while there is some concern about the breadth of the reasons for an extension and the possibility that such extensions may be perceived as a right rather than a privilege, there is general support for the authority to establish institutional policies permitting such extensions when, in the judgement of the chief academic officer, they are justified.

Several of the Committee's recommendations that provide suggested detail for institutional policy are not included in the proposed guidelines in the Regents' Rules and Regulations. For example, current Regents' Rules and Regulations authorize a "tolling" of the maximum probationary period for any year in which the faculty member is not in full-time academic service. Thus, it was not necessary to include a portion of the Committee's recommendation that military service be listed as a reason for extension. The recommendation that each department chair or unit head be required to provide a copy of institutional policy to all faculty annually has been replaced with language that the policy will be publicized. The recommended requirement concerning a specific appeals procedure for denied requests was considered best addressed in institutional policy or handled through existing appeal procedures.

Based on the recommendation of President Mendelsohn, the proposed language has been worded to make it clear that it could also be applicable to the term-tenure faculty at the U. T. M.D. Anderson Cancer Center upon the implementation of appropriate institutional policy to extend the maximum length of a term-tenure appointment at that institution.

# 1997 CALENDAR

<b>January 1997</b> S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>February 1997</b> S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<b>March 1997</b> S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>April 1997</b> S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
<b>May 1997</b> S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>June 1997</b> S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	<b>July 1997</b> S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>August 1997</b> S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
<b>September 1997</b> S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	<b>October 1997</b> S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>November 1997</b> S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	<b>December 1997</b> S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

# Executive Committee

EXECUTIVE COMMITTEE  
Committee Chairman Rapoport

Date: November 14, 1996

Time: Following the reconvening of the Board of Regents at 1:00 p.m. or upon recess of Briefing Session

Place: Rooms NB2.402 and NB2.403, Simmons Biomedical Research Building, U. T. Southwestern Medical Center - Dallas

Page  
Ex.C

A. EXECUTIVE COMMITTEE LETTER 96-22

U. T. Austin - Memorial Stadium - Lighting for Practice and Soccer Fields and Installation of Artificial Turf (Project No. 102-858): Request for Approval of Increase in Total Project Cost; Recommended Award of Construction Contract to Tremur Consulting Contractors, Inc., Del Valle, Texas; and Appropriation Therefor

3

B. EXECUTIVE COMMITTEE LETTER 97-1

1. U. T. System: Recommendation for Approval to Authorize the Establishment of a Non-profit Corporation to Apply for and Hold the License for a Statewide University of Texas System - Texas Tech Health Maintenance Organization
2. U. T. Austin - Renovation of Gregory Gymnasium (Project No. 102-817): Request for Approval of Plaque Inscription

6

22

3. U. T. Austin - Women's Softball Field - Stage Two Grandstand and Related Facilities (Project No. 102-840): Request for Approval of Increase in Total Project Cost; Recommended Award of Construction Contract to J. C. Evans Construction Co., Inc., Austin, Texas; Request for Approval of Plaque Inscription; and Appropriation Therefor 23
4. U. T. Tyler: Request for Authorization to Amend the FY 1996-2001 Capital Improvement Program and the FY 1996-1997 Capital Budget; Reallocate Funds Among Existing Projects; and Appropriation Therefor 27
5. U. T. Health Science Center - Houston: Request for Purchase of Electron Microscope for Use by the Institute of Molecular Medicine and Appropriation Therefor 28

A. EXECUTIVE COMMITTEE LETTER NO. 96-22

U. T. Austin - Memorial Stadium - Lighting for Practice and Soccer Fields and Installation of Artificial Turf (Project No. 102-858): Request for Approval of Increase in Total Project Cost; Recommended Award of Construction Contract to Tremur Consulting Contractors, Inc., Del Valle, Texas; and Appropriation Therefor.--

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, and President Berdahl that the U. T. Board of Regents:

- a. Authorize an increase in the total project cost from \$1,200,000 to \$1,320,000 for Memorial Stadium - Lighting for Practice and Soccer Fields and Installation of Artificial Turf at U. T. Austin to be funded by \$120,000 in Auxiliary Enterprise Balances from Men's Athletic Department Reserves
- b. Award a construction contract for Memorial Stadium - Lighting for Practice and Soccer Fields and Installation of Artificial Turf at U. T. Austin to the lowest responsible bidder, Tremur Consulting Contractors, Inc., Del Valle, Texas, for the Base Bid and Alternate Bid Nos. 1, 2, and 3 in the amount of \$1,201,180
- c. Appropriate \$120,000 in Auxiliary Enterprise Balances from the U. T. Austin Men's Athletic Department Reserves. A previous appropriation of \$1,200,000 from Gifts and Grants from Intercollegiate Athletics for Men provides total project funding of \$1,320,000.

BACKGROUND INFORMATION

In accordance with authorization of the U. T. Board of Regents in May 1996, bids for the installation of lighting for the grass and artificial turf practice fields, as well as the women's soccer field, and the construction of an artificial turf practice field using artificial turf removed from Memorial Stadium were received on July 11, 1996, as shown on Page Ex.C - 5.

The recommended contract award to Tremur Consulting Contractors, Inc., Del Valle, Texas, in the amount of \$1,201,180 is based on a Base Bid of \$829,000 and the selection of three alternate bids at a total cost of \$372,180.

Tremur Consulting Contractors, Inc. stated in its proposal that it will have Historically Underutilized Business participation of 10% for minority-owned firms and 16% for women-owned firms in the contract.

The total project cost for this contract is comprised of the following elements:

General Construction Contract	\$1,201,180
Fees and Administrative Expenses	102,000
Miscellaneous Expenses	11,820
Testing	<u>5,000</u>
 Total Project Cost	 \$1,320,000

This project was reviewed by the Texas Higher Education Coordinating Board in April 1996 and is included in the FY 1996-2001 Capital Improvement Program and the FY 1996-1997 Capital Budget.

Memorial Stadium -  
 Lighting for Practice and Soccer Fields and  
 Installation of Artificial Turf  
 The University of Texas at Austin  
 Project No. 102-858  
 Bids Received July 11, 1996

EX. C - 5

BIDDER	Tremur Consulting Contractors, Inc. <u>Del Valle, Texas</u>	Chasco Contracting <u>Round Rock, Texas</u>	NBS Construction, Inc. <u>Manor, Texas</u>	Southwest Recreational Industries, Inc. <u>Leander, Texas</u>	Workman Corporation <u>Austin, Texas</u>	RGM Constructors, L. P. <u>Pflugerville, Texas</u>
Base Bid	\$ 829,000	\$ 847,000	\$ 905,000	\$ 840,000	\$ 886,000	\$1,067,141
Alternate No. 1 - Install field lighting for Field "A"	186,230	186,000	190,000	232,200	197,000	169,000
Alternate No. 2 - Install field lighting for Field "B"	108,600	113,000	110,000	123,000	121,000	99,960
Alternate No. 3 - Install field lighting for Field "C"	<u>77,350</u>	<u>80,000</u>	<u>79,000</u>	<u>95,000</u>	<u>89,000</u>	<u>72,475</u>
Recommended Award - Base Bid and Alternate Bid Nos. 1, 2, and 3	\$1,201,180	\$1,226,000	\$1,284,000	\$1,290,200	\$1,293,000	\$1,408,576



B. EXECUTIVE COMMITTEE LETTER NO. 97-1

1. U. T. System: Recommendation for Approval to Authorize the Establishment of a Nonprofit Corporation to Apply for and Hold the License for a Statewide University of Texas System - Texas Tech Health Maintenance Organization.--

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs and the Vice Chancellor and General Counsel that the U. T. Board of Regents approve the establishment of a nonprofit corporation to apply for and hold the license for a statewide University of Texas System - Texas Tech Health Maintenance Organization (HMO). The proposed name of the corporation and HMO is "Texas Universities Health Plan, Inc." Such a corporation shall be established in accordance with the Bylaws developed by the Office of General Counsel and set forth on Pages Ex.C 7 - 21.

BACKGROUND INFORMATION

The U. T. System has requested authority to establish a nonprofit corporation to obtain a primary Health Maintenance Organization (HMO) certificate of authority. The major purpose of this HMO is to manage capitated lives in geographically dispersed areas of Texas through integrated delivery systems. Texas Tech Health Science Center has been invited to participate in its geographical area in West Texas. A briefing related to the proposed establishment of this HMO was provided to the U. T. Board of Regents at its August 1996 meeting.

BY-LAWS  
OF  
TEXAS UNIVERSITIES  
HEALTH PLAN, INC.

ARTICLE 1

NAME AND PURPOSE

1.1 Name. The name of the corporation is Texas Universities Health Plan, Inc. (“Corporation”). The principal place of business of the Corporation shall be located at 601 Colorado Street, Austin, Texas 78701. The Corporation may have such other offices, either within or without the State of Texas, as the Board of Directors may determine or as the affairs of the Corporation may require from time to time.

1.2 Purpose. This corporation is organized exclusively for charitable, scientific, and educational purposes. The Corporation is a non-profit corporation organized under the laws of the State of Texas, including the Texas Non-Profit Corporation Act, Tex. Rev. Civ. State. Ann. Art. 1396. The Articles of Incorporation of the Corporation (as amended from time to time, the “Articles of Incorporation”) were filed in the office of the Secretary of the State of Texas on \_\_\_\_\_. In accomplishment of such purposes, the Corporation will be administered solely for the purpose of aiding, assisting, supporting and acting on behalf of The University of Texas System (the “System”), an agency of the State of Texas, in the performance of its essential governmental function of providing higher education in accordance with the laws of the State of Texas authorizing and governing the

System. More specifically, the Corporation is organized and shall be operated exclusively to carry out the following purposes:

(a) Securing a certificate of authority for a Health Maintenance Organization under the provisions of Texas Insurance Code Chapter 20A, Health Maintenance Organization Act. The Corporation may appoint officers of the Health Maintenance Organization.

(b) Supporting health care education through grants to the System to be used for educating students in health care programs; for scholarships and loans to such students; for programs to enhance the capabilities of faculty of the System to educate students in the delivery of health care to the public; and for programs developed and implemented by the System to inform and instruct the general public in the areas of medical science, public health, hygiene, and other health related subjects that are beneficial to individuals and the community.

(c) Providing grants to the System to conduct research and develop educational programs to further and improve the ability of health care professionals and facilities to provide health care services to the public.

(d) Other activities useful or appropriate to the accomplishment of the foregoing purposes.

No part of the Corporation's net earnings shall inure to the benefit of, or be distributable to, any director, officer, or other person; provided that, the Corporation shall be authorized and empowered to employ or contract for the services as necessary or useful in the accomplishment of the foregoing purposes and shall be authorized and empowered to pay reasonable compensation for services rendered by such personnel and facilities and to make payments and distributions in furtherance of such purposes. No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

## ARTICLE 2

### MEMBERS

- 2.1 The Corporation shall have no members.

## ARTICLE 3

### BOARD OF DIRECTORS

- 3.1 Powers, Number, Term, Qualifications, Removal, Resignation, and Vacancies.

(a) Powers. Except as otherwise provided in the Articles of Incorporation and these By-laws, the direction and management of the affairs of the Corporation and the control and disposition of its assets shall be vested in a board of directors ("Board").

(b) Number. The Board shall consist of not less than five (5) directors. Such number may from time to time be increased or decreased by the Board and shall be set forth in the notice of any meeting of the Board.

(c) Term. Except for appointments by title, commencing with the date of appointment, each director shall serve a term of three years and until a successor shall have been duly appointed and qualified unless he or she is sooner removed pursuant to subparagraph 3.1(e) or dies or resigns. Directors appointed by The University of Texas System Board of Regents ("U. T. Regents") and constituting the initial Board shall serve terms of office as follows:

(i) one shall serve a term commencing upon the inception of the corporation and ending upon the date of the first annual meeting of the Board;

(ii) one shall serve a term commencing upon the inception of the corporation and ending upon the date of the second annual meeting of the Board; and

(iii) one shall serve a term commencing upon the inception of the corporation and ending upon the date of the third annual meeting of the Board.

The determination of which directors named as initial directors in the Articles of Incorporation shall serve terms of office as specified above shall be determined by the initial Board at its organizational meeting. Each successor to a director whose term has expired shall be appointed in the

manner specified in paragraph 3.2, for the term specified in this subparagraph 3.1(c). In the case of an appointment to fill a vacancy the term of the successor shall be for the unexpired term only.

(d) Qualifications. Each director shall possess one of the qualifications listed below:

(i) three persons knowledgeable about the management, operations, or financing of health organizations, to be appointed by the U. T. Regents;

(ii) the U. T. System Executive Vice Chancellor for Health Affairs;

(iii) the U. T. System Executive Vice Chancellor for Business Affairs.

(e) Removal. The U. T. Regents may remove a director appointed by the U. T. Regents from the Board at any time. Failure to meet the qualifications of subparagraph 3.1(d) on a continuing basis shall result in automatic removal.

(f) Resignation. A director may resign at any time upon written notice to the president or secretary of the corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt. The acceptance of a resignation shall not be necessary to make it effective.

(g) Vacancies. A vacancy shall exist on the Board upon the death, resignation, or removal of a director, upon the disability of a director that renders him or her permanently incapacitated (as defined in paragraph 10.4), or when a director is no longer qualified under subparagraph 3.1(d) to serve as a director.

3.2 Appointment. Each successor to a director whose term shall have expired may be appointed by the Regents at a regularly scheduled meeting or at a special meeting called for that purpose. Any director whose term of office shall have expired may be appointed to another term. In the event of a vacancy or of an increase in the number of directors in accordance with these By-laws, the vacancy or the additional director(s) may be appointed by the U. T. Regents without the necessity of a meeting.

3.3 Annual Meeting of the Board. The annual meeting of the Board shall be held at such date and time as shall be designated from time to time by the Board and stated in the notice of meeting. The purpose of the annual meeting shall be for the election of officers of the corporation and the transaction of such other business as may lawfully come before the meeting. It shall be the duty of the secretary of the corporation to give at least ten (10) days notice of the time, place, and date of the annual meeting to each director.

3.4 Regular Meetings. Regular meetings of the Board shall be held according to a schedule of dates and at the time and place adopted by the Board at its annual meeting. The purpose of regular meetings shall be for the transaction of such business as may lawfully come before each meeting. The secretary of the corporation shall provide the members with a schedule of the regular meetings.

3.5 Special Meetings. Special meetings of the Board shall be held whenever called by or at the request of the president of the corporation or any two directors. Except in the case of an emergency, ten (10) days notice of the date, time and place of each such special meeting shall be given to each director.

3.6 Quorum for Meetings. The presence of a majority of the number of directors fixed pursuant to the provisions of these By-laws shall be a quorum for the transaction of business at all meetings convened according to these By-laws.

3.7 Voting. The affirmative vote of a majority of the directors present (in person or by proxy) at a meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by law, the corporation's Articles of Incorporation, or these By-laws.

3.8 Proxies. A director may vote at a meeting of the Board by proxy executed in writing by such director and delivered to the secretary of the corporation at or prior to such meeting; however, a director present by proxy at any meeting of the Board may not be counted to determine whether a quorum is present. No proxy shall be valid after three months from the date of its execution and shall be revocable at any time unless otherwise made irrevocable by law.

3.9 Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board or of any committee designated by the Board may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all members of the Board or of such committee. The consent shall have the same force and effect as a unanimous vote at a meeting.

## ARTICLE 4

### NOTICES

4.1 Form of Notice. Whenever the provisions of these By-laws require notice to be given to a director or committee members, and no provision is made as to how such notice shall be given, notice shall be given in writing, either by courier or by mail, postage prepaid, addressed to the director or committee members at such address as appears in the records of the corporation. Any notice by



mail shall be deemed to be effective at the time the notice is deposited, postage prepaid, in the United States mail.

4.2 Waiver. Whenever notice is required to be given to a director or a committee member, a waiver of notice in writing signed by the director or committee member entitled to such notice, whether before or after the time stated therein, shall be equivalent to giving the required notice.

## ARTICLE 5

### GENERAL OFFICERS

#### 5.1 Number, Election and Term, Resignation, and Removal.

(a) Number. The officers of the Board shall be a chairman and a vice chairman. The corporate officers shall be a president, one or more vice presidents, a secretary, and a treasurer and such other officers as may be determined and selected by the Board from time to time.

(b) Election and Term. At the organizational meeting, and thereafter at each annual meeting, the Board shall elect the officers. Each officer shall take office on the date of election and shall hold office until the earlier of the date of the next annual meeting of the Board, or the date such officer dies, resigns, or is removed. Any two or more offices may be held by the same person, except the offices of president and secretary.

(c) Resignation. Any officer may resign by giving written notice to the president or secretary. Unless otherwise specified in the notice, the resignation shall take effect upon receipt. The acceptance of the resignation shall not be necessary to make it effective.

(d) Removal. Any officer elected by the Board may be removed at any time by the Board with or without cause.

5.2 Attendance at Meetings. The chairman of the Board, and in his or her absence the vice chairman of the Board, shall call meetings of the Board to order, and shall act as the chairman of such meetings. The secretary of the corporation shall act as secretary of all such meetings, but in the absence of the secretary the chairman of the Board may appoint any person present to act as secretary of the meeting.

5.3 Duties. The principal duties of the several officers are as follows:

(a) Chairman of the Board. The chairman of the Board shall preside at all meetings of the Board and shall perform such other duties that are not inconsistent with the Article of Incorporation or these By-laws as may be assigned by the Board.

(b) Vice Chairman of the Board. The vice chairman of the Board shall discharge the duties of the chairman in the event of the chairman's absence or disability, and shall perform such additional duties that are not inconsistent with the Articles of Incorporation or these By-laws as may be assigned by the Board.

(c) President. The president shall be the chief executive officer of the corporation, and subject to the control of the Board, shall have general charge and supervision of the administration of the activities and affairs of the corporation. The president shall see that all orders and resolutions of

the Board are carried into effect. The president shall sign and execute all legal documents and instruments in the name of the corporation when authorized so to do by the Board, prepare an annual budget showing expected receipts and expenditures for consideration by the Board, and shall perform such other duties that are not inconsistent with the Articles of Incorporation or these By-laws as may be assigned by the Board. The president shall also have the power to appoint and remove subordinate employees. The president shall submit to the Board plans and suggestions for the activities of the corporation, shall direct its general correspondence and shall present recommendations in each case to the Board for decision. The president shall also submit a report of the activities and affairs of the corporation at each annual meeting of the Board and at other times when called upon to do so by the Board.

(d) Vice Presidents. The vice presidents, in order of rank, shall discharge the duties of the president in the event of the president's absence or disability. They shall also perform such additional duties that are not inconsistent with the Articles of Incorporation or these By-laws as may be assigned by the Board.

(e) Secretary. The secretary shall be responsible for the records and correspondence of the corporation under the direction of the president, and shall be the custodian of the seal of the corporation, if any. The secretary shall attend all meetings of the Board and give such notice of meetings as required by these By-laws. The secretary shall take and keep true minutes of all meetings of the Board. The secretary shall discharge such other duties that are not inconsistent with the Articles of Incorporation or these By-laws as shall be assigned by the president or the Board. In case of the absence or disability of the secretary, the Board may appoint an assistant secretary to

perform the duties of the secretary during such absence or disability.

(f) Treasurer. The treasurer shall keep account of all moneys, credits, and property of the corporation and keep an accurate account of all moneys received and disbursed. Except as otherwise ordered by the Board, the treasurer shall have the custody of all funds and securities of the corporation and shall deposit the same in such banks or depositories as the Board shall designate. The treasurer shall keep accurate books of account and other books showing at all times the amount of the funds and other property belonging to the corporation. All books shall be open to the inspection of the Board and the member(s). The treasurer shall also submit a report of the accounts and financial condition of the corporation at each annual meeting of the Board and under the direction of the Board, shall disburse all moneys and sign all checks and other instruments drawn on or payable out of the funds of the corporation, unless the Board authorizes other officers, employees, or agents of the corporation to sign checks without the counter signature of the Treasurer. The Board may require all checks to be signed by the president or one of the vice presidents. The treasurer shall make such transfers and alterations in the securities of the corporation as may be ordered by the Board. The treasurer shall perform such additional duties that are not inconsistent with the Articles of Incorporation or these By-laws as may be assigned by the Board or the president. The treasurer shall give bond only if required by the Board. In case of absence or disability of the treasurer, the Board may appoint an assistant treasurer to perform the duties of the treasurer during such absence or disability.

5.4 Vacancies. Whenever a vacancy shall occur in any general office of the corporation, such vacancy shall be filled by the Board by the election of a new officer who shall take office on the date of election and shall hold office until the earlier of the date of the next annual meeting of the Board

or the date such officer dies, resigns, or is removed.

## ARTICLE 6

### APPOINTIVE OFFICERS AND AGENTS

6.1 Appointive Officers and Agents. The Board may appoint such officers and agents in addition to those provided for in Article 5 of these By-laws as the Board may deem necessary. Such persons shall have such authority and perform such duties that are not inconsistent with the Articles of Incorporation or these By-laws as shall be assigned by the Board. All appointive officers and agents shall hold their respective offices or positions at the pleasure of the Board and may be removed at any time with or without cause.

## ARTICLE 7

### STANDING AND SPECIAL COMMITTEES

7.1 Operating Committee of the Health Maintenance Organization. The Board may designate a standing Operating Committee of the Health Maintenance Organization. Membership on this Committee will consist of either the Chief Executive Officer or Chairman of the Board of Directors of each approved non-profit health corporation contributing to the Corporation and contracting with the Corporation to provide health services in a specified service area. The Committee will perform such duties as may be delegated by the Board and will report to the Board. The Committee shall elect a Chairman.

7.2 Standing Committees. The Board may designate other standing committees to perform such duties that are not inconsistent with the Articles of Incorporation or these By-laws as shall be assigned by the Board. Each standing committee shall consist of two or more persons, who

may, but need not be, directors of the corporation. Appointments of persons to such standing committees shall be for terms prescribed by the Board upon their appointment.

7.3 Special Committees. The Board may designate one or more special committees to perform such duties that are not inconsistent with the Articles of Incorporation or these By-laws as shall be assigned by the Board. Each special committee shall consist of two or more persons appointed by the chairman of the Board, who may, but need not be, directors of the corporation. A special committee shall limit its activities to those for which it is designated and shall have no power to act except as specifically conferred by the Board. A special committee shall stand dissolved upon the completion of the duties assigned.

7.4 Quorum and Voting. A majority of the members of a committee shall constitute a quorum for the transaction of business at any meeting of such committee and the act of a majority of the quorum shall be the act of the committee. Attendance or voting by proxy shall not be permitted.

7.5 Meetings and Notices. Meetings of a committee may be called by the chairman of the Board or the chairman of the committee. Each committee shall meet as often as is necessary to perform its duties. Notice may be given at any time and in any manner reasonably designed to inform the committee members of the time and place of the meetings. Each committee shall keep minutes of its proceedings.

7.6 Resignations and Removals. Any members of a committee may resign at any time by giving notice to the chairman of the committee or the secretary of the corporation. Unless otherwise specified in the notice, such resignation shall take effect upon receipt. The acceptance of such resignation shall not be necessary to make it effective. The Board may remove a member of any committee at anytime with or without cause.

7.7 Vacancies. A vacancy on a committee shall be filled for the unexpired portion of the

term in the same manner in which an original appointment to such committee is made.

## ARTICLE 8

### AMENDMENTS

8.1 Amendments. These By-laws may be altered, amended, or repealed or new By-laws may be adopted only by the Board at a meeting called for that purpose.

## ARTICLE 9

### INDEMNIFICATION , OFFICERS, EMPLOYEES, AND AGENTS

9.1 Indemnification. The corporation shall indemnify directors, officers, employees, and agents of the corporation to the extent required by Article 2.22A of the Texas Non-Profit Corporation Act and may indemnify such persons to the extent permitted by Article 2.22A of the Texas Non-Profit Corporation Act, subject to restrictions, if any, in the Articles of Incorporation. To the extent permitted by Article 2.22A of the Texas Non-Profit Corporation Act, the corporation shall have the power to purchase and maintain, at its cost and expense, insurance to provide coverage on behalf of such persons for any liability asserted against them in their capacity as director, officer, employee, or agent of the corporation.

## ARTICLE 10

### GENERAL PROVISIONS

10.1 Fiscal Year. The fiscal year of the corporation shall end on August 31 of each calendar year.

10.2 Books and Records. The corporation shall keep correct and complete books and

records of account and shall also keep minutes of the proceedings of the meetings of the Board and standing or special committees.

10.3 Seal. The Board may adopt a corporate seal to be in such form and to be used in such manner as the Board shall direct.

10.4 Permanent Incapacity. Any member of the Board or any officer of the corporation who shall be incapable of participating in the management and affairs of the corporation for a continuous period of six months shall be deemed to be "permanently incapacitated" within the meaning of that term as used in these By-laws.

10.5 Checks. All checks or demands for money and notes of the corporation shall be signed by such officer or officers as provided in these By-laws or as the Board may from time to time designate.

10.6 Contracts. The Board may authorize any officer or officers or agent or agents of the corporation to enter into any contract or execute and deliver any instrument in the name and on behalf of the corporation that is consistent with the purposes for which the corporation is organized. Such authority may be general or limited to specific instances.

10.7 Deposits. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board may from time to time select.

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2. U. T. Austin - Renovation of Gregory Gymnasium (Project No. 102-817): Request for Approval of Plaque Inscription.--

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, and President Berdahl that the U. T. Board of Regents approve the inscription set out below for a plaque to be placed on Gregory Gymnasium at U. T. Austin in keeping with the standard pattern approved by the U. T. Board of Regents in June 1979:

RENOVATION OF GREGORY GYMNASIUM  
1996

BOARD OF REGENTS

Bernard Rapoport Chairman	William H. Cunningham Chancellor, The University of Texas System
Thomas O. Hicks Vice-Chairman	Robert M. Berdahl President, The University of Texas at Austin
Martha E. Smiley Vice-Chairman	
Linnet F. Deily	
Donald L. Evans	F & S Partners Incorporated Project Architect
Zan W. Holmes, Jr.	Emerson Construction Company, Inc.
Lowell H. Lebermann, Jr.	Contractor
Tom Loeffler	
Ellen Clarke Temple	

BACKGROUND INFORMATION

Gregory Gymnasium at U. T. Austin was originally constructed in 1930 and was expanded in 1962 with the construction of the Gregory Gymnasium Annex. The project will renovate approximately 264,867 gross square feet of space and encompasses some minor additions and demolition to improve user circulation and restore previously concealed architectural features. Renovation includes new heating, ventilating and air-conditioning, and electrical and plumbing systems and will bring the building into compliance with current building codes.

3. U. T. Austin - Women's Softball Field - Stage Two Grandstand and Related Facilities (Project No. 102-840): Request for Approval of Increase in Total Project Cost; Recommended Award of Construction Contract to J. C. Evans Construction Co., Inc., Austin, Texas; Request for Approval of Plaque Inscription; and Appropriation Therefor.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, and President Berdahl that the U. T. Board of Regents:

- a. Approve an increase in the total project cost for the Women's Softball Field - Stage Two Grandstand and Related Facilities at U. T. Austin which includes both Stage One and Stage Two by \$800,000 from \$3,750,000 to \$4,550,000 to be funded from Unexpended Plant Fund Balances and Auxiliary Enterprise Balances which will be reimbursed from Gifts and Grants when available
- b. Award a general construction contract for the Women's Softball Field - Stage Two Grandstand and Related Facilities at U. T. Austin to the lowest responsible bidder, J. C. Evans Construction Co., Inc., Austin, Texas, for the Base Bid and Alternate Bid No. 1 in the amount of \$3,278,900
- c. Approve the inscription set out on Page Ex.C - 24 for a plaque to be placed on the building in keeping with the standard pattern approved by the U. T. Board of Regents in June 1979.

WOMEN'S SOFTBALL FIELD - STAGE TWO  
GRANDSTAND AND RELATED FACILITIES  
1996

BOARD OF REGENTS

Bernard Rapoport Chairman	William H. Cunningham Chancellor, The University of Texas System
Thomas O. Hicks Vice-Chairman	Robert M. Berdahl President, The University of Texas at Austin
Martha E. Smiley Vice-Chairman	
Linnet F. Deily	
Donald L. Evans	Marmon Mok Project Architect
Zan W. Holmes, Jr.	J. C. Evans Construction Co., Inc. Contractor
Lowell H. Lebermann, Jr.	
Tom Loeffler	
Ellen Clarke Temple	

- d. Appropriate an additional \$800,000 from Unexpended Plant Fund Balances which will be reimbursed from Gifts and Grants when available.

BACKGROUND INFORMATION

In accordance with authorization of the U. T. Board of Regents in August 1995, bids for the general construction of the Women's Softball Field - Stage Two Grandstand and Related Facilities at U. T. Austin were received on August 15, 1996, as shown on Page Ex.C - 26.

The Women's Softball Field project was approved by the U. T. Board of Regents in August 1995 at a total project cost of \$3,750,000. The project is to be accomplished in two stages. The contract for the first stage, construction of the playing field, was awarded in November 1995 for a total project cost of \$620,000.

Bids for construction of Stage Two were originally received on April 25, 1996, and were substantially above the project construction budget. Following the bid opening, the Office of Facilities Planning and Construction implemented design changes which reduced cost without materially changing the ability of the project to meet the program requirements.

Following redesign, it was determined that an increase in project cost would still be required and the revised cost estimate for Stage Two was submitted to the Coordinating Board for approval.

The recommended contract award to J. C. Evans Construction Co., Inc., Austin, Texas, for the Base Bid and Alternate Bid No. 1 to add field lights can be made within the approved total project cost of \$4,550,000. J. C. Evans Construction Co., Inc. has stated in its proposal that it will have Historically Underutilized Business participation of 8.7% for women-owned firms and 16.4% for minority-owned firms in the contract.

The revised accounting for the project, including professional fees, contingencies, miscellaneous, and administrative expenses, is as follows:

Stage One Playing Field	\$ 620,000
Stage Two Grandstand and Related Facilities	<u>3,930,000</u>
Total Project Cost	\$4,550,000

The total project cost for this Stage Two contract is comprised of the following elements:

General Construction Contract	\$3,278,900
Fees and Administrative Expenses	379,799
Energy Management System, Communications Testing, Furnishings, Field Turf	194,037
Miscellaneous Expenses	18,264
Project Contingency	<u>59,000</u>
Total Project Cost	\$3,930,000

This project was approved by the Texas Higher Education Coordinating Board in July 1996 and is included in the FY 1996-2001 Capital Improvement Program and the FY 1996-1997 Capital Budget. Funding for this project will be \$4,494,000 from Unexpended Plant Fund Balances and \$56,000 from Auxiliary Enterprise Balances to be reimbursed from Gifts and Grants when available. Approval of this item will amend the Capital Improvement Program and Capital Budget.

**Women's Softball Field - Stage Two Grandstand  
and Related Facilities  
The University of Texas at Austin  
Project No. 102-840  
Bids Received August 15, 1996**

<u>Bidder</u>	<u>J. C. Evans Construction Co., Inc. Austin, Texas</u>	<u>Workman Corporation Austin, Texas</u>	<u>Chasco Contracting Round Rock, Texas</u>	<u>Austin Rio Construction Company, Inc. Austin, Texas</u>	<u>Brath, Inc. Round Rock, Texas</u>	<u>Arias Enterprises, Inc San Antonio, Texas</u>
<b>Base Bid</b>	\$3,199,000	\$3,249,500	\$3,465,000	\$3,469,000	\$3,568,000	\$3,807,000
<b>Alternate No. 1 - Add field lighting</b>	79,900	92,000	85,000	80,300	90,000	76,000
<b>Alternate No. 2 - Add precast concrete</b>	<u>No Bid</u>	<u>200,000</u>	<u>No Bid</u>	<u>No Bid</u>	<u>No Bid</u>	<u>21,000</u>
<b>Recommended Award - Base Bid and Alternate No. 1</b>	\$3,278,900	\$3,341,500	\$3,550,000	\$3,549,300	\$3,658,000	\$3,883,000

4. U. T. Tyler: Request for Authorization to Amend the FY 1996-2001 Capital Improvement Program and the FY 1996-1997 Capital Budget; Reallocate Funds Among Existing Projects; and Appropriation Therefor.--

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, and President Hamm that the U. T. Board of Regents authorize amendment of the FY 1996-2001 Capital Improvement Program and the FY 1996-1997 Capital Budget, reallocate funds among existing projects, and appropriate funds for projects at U. T. Tyler as described below:

- a. Appropriate \$930,318 from the U. T. Tyler Permanent University Fund Bond Proceeds - Special Program Funds as a substitute for \$930,318 of General Fee Balances for the Liberal Arts Complex project with the total project cost to remain \$21,900,000
- b. Appropriate \$880,000 from the U. T. Tyler Permanent University Fund Bond Proceeds - Special Program funding as a substitute for \$300,000 in General Fee Balances and \$580,000 in Revenue Financing System Bond Proceeds for the purchase and renovation of the University Place Retail Center project with the total project cost to remain \$880,000
- c. Delete the Engineering Building design project which had a total project cost of \$750,000.

BACKGROUND INFORMATION

The proposal to change the funding sources for these approved U. T. Tyler projects is intended to improve the overall fund balance position at U. T. Tyler. The proposal allocates funds from the Permanent University Fund Bond Proceeds - Special Program dollars which have previously been designated for

U. T. Tyler as a replacement of General Fee Balances for the Liberal Arts Complex and the purchase and renovation of the University Place Retail Center projects. These actions will allow U. T. Tyler to return General Fee Balances to current unrestricted funds. The replacement of Revenue Financing System Bond Proceeds used in the purchase and renovation of the University Place Retail Center project will eliminate the need to use General Fee Revenues to finance debt service on this project.

These projects are included in the FY 1996-2001 Capital Improvement Program and the FY 1996-1997 Capital Budget, and the project costs as already approved by the U. T. Board of Regents will remain unchanged.

In addition to the reallocation of fund sources, the proposal deletes the Engineering Building design project which will also allow \$100,000 of General Fee Balances to be released.

Approval of these items will amend the FY 1996-2001 Capital Improvement Program and the FY 1996-1997 Capital Budget.

5. U. T. Health Science Center - Houston: Request for Purchase of Electron Microscope for Use by the Institute of Molecular Medicine and Appropriation Therefor.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs, the Executive Vice Chancellor for Business Affairs, and President Low that the U. T. Board of Regents:

- a. Approve the purchase of an electron microscope for use by the Institute of Molecular Medicine at the U. T. Health Science Center - Houston
- b. Appropriate \$1,100,000 from Permanent University Fund Bond Proceeds for total project funding.

## BACKGROUND INFORMATION

The U. T. Health Science Center - Houston has the opportunity to purchase from the Zeiss Corporation their latest model electron microscope at a substantial discount. The machine was shipped to Chicago for a trade show by Zeiss. The company has provided a written commitment to sell the equipment at less than market value to avoid the air freight costs associated with shipping it back to Germany. The Institute of Molecular Medicine's research capabilities would be greatly enhanced by the immediate purchase of the electron microscope and associated flow cytometer which are basic to the study of molecular medicine.

The U. T. Board of Regents approved a Memorandum of Understanding (MOU) in March 1994 for \$15,000,000 of Permanent University Fund Bond Proceeds to support the development of the Institute of Molecular Medicine (IMM). The U. T. Health Science Center - Houston is in the process of raising matching funds in this amount for long-term support of the IMM project.

In April 1994, the U. T. Board of Regents appropriated the first \$2,500,000 in Permanent University Fund Bond Proceeds for the IMM and these funds have been matched by the U. T. Health Science Center - Houston. The current project has a total cost of \$5,400,000 and consists of the renovation of existing space in the Texas A&M University Institute of Biotechnology Building for which the U. T. Health Science Center - Houston has entered into a long-term lease.

The specific request for the purchase of equipment for the IMM is based on an immediate need and an unexpected opportunity as described above. Future requests for Permanent University Fund Bond Proceeds under the terms of this Memorandum of Understanding will be supported by matching funds.



## **Business Affairs & Audit Committee**

BUSINESS AFFAIRS AND AUDIT COMMITTEE  
Committee Chairman Smiley

Date: November 14, 1996  
Time: Following the meeting of the Executive Committee  
Place: Rooms NB2.402 and NB2.403, Simmons Biomedical  
Research Building, U. T. Southwestern Medical  
Center - Dallas

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7. U. T. Austin and U. T. El Paso: Request for Approval to Sell Approximately 1,569.97 Acres Located in Guadalupe County, Texas, and Authorization to Execute All Documents Related Thereto 47
8. U. T. Pan American: Request for Approval to Purchase Lamar Elementary School in Edinburg, Hidalgo County, Texas, and to Submit the Proposed Purchase to the Coordinating Board for Approval and Authorization to Execute All Documents Related Thereto 48
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1. U. T. System: Recommendation to Approve Chancellor's Docket No. 87.--

RECOMMENDATION

It is recommended that Chancellor's Docket No. 87 be approved.

It is requested that the committee confirm that authority to execute contracts, documents, or instruments approved therein has been delegated to the officer or official executing same.

2. U. T. Board of Regents: Proposed Amendments to the Regents' Rules and Regulations, Parts One and Two, Relating to the Delegation of Selected Contract Approval Authority to Designated U. T. System Administration and Component Officials.--

RECOMMENDATION

The U. T. System Process Review Committee, with the concurrence of the Chancellor, recommends that the Regents' Rules and Regulations, Parts One and Two, be amended as set forth below to clarify the delegation of selected contract approval authority to designated U. T. System Administration and component officials:

a. Part One, Chapter I (Board of Regents)

1. Amend Section 9, Subsection 9.2, Subdivisions 9.22 and 9.23, relating to contracting authority, as set forth below in congressional style:

9.22 All [~~contracts-for-consulting-services-for-more than-\$250,000-must-be-approved-by-the-Executive Committee-of-the-Board-or-approved-by-the-Board via-the-docket-or-the-agenda.--Except-as provided-in-Subdivision-9.23,-all-other~~] contracts or agreements, including purchase orders and vouchers, with a cost or value of more than \$500,000 must be approved by the

Executive Committee of the Board or approved by the Board via the docket or the agenda[-] except the following, which do not require prior approval or ratification by the Executive Committee or the Board regardless of the contract amount:

- 9.221 Contracts, agreements, and documents relating to construction projects previously approved by the Board in the Capital Improvement Program and Capital Budget.
- 9.222 Contracts or grant proposals for sponsored research, including institutional support grants, that do not include a license for or conveyance of intellectual property owned or controlled by the Board.
- 9.223 Contracts or agreements for the purchase of replacement equipment.
- 9.224 Contracts or agreements for the purchase of routinely purchased supplies.
- 9.225 Purchases made under a group purchasing program.
- 9.226 Purchases of new equipment identified specifically in the institutional budget approved by the Board.
- 9.23 All contracts for consulting services for more than \$250,000 must be approved by the Executive Committee of the Board or approved by the Board via the docket or the agenda [Contracts, agreements, and documents relating to construction projects previously approved by the Board in the Capital Improvement Program and Capital Budget and contracts or agreements, including purchase orders and vouchers, for the purchase of replacement equipment, routinely purchased supplies, purchases made under a group purchasing program, or purchases of new equipment identified specifically in the institutional budget approved by the Board do not require prior approval or ratification by the Executive Committee or the Board regardless of the contract amount].

2. Amend Section 9, Subsection 9.2, by adding Subdivision 9.29, relating to contracts or agreements with foreign entities, as follows:

9.29 All contracts and agreements of any kind or nature with a foreign government or agency thereof and all contracts and agreements for sponsored research with a corporation or other entity organized and operating under the laws of a foreign state must be approved by the Board via the docket or the agenda.

b. Part Two, Chapter VIII (Physical Plant Improvements)

1. Amend Section 2, Subdivision 2.23, relating to contracts for the services of a project architect or engineer for major projects, as set forth below in congressional style:

2.23 The Chancellor, on behalf of the Board, will utilize the services of a project architect or engineer for each Major Project or portion thereof as may be desirable or required by law. Contracts with architects and engineers shall comply with guidelines issued by the Office of General Counsel and shall be written on a standard form approved by the Office of General Counsel. [~~The Chancellor is authorized to adopt a standard contract form or forms, subject to approval by the Office of General Counsel, for the employment of architects and engineers to provide professional services.~~]

2. Amend Section 3, Subsection 3.3, relating to contracts for professional services in connection with minor projects, as set forth below in congressional style:

3.3 Professional Services.--Subject to the provisions of Part One, Chapter I, Section 9 of these Rules and Regulations, each chief administrative officer is authorized to execute and deliver on behalf of the Board contracts and agreements with architects, engineers, and other professional service providers for Minor Projects previously approved in accordance with this Chapter. Contracts with architects and engineers shall comply with guidelines issued

by the Office of General Counsel and shall be written on a standard form approved by the Office of General Counsel. [~~Contracts with architects and engineers shall be on a standard form adopted by the Chancellor pursuant to Subdivision 2.22.~~]

c. Part Two, Chapter XI (Contract Administration)

1. Amend Section 2, Subsection 2.1, relating to delegation of contracting authority for small purchases, as set forth below in congressional style:

2.1 [~~Foreign Contracts.--A contract or agreement with a foreign government or agency thereof or with an institution, corporation, enterprise, or individual subject to the jurisdiction of a foreign government shall be submitted to the Board for approval as an item on the agenda or via the institutional docket, as determined by the appropriate Executive Vice Chancellor.~~]  
Small Purchase Programs.--The Board delegates to each chief administrative officer authority to implement, manage, and oversee a small purchase program to allow purchases of routine supplies, services, and equipment to be made by specified employees. A small purchase program shall not permit any purchase for more than \$5,000. The small purchase program shall provide appropriate oversight and include all procedures necessary to assure compliance with these Rules and Regulations and applicable laws.

2. Amend Section 3, Subsection 3.2, relating to authority to settle claims and disputes, as set forth below in congressional style:

3.2 Settlement of Disputes.--Except as provided in Subsection 3.3 of this Section, t[~~F~~]he Board delegates to the Vice Chancellor and General Counsel authority to execute and deliver on behalf of the Board agreements for legal services with outside counsel and agreements settling any claim, dispute, or litigation with a third party in the following amounts. The

Vice Chancellor and General Counsel shall consult with the chief administrative officer and the appropriate Executive Vice Chancellor with regard to all significant settlements that will be paid out of institutional funds. The Vice Chancellor and General Counsel shall consult with the Office of Development and External Relations with respect to settlement of will contests and other matters relating to gifts and bequests administered by that Office.

<u>Amount</u>	<u>Additional Requirements</u>
\$150,000 or less	None
\$150,001 to \$300,000	Concurrence of the Chancellor or the appropriate Executive Vice Chancellor
\$300,001 to \$500,000	Concurrence of the Chairman of the Board
More than \$500,000	Concurrence of the Board of Regents, the Executive Committee, or the appropriate standing committee of the Board

3. Amend Section 3, by adding Subsection 3.3, regarding authority to settle claims and disputes relating to construction contracts, to read as follows:

3.3 Settlement of Claims and Disputes Relating to Construction Projects.--The Board delegates authority to execute all documents necessary or desirable to settle claims and disputes relating to construction projects to the System or component official designated in the construction contract to the extent funding for the project has been authorized in accordance with the provisions of Part Two, Chapter VIII of these Rules and Regulations.



- d. Part Two, Chapter XIII (Contracts and Grants for Sponsored Research)
1. Amend Section 1, relating to delegation of contracting authority with respect to sponsored research and grant proposals, as set forth below in congressional style:

Sec. 1. Delegation of Authority.--Subject to [~~Subsections 1.1 and 1.2 of this Section and to~~] the general provisions of Part One, Chapter I, Section 9, the Board delegates to each chief administrative officer authority to execute and deliver on behalf of the Board contracts or grant proposals for sponsored research [~~from or with third parties, including institutional support grants~~], other than agreements that grant to a third party an interest in intellectual property owned or controlled by the Board, which agreements must be processed as required by Part Two, Chapter XII, Subsection 9.1 of these Rules and Regulations. Funds shall not be encumbered or expended prior to execution of the contract or grant by the chief administrative officer. The chief administrative officer may require that the chief business officer or delegate [~~must~~] approve the business aspects of contracts or grant proposals for sponsored research [~~agreements~~] prior to execution.

2. Delete in their entirety Subsections 1.1 and 1.2 relating to intellectual property and foreign contracts.

#### BACKGROUND INFORMATION

These proposed amendments to the Regents' Rules and Regulations further implement actions taken by the U. T. Board of Regents at the May 1996 meeting where it was agreed in principle that the authority to execute a variety of contracts and agreements would be delegated to U. T. System Administration or component officials within specific guidelines, conditions,

and restrictions. The authority to execute contracts and agreements was broadly implemented by actions taken by the U. T. Board of Regents at a special called meeting on August 29, 1996.

This overall initiative is part of the cost-saving programs recommended by the U. T. System Process Review Committee, chaired by Regent Lebermann, and provides an efficient method for the U. T. Board of Regents to delegate certain contracting authority as authorized by Section 65.31(g) of the Texas Education Code. Implementation of this delegated authority will be monitored periodically through routine reviews and audits.

The proposed amendments contain substantive and minor editorial corrections as summarized below:

- a. Regents' Rules and Regulations, Part One, Chapter I, Board of Regents -- Clarifies the kinds of contracts and agreements that are not subject to the \$500,000 general limitation on delegated authority, specifies that contracts or grant proposals for sponsored research that do not include a license or grant of intellectual property are not subject to the \$500,000 general limitation on delegated authority, and clarifies that all contracts and agreements with foreign governments or entities must be approved by the Board via the docket or the agenda.
- b. Regents' Rules and Regulations, Part Two, Chapter VIII, Physical Plant Improvements -- Clarifies that contracts for professional services in connection with construction projects must be on a standard form approved by the Office of General Counsel and conform to guidelines issued by the Office of General Counsel.
- c. Regents' Rules and Regulations, Part Two, Chapter XI, Contract Administration -- Delegates authority to each chief administrative officer to implement, manage, and oversee a small purchase program to allow purchases of routine supplies, services, and equipment up to \$5,000 to be made by specified employees, deletes the requirement that foreign contracts be approved by the Board, which requirement is now found in the general provisions relating to delegation of contracting authority in Part One, Chapter I, Section 9 of the Regents' Rules and Regulations, and specifies that authority to settle claims and disputes relating to construction projects will be as provided in the construction contract. The authority to

implement a small purchase program is in addition to the general authority to execute and deliver contracts subject to the limitations of Part One, Chapter I, Section 9 of the Regents' Rules and Regulations.

- d. Regents' Rules and Regulations, Part Two, Chapter XIII, Contracts and Grants for Sponsored Research -- Clarifies delegation of authority to execute certain sponsored research agreements and grant proposals and deletes the requirement that foreign contracts be approved by the Board, which requirement is now found in the general provisions relating to delegation of contracting authority in Part One, Chapter I, Section 9 of the Regents' Rules and Regulations.
3. U. T. System: Recommendation to Authorize Appropriate Officials to Execute the Bank Card Services Agreement Between the U. T. Board of Regents and National Data Payment Systems, Atlanta, Georgia.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Business Affairs that the U. T. Board of Regents authorize the Chancellor or his delegate to execute the Bank Card Services Agreement between the U. T. Board of Regents and National Data Payment Systems, Atlanta, Georgia, for the processing of credit card transactions for the component institutions of the U. T. System.

#### BACKGROUND INFORMATION

Under Part One, Chapter I, Section 9, Subsection 9.2, Subdivision 9.22 of the Regents' Rules and Regulations, contracts in excess of \$500,000 must be approved by the U. T. Board of Regents. The current contract for bank card processing with NationsBank (now Unified Merchant Services) expired March 1, 1996, and was renewed through January 1, 1997, to allow time to request proposals for the services.

In July 1996, a request for proposals was mailed, and proposals from eight companies were received. A committee of representatives from nine of the U. T. System component institutions reviewed the companies and recommended three for further consideration. The three companies were National Data Payment Systems, First Data Merchant Services, and First USA Paymentech. Based on presentations from the companies, discount rate, technological capabilities, and perceived quality of service, National Data Payment Systems was recommended.

4. U. T. System: Recommended Approval of the System-wide Internal Audit Plan for Fiscal Year 1996-97.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Business Affairs and Audit Committee of the U. T. Board of Regents that the proposed U. T. System Internal Audit Plan for Fiscal Year 1996-97 be approved. The development of the Audit Plan is based on a system-wide risk assessment. The implementation of the Plan will be coordinated with the institutional auditors. A copy of the U. T. System Administration and component institution Audit Plans and the Summarized Audit Plans are on file in the Office of the Board of Regents.

#### BACKGROUND INFORMATION

The individual institution's Audit Plans, which were compiled by the internal audit departments after the process of receiving input and guidance from the institution's management and Internal Audit Committee, were submitted to the Internal Audit Committees and chief administrative officers for review and comments.

The individual Audit Plans were also reviewed by the Chancellor, the Executive Vice Chancellors, and the System Audit Director. Each of these individuals was given the opportunity for direct input into the development of the Plans.

After the review process, the Internal Audit Committees at each of the component institutions formally approved its institution's Plan.

The U. T. System Internal Audit Plans adequately address the risks of the U. T. System by planning audits as follows:

	<u>Audit Hours</u>	<u>% of Total Hours</u>
Key Financial and Operating Information	43,212	26.88%
Risk Based Audits	34,790	21.64%
EDP Audits	20,389	12.68%
Departmental Audits	26,574	16.53%
Other Audits/Projects	<u>35,820</u>	<u>22.27%</u>
Total	<u>160,785</u>	<u>100.00%</u>

The Business Affairs and Audit Committee reviewed the individual Plans at its October 8, 1996, meeting and recommends approval.

5. U. T. System: Proposed Adoption of Fifth Supplemental Resolution Establishing a Taxable Interim Financing Program and Authorization for Appropriate Officials to Execute Documents Relating Thereto.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Business Affairs that the U. T. Board of Regents:

- a. Adopt a Fifth Supplemental Resolution substantially in the form set out on Pages BAAC 14 - 45 to authorize a taxable interim financing program in an aggregate amount not to exceed \$25,000,000

- b. Authorize the officers and employees of the Office of Business Affairs to take any and all steps necessary to carry out the intentions of the U. T. Board of Regents to complete the transaction.

#### BACKGROUND INFORMATION

The use of tax-exempt debt for projects is limited by the Internal Revenue Code to facilities employed for governmental purposes. Projects with nongovernmental use beyond established limits are denied the benefits of tax-exempt debt and must employ taxable debt. Taxable debt is anticipated to be issued for projects in the Capital Improvement Program that contain nongovernmental use or private use such as stadium sky boxes and space rented to nongovernmental entities.

The U. T. Board of Regents utilizes commercial paper to provide interim financing for projects in the Capital Improvement Program. After completion of the projects, permanent financing in the form of bonds is used. The Board currently has a tax-exempt commercial paper program with the aggregate amount of paper outstanding not to exceed \$250,000,000. As of October 1, 1996, the Board had \$89,382,000 of tax-exempt commercial paper outstanding.

The taxable commercial paper program will not exceed \$25,000,000. Procedures from the Guidelines Governing Administration of the Revenue Financing System will be applied to the issuance of taxable debt.

Liquidity for both the tax-exempt and taxable commercial paper programs is provided by the U. T. System Short/Intermediate Term Fund.

**CERTIFICATE FOR RESOLUTION**

THE STATE OF TEXAS §  
BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM §

We, the undersigned officers of the Board of Regents of The University of Texas System, hereby certify as follows:

1. The Board of Regents of The University of Texas System convened in REGULAR MEETING ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 1996, at the designated meeting place, and the roll was called of the duly constituted officers and members of said Board, to-wit:

- Mr. Bernard Rapoport, Chairman
- Mr. Thomas O. Hicks, Vice Chairman
- Ms. Martha E. Smiley, Vice Chairman
- Ms. Linnet F. Deily
- Mr. Donald L. Evans
- Mr. Zan W. Holmes, Jr.
- Mr. Lowell H. Lebermann, Jr.
- Mr. Tom Loeffler
- Ms. Ellen Clarke Temple
- Mr. Arthur H. Dilly, Executive Secretary

and all of said persons were present, except the following absentees: \_\_\_\_\_, thus constituting a quorum. Whereupon, among other business, the following was transacted at said Meeting: a written

**FIFTH SUPPLEMENTAL RESOLUTION  
AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF BOARD  
OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM REVENUE  
FINANCING SYSTEM TAXABLE COMMERCIAL PAPER NOTES,  
SERIES B AND APPROVING AND AUTHORIZING INSTRUMENTS  
AND PROCEDURES RELATING THERETO**

was duly introduced for the consideration of said Board and duly read. It was then duly moved and seconded that said Resolution be adopted; and, after due discussion, said motion, carrying with it the adoption of said Resolution, prevailed and carried by the following vote:

AYES: All members of said Board shown present above voted "Aye", except as shown below.

NOES: \_\_\_\_\_

2. That a true, full and correct copy of the aforesaid Resolution adopted at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; that said Resolution has been duly recorded in said Board's minutes of said Meeting; that the above and foregoing paragraph is a true, full, and correct excerpt from said Board's minutes of said Meeting pertaining to the adoption of said Resolution; that the persons named in the above and foregoing paragraph are the duly chosen, qualified, and acting officers and members of said Board as indicated therein; and that each of the officers and members of said Board was duly and sufficiently notified officially and personally, in advance, of the time, place, and purpose of the aforesaid Meeting, and that said Resolution would be introduced and considered for adoption at said Meeting; and that said Meeting was open to the public, and public notice of the time, place, and purpose of said Meeting was given, all as required by the Texas Government Code, Chapter 551.

3. That the Resolution has not been modified, amended or repealed and is in full force and effect on and as of the date hereof.

SIGNED AND SEALED the \_\_\_\_\_.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Executive Secretary

(SEAL)



**FIFTH SUPPLEMENTAL RESOLUTION  
AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF BOARD  
OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM REVENUE  
FINANCING SYSTEM TAXABLE COMMERCIAL PAPER NOTES,  
SERIES B AND APPROVING AND AUTHORIZING INSTRUMENTS  
AND PROCEDURES RELATING THERETO**

**FIFTH SUPPLEMENTAL RESOLUTION  
AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF BOARD  
OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM REVENUE  
FINANCING SYSTEM TAXABLE COMMERCIAL PAPER NOTES,  
SERIES B AND APPROVING AND AUTHORIZING INSTRUMENTS  
AND PROCEDURES RELATING THERETO**

**PREAMBLE** .....

**ARTICLE I  
DEFINITIONS AND CONSTRUCTION OF TERMS**

**Section 1.01. DEFINITIONS** .....

**Section 1.02. CONSTRUCTION OF TERMS** .....

**ARTICLE II  
AUTHORIZATION OF NOTES**

**Section 2.01. GENERAL AUTHORIZATION** .....

**Section 2.02. COMMERCIAL PAPER NOTES** .....

**Section 2.03. FORM OF COMMERCIAL PAPER NOTES** .....

**Section 2.04. EXECUTION - AUTHENTICATION** .....

**Section 2.05. ISSUING AND PAYING AGENT AND  
BOOK-ENTRY-ONLY SYSTEM** .....

**(a) Issuing and Paying Agent** .....

**(b) Book-Entry-Only System** .....

**Section 2.06. NEGOTIABILITY, REGISTRATION, AND EXCHANGEABILITY** .....

**Section 2.07. COMMERCIAL PAPER NOTES MUTILATED, LOST,  
DESTROYED, OR STOLEN** .....

**Section 2.08. SERIES B CREDIT AGREEMENT** .....

**Section 2.09. PROMISSORY NOTE** .....

**Section 2.10. NOTE PAYMENT FUND** .....

- Section 2.11. ESTABLISHMENT OF FINANCING SYSTEM; ISSUANCE OF  
PARITY DEBT; SECURITY AND PLEDGE .....
- Section 2.12. CANCELLATION .....
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**ARTICLE III  
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- Section 3.01. ISSUANCE AND SALE OF NOTES .....
- Section 3.02. PROCEEDS OF SALE OF COMMERCIAL PAPER NOTES .....
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**ARTICLE IV  
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**ARTICLE V  
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- (a) Amendments Without Consent .....
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- Section 6.01. **FIFTH SUPPLEMENT TO CONSTITUTE A CONTRACT;  
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- Section 6.02. **INDIVIDUALS NOT LIABLE** .....
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- Section 6.04. **SEVERABILITY OF INVALID PROVISIONS** .....
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- Section 6.06. **LIMITATION OF BENEFITS WITH RESPECT TO  
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- Section 6.07. **APPROVAL OF ATTORNEY GENERAL** .....
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- Section 6.09. **NOTICE TO RATING AGENCIES** .....
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- Exhibit A - Definitions**
- Exhibit B - Form of Commercial Paper Notes**
- Exhibit C - Form of Master Note**

**FIFTH SUPPLEMENTAL RESOLUTION  
AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF  
BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS  
SYSTEM REVENUE FINANCING SYSTEM TAXABLE  
COMMERCIAL PAPER NOTES, SERIES B AND APPROVING  
AND AUTHORIZING INSTRUMENTS AND PROCEDURES  
RELATING THERETO**

WHEREAS, on April 12, 1990, the Board adopted a Master Resolution Establishing The University of Texas System Revenue Financing System, as amended and restated on February 14, 1991 and further amended on October 8, 1993 (referred to herein as the "Master Resolution"); and

WHEREAS, unless otherwise defined herein, terms used herein shall have the meaning given in the Master Resolution; and

WHEREAS, the Master Resolution establishes the Revenue Financing System (the "Financing System") comprised of the institutions now or hereafter constituting components of The University of Texas System which are designated "Members" of the Financing System by action of the Board and pledges the Pledged Revenues attributable to each Member of the Financing System to the payment of Parity Debt to be outstanding under the Master Resolution; and

WHEREAS, the Board has previously adopted the First, Second, Third, and Fourth Supplemental Resolutions to the Master Resolution authorizing Parity Debt thereunder; and

WHEREAS, the Board has determined to authorize the issuance of Parity Debt in the form of taxable commercial paper notes to provide interim financing for capital improvements and to finance equipment purchases when such improvements and equipment cannot be financed on a tax-exempt basis pursuant to the Board's Revenue Financing System Commercial Paper Program, Series A authorized by the First Supplemental Resolution to the Master Resolution; and

WHEREAS, the Board hereby determines and deems it necessary to authorize the issuance of Parity Debt pursuant to this Fifth Supplemental Resolution (the or this "Fifth Supplement") to the Master Resolution for such purposes and;

WHEREAS, the notes (the "Notes") authorized to be issued by this Fifth Supplement are to be issued and delivered pursuant to Chapter 55, Texas Education Code, and the Board hereby finds that the purposes for which it may issue Notes hereunder constitute a "public utility", as contemplated by Article 717q, Vernon's Texas Civil Statutes, as amended; and

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM THAT:

ARTICLE I  
DEFINITIONS AND CONSTRUCTION OF TERMS

Section 1.01. Definitions. In addition to the definitions set forth in the preamble of this Fifth Supplement, the terms used in this Fifth Supplement and not otherwise defined shall have the meanings given in the Master Resolution or in Exhibit "A" to this Fifth Supplement attached hereto and made a part hereof.

Section 1.02. Construction of Terms. If appropriate in the context of this Fifth Supplement, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

ARTICLE II  
AUTHORIZATION OF NOTES

Section 2.01. General Authorization. Pursuant to authority conferred by and in accordance with the provisions of the Constitution and laws of the State of Texas, particularly the Acts, Commercial Paper Notes shall be and are hereby authorized to be issued in an aggregate principal amount not to exceed Twenty Five Million Dollars (\$25,000,000) at any one time Outstanding for the purpose of financing Project Costs of Eligible Projects and to refinance, renew, or refund Notes, Prior Encumbered Obligations, and Parity Debts, including interest thereon all in accordance with and subject to the terms, conditions, and limitations contained herein. For purposes of this Section 2.01, any portion of Outstanding Notes to be paid from money on deposit with the Issuing and Paying Agent and from the available proceeds of Parity Debt or other obligations of the Board issued on the day of calculation shall not be considered Outstanding. The authority to issue Commercial Paper Notes from time to time under the provisions of this Fifth Supplement shall exist until the Maximum Maturity Date, regardless of whether at any time prior to the Maximum Maturity Date there are any Commercial Paper Notes Outstanding.

Section 2.02. Commercial Paper Notes. Under and pursuant to the authority granted hereby and subject to the limitations contained herein, Commercial Paper Notes to be designated "Board of Regents of The University of Texas System Revenue Financing System Taxable Commercial Paper Notes, Series B" are hereby authorized to be issued and sold and delivered from time to time in such principal amounts as determined by a U.T. System Representative in denominations of \$100,000 or in integral multiples of \$1,000 in excess thereof, numbered in ascending consecutive numerical order in the order of their issuance, and shall mature and become due and payable on such dates as a U.T. System Representative shall determine at the time of sale; provided, however, that no Commercial Paper Note shall (i) mature after the Maximum Maturity Date or (ii) have a term in excess of 270 calendar days.

Subject to the limitations contained herein, Commercial Paper Notes herein authorized shall be dated as of their date of issuance (the "Note Date") and shall bear no interest or bear interest at such rate or rates per annum or computed pursuant to such formula and on such basis (but in no event to exceed the Maximum Interest Rate in effect on the date of issuance thereof), as may be

determined by a U.T. System Representative. Interest, if any, on Commercial Paper Notes shall be payable at maturity. Commercial Paper Notes may be payable to bearer, may be issued in registered form, without coupons, or may be issued in book-entry only form pursuant to Section 2.05(b) as determined by a U.T. System Representative. Both principal of and interest on the Commercial Paper Notes shall be payable in lawful money of the United States of America, without exchange or collection charges to the Holder thereof in the manner provided in the Form of Commercial Paper Note set forth in Exhibit B to this Fifth Supplement.

Commercial Paper Notes issued hereunder may contain terms and provisions for the redemption or prepayment thereof prior to maturity, subject to any applicable limitations contained herein, as provided herein or otherwise as shall be determined by a U.T. System Representative.

Subject to applicable terms, limitations, and procedures contained herein, the Commercial Paper Notes may be sold in such manner at public or private sale and at par or at such discount or premium (within the interest rate and yield restrictions provided herein) as a U.T. System Representative shall approve at the time of the sale thereof.

#### Section 2.03. Form of Commercial Paper Notes.

(a) If not issued in book-entry only form, the Commercial Paper Notes and the Certificate of Authentication to appear on each of the Commercial Paper Notes shall be substantially in the form set forth in Exhibit B to this Fifth Supplement with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Fifth Supplement and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) ("CUSIP" numbers) and such legends and endorsements thereon as may, consistently herewith, be approved by a U.T. System Representative. Any portion of the text of any Commercial Paper Notes may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Commercial Paper Notes and the Commercial Paper Notes shall be printed, lithographed, or engraved or produced in any other similar manner, or typewritten, all as determined and approved by a U.T. System Representative.

(b) If the Commercial Paper Notes are issued in book-entry only form pursuant to Section 2.05(b), they shall be issued in the form of a Master Note in substantially the form attached hereto as Exhibit C to which there shall be attached the form of Commercial Paper Note set forth in Exhibit B and it is hereby declared that the provisions of Exhibit B are incorporated into and shall be a part of the Master Note. It is further provided that this Fifth Supplement, the Master Resolution, and the form of Commercial Paper Note set forth in Exhibit B shall constitute the "underlining records" referred to in the Master Note. Notwithstanding the provisions of Section 2.04, the Master Note shall be executed on behalf of the Board by the manual signature of the Chairman or Vice-Chairman of the Board.

Section 2.04. Execution - Authentication. The Notes shall be executed on behalf of the Board by the Chairman or Vice Chairman of the Board under its seal reproduced or impressed thereon and attested by the Executive Secretary to the Board. The signature of said officers on the

Notes may be manual or facsimile. Notes bearing the manual or facsimile signatures of individuals who are or were the proper officers of the Board on the date of passage of this Fifth Supplement shall be deemed to be duly executed on behalf of the Board, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of the initial sale and delivery of Notes authorized to be issued hereunder and with respect to Notes delivered in subsequent sales, exchanges, and transfers, all as authorized and provided in the Bond Procedures Act of 1981, Article 717k-6, Vernon's Texas Civil Statutes, as amended.

Other than pursuant to Section 2.03(b), no Commercial Paper Note shall be entitled to any right or benefit under this Fifth Supplement, or be valid or obligatory for any purpose, unless there appears on such Commercial Paper Note a certificate of authentication substantially in the form provided in Exhibit B to this Fifth Supplement, executed by the Issuing and Paying Agent by manual signature, and such certificate upon any Commercial Paper Note shall be conclusive evidence, and the only evidence, that such Commercial Paper Note has been duly certified or registered and delivered.

Section 2.05. Issuing and Paying Agent and Book-Entry-Only System.

(a) Issuing and Paying Agent. The Issuing and Paying Agent for the Commercial Paper Notes may be the Board, if authorized by law, or the institution determined by the U.T. System Representative, to have submitted the lowest responsible bid for such services in response to requests for proposals. The Board covenants and agrees to keep and maintain the Registration Books at the office of the Issuing and Paying Agent, all as provided herein and pursuant to such reasonable rules and regulations as the Issuing and Paying Agent may prescribe. The Board covenants to maintain and provide an Issuing and Paying Agent at all times while the Commercial Paper Notes are outstanding, which, if it is not acting in such capacity, shall be a national or state banking association or corporation organized and doing business under the laws of the United States of America or of any State and authorized under such laws to exercise trust powers. The issuing and paying agent for the Board's Revenue Financing System Commercial Paper Notes, Series A (the "Series A Notes") is hereby designated as the initial Issuing and Paying Agent. Should a change in the Issuing and Paying Agent for the Commercial Paper Notes occur, the Board agrees to promptly cause a written notice thereof to be (i) sent to each Holder of the Commercial Paper Notes then outstanding by United States mail, first class, postage prepaid and (ii) published in a financial newspaper or journal of general circulation in The City of New York, New York, once during each calendar week for at least two calendar weeks; provided, however, that the publication of such notice shall not be required if notice is given to each Holder in accordance with clause (i) above. Such notice shall give the address of the successor Paying Agent/Registrar. A successor Issuing and Paying Agent may be appointed without the consent of the Holders.

The Board and the Issuing and Paying Agent may treat the bearer (in the case of Commercial Paper Notes so registered) or the Registered Owner of any Commercial Paper Note as the absolute owner thereof for the purpose of receiving payment thereof and for all purposes, and, to the extent permitted by law, the Board and the Issuing and Paying Agent shall not be affected by any notice or knowledge to the contrary.



A copy of the Registration Books and any change thereto shall be provided to the Board by the Issuing and Paying Agent, by means of telecommunications equipment or such other means as may be mutually agreeable thereto, within two Business Days of the opening thereof or any change therein, as the case may be.

(b) Book-Entry-Only System. If a U.T. System Representative determines that it is possible and desirable to provide for a book-entry-only system of Commercial Paper Note registration with DTC, such U.T. System Representative, acting for and on behalf of the Board, is hereby authorized to approve, execute, and deliver a Letter of Representations to DTC and to enter into such other agreements and execute such instruments as are necessary to implement such book-entry-only system, such approval to be conclusively evidenced by the execution thereof by said U.T. System Representative. Under the initial Book-Entry-Only System with DTC, (i) no physical Note certificates will be delivered to DTC and (ii) the Board will execute and deliver to the Issuing and Paying Agent, as custodian for DTC, a master note relating to the Commercial Paper Notes (the "Master Note") in substantially the form set forth in Exhibit C. Except as provided herein, the ownership of the Notes shall be registered in the name of Cede & Co., as nominee of DTC, which will serve as the initial securities depository for the Notes. Ownership of beneficial interests in the Notes shall be shown by book entry on the system maintained and operated by DTC and DTC participants, and transfers of ownership of beneficial interests shall be made only by DTC and the DTC participants by book entry, and the Board and the Issuing and Paying Agent shall have no responsibility therefor. DTC will be required to maintain records of the positions of the DTC participants in the Notes, and the DTC participants and persons acting through the DTC participants will be required to maintain records of the purchasers of beneficial interests in the Notes. Except as provided in subsection (b)(i) of this Section 2.05, the Notes shall not be transferable or exchangeable, except for transfer to another securities depository or to another nominee of a securities depository.

With respect to Commercial Paper Notes registered in the name of DTC or its nominee, neither the Board nor the Issuing and Paying Agent shall have any responsibility or obligation to any DTC Participant or to any person on whose behalf a DTC Participant holds an interest in the Commercial Paper Notes. Without limiting the immediately preceding sentence, neither the Board nor the Issuing and Paying Agent shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC or any DTC Participant with respect to any ownership interest in the Commercial Paper Notes, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of the Commercial Paper Notes, as shown on the Registration Books, of any notice with respect to the Commercial Paper Notes, including any notice of redemption, and (iii) the payment to any DTC Participant or any other person, other than a registered owner of the Commercial Paper Notes, as shown in the Registration Books, of any amount with respect to principal of and premium, if any, or interest on the Commercial Paper Notes.

Whenever, during the term of the Commercial Paper Notes, the beneficial ownership thereof is determined by a book-entry at DTC, the requirements in this Fifth Supplement of holding, registering, delivering, exchanging, or transferring the Commercial Paper Notes shall be deemed modified to require the appropriate person or entity to meet the requirements of DTC as to holding, registering, delivering, exchanging, or transferring the book-entry to produce the same effect.

Either the Board or DTC may determine to discontinue the Book-Entry-Only System and in such case, unless a new Book-Entry-Only System is put in place, physical certificates in the form set forth in Exhibit B shall be provided to the Beneficial Holders.

If at any time, DTC ceases to hold the Commercial Paper Notes, all references herein to DTC shall be of no further force or effect.

Whenever the beneficial ownership of the Commercial Paper Notes is determined by a book-entry at DTC, delivery of Commercial Paper Notes for payment at maturity shall be made pursuant to DTC's payment procedures as are in effect from time to time and the DTC Participants shall transmit payment to beneficial owners whose Commercial Paper Notes have matured. The Board and each Issuing and Paying Agent, Bank, and Dealer are not responsible for transfer of payment to the DTC Participants or beneficial owners.

Section 2.06. Negotiability, Registration, and Exchangeability. The Commercial Paper Notes shall be, and shall have all of the qualities and incidents of a negotiable instrument under the laws of the State of Texas, and each successive Holder, in accepting any of the obligations, shall be conclusively deemed to have agreed that such obligations shall be and have all of the qualities and incidents of a negotiable instrument under the laws of the State of Texas.

Registration Books relating to the registration, payment, and transfer or exchange of the Commercial Paper Notes shall at all times be kept and maintained by the Board at the office of the Issuing and Paying Agent, and the Issuing and Paying Agent shall obtain, record, and maintain in the Registration Books the name, and to the extent provided by or on behalf of the Holder, the address of each Holder of the Commercial Paper Notes, except for Commercial Paper Notes registered to bearer. A copy of the Registration Books shall be provided to and held by the Board in the manner provided in Section 2.05 hereof. Any Commercial Paper Note may, in accordance with its terms and the terms hereof, be transferred or exchanged for Commercial Paper Notes of like tenor and character and of other authorized denominations upon the Registration Books by the Holder in person or by his duly authorized agent, upon surrender of such Commercial Paper Note to the Issuing and Paying Agent for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Registrar.

Upon surrender for transfer of any Commercial Paper Note at the designated office of the Registrar, the Issuing and Paying Agent shall register and deliver, in the name of the designated transferee or transferees, one or more new Commercial Paper Notes executed on behalf of, and furnished by, the Board of like tenor and character and of authorized denominations and having the same maturity, bearing interest at the same rate and of a like aggregate principal amount as the Commercial Paper Note or Commercial Paper Notes surrendered for transfer.

Furthermore, Commercial Paper Notes may be exchanged for other Commercial Paper Notes of like tenor and character and of authorized denominations and having the same maturity, bearing the same rate of interest and of like aggregate principal amount as the Commercial Paper Notes surrendered for exchange, upon surrender of the Commercial Paper Notes to be exchanged at the designated office of the Registrar. Whenever any Commercial Paper Notes are so surrendered for

exchange, the Issuing and Paying Agent shall register and deliver new Commercial Paper Notes of like tenor and character as the Commercial Paper Notes exchanged, executed on behalf of and furnished by, the Board to the Holder requesting the exchange.

The Board and the Issuing and Paying Agent may charge the Holder a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such exchange or transfer. The Issuing and Paying Agent or the Board may also require payment from the Holder of a sum sufficient to cover any tax, fee, or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new Commercial Paper Note shall be delivered.

The Board and the Issuing and Paying Agent shall not be required to transfer or exchange any Commercial Paper Note selected, called, or being called for redemption in whole or in part.

New Commercial Paper Notes delivered upon any transfer or exchange shall be valid special obligations of the Board evidencing the same debt as the Commercial Paper Notes surrendered, shall be secured by this Fifth Supplement, and shall be entitled to all of the security and benefits hereof to the same extent as the Commercial Paper Notes surrendered.

The Board reserves the right to change the above registration and transferability provisions of the Commercial Paper Notes at any time on or prior to the delivery thereof in order to comply with applicable laws and regulations of the United States in effect at the time of issuance thereof. In addition, to the extent that the provisions of this Section conflict with or are inconsistent with the provisions of the Form of Commercial Paper Note set forth in Exhibit B, such other provisions shall control.

**Section 2.07. Commercial Paper Notes Mutilated, Lost, Destroyed, or Stolen.** If any Commercial Paper Note shall become mutilated, the Board, at the expense of the Holder of said Commercial Paper Note, shall execute and the Issuing and Paying Agent shall authenticate and deliver a new Note of like tenor and number in exchange and substitution for the Commercial Paper Note so mutilated, but only upon surrender to the Issuing and Paying Agent of the Commercial Paper Note so mutilated. If any Commercial Paper Note shall be lost, destroyed, or stolen, evidence of such loss, destruction, or theft may be submitted to the Board and the Issuing and Paying Agent. If such evidence be satisfactory to them and indemnity satisfactory to them shall be given, the Board, at the expense of the Holder, shall execute and the Issuing and Paying Agent shall authenticate and deliver a new Commercial Paper Note of like tenor in lieu of and in substitution for the Commercial Paper Note so lost, destroyed, or stolen. In the event any such Commercial Paper Note shall have matured, the Issuing and Paying Agent instead of issuing a duplicate Commercial Paper Note may pay the same without surrender thereof after making such requirement as it deems fit for its protection, including a lost instrument bond. Neither the Board nor the Issuing and Paying Agent shall be required to treat both the original Commercial Paper Note and any duplicate Commercial Paper Note as being outstanding for the purpose of determining the principal amount of Commercial Paper Notes which may be issued hereunder, but both the original and the duplicate Commercial Paper Note shall be treated as one and the same. The Board and the Issuing and Paying Agent may charge the Holder of such Commercial Paper Note with their reasonable fees and expenses for such service.

Section 2.08. Series B Credit Agreement. The Board reserves the right to enter into a Series B Credit Agreement to provide liquidity for a part or all of the Commercial Paper Notes to be outstanding under this Fifth Supplement. Whenever the term "Series B Credit Agreement" is used in the Fifth Supplement, it shall refer to the agreement referred to in this Section and the term "Advances" shall mean advances under such Agreement. The Board further reserves the right to enter into one agreement which would constitute both the Series B Credit Agreement and the "Series A Credit Agreement", as that term is defined in the First Supplemental Resolution, and which would provide liquidity for the Notes and the Board's Revenue Financing System Commercial Paper Notes, Series A.

Section 2.09. Promissory Note. The Board reserves the right to authorize one or more promissory notes to evidence Advances under the Series B Credit Agreement and such promissory notes shall be on a parity and of equal dignity with the Commercial Paper Notes.

Section 2.10. Note Payment Fund. There is hereby created a fund at the Issuing and Paying Agent entitled the "Revenue Financing System Taxable Commercial Paper Note Payment Fund" (the "Note Payment Fund"). The proceeds from the sale of Parity Debt issued for the purpose of refunding and retiring Notes Outstanding under this Fifth Supplement shall be paid to the Issuing and Paying Agent for deposit to the credit of the Note Payment Fund and used for such purpose. In addition, all amounts required to be paid to the Issuing and Paying Agent for deposit by the Board pursuant to Section 2.11 shall be paid to the Issuing and Paying Agent for deposit to the Note Payment Fund and shall be used to pay principal of, premium, if any, and interest on Notes at the respective interest payment, maturity, or redemption of such Notes as provided herein, including the repayment of any amounts owed with respect to the Promissory Note in evidence of Advances under the Series B Credit Agreement.

Additionally, all Advances under the Series B Credit Agreement shall be paid to the Issuing and Paying Agent for the account of the Board and deposited into the Note Payment Fund and used to pay the principal of, premium, if any, and interest on the Commercial Paper Notes.

Section 2.11. Establishment of Financing System; Issuance of Parity Debt; Security and Pledge.

(a) By adoption of the Master Resolution, the Board has established the Financing System for the purpose of providing a financing structure for revenue supported indebtedness of the components of The University of Texas System which are from time to time included as Members of the Financing System. The Master Resolution is intended to establish a master plan under which revenue supported debt of the Financing System may be incurred. This Fifth Supplement provides for the authorization, issuance, sale, delivery, form, characteristics, provisions of payment and redemption, and security of the Notes which are a series of Parity Debt. The Master Resolution is incorporated herein by reference and as such made a part hereof for all purposes, except to the extent modified and supplemented hereby, and the Notes are hereby declared to be Parity Debt under the Master Resolution.

(b) The Notes are special obligations of the Board payable from and secured solely by the Pledged Revenues pursuant to the Master Resolution and this Fifth Supplement. The Pledged Revenues are hereby pledged, subject to the liens securing the Prior Encumbered Obligations, to the payment of the principal of, premium, if any, and interest on the Notes as the same shall become due and payable. The Board agrees to pay the principal of, premium, if any, and the interest on the Notes when due, whether by reason of maturity or redemption.

(c) A U.T. System Representative shall implement the procedures necessary to make an Advance under the Series B Credit Agreement, if in effect, if there is not anticipated to be Pledged Revenues or other lawfully available funds in an amount sufficient and in ample time to pay the principal of and interest and any premium, if any, on the Commercial Paper Notes as such principal, interest, and premium, respectively, come due, whether by reason of maturity or redemption. Amounts in the Note Payment Fund attributable to and derived either from Advances under and pursuant to the Series B Credit Agreement or from amounts provided pursuant to Section 4.03(b) shall be used only to pay the principal of, premium, if any, and interest on the Commercial Paper Notes.

Section 2.12. Cancellation. All Commercial Paper Notes which at maturity are surrendered to the Issuing and Paying Agent for the collection of the principal and interest thereof or are surrendered for transfer or exchange pursuant to the provisions hereof or are refunded through an Advance shall, upon payment or issuance of new Commercial Paper Notes, be cancelled by the Issuing and Paying Agent and forthwith transmitted to the Board, and thereafter the Board shall have custody of such cancelled Commercial Paper Notes.

Section 2.13. Fiscal and Other Agents. In furtherance of the purposes of this Fifth Supplement, the Board may from time to time appoint and provide for the payment of such additional fiscal, paying, or other agents or trustees as it may deem necessary or appropriate in connection with the Notes.

### ARTICLE III ISSUANCE AND SALE OF NOTES

#### Section 3.01. Issuance and Sale of Notes.

(a) All Commercial Paper Notes shall be sold in the manner determined by the U.T. System Representative to be most economically advantageous to the Board.

(b) The terms of the Commercial Paper Notes shall be established and they shall be delivered by the Issuing and Paying Agent in accordance with telephonic, computer, or written instructions of any U.T. System Representative and in the manner specified below and in the Issuing and Paying Agent Agreement. To the extent such instructions are not written, they shall be confirmed in writing within 24 hours of the transmission or communication thereof. Said instructions shall specify such principal amounts, dates of issue, maturities, rates of discount or interest, or the formula or method of calculating interest and the basis upon which it is to be computed, purchase price, and other terms and conditions which are hereby authorized and permitted to be fixed by any U.T. System

Representative at the time of sale of the Commercial Paper Notes. Such instructions shall also contain provisions representing that all action on the part of the Board necessary for the valid issuance of the Commercial Paper Notes then to be issued, or the incurring of Advances under the Promissory Note then to be incurred, has been taken, that all provisions of Texas and federal law necessary for the valid issuance of such Commercial Paper Notes with provision for original issue discount have been complied with, and that such Commercial Paper Notes will be valid and enforceable special obligations of the Board according to their terms, subject to the exercise of judicial discretion in accordance with general principles of equity and bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable. Such instructions shall also certify that, as of the date of such certificate:

(i) the Board has been advised by Bond Counsel that the projects to be financed or refinanced by the Commercial Paper Notes will constitute Eligible Projects;

(ii) the requirements of Section 5 of the Master Resolution have been complied with and the Texas Higher Education Coordination Board approval of the Eligible Project, if required, has been obtained;

(iii) the principal amount of Commercial Paper Notes to be Outstanding after the proposed issuance;

(iv) after the proposed issuance, the total principal amount of Outstanding Commercial Paper Notes plus interest accrued or to accrue thereon for the following ninety (90) days shall not exceed available funds of the Board to be maintained pursuant to Section 4.02 plus the "Available Bank Loan Commitment" under the Series B Credit Agreement, if then in effect;

(v) if the Series B Credit Agreement is then in effect, no "Event of Default" thereunder has occurred and is continuing;

(vi) the Board is in compliance with the covenants set forth in Article IV as of the date of such instructions; and

(vii) that the sum of the interest payable on such Commercial Paper Note issued and Outstanding or in the process of issuance and any discount established for such Commercial Paper Notes will not exceed a yield to the maturity date of such Commercial Paper Note in excess of the Maximum Interest Rate in effect on the date of issuance of such Commercial Paper Note.

(c) The Promissory Note shall be delivered to the Bank and thereafter Advances may be made thereunder in accordance with the terms of the Series B Credit Agreement.

Section 3.02. Proceeds of Sale of Commercial Paper Notes. The proceeds of the sale of any Commercial Paper Notes (net of all expenses and costs of sale and issuance) shall be applied for any or all of the following purposes as directed by a U.T. System Representative:

- (i) used for the payment and redemption or purchase of Outstanding Commercial Paper Notes, Parity Debt, or Prior Encumbered Obligations at or before maturity and the refunding of any Advances (evidenced by the Promissory Note) under the Series B Credit Agreement; or
- (ii) used for the purpose of financing Project Costs of Eligible Projects.

Section 3.03. Issuing and Paying Agent Agreement. A U.T. System Representative is hereby authorized to enter into an amendment to the Issuing and Paying Agent Agreement relating to the Series A Notes to reflect the appointment of Bankers Trust Company as the Issuing and Paying Agent as may be necessary and proper to carry out the purpose and intent of the Board in authorizing this Fifth Supplement. A U.T. System Representative is hereby authorized to enter into any supplemental agreements with the Issuing and Paying Agent or with any successor Issuing and Paying Agent.

Section 3.04. Dealer Agreement. Goldman, Sachs & Co. Inc. (the "Dealer") as the Dealer for the Series A Notes is hereby appointed as the Dealer for the Notes and a U.T. System Representative is hereby authorized to enter into an amendment to the Dealer Agreement relating to the Series A Notes to reflect the addition of the Notes to such agreement and is further authorized and directed to approve, execute, and deliver to the Dealer any instrument evidencing such changes, additions, or amendments to the Dealer Agreement as may be necessary and proper to carry out the purpose and intent of the Board in authorizing this Fifth Supplement. A U.T. System Representative is hereby authorized to enter any supplemental agreements with the Dealer or with any successor Dealer.

#### ARTICLE IV COVENANTS OF THE BOARD

Section 4.01. Limitation on Issuance. Unless this Fifth Supplement is amended and modified by the Board in accordance with the provisions of Section 5.01, the Board covenants that there will not be issued and Outstanding at any time more than \$25,000,000 in principal amount of Commercial Paper Notes. The Board, however, does reserve the right to increase said amount by an amendment to this Fifth Supplement or to issue additional Parity Debt in excess of said amount, without limitation, by a Supplement duly adopted by the Board.

Section 4.02. Provisions For Liquidity. The Board covenants to maintain available funds plus the Available Bank Loan Commitment in an amount equal to the total principal amount of Outstanding Commercial Paper Notes plus interest to accrue thereon at the rate of 15% per annum for the following ninety (90) days.

Section 4.03. Available Funds.

(a) To the extent Notes cannot be issued to renew or refund Outstanding Notes and Advances cannot be drawn on the Promissory Notes, if any, the Board shall provide funds or shall in good faith endeavor to sell a sufficient principal amount of Parity Debt or other obligations of the Board in order to have funds available, together with other moneys available therefor, to pay the Notes and the interest thereon, or any renewals thereof, as the same shall become due, and other amounts due under the Series B Credit Agreement.

(b) Notwithstanding anything to the contrary contained herein, to the extent that the Dealer cannot sell Commercial Paper Notes to renew or refund Outstanding Notes on their maturity, the Board covenants to make Advances under the Promissory Notes, if any, or to use lawfully available funds to purchase Notes issued to renew and refund such maturing Notes and such payment, issuance, and purchase are not intended to constitute an extinguishment of the obligation represented by such maturing Notes and the Board may issue Notes to renew and refund the Notes held by it when the Dealer is again able to sell Notes. While such Notes are held by the Board they shall bear interest at the prevailing market rate for alternative taxable investments of similar maturity and credit rating.

Section 4.04. Opinion of Bond Counsel. The Board shall cause the legal opinion of Bond Counsel as to the validity of the Notes to be furnished to any Holder without cost and a copy of said opinion may be printed on each of the Commercial Paper Notes. In addition, in connection with the annual updating of the Offering Memorandum (as provided in accordance with Section 6.08 hereof) as required by the Dealer Agreement, there shall be provided an annual updated opinion of Bond Counsel, at the cost of the Board or the Dealer as agreed to in the Dealer Agreement.

ARTICLE V  
AMENDMENTS

Section 5.01. Amendment of Supplement.

(a) Amendments Without Consent. This Fifth Supplement and the rights and obligations of the Board and of the owners of the Outstanding Commercial Paper Notes may be modified or amended at any time without notice to or the consent of any owner of the Commercial Paper Notes or any other Parity Debt, solely for any one or more of the following purposes:

(i) To add to the covenants and agreements of the Board contained in this Fifth Supplement, other covenants and agreements thereafter to be observed, or to surrender any right or power reserved to or conferred upon the Board in this Fifth Supplement;

(ii) To cure any ambiguity or inconsistency, or to cure or correct any defective provisions contained in this Fifth Supplement, upon receipt by the Board of an opinion of Bond Counsel, that the same is needed for such purpose, and will more clearly express the intent of this Fifth Supplement;



(iii) To supplement the security for the Outstanding Commercial Paper Notes issued hereunder, replace or provide additional credit facilities, or change the form of the Outstanding Commercial Paper Notes, or make such other changes in the provisions hereof, including extending the Maximum Maturity Date, as the Board may deem necessary or desirable and which shall not, in the judgment of the Board, materially adversely affect the interests of the owners of the Outstanding Commercial Paper Notes;

(iv) To make any changes or amendments requested by any bond rating agency then rating or requested to rate Commercial Paper Notes, as a condition to the issuance or maintenance of a rating, which changes or amendments do not, in the judgment of the Board, materially adversely affect the interests of the owners of the Outstanding Commercial Paper Notes; or

(v) To increase the amount of Commercial Paper Notes which may be Outstanding pursuant to Section 4.01.

(b) Amendments With Consent. Subject to the other provisions of this Fifth Supplement, the owners of Outstanding Commercial Paper Notes aggregating at least 51 percent in Outstanding Principal Amount shall have the right from time to time to approve any amendment, other than amendments described in Subsection (a) of this Section, to this Fifth Supplement which may be deemed necessary or desirable by the Board, provided, however, that nothing herein contained shall permit or be construed to permit, without the approval of the owners of all of the Outstanding Commercial Paper Notes, the amendment of the terms and conditions in this Fifth Supplement or in the Commercial Paper Notes so as to:

(i) Make any change in the maturity of the Outstanding Commercial Paper Notes;

(ii) Reduce the rate of interest borne by Outstanding Commercial Paper Notes;

(iii) Reduce the amount of the principal payable on Outstanding Commercial Paper Notes;

(iv) Modify the terms of payment of principal of or interest on the Outstanding Commercial Paper Notes, or impose any conditions with respect to such payment;

(v) Affect the rights of the owners of less than all Commercial Paper Notes then Outstanding; or

(vi) Change the minimum percentage of the Outstanding Principal Amount of Commercial Paper Notes necessary for consent to such amendment.

(c) Notice. If at any time the Board shall desire to amend this Fifth Supplement pursuant to Subsection (b), the Board shall cause notice of the proposed amendment to be published in a financial newspaper or journal of general circulation in The City of New York, New York, once during each calendar week for at least two successive calendar weeks. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of the Issuing and Paying Agent for inspection by all owners of Commercial Paper Notes issued hereunder. Such publication is not required, however, if the Board gives or causes to be given such notice in writing to each owner of Commercial Paper Notes. A copy of such Notice shall be provided in writing to (i) the Bank at the address shown in the Series B Credit Agreement as the address to which notices to the Bank are to be sent and (ii) to each national rating agency maintaining a rating on the Commercial Paper Notes.

(d) Receipt of Consents. Whenever at any time not less than thirty (30) days, and within one year, from the date of the first publication of said notice or other service of written notice of the proposed amendment the Board shall receive an instrument or instruments executed by all of the owners or the owners of at least 51 percent in Outstanding Principal Amount of the Commercial Paper Notes, as appropriate, which instrument or instruments shall refer to the proposed amendment described in said notice and which specifically consent to and approve such amendment in substantially the form of the copy thereof on file as aforesaid, the Board may adopt the amendatory resolution in substantially the same form.

(e) Effect of Amendments. Upon the adoption by the Board of any resolution to amend this Fifth Supplement pursuant to the provisions of this Section, this Fifth Supplement shall be deemed to be amended in accordance with the amendatory resolution, and the respective rights, duties, and obligations of the Board and all the owners of then Outstanding Commercial Paper Notes and all future Commercial Paper Notes shall thereafter be determined, exercised, and enforced under the Master Resolution and this Fifth Supplement, as amended.

(f) Consent Irrevocable. Any consent given by any owner of Commercial Paper Notes pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the Fifth Supplement publication or other service of the notice provided for in this Section, and shall be conclusive and binding upon all future owners of the same Commercial Paper Notes during such period. Such consent may be revoked at any time after six months from the date of the first publication of such notice by the owner who gave such consent, or by a successor in title, by filing notice thereof with the Issuing and Paying Agent and the Board, but such revocation shall not be effective if the owners of at least 51 percent in Outstanding Principal Amount of Commercial Paper Notes prior to the attempted revocation consented to and approved the amendment.

(g) Ownership. For the purpose of this Section, the ownership and other matters relating to all Commercial Paper Notes registered as to ownership shall be determined from the registration books kept by the Issuing and Paying Agent therefor. The fact of the owning of Commercial Paper

Notes issued hereunder not registered as to ownership by any Holder and the amount and the numbers of such Commercial Paper Notes and the date of the holding of the same may be proved by the affidavit of the person claiming to be such Holder if such affidavit shall be deemed by the Issuing and Paying Agent to be satisfactory, or by a certificate executed by any trust company, bank, banker or any other depository, wherever situated, if such certificate shall be deemed by Issuing and Paying Agent to be satisfactory, showing that at that date therein mentioned such person had on deposit with such trust company, bank, banker or other depository the Commercial Paper Notes described in such certificate. The Issuing and Paying Agent may conclusively assume that such ownership continues until written notice to the contrary is served upon the Issuing and Paying Agent.

(h) Consent of Bank. For so long as the Bank is not in default under the Series B Credit Agreement, no amendment to this Fifth Supplement shall become effective without the prior written consent of the Bank, which consent shall not be unreasonably withheld.

## ARTICLE VI MISCELLANEOUS

Section 6.01. Fifth Supplement to Constitute a Contract; Equal Security. In consideration of the acceptance of the Notes by those who shall hold the same from time to time, this Fifth Supplement shall be deemed to be and shall constitute a contract between the Board and the Holders from time to time of the Notes and the pledge made in this Fifth Supplement by the Board and the covenants and agreements set forth in this Fifth Supplement to be performed by the Board shall be for the equal and proportionate benefit, security, and protection of all Holders of the Notes, without preference, priority, or distinction as to security or otherwise of any of the Notes over any of the others by reason of time of issuance, sale, or maturity thereof or otherwise for any cause whatsoever, except as expressly provided in or permitted by this Fifth Supplement or, with respect to the Promissory Note, the Series B Credit Agreement.

Section 6.02. Individuals Not Liable. All covenants, stipulations, obligations, and agreements of the Board contained in this Fifth Supplement shall be deemed to be covenants, stipulations, obligations, and agreements of The University of Texas System and the Board to the full extent authorized or permitted by the Constitution and laws of the State of Texas. No covenant, stipulation, obligation, or agreement herein contained shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the Board or agent or employee of the Board in his individual capacity and neither the members of the Board nor any officer thereof shall be liable personally on the Notes or be subject to any personal liability or accountability by reason of the issuance thereof.

### Section 6.03. Additional Actions.

(a) The Chairman of the Board, the Vice Chairman of the Board, the Executive Secretary to the Board, the U.T. System Representatives, and the other officers, employees, and agents of the Board are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the issuance, sale, and delivery of the Notes and otherwise to effectuate the purposes of this Fifth Supplement, the Series B Credit Agreement, the Dealer Agreement, and the Issuing and

Paying Agent Agreement. In addition, the Chairman of the Board, Vice Chairman of the Board Chancellor, Executive Vice Chancellor for Business Affairs, and the Assistant Vice Chancellor for Finance, and Bond Counsel are hereby authorized to approve, subsequent to the date of this adoption of this Fifth Supplement, any amendments to the above named documents, and any technical amendments to this Fifth Supplement as may be required by Fitch, Moody's, or Standard & Poor's as a condition to the granting or maintenance of a rating on the Commercial Paper Notes acceptable to a U.T. System Representative, or as may be required by the Attorney General's office in connection with the approval of this Fifth Supplement.

(b) A U.T. System Representative shall promptly give written notice to Fitch, Moody's, and Standard & Poor's, as appropriate, of any changes or amendments to this Fifth Supplement, the Series B Credit Agreement (including the expiration or termination of the Series B Credit Agreement), or any other operative document used in connection with the issuance from time to time of the Notes.

Section 6.04. Severability of Invalid Provisions. If any one or more of the covenants, agreements, or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements, or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Notes issued hereunder.

Section 6.05. Payment and Performance on Business Days. Whenever under the terms of this Fifth Supplement or the Notes, the performance date of any provision hereof or thereof, including the payment of principal of or interest on the Notes, shall occur on a day other than a Business Day, then the performance thereof, including the payment of principal of and interest on the Notes, need not be made on such day but may be performed or paid, as the case may be, on the next succeeding Business Day with the same force and effect as if made on the date of performance or payment is scheduled.

Section 6.06. Limitation of Benefits With Respect to the Fifth Supplement. With the exception of the rights or benefits herein expressly conferred, nothing expressed or contained herein or implied from the provisions of this Fifth Supplement or the Notes is intended or should be construed to confer upon or give to any person other than the Board, the Holders, the Issuing and Paying Agent, the Bank, and the Dealer any legal or equitable right, remedy, or claim under or by reason of or in respect to this Fifth Supplement or any covenant, condition, stipulation, promise, agreement, or provision herein contained. This Fifth Supplement and all of the covenants, conditions, stipulations, promises, agreements, and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the Board, the Holders, the Issuing and Paying Agent, the Bank, and the Dealer as herein and in the Issuing and Paying Agent Agreement, the Series B Credit Agreement, and the Dealer Agreement provided.

Section 6.07. Approval of Attorney General. No Notes herein authorized to be issued shall be sold or delivered by a U.T. System Representative until the Attorney General of the State of Texas

shall have approved this Fifth Supplement, and other agreements and proceedings as may be required in connection therewith, all as is required by the Acts.

Section 6.08. Approval of Offering Memorandum. A U.T. System Representative is hereby authorized to approve the form of Offering Memorandum, to be used by the Dealer in the offering of the Commercial Paper Notes, and the use thereof by the Dealer in connection therewith and to cooperate with the Dealer in periodically updating and approving the Offering Memorandum.

Section 6.09. Notice to Rating Agencies. Notice shall be given to each national rating agency which maintains a rating on the Commercial Paper Notes of the execution and delivery of the Series B Credit Agreement and any amendment, substitution, or termination of such agreement and of any amendment or substitution of the Dealer Agreement or the Issuing and Paying Agent Agreement.

Section 6.10. Public Notice. It is hereby found and determined that each of the officers and members of the Board was duly and sufficiently notified officially and personally, in advance, of the time, place, and purpose of the Meeting at which this Fifth Supplement was adopted, and that this Fifth Supplement would be introduced and considered for adoption at said meeting; that said meeting was open to the public, and public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

PASSED AND ADOPTED, this

ATTEST:

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Executive Secretary

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Chairman

(SEAL)

Exhibit A - Definitions  
Exhibit B - Form of Commercial Paper Notes  
Exhibit C - Form of Master Note

## EXHIBIT A DEFINITIONS

As used in this Fifth Supplement, the terms below defined shall be construed, are used and are intended to have the following meanings, unless the text hereof specifically indicates otherwise:

"Acts" means collectively, Article 717q, Vernon's Texas Civil Statutes, as amended, and Chapter 55, Texas Education Code, as amended.

"Advances" means Advances or loans under the Promissory Note to refund Commercial Paper Notes pursuant to the Series B Credit Agreement.

"Bank" means any lender which becomes a party to the Series B Credit Agreement, or any other financial institution executing a Credit Agreement.

"Board of Regents", "Board", or "Issuer" means the Board of Regents of The University of Texas System, or any successor thereto.

"Business Day" means any day (a) when banks are open for business in Austin, Texas, and (b) when banks are not authorized to be closed in New York, New York.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commercial Paper Note" means a Note issued pursuant to the provisions of this Fifth Supplement, having the terms and characteristics specified in Section 2.02 and in the form described in Exhibit B to this Fifth Supplement.

"Costs" means all costs and expenses defined as "project costs" under the Acts incurred in relation to Eligible Projects and permitted by law to be paid with the proceeds of the Commercial Paper Notes, including without limitation design, planning, engineering, and legal costs; acquisition costs of land, interests in land, right of way, and easements; construction costs; costs of machinery, equipment, and other capital assets incident and related to the operation, maintenance, and administration of the Eligible Projects; and financing costs, including interest during construction and thereafter, underwriter's discount, and/or legal, financial, and other professional services fees and expenses, and shall include reimbursement for Costs attributable to Eligible Projects incurred prior to the issuance of any Commercial Paper Notes.

"Dealer" means the Dealer as defined in Section 3.04.

"DTC" means The Depository Trust Company or any substitute securities depository appointed pursuant to this Fifth Supplement, or any nominee of either.

"DTC Participant" means a member of, or the participant in, DTC that will act on behalf of a Holder.

"Eligible Project" means the acquisition, purchase, construction, improvement, enlargement, and/or equipping of any property, buildings, structures, activities, services, operations, or other facilities, or any other project, program or improvement authorized by the laws of the State of Texas for and on behalf of the Financing System or any Member thereof.

"Fifth Supplement" means this Fifth Supplemental Resolution to the Master Resolution.

"Fiscal Year" means the 12-month operational period of The University of Texas System commencing on September 1 of each year and ending on the following August 31.

"Fitch" means Fitch Investors Service or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities ratings services, such other nationally recognized securities rating agency as may be designated in writing by the Board.

"Holder" or "Noteholder" means the Registered Owner or any person, firm, association, or corporation who is in possession of any Commercial Paper Note issued to bearer or in blank.

"Issuing and Paying Agent" and "Registrar" means with respect to the Commercial Paper Notes the agent appointed pursuant to Section 2.05, or any successor to such agent.

"Master Resolution" means the Master Resolution establishing the Financing System adopted by the Board on April 12, 1990, and amended and restated on February 14, 1991, and further amended on October 8, 1993.

"Maximum Interest Rate" means the greater of the maximum net effective interest rate permitted by law to be paid on obligations issued or incurred by the Board in the exercise of its borrowing powers (prescribed by Article 717k-2, Vernon's Texas Civil Statutes, as amended).

"Maximum Maturity Date" means April 1, 2020.

"Moody's" means Moody's Investors Service, Inc. or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities rating services, such other nationally recognized securities rating agency as may be designated in writing by the Board.

"Note" or "Notes" means the evidences of indebtedness authorized to be issued and at any time outstanding pursuant to this Fifth Supplement and shall include Commercial Paper Notes (including the Master Note as defined in Section 2.05) or Promissory Notes as appropriate.

"Note Date" shall have the meaning given in Section 2.10.

"Note Payment Fund" means that fund created pursuant to Section 2.11.

"Paying Agent" see Issuing and Paying Agent.

"Promissory Note" shall mean the promissory note issued pursuant to the provisions of this Fifth Supplement and the Series B Credit Agreement in evidence of Advances made by the Bank to refund any Commercial Paper Note, or the interest thereon, having the terms and characteristics contained in the Series B Credit Agreement and issued in accordance therewith, including any renewals or modifications thereof.

"Registered Owner" means the person or entity in whose name any Note is registered in the Registration Books.

"Registration Books" means the books or records relating to the registration, payment, and transfer or exchange of the Project Notes maintained by the Issuing and Paying Agent pursuant to Section 2.10.

"Series B Credit Agreement" means a Credit Agreement entered into with respect to Commercial Paper Notes as authorized by Section 2.08 of this Fifth Supplement.

"Standard & Poor's" means Standard & Poor's Corporation or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities rating services, such other nationally recognized securities rating agency as may be designated in writing by the Board.

"U.T. System Representative" means one or more of the following officers or employees of The University of Texas System, to-wit: the Chancellor, the Executive Vice Chancellor for Business Affairs, the Assistant Vice Chancellor for Finance, and the Director of Finance, or such other officer or employee of The University of Texas System authorized by the Board to act as a U.T. System Representative.



**EXHIBIT B  
FORM OF COMMERCIAL PAPER NOTES**

United States of America  
State of Texas  
**BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM  
REVENUE FINANCING SYSTEM  
TAXABLE COMMERCIAL PAPER NOTE, SERIES B**

Note Number \_\_\_\_\_ Interest Rate\* \_\_\_\_\_ Note Date \_\_\_\_\_ \$ \_\_\_\_\_

On \_\_\_\_\_ (the "Maturity Date") for value received, THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM (the "Board")

Promises To Pay To The Order of \_\_\_\_\_  
The Principal Sum Of \_\_\_\_\_  
Payable At \_\_\_\_\_  
(the "Issuing and Paying Agent").

on the Maturity Date, specified above, and to pay interest, if any, on said principal amount, specified above, on said Maturity Date, from the above specified Note Date to said Maturity Date at the per annum Interest Rate specified above (computed on the basis of actual days elapsed and a 360-day year, unless otherwise set forth in an exhibit attached to this Note) solely from the sources hereinafter identified and as hereinafter stated; both principal and interest on this Commercial Paper Note being payable in immediately available lawful money of the United States of America at the principal office of the Issuing and Paying Agent, specified above, or its successor. No interest will accrue on the principal amount hereof after said Maturity Date.

This Commercial Paper Note is one of an issue of commercial paper notes (the "Commercial Paper Notes") which, together with the below referenced Promissory Note (such Promissory Note and the Commercial Paper Notes being hereinafter collectively referred to as the "Notes"), has been duly authorized and issued in accordance with the provisions of a master resolution (the "Master Resolution") and a fifth supplemental resolution thereto (the "Supplemental Resolution," the provisions of the Master Resolution are incorporated by reference in the Supplemental Resolution and the Master Resolution and the Supplemental Resolution shall hereinafter be referred to collectively as the "Supplemental Resolution") passed by the Board, an agency and political subdivision of the State of Texas, for the purpose of financing Costs of Eligible Projects (each as defined in the Supplemental Resolution) and to refinance, renew, and refund the Notes, other Parity Debt, and Prior Encumbered Obligations; all in accordance and in strict conformity with the provisions of the Constitution and laws of the State of Texas, including but not limited to, Article 717q, Vernon's Texas Civil Statutes, as amended, and Chapter 55, Texas Education Code, as amended. Capitalized terms used herein and not otherwise defined shall have the meaning given in the Supplemental Resolution.

This Commercial Paper Note, together with the other Notes and other Parity Debt, is payable from and equally secured by the Pledged Revenues; provided, however, that the lien on and pledge of the Pledged Revenues is junior and subordinate to the lien and pledge securing the payment of the Prior Encumbered Obligations, all as further defined and described in the Supplemental Resolution. The Notes do not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the Board, except with respect to the Pledged Revenues as described in the Supplemental Resolution, and the Holder hereof shall never have the right to demand payment of this obligation from any sources or properties of the Board except as described in the Supplemental Resolution. **THE NOTES DO NOT CONSTITUTE OR CREATE A DEBT OR LIABILITY OF THE STATE OF TEXAS, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING AUTHORITY OF THE STATE OF TEXAS IS IN ANY MANNER PLEDGED, GIVEN, OR LOANED TO THE PAYMENT OF THE NOTES.**

Reference is hereby made to the Supplemental Resolution, copies of which may be obtained upon request to the Board, and by acceptance of this Commercial Paper Note the Holder hereof hereby assents to all of the terms and provisions of the Supplemental Resolution, including, but not limited to, provisions relating to definitions of terms; the description of and the nature of the security for the Notes and the Pledged Revenues; the conditions upon which the Supplemental Resolution may be amended or supplemented with or without the consent of the Holders of the Notes; and the right to issue obligations payable from and secured by the Pledged Revenues.

It is hereby certified and recited that all acts, conditions, and things required by law and the Supplemental Resolution to exist, to have happened, and to have been performed precedent to and in the issuance of this Commercial Paper Note, do exist, have happened, and have been performed in regular and in due time, form, and manner as required by law and that the issuance of this Commercial Paper Note, together with all other Notes, is not in excess of the principal amount of Notes permitted to be issued under the Supplemental Resolution.

This Commercial Paper Note has all the qualities and incidents of a negotiable instrument under the laws of the State of Texas.

This Commercial Paper Note may be registered to bearer or to any designated payee. Title to any Commercial Paper Note registered to bearer shall pass by delivery. If not registered to bearer, this Commercial Paper Note may be transferred only on the books of the Board maintained at the designated office of the Issuing and Paying Agent. Upon surrender hereof at the designated office of the Issuing and Paying Agent, this Commercial Paper Note may be exchanged for a like aggregate principal amount of fully registered (which registration may be to bearer) Commercial Paper Notes of authorized denominations of like interest rate and maturity, but only in the manner, and subject to the limitations, and upon payment of the charges provided in the Supplemental Resolution and upon surrender and cancellation of this Commercial Paper Note.

This Commercial Paper Note shall not be entitled to any benefit under the Supplemental Resolution or be valid or become obligatory for any purpose until this Commercial Paper Note shall

have been authenticated by the execution by the Issuing and Paying Agent of the Certificate of Authentication hereon.

IN WITNESS WHEREOF, the Board has authorized and caused this Commercial Paper Note to be executed and attested on its behalf by the manual or facsimile signatures of the Chairman of the Board and the Executive Secretary to the Board and its official seal impressed or a facsimile thereof to be printed hereon.

BOARD OF REGENTS OF THE UNIVERSITY  
OF TEXAS SYSTEM

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Chairman

ATTEST:

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Executive Secretary

(SEAL)

\* Formula or alternate method of calculating interest may be attached as an exhibit to this Note.

**CERTIFICATE OF AUTHENTICATION**

This Commercial Paper Note is one of the Commercial Paper Notes delivered pursuant to the within mentioned Supplemental Resolution.

\_\_\_\_\_  
\_\_\_\_\_  
as Issuing and Paying Agent

By: \_\_\_\_\_  
Countersignature

**ANNEX 2**  
(Page 1 of 2)



**MUNICIPAL COMMERCIAL PAPER — TECP MASTER NOTE**

\_\_\_\_\_ (Date of Issuance)

\_\_\_\_\_ ("Issuer"), for value received, hereby promises to pay to Cede & Co., as nominee of The Depository Trust Company, or to registered assigns: (i) the principal amount, together with unpaid accrued interest thereon, if any, on the maturity date of each obligation identified on the records of Issuer (the "Underlying Records") as being evidenced by this Master Note, which Underlying Records are maintained by \_\_\_\_\_ ("Paying Agent"); (ii) interest on the principal amount of each such obligation that is payable in installments, if any, on the due date of each installment, as specified on the Underlying Records; and (iii) the principal amount of each such obligation that is payable in installments, if any, on the due date of each installment, as specified on the Underlying Records. Interest shall be calculated at the rate and according to the calculation convention specified on the Underlying Records. Payments shall be made solely from the sources stated on the Underlying Records by wire transfer to the registered owner from Paying Agent without the necessity of presentation and surrender of this Master Note.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS MASTER NOTE SET FORTH ON THE REVERSE HEREOF.

This Master Note is a valid and binding obligation of Issuer.  
Not Valid Unless Countersigned for Authentication by Paying Agent.

\_\_\_\_\_  
(Paying Agent)

\_\_\_\_\_  
(Issuer)

By: \_\_\_\_\_  
(Authorized Countersignature)

By: \_\_\_\_\_  
(Authorized Signature)

(Reverse Side of Note)

At the request of the registered owner, Issuer shall promptly issue and deliver one or more separate note certificates evidencing each obligation evidenced by this Master Note. As of the date any such note certificate or certificates are issued, the obligations which are evidenced thereby shall no longer be evidenced by this Master Note.

**FOR VALUE RECEIVED**, the undersigned hereby sells, assigns, and transfers unto

\_\_\_\_\_  
(Name, Address, and Taxpayer Identification Number of Assignee)

the Master Note and all rights thereunder, hereby irrevocably constituting and appointing \_\_\_\_\_ attorney to transfer said Master Note on the books of Issuer with full power of substitution in the premises.

Dated:

Signature(s) Guaranteed:

\_\_\_\_\_  
(Signature)

**NOTICE:** The signature on this assignment must correspond with the name as written upon the face of this Master Note, in every particular, without alteration or enlargement or any change whatsoever.

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

6. U. T. Austin: Request for Authorization to Purchase 253.28 Acres of Land in Jeff Davis County, Texas, Adjacent to the McDonald Observatory, and to Submit the Proposed Purchase to the Coordinating Board for Approval and Authorization to Execute All Documents Related Thereto.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, and President Berdahl that U. T. Austin be authorized to purchase 253.28 acres of undeveloped land which is located adjacent to the McDonald Observatory in Jeff Davis County, Texas, from Frost National Bank, San Antonio, Texas, for \$165,000, and to submit the proposed purchase to the Texas Higher Education Coordinating Board for approval. Funding from private gifts will be used to make the purchase.

It is further recommended that the Executive Vice Chancellor for Business Affairs or his delegate be authorized to execute all documents, instruments, and other agreements and take all such further actions deemed necessary, advisable, or proper to carry out the purpose and intent of the foregoing recommendation.

#### BACKGROUND INFORMATION

The land will initially be used for the expansion of the Visitor's Center and to protect the McDonald Observatory against unwanted future development on its western boundary which could have an adverse effect on the research conducted there. Later uses of the land will include housing for Observatory personnel and support facilities. The purchase price in the amount of \$165,000 is supported by an MAI appraisal.

7. U. T. Austin and U. T. El Paso: Request for Approval to Sell Approximately 1,569.97 Acres Located in Guadalupe County, Texas, and Authorization to Execute All Documents Related Thereto.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, President Berdahl, and President Natalicio that authorization be given for the U. T. System Real Estate Office, on behalf of U. T. Austin and U. T. El Paso, to sell approximately 1,569.97 acres of land in Guadalupe County, Texas. The property will be marketed through a competitive offer process and sold for the best offer at or above the appraised value of \$785,000.

It is further recommended that the Executive Vice Chancellor for Business Affairs or his delegate be authorized to execute all documents, instruments, and other agreements and take all such further actions deemed necessary, advisable, or proper to carry out the purpose and intent of the foregoing recommendation.

#### BACKGROUND INFORMATION

The U. T. Board of Regents accepted the property from the Estate of Jane Weinert Blumberg, deceased, to establish the Jane Weinert Blumberg Chair in English at U. T. Austin and the Jane Weinert Blumberg Endowment Fund at U. T. El Paso. U. T. Austin received an undivided 66 2/3 percent interest in the property and U. T. El Paso received an undivided 33 1/3 percent interest. The property consists of four contiguous tracts of land located about 15 miles south of the City of Seguin along the east side of State Highway 123 in southern Guadalupe County, Texas.

An appraisal by Menn and Associates of Seguin, Texas, dated May 6, 1996, indicated the market value of the property to be \$785,000 or \$500 per acre.



Mrs. Blumberg, a 1937 U. T. Austin graduate, was a member of the U. T. Board of Regents from 1977-1983 and was designated a Distinguished Alumna of U. T. Austin in 1983. She participated in several U. T. organizations including The Chancellor's Council, U. T. Austin's President's Associates, the U. T. Austin Ex-Students' Association, and the U. T. Health Science Center - San Antonio Development Board.

8. U. T. Pan American: Request for Approval to Purchase Lamar Elementary School in Edinburg, Hidalgo County, Texas, and to Submit the Proposed Purchase to the Coordinating Board for Approval and Authorization to Execute All Documents Related Thereto.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, and President Nevarez that U. T. Pan American be authorized to purchase the Lamar Elementary School located at 1210 West Schunior Street, Edinburg, Hidalgo County, Texas, from the Edinburg Independent School District for \$450,000, and to submit the proposed purchase to the Texas Higher Education Coordinating Board for approval. Funding for the purchase from General Fee Balances is included in the FY 1996-2001 Capital Improvement Program.

It is further recommended that the Executive Vice Chancellor for Business Affairs or his delegate be authorized to execute all documents required to complete the transaction.

#### BACKGROUND INFORMATION

The Lamar Elementary School, which is adjacent to the northwest quadrant of the U. T. Pan American campus, is the first priority site for the expansion of the campus. The site includes 12.5 acres of land, a single-story elementary school building which was built in 1956, a gymnasium, and associated facilities such as playgrounds and parking lots. U. T. Pan American officials have been negotiating with representatives

of the Edinburg Independent School District to purchase the property since 1992. The purchase price is supported by an appraisal dated March 12, 1996. The U. T. Board of Regents was briefed on the possibility of the purchase at its October 1994 and May 1996 meetings.

Under the terms of the contract to purchase the property, the school district will have until January 13, 1999, to vacate the premises and deliver possession to U. T. Pan American at which time the closing will take place. It is anticipated that U. T. Pan American may lease and use a portion of the facility in the interim period prior to closing.

U. T. Pan American will conduct an assessment of the property as required by the U. T. System Environmental Review Policy for Acquisitions of Real Estate during the feasibility period which is provided in the contract to purchase the property. While some asbestos is believed to exist in floor tiles in three rooms in the school, it is not believed to be friable and can be managed or removed following the purchase.

9. U. T. System: Progress Report for Fiscal Year 1996 on the Historically Underutilized Business (HUB) Program.--

#### REPORT

Mr. Lewis Wright, Associate Vice Chancellor for Business Affairs, will present a progress report for Fiscal Year 1996 on the U. T. System Historically Underutilized Business (HUB) Program.

## Academic Affairs Committee

ACADEMIC AFFAIRS COMMITTEE  
Committee Chairman Lebermann

Date: November 14, 1996

Time: Following the meeting of the Business Affairs and  
Audit Committee

Place: Rooms NB2.402 and NB2.403, Simmons Biomedical  
Research Building, U. T. Southwestern Medical  
Center - Dallas

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1. U. T. Board of Regents: Proposed Amendments to the Regents' Rules and Regulations, Part One, Chapter III, Section 6, Subsections 6.2 and 6.3 (Tenure, Promotion, and Termination of Employment).--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs and the Executive Vice Chancellor for Health Affairs that the Regents' Rules and Regulations, Part One, Chapter III, Section 6, Subsections 6.2 and 6.3 be amended as set forth below in congressional style:

Sec. 6. Tenure, Promotion, and Termination of Employment.

. . . .

6.2 . . . .

~~[Effective with the Fall Semester of 1988, The University of Texas of the Permian Basin is authorized to discontinue use of seven-year term appointments of faculty and to institute a tenure system. In accordance with Regents' Rules and Regulations, The University of Texas of the Permian Basin will develop new policies and procedures for tenure review of future faculty and faculty now employed on term appointments for inclusion in the institutional Handbook of Operating Procedures. No new term appointments are to be made, and current term appointments shall be renewed only for currently employed faculty who do not qualify for tenure appointment.]~~

. . . .

- 6.3 Termination by an institution of the employment of a faculty member who has been granted tenure and of all other faculty members before the expiration of the stated period of appointment, except as is otherwise provided in Sub-division[section] 6.26 and Subsections 6.(11) and 6.(12) or by resignation or retirement, will be only for good cause shown. In each

case the issue will be determined according to the [by-an] equitable procedures provided in this Subsection [7-affording-protection-to-the rights-of-the-individual-and-to-the-interests of-the-System].

6.31 The [A] chief administrative officer shall assure that all allegations against a faculty member that involve the potential for termination are reviewed under the direction of the chief academic officer unless another officer is designated by the chief administrative officer [may-for grave-cause-suspend-an-accused-faculty member-pending-immediate-investigation-or speedy-trial-as-hereinafter-provided]. The faculty member who is the subject of the allegations shall be given an opportunity to be interviewed prior to a determination by the chief academic officer whether the allegations are supported by evidence that constitutes good cause for termination. The chief academic officer will recommend to the chief administrative officer whether to proceed with charges for termination. A faculty member under review for matters that may result in charges for termination may file a grievance pursuant to a faculty grievance procedure only if the subject of the grievance is not involved in the review. A pending grievance may proceed only if it does not involve a subject under review.

6.32 If the chief administrative officer determines that the allegations are supported by evidence that constitutes good cause for termination, the chief administrative officer will meet with the faculty member, explain the allegations and supporting evidence, and give the faculty member a reasonable amount of time, as determined by the chief administrative officer, to respond either orally or in writing. In cases of incompetency[7] or gross immorality, [or felony7] where the facts are admitted, or

in the case of a felony conviction, the hearing procedures of Subdivision 6.33 shall not apply and [summary] dismissal by the chief administrative officer will follow.

- 6.33 In cases where other offenses are charged, and in all cases where the facts are in dispute, the accused faculty member will be informed in writing of the charges. If the chief administrative officer determines that the nature of the charges and the evidence are such that it is in the best interest of the institution, the accused faculty member may be suspended with pay pending the completion of the hearing and final decision by the Board. [7 which,--on] On reasonable notice, the charges will be heard by a special hearing tribunal of at least three faculty members. The academic rank of each member of the tribunal must be at least equal to that of the accused faculty member. The notice will specify the date, time, and place for the hearing and will specify the names of the faculty members appointed to the hearing tribunal. The hearing tribunal members are [whose-membership shall-be] appointed by the chief administrative officer from a panel (pool) of members of the faculty. At least 50% of the panel members from which the hearing tribunal members are appointed shall be selected by a procedure established by the faculty governance organization, selected by an existing faculty committee with oversight for university-wide faculty committee selection, or selected through an approved process designed to provide appropriate faculty input into the selection. The remaining members of the panel shall be appointed by the chief administrative officer [whose-academic-rank-is-at-least equal-to-that-of-the-accused-faculty member].



- 6.331 In every such hearing the accused faculty member will have the right to appear in person and by counsel of the accused's selection and to confront and cross-examine witnesses who may appear. If the accused faculty member is represented by counsel, the institution is entitled to be represented by counsel from the Office of General Counsel.
- 6.332 The accused faculty member shall have the right to testify, but may not be required to do so, and may introduce in his or her behalf all evidence, written or oral, which may be relevant and [~~or~~] material to the charges [~~defense~~].
- 6.333 A stenographic or electronic record of the proceedings will be taken and filed with the Board, and such record shall be made accessible to the accused.
- 6.334 A representative of the institution may appear before the hearing tribunal to present witnesses and evidence [~~against the accused faculty member and~~] in support of the charge [~~brought~~] against such faculty member, and such institutional representatives shall have the right to cross-examine the accused faculty member (if the faculty member testifies [~~in his or her own behalf~~]) and the witnesses offered on behalf of the faculty member. The institution has the burden to prove good cause for termination by the greater weight of the credible evidence.

- 6.335 The hearing tribunal shall not include any accuser of the faculty member. If the accused faculty member is not satisfied with the fairness or objectivity of any member or members of the hearing tribunal, the faculty member may challenge the~~ir~~ alleged lack of fairness or objectivity, but any such challenge must be made in writing to the hearing tribunal at least three (3) week days prior to the date for the hearing [~~submission-of-any evidence-to-the-hearing tribunal~~]. The accused faculty member shall have no right to disqualify any [~~such~~] member or members from serving on the tribunal. It shall be up to each [~~such~~] challenged member to determine whether he or she can serve with fairness and objectivity in the matter, and if any [~~such~~] challenged member should voluntarily disqualify himself or herself, the chief administrative officer shall appoint a substitute member of the tribunal from the panel described in Subdivision 6.33 [~~who-is-qualified-hereunder~~].
- 6.336 The hearing tribunal, by a majority of the total membership, will make written findings on the material facts and a recommendation of the continuance or termination of the accused faculty member~~'s~~ tenure. The hearing tribunal, by a majority of its total membership, may make any supplementary suggestions it deems proper concerning the disposal of the case. The original of such findings and the [~~basic~~] recommendation,

[together] with any supplementary suggestions, shall be delivered to the Board and a copy [thereof] to the accused. If minority findings, recommendations, or suggestions are made, they shall be similarly treated. The original transcript of the testimony and the exhibits shall also be forwarded to the Board.

- 6.34 The Board, by a majority of the total membership, will approve, reject, or amend such findings, recommendations, and suggestions, if any, or will recommit the report to the same tribunal for hearing additional evidence and reconsidering its findings, recommendations, and suggestions, if any. Reasons for approval, rejection, or amendment of such findings, recommendations, or suggestions will be stated in writing and communicated to the accused.
- 6.35 Tenure-track [~~Non~~tenured] faculty members who are notified in accordance with Subsection 6.7 that they will not be reappointed or who are notified in accordance with Subdivision 6.23 or Subsections 6.7 or 6.8 that the subsequent academic year will be the terminal year of appointment shall not be entitled to a statement of the reasons upon which the decision for such action is based. Such a decision shall be subject to review under this Subdivision only to determine whether the decision was made for reasons that are unlawful under the laws or Constitution of this state or the United States. A review under this Subdivision may be granted only in those cases where the affected faculty member submits a written request for a review to the chief administrative officer that describes in detail the facts relied upon to prove that the decision was made for unlawful reasons. If the chief administrative officer determines that the alleged facts, if proven by credible evidence, support a conclusion that the

decision was made for unlawful reasons, such allegations shall be heard under the procedures in Subsection 6.3 as in the case of dismissal for cause, with the following exceptions:

- (1) the burden of proof is upon the affected faculty member to establish by the greater weight of the credible evidence that the decision in question was made for reasons that are unlawful under the laws or Constitution of this state or the United States;
- (2) the administration of the institution need not state the reasons for the questioned decision or offer evidence in support thereof unless the affected faculty member presents credible evidence that, if unchallenged, proves the decision was made for unlawful reasons;
- (3) the hearing tribunal shall make written findings and recommendations based on the evidence presented at the hearing and shall forward such findings and recommendations with the transcript and exhibits from the hearing to the chief administrative officer;
- (4) the chief administrative officer may approve, reject, or amend the recommendations of the hearing tribunal or may reach different conclusions based upon the record of the hearing. The decision of the chief administrative officer shall be final.

. . . .

This item requires the concurrence of the Health Affairs Committee.

## BACKGROUND INFORMATION

The proposed change to the Regents' Rules and Regulations, Part One, Chapter III, Section 6, Subsection 6.2 deletes language related to term tenure at U. T. Permian Basin. There are no longer any faculty members on term tenure appointments at U. T. Permian Basin and the language is inoperative. Term tenure at U. T. Permian Basin was replaced with regular tenure by U. T. Board of Regents' action in October 1988.

The proposed changes to Subsection 6.3 related to tenure, promotion, and termination of employment deal specifically with the manner of selection of peer faculty members for a special hearing tribunal to hear charges against a tenured faculty member or certain tenure-track faculty members being considered for termination by the component institution and codify the procedure to be followed prior to a determination that good cause exists for termination. The proposed changes are a suggested refinement to current policies and are in no way a finding that the current provisions of the Regents' Rules and Regulations are unlawful or unfair. The suggested changes are, in part, a response to a June 1995 resolution from the U. T. System Faculty Advisory Council concerning tribunal selection and a November 1995 resolution recommending changes to the termination procedures. The recommended changes have been reviewed by the chief administrative officers.

Additional substantive changes to Subsection 6.3 are summarized below:

- a. Subdivision 6.31 - provides a general framework for the review of allegations prior to the decision to recommend a hearing on charges. The proposal includes a specific requirement that the faculty member under review be allowed an opportunity for interview by the chief academic officer prior to the chief academic officer's determination that there is evidence to support the allegations. New language clarifies existing practice related to the appropriate interplay between the grievance process and an ongoing review or termination proceeding.

- b. Subdivision 6.32 - makes clear that if the chief administrative officer finds that good cause exists to initiate charges, the faculty member is to be given an opportunity to respond to the findings and also consolidates current language to effect that the formal hearing process is not required when the facts are admitted or the faculty member has been finally convicted of a felony offense.
  - c. Subdivision 6.33 - rearranges existing language on interim suspension with pay and provides guidelines for the selection of a panel of potential hearing tribunal members. The language recommended does provide for faculty involvement in the panel selection but retains presidential prerogative for hearing tribunal appointment and leaves the issue of appropriate academic rank for the panel members as an institutional decision. The Faculty Advisory Council would prefer the panel be selected by faculty or its composition be agreed to by faculty and administration. The Chairman of the Faculty Advisory Council has requested an opportunity to speak to the Board on the issue of panel selection.
  - d. Subparagraph 6.334 - specifically references the burden of proof in a termination proceeding which, as under current practice, is upon the institution.
  - e. Subdivision 6.35 - includes minor amendments to make clear that the notice provisions referenced are only applicable to nontenured faculty on tenure-track.
2. U. T. Board of Regents: Proposed Amendments to the Regents' Rules and Regulations, Part One, Chapter VI, Section 6, Subsection 6.(11) (Use of Property, Buildings, or Facilities for Filming Motion Pictures or Television Productions).--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, and the Executive Vice Chancellor for Health Affairs that the Regents' Rules and Regulations, Part One, Chapter VI, Section 6, Subsection 6.(11),

regarding use of property, buildings, or facilities for filming motion pictures or television productions, be amended as set forth below in congressional style:

Sec. 6. Use of University Facilities.

. . .

6.(11) Use of Property, Buildings, or Facilities for Filming Motion Pictures or Television Productions.--The chief administrative officer of the U. T. System or a component institution or his or her delegate may authorize the use of property, buildings, or facilities owned or controlled by the U. T. System or component institution for filming motion pictures or television productions under a written agreement approved pursuant to U. T. System procedures. Requests to film a motion picture or television production will be reviewed and considered on a case by case basis and, subject to the provisions of this Subsection, it shall be within the discretion of the chief administrative officer or his or her delegate to determine whether to grant the request. The safety of students, faculty, and staff; the potential for damage to buildings, facilities, or property and for disruption of administrative or academic programs or other scheduled activities; and the subject matter of the film shall be of primary consideration in determining whether to grant a filming request.

6.(11)1 The chief administrative officer or his or her delegate will be responsible for assuring that scheduled time(s) and location(s) for filming do not interfere with administrative and academic programs or other scheduled activities of the U. T. System or component institution.

- 6.(11)2 The U. T. System or a component institution shall not be identified as the filming location in the film credits or in any media advertising for the film. The film may not include any building, statue, fountain, facility, mark, symbol, or logo that identifies the U. T. System or a component institution as the filming location. This prohibition shall not apply to the filming of an approved script that relates to the life and accomplishments of a present or former officer or employee of the U. T. System or of the component institution at which the script is filmed.
- 6.(11)3 The script for the motion picture or television production must be approved by the chief administrative officer or his or her delegate.
- 6.(11)4 The production company must identify the persons or entities with an interest in the company [~~have-been-in-existence-for-at least-three-(3)-years-and produced-one-or-more-motion pictures-that-have-been distributed-and-exhibited nationwide-or-one-or-more television-programs-that-have been-broadcast-by-a-major television-network,-e.g.-ABC,-EBS,-FOX,-NBE~~].
- 6.(11)5 The production company must provide a policy of comprehensive general liability and property damage insurance issued by a company authorized to do business in the State of Texas naming the Board of Regents, the U. T. System, the component institution, and the officers and employees of each as additional insureds,



providing coverage for bodily injury and death of persons and damage to property that result directly or indirectly from the negligent or intentional act or omission of, or from the use or condition of any property, equipment, machinery, or vehicle used, operated, or controlled by, the production company or its officers, employees, agents, or subcontractors while on property owned or controlled by the U. T. System or a component institution. The limits of coverage shall be determined by the chief administrative officer or his or her delegate on the basis of the nature and extent of the activities to be conducted by the production company and the property, buildings, or facilities to be utilized. In no event shall the limits of liability for each occurrence be less than two [~~five~~] million dollars (\$2 [~~5~~],000,000.00) for bodily injury or death of a person and one million dollars (\$1,000,000.00) for property damage.

- 6.(11)6 A use fee will be established in each case based upon the nature and extent of the activities of the production company and the U. T. System or component institution property, buildings, facilities, personnel, and services that are required to accommodate such activities. The use fee must be paid in advance by a certified or cashier's check made payable to the U. T. System or component institution. If the production company cancels a scheduled use,

the deposit, less any expense incurred by the U. T. System or component institution in preparation for such use, will be refunded.

This item requires the concurrence of the Health Affairs Committee.

#### BACKGROUND INFORMATION

These proposed minor amendments to the Regents' Rules and Regulations, Part One, Chapter VI, Section 6, Subsection 6.(11) address suggestions recently received from the Texas Film Commission.

Subdivision 6.(11)4 is amended to delete the requirement that the production company be in operation for three years. The Texas Film Commission advises that a new production company is often formed for each project. The University's interest in reliability of the production company will be satisfied instead by the company's identification of the individuals or entities with an interest in the company.

At the Texas Film Commission's suggestion, Subdivision 6.(11)5 is amended to reduce the minimum required liability insurance from \$5.0 million to \$2.0 million for bodily injury or death. This change impacts the minimum requirement only; additional coverage may be required as appropriate for the nature of the project.

The U. T. System requirements on the use of property, buildings, or facilities for filming motion pictures or television productions were approved for inclusion in the Regents' Rules and Regulations at the May 1996 meeting.

3. U. T. Austin: Request to Repeal Bowl Game Policy.--

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs and President Berdahl that the Regental Bowl Game Policy for U. T. Austin be repealed. It is further recommended that bowl game invitations may be accepted by the chief administrative officer of a general academic component institution upon review and approval of the proposed bowl game budget by the Executive Vice Chancellor for Academic Affairs and the Executive Vice Chancellor for Business Affairs.

BACKGROUND INFORMATION

At the October 1962 meeting, the U. T. Board of Regents adopted a detailed policy related to permission to play in bowl games, expense reimbursement, ticket distribution, and compensation for participation in bowl games. The policy was amended in part at the February 1982 meeting of the U. T. Board of Regents. The policy is very outdated and has been replaced in practice for the last three U. T. Austin bowl games by prior approval of proposed bowl game budgets by the Executive Vice Chancellor for Academic Affairs and coverage of compensation issues by individual contracts and institutional policy. This is consistent with recent delegation authorization.

Upon approval of formal repeal of the 1962 Bowl Game Policy, each institution will adopt Handbook of Operating Procedures to implement the approval requirement. Final bowl budgets will be ratified by the U. T. Board of Regents via institutional budget approvals.

4. U. T. Austin: Request to Repeal Policy Related to Law School Admissions Standards and Enrollment Conditions.--

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs and President Berdahl that the policy for Law School Admissions Standards at U. T. Austin, including enrollment conditions, as approved by the U. T. Board of Regents at the April 1970 meeting be repealed.

BACKGROUND INFORMATION

A Regental policy enacted in April 1970 to establish eligibility requirements for admission to the School of Law at U. T. Austin effective for the 1970-71 academic year is outdated but has not been formally repealed. The admissions standards have been reviewed every two years and updated as appropriate prior to new catalog publication. Needed changes have been ratified by the U. T. Board of Regents via the approval of catalog changes in the institutional docket. The 1970-71 eligibility requirements were also subject to the following four continuing enrollment conditions:

- (1) The total enrollment in the Law School shall be maintained at no less than 1450 students.
- (2) The first-year enrollment shall never be less than 500 students.
- (3) The percentage of nonresident students shall at no time be above 15% of the entering class and beginning with the 1971-72 school year the percentage of nonresident students shall at no time be above 15% of the total enrollment of the Law School.
- (4) For purposes of computing the percentage limitations set out in Section Three above, any student who enters the Law School as a nonresident shall be treated as a nonresident for the entire time he is a student in the Law School.

Decisions on School of Law minimum total enrollment, Condition (1), and first-year enrollment, Condition (2), are obviously impacted by available faculty, Law School accreditation requirements, and related factors. Thus, such decisions are best made at the institutional level in the context of and under the authority of U. T. Austin's approved Enrollment Management Plan as for the other schools and colleges on that campus.

The limitation on nonresident student enrollment contained in Condition (3) is now included in the current General Appropriations Act (as not exceeding 20 percent). Similarly, Condition (4) is no longer a correct statement of residency classification pursuant to the Texas Education Code.

U. T. Austin anticipates the need to adjust Law School enrollment limits by as much as 15 percent over the next several years. Repeal of these enrollment conditions will permit consideration of such modifications as part of overall enrollment management needs.

5. U. T. El Paso: Request for Authorization to Conduct a Private Fund-Raising Campaign to Increase Endowment Funds and to Provide for Certain Capital Needs (Regents' Rules and Regulations, Part One, Chapter VII, Section 2, Subsection 2.4, Subdivision 2.44).--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs and President Natalicio that authorization be given for U. T. El Paso to conduct a private fund-raising campaign to increase endowment funds and provide for certain capital needs, pursuant to the Regents' Rules and Regulations, Part One, Chapter VII, Section 2, Subsection 2.4, Subdivision 2.44 relating to private fund-raising campaigns.

## BACKGROUND INFORMATION

The primary initiative of the proposed campaign at U. T. El Paso is to provide the institution with the appropriate resources and programs to meet the demands of the twenty-first century.

The five-year campaign is designed to increase the institution's endowment which is to be dedicated for a variety of purposes, including recruiting and retraining faculty to sustain new graduate-level programs, supporting teaching assistantships and research internships for graduate students, as well as funding undergraduate travel to regional, national, and international competitions and other enhanced academic experiences, building a special library endowment to update its resources, funding ongoing technology costs relative to instruction and research, supporting public school partnerships, and providing a stable financial source for athletic scholarships, staff support, and program development. In addition, the goal includes raising gifts to provide for certain capital needs. Recommendations to name appropriate buildings or other campus facilities for contributors to the campaign will be forwarded to the U. T. Board of Regents at a later date.

6. U. T. El Paso: Request for Authorization to Charge Reduced Tuition Rate for Students Residing in Doña Ana and Otero Counties, New Mexico, Effective with the Spring Semester 1997 and for the Executive Vice Chancellor for Academic Affairs to Forward the Proposal to the Coordinating Board for Approval (Catalog Change).--

## RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs and President Natalicio that authorization be granted to U. T. El Paso to charge, effective with the Spring Semester 1997, a reduced tuition rate equal to the statutory rate for Texas residents, plus \$30 per semester credit hour, for citizens of Doña Ana and Otero Counties, New Mexico, under the provisions of the Texas Education Code, Section 54.0601.

In keeping with guidelines adopted by the Texas Higher Education Coordinating Board, this recommendation will apply to undergraduate programs and includes a finding that the proposed lower tuition rate is in the best interest of U. T. El Paso and that charging a lower tuition rate will not cause unreasonable harm to any other Texas institution of higher education.

Further, the U. T. Board of Regents is requested to authorize the Executive Vice Chancellor for Academic Affairs to forward the proposal for a reduced tuition rate to the Texas Higher Education Coordinating Board for consideration and approval.

Upon Coordinating Board approval, the next appropriate catalog published at U. T. El Paso will be amended to reflect this action.

#### BACKGROUND INFORMATION

The 74th Texas Legislature added Section 54.0601 to the Texas Education Code. The section states that "the Coordinating Board may set a nonresident tuition rate that is lower than the [regular] nonresident tuition rate . . ." based on a written request from the governing board of a general academic teaching institution located not more than 100 miles from the boundary of Texas with another state.

At its July 1995 meeting, the Coordinating Board adopted a procedure that includes the following features:

- a. The request must include an explanation of why the lower rate is in the best interest of the institution and why such a rate will not cause unreasonable harm to any other institution of higher education
- b. The rate may not be set lower than the tuition rate for Texas residents plus \$30 per semester credit hour
- c. The Coordinating Board will approve a lower rate only for an institution that has a surplus of total educational and general space.

A subsequent interpretation limited the application of this authority to undergraduate programs.

The best interests of the U. T. System component institutions are served by having a variety of students from different backgrounds. In situations such as that in El Paso, economic and cultural ties extend across state boundaries and relationships are enhanced through educational opportunities and attainment.

With regard to harm to other institutions, students from New Mexico may be expected to enroll at U. T. El Paso because of convenience, proximity, or because of their attraction to a specific field of study. U. T. El Paso would not foster direct competition with another Texas institution of higher education for such students. (An appropriations rider prohibits expenditures of state funds for recruitment of out-of-state students.) Additionally, this authorization is requested only for residents of the two counties in New Mexico that are nearest to El Paso even though the statute would permit the reduced tuition for New Mexico residents from throughout the state. The number of students from New Mexico attending U. T. El Paso under this provision is not likely to increase significantly above current enrollment rates.

Under a reciprocal resident tuition provision under Section 54.060(f) of the Texas Education Code, New Mexico residents from Doña Ana and Otero Counties pay resident tuition rates for up to six (6) semester credit hours. This action was approved at the August 1995 meeting of the U. T. Board of Regents. Upon approval of the current proposal, eligible undergraduate students would pay the reduced rate if they registered for more than six (6) hours. At the November 1995 meeting, the U. T. Board of Regents authorized U. T. Dallas, U. T. Permian Basin, and U. T. Tyler to charge reduced tuition to eligible students under Section 54.0601 of the Texas Education Code and approved like authorization for U. T. Arlington at the August 1996 meeting.



7. U. T. El Paso: Request for Authorization to Establish a Doctor of Philosophy Degree in Biological Sciences and to Submit the Proposed Program to the Coordinating Board for Approval (Catalog Change).--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs and President Natalicio that authorization be granted to establish a Doctor of Philosophy (Ph.D.) degree in Biological Sciences at U. T. El Paso and to submit the proposal to the Texas Higher Education Coordinating Board for review and appropriate action. The proposed degree program is consistent with U. T. El Paso's approved Table of Programs and institutional plans for offering quality degree programs to meet student needs. A description of the degree program is included in the Background Information of this agenda item.

Upon approval by the Coordinating Board, the next appropriate catalog published at U. T. El Paso will be amended to reflect this action.

#### BACKGROUND INFORMATION

##### Program Description

The primary educational objective of the proposed Doctor of Philosophy degree in Biological Sciences at U. T. El Paso is to prepare students for research on the pressing pathobiological problems of the region, with an emphasis on (1) the pathogenesis of infectious diseases and (2) the toxic and carcinogenic effects of environmental pollutants. Doctoral candidates will complete at least 72 semester credit hours beyond the bachelor's degree including a dissertation presenting research on a significant problem related to the toxicological effects of pathogens or xenobiotics (parasitic or foreign biological agents) in the environment. Within the 72 semester credit hour program is a 12 hour core requirement. The program will be administered by the Department of Biological Sciences and the Graduate School.

## Need

Because of increased governmental and public awareness of substances that pose a potential health risk, the demand for broadly trained pathobiologists will continue to grow. While other doctoral programs in biology are offered in Texas, none has the same emphasis as the proposed program, which will emphasize basic research on the cellular mechanisms of toxicology and pathogenesis. None of the other Texas degree programs would overlap significantly.

With El Paso serving as a gateway to a developing and industrialized Mexico, U. T. El Paso's location offers pathobiologists unique research opportunities unavailable elsewhere. The combined binational metropolitan area of El Paso/Ciudad Juarez has a population of nearly two million and is beset by significant environmental health problems: poor sanitation, pollution, hazardous and toxic waste generation, and elevated risks of cancer. The proposed degree would train scientists who (1) are skilled in the basic and applied aspects of molecular toxicology and pathogenesis, (2) are equipped with the knowledge to develop methodologies for evaluating risk, and (3) can develop strategies for protecting humans and other organisms from the consequences of such risks.

In addition, this program provides graduate study opportunities for place-bound minority students in the border area who have been historically underrepresented in the sciences. Currently, over 20% of the 642 undergraduate students and 44% of the 62 master's degree students have indicated an interest in obtaining a doctoral degree in the biological sciences. Students at other institutions would be candidates for the program as well.

Additionally, area leaders anticipate that this program would be a magnet to draw governmental, biotech, pharmaceutical, and related business and industry to the region, thus creating higher-paying technical and professional jobs in the El Paso area.

## Program Quality

The curriculum is tightly focused. The general structure for course work, examinations, and research mentoring are comparable to those in other doctoral programs in the sciences.

The program has been reviewed by a team of out-of-state consultants selected by the staff of the Coordinating Board. Those consultants found the initial proposal to be of high quality but recommended a broader research focus and a reduction in required course hours. Those changes have been addressed, and two additional consultants have assisted the University in preparing the latest version of the program proposal.

Twenty-one active research scholars on the U. T. El Paso faculty will initiate this program. In the past five years, these faculty have obtained 18 grants totalling over \$13 million in support of their research activities.

U. T. El Paso offers a Ph.D. in Environmental Science and Engineering and through the U. T. Health Science Center - Houston offers the Master of Public Health degree. Faculty for these two programs share a commonality of interest with the faculty who will offer the Ph.D. in Biological Sciences.

#### Cost

Much of the developmental cost for this program has been met by the federal grant awarded to U. T. El Paso for Research Centers for Minority Institutions. Substantial investments in laboratory facilities and faculty development have already been made from these grant funds. The total estimated cost for the first five years of the program is \$815,800, with nearly half coming from federal funds.

#### Summary

U. T. El Paso is requesting authorization to establish a Doctor of Philosophy degree in Biological Sciences with an emphasis in environmental pathobiology and to submit the proposed degree to the Texas Higher Education Coordinating Board. The University has 21 active scholars engaged in related research and has developed a well-focused curriculum to support the program. Much of the development cost will be covered by external grant funds including a possible extension of the existing \$4.5 million Research Centers for Minority Institutions grant.

A copy of the proposal for the Doctor of Philosophy degree in Biological Sciences at U. T. El Paso is on file in the U. T. System Office of Academic Affairs.

# Health Affairs Committee

HEALTH AFFAIRS COMMITTEE  
Committee Chairman Loeffler

**Date:** November 14, 1996

**Time:** Following the meeting of the Academic Affairs Committee

**Place:** Rooms NB2.402 and NB2.403, Simmons Biomedical Research Building, U. T. Southwestern Medical Center - Dallas

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1. U. T. System: Recommendation to Authorize the Transfer of Funds from the Medical Service, Research and Development Plan (MSRDP)/Physician Referral Service (PRS) at Each Health Component to Texas Universities Health Plan, Inc., a Texas Nonprofit Corporation.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs and the Office of General Counsel that the U. T. Board of Regents approve the transfer of funds from the Medical Service, Research and Development Plan (MSRDP)/Physician Referral Service (PRS) at each University of Texas System health component to Texas Universities Health Plan, Inc. ("the Plan"), a Texas nonprofit corporation. The practice plan funds will be utilized for the purpose of establishing sufficient reserves and operational costs associated with the application for and development of the Plan. Operational costs will include all reasonable necessary expenditures and start-up costs. The aforementioned funds will not exceed an aggregate of eight million dollars which will be utilized for operational expenses and reserves required for the Plan. Upon the dissolution of the Plan, all remaining operational funds and reserves will be remitted back to the respective U. T. System health component practice plan as directed by the Office of Health Affairs.

#### BACKGROUND INFORMATION

By previous action, the U. T. Board of Regents authorized the formation of a nonprofit corporation known as Texas Universities Health Plan, Inc. The Plan, which will obtain a primary Health Maintenance Organization certificate of authority, will enhance patient referrals to the U. T. System health components and assure the continuation of clinical educational experiences and opportunities for medical residents and students in the emerging field of managed care. In addition, the Plan will allow for the continuation of the delivery of health care to the traditional patients of the U. T. System health components.

The Plan will provide managed health care and clinical educational experience opportunities consistent with the mission and purposes of the U. T. System health institutions.

2. U. T. Southwestern Medical Center - Dallas: Recommendation for Approval of Mission Statement and to Submit the Statement to the Coordinating Board for Approval.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs and President Wildenthal that the U. T. Board of Regents approve the Mission Statement for the U. T. Southwestern Medical Center - Dallas as set out on Pages HAC 5 - 7.

Upon approval by the U. T. Board of Regents, the statement will be submitted to the Texas Higher Education Coordinating Board for approval.

#### BACKGROUND INFORMATION

The Mission Statement of the U. T. Southwestern Medical Center - Dallas, which was previously approved in November 1995, has been revised to add the Master's degree to the mission, role and scope of the U. T. Southwestern Allied Health Sciences School - Dallas. The U. T. Southwestern Medical Center - Dallas awards the Master of Arts (M.A.) and Master of Science (M.S.) degrees in a number of fields with the Master's level authority included in the institution's Table of Programs. The awarding of the Master's degree has traditionally been reserved for the U. T. Southwestern Graduate School of Biomedical Sciences - Dallas. As the Allied Health Sciences School has upgraded its faculty, student body, and academic offerings, it has become apparent that the authority to offer Master's degrees in fields related to allied health sciences should be extended to the U. T. Southwestern A.H.S.S. - Dallas. Within that mission, the Allied Health Sciences School would be able to award the Master of Science, Master of Arts, the proposed Master of Physical Therapy, and other degree programs as approved and appropriate. The U. T. Southwestern G.S.B.S. - Dallas would continue to offer Master's degrees in the fields of basic and clinical science investigation.

See Item 4 on Page HAC - 10 related to the proposed establishment of the Master of Physical Therapy degree at the U. T. Southwestern A.H.S.S. - Dallas.



The University of Texas  
Southwestern Medical Center at Dallas

Mission Statement

The University of Texas Southwestern Medical Center at Dallas is a component institution of The University of Texas System and is committed to pursuing high standards of achievement in instruction, research, and clinical activities. Since its inception in 1943, U. T. Southwestern has evolved as one of the leading biomedical institutions in the country, and its programs are designed and implemented with the intent to sustain this progress in the future.

As an academic health science center, the central mission of the institution is to educate health professionals whose lifelong career objectives will be to provide the best possible care, apply the most appropriate treatment modalities, and continue to seek information fundamental to the treatment and prevention of disease. Within an environment of interdisciplinary activity and academic freedom at Southwestern, students receive training from faculty scholars who have in-depth expertise in the many specialties of health care and the biomedical sciences. Faculty members also engage in research and patient care so that they can generate new knowledge in the fight against disease and maintain their clinical skills while serving the people of Texas to the best of their ability. Research findings are made available directly to students and indirectly to the general public as practicing professionals adopt new treatment modalities. The focus of the faculty, students, and administration at The University of Texas Southwestern Medical Center at Dallas will remain on providing exemplary educational programs, creating new knowledge, delivering quality medical care, maintaining the highest ethical standards, advancing the scientific basis of medical practice, and demonstrating concern and compassion for all people. Every aspect of the University's operation will be conducted in as cost-effective a manner as possible.

The institution consists of the Southwestern Medical School, the Southwestern Graduate School of Biomedical Sciences, and the Southwestern Allied Health Sciences School and offers degrees and programs with subject matter limited to health-related fields.

The central purpose of The University of Texas Southwestern Medical School at Dallas is to produce physicians who will be inspired to maintain lifelong medical scholarship and who will

apply the knowledge gained in a responsible and humanistic manner to the care of patients. The Southwestern Medical School has assumed responsibility for the continuum of medical education. The institution offers instructional programs not only in undergraduate medical education leading to the M.D. degree, but also graduate training in the form of residency positions and fellowships as well as continuing education for practicing physicians and medical scientists. An important focus of the educational effort is training primary care physicians and preparing doctors who will practice in underserved areas of Texas. Another instructional role of Southwestern Medical School faculty members is that of fully preparing those medical students who seek a career in academic medicine and research, including the opportunity to earn both the M.D. and Ph.D. degrees simultaneously.

The Southwestern Graduate School of Biomedical Sciences provides well qualified individuals seeking an M.A., M.S., or Ph.D. degree with the opportunity and the encouragement to investigate rigorously and be creative in solving significant problems in the biological, physical, and behavioral sciences. In addition to acquiring information in their area of research expertise, graduate students at the Southwestern Medical Center are encouraged to develop and test new ideas in the classroom and to communicate their ideas to others within the research-oriented medical community. Although enrolled in a specific program, the students are not restricted to courses in their major field of study. Exposure to a wide variety of academic disciplines is necessary to prepare each individual for the rapidly changing emphasis in the biomedical sciences. Therefore, graduate students at U. T. Southwestern gain a wide perspective of contemporary biomedical science through interdisciplinary courses, seminars and informal discussions involving scholastic interaction with students and faculty from other educational programs within the University.

The educational programs of the Southwestern Allied Health Sciences School have been established to educate individuals at the baccalaureate and master's degree levels for those professions which support the health-care delivery team concept. The School offers baccalaureate degree programs in several fields, post-baccalaureate courses of study, certificate programs, and master's degree programs in allied health science fields of study. As an integral part of Southwestern Medical Center, the School works cooperatively in education, research, and service contexts. It prepares allied health professionals of the highest quality and competency to help

meet the care needs of the people of Texas. Through research and scholarly pursuits related to health care, it advances scientific knowledge and practices of the allied health profession. It offers consultation, technical assistance, and professional services to meet education and health-care needs of the community. In addition, it contributes to the continued growth and development of allied health professions, including reduction of barriers to career advancement through pathways to graduate or post-graduate education. The School views its community obligations as being important and therefore works actively to publicize career opportunities and respond in an appropriate manner to the requirements of health care institutions, agencies, and service providers in the area.

3. U. T. Southwestern Medical Center - Dallas (U. T. Southwestern G.S.B.S. - Dallas): Request for Authorization to Establish a Doctor of Philosophy Degree in Integrative Biology and to Submit the Proposed Degree Program to the Coordinating Board for Approval (Catalog Change).--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs and President Wildenthal that authorization be granted to establish a Doctor of Philosophy degree in Integrative Biology to be administered by the U. T. Southwestern G.S.B.S. - Dallas at the U. T. Southwestern Medical Center - Dallas and to submit the proposal to the Texas Higher Education Coordinating Board for review and appropriate action. The proposed doctoral degree program is consistent with the U. T. Southwestern Medical Center - Dallas' approved Table of Programs and institutional plans for offering quality degree programs to meet student needs.

Upon approval by the Coordinating Board, the next appropriate catalog published at the U. T. Southwestern Medical Center - Dallas will be amended to reflect this action.

#### BACKGROUND INFORMATION

##### Program

The proposed Doctor of Philosophy degree program in Integrative Biology will be administered in the Division of Cell and Molecular Biology at the U. T. Southwestern G.S.B.S. - Dallas. Requirements for the degree will include 24 semester credit hours of academic course work, a specific qualifying examination, and the completion of an approved dissertation based on the student's laboratory research experiences. The course work and research training in this new program will prepare students to use the tools of modern molecular and cellular biology to examine complex physiological functions. The graduates of this program will be prepared to meet the needs of modern medicine to understand normal physiological function and disease processes. The first students are anticipated to enroll Fall 1997.

### Program Justification

Biomedical scientists of the future increasingly will be required, by the evolution of knowledge in biology, to have a command of the theory and practice of both molecular biology and organismal biology. In fact, currently the most appropriate approach to many of the key questions in biomedical science requires the application of the tools of molecular biology and molecular genetics to assessments of organismal function. Unfortunately, there are currently few scientists with the requisite expertise in both molecular and organismal biology. The faculties of Texas universities and universities across the nation (in the fields of agriculture, ecology, and biomedicine) will benefit from individuals with such cross training. It follows that broad-based interdisciplinary training will be an important consideration for future employment both in academia and industry. The U. T. Southwestern Medical School - Dallas is adjusting its educational program to meet the projected needs for scientists with a specific set of skills. Expected enrollment each year will be five or six students from the first-year class of the Division of Cell and Molecular Biology.

### Program Quality

The curriculum of the new program will include the standard first-year curriculum of the Division of Cell and Molecular Biology plus a selection of nine semester hours of advanced course work offered by the Integrative Biology program faculty. The new program is assured a highly qualified student body because of the stringent standards for admission to the Division of Cell and Molecular Biology first-year curriculum. The program will choose its students from those who successfully complete the first year in the Division of Cell and Molecular Biology. The faculty of 22 are all successful, well-funded scientists, many of whom are recognized leaders in their fields. In addition, they bring a wealth of experience in training graduate students, providing outstanding opportunities for students to learn at the forefront of science.

### Cost

The cost of the new program will be the cost of a part-time administrative assistant (33% time). No new funds are requested. The personnel need will be met by reassignment of personnel within the U. T. Southwestern G.S.B.S. - Dallas or by reallocation of current funds for this purpose.

### Summary

The course work and research training in this new program will prepare students to use the tools of modern molecular and cellular biology to examine complex physiological functions. The proposed degree will help fulfill the desire by the U. T. Southwestern Medical Center - Dallas to meet the educational needs of students and community constituents in its region.

A copy of the proposal for the Doctor of Philosophy degree in Integrative Biology is on file in the U. T. System Office of Health Affairs.

4. U. T. Southwestern Medical Center - Dallas (U. T. Southwestern A.H.S.S. - Dallas): Request for Authorization to Establish a Master of Physical Therapy Degree Program and to Submit the Proposed Degree Program to the Coordinating Board for Approval (Catalog Change).--

### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs and President Wildenthal that authorization be granted to establish a Master of Physical Therapy degree program to be administered by the U. T. Southwestern A.H.S.S. - Dallas at the U. T. Southwestern Medical Center - Dallas and to submit the proposal to the Texas Higher Education Coordinating Board for review and appropriate action. The proposed Master's degree program is consistent with the Mission Statement and approved Table of Programs for U. T. Southwestern Medical Center - Dallas. See Item 2 on Page HAC - 4 related to approval of a revised Mission Statement for the U. T. Southwestern Medical Center - Dallas. A description of the Master of Physical Therapy degree program is included in the Background Information of this agenda item.

Upon approval by the Coordinating Board, the next appropriate catalog published at U. T. Southwestern Medical Center - Dallas will be amended to reflect this action.

## BACKGROUND INFORMATION

### Program Description

The proposed program represents a change from an existing baccalaureate entry-level Physical Therapy degree to an entry-level Master's degree in Physical Therapy. Applicants must have completed a baccalaureate degree from an accredited university by December of the year of application. Fifty-six credit hours of prerequisite course work must also be completed or in progress by the November application deadline. Eighty-one credit hours are required for completion of the degree.

The basic content of the proposed curriculum is currently offered in the bachelor's program but has been expanded and sequenced to offer better integration of the basic science and clinical courses and foster independent learning. The Master of Physical Therapy curriculum will be offered through the Department of Physical Therapy in the U. T. Southwestern A.H.S.S. - Dallas. The anticipated date for enrolling students is Summer 1998 and that class will graduate at the completion of Spring 2000.

### Need

In 1991, the State of Texas passed legislation allowing physical therapists to treat patients without a physician referral. Physical therapists now may serve as an entry point into the health-care delivery system which adds the responsibility of screening patients and referring to other health-care providers. The physical therapy curriculum has evolved to include more evaluative procedures, physical therapy diagnostic skills, and knowledge of pathologies with an awareness of when to refer to another provider when problems lie outside the scope of physical therapy. More therapists now work in non-traditional settings, such as public schools, industrial settings, and home health and sports medicine centers, without on-site physician supervision or interaction with other health care providers. The proposed program reflects the content required for safe, effective, and efficient practice in today's changing health care environment. The number of students enrolled in the program will remain at 40. Since no additional funding is requested, the same class size ensures the continuation of quality teaching and appropriate instructor-to-student ratios.

## Quality

The proposed curriculum is designed to begin with basic science content in anatomy, physiology, and neuroscience. The clinical science courses then integrate basic sciences, pathology, and psychology with evaluation and treatment of neurological, musculoskeletal, and cardiopulmonary systems. Clinical experiences are incorporated into the curriculum to allow integration of laboratory and classroom experiences. Laboratories are included in clinical science courses to allow practice of evaluation skills, problem solving, design and implementation of treatment plans. The students will develop skills in the research process and in the application of research findings to clinical practice. The admission process will be conducted by the Admissions Committee of the Physical Therapy Department in cooperation with the Registrar's Office and approval of the U. T. Southwestern A.H.S.S. - Dallas. Admission is competitive and based on the following criteria: overall GPA (3.0), science GPA (3.0), GRE scores, letter of recommendation scores, interview scores, and score of an essay written at the time of interview. The Physical Therapy Department has recently expanded the number of faculty members to 10 in anticipation of the proposed program. Four physical therapy faculty members have Ph.D.'s and two other faculty members are in progress on their doctoral education. Three other faculty members have received national certification in the following specialties: geriatrics, neurology, and orthopedics.

## Cost

There will be no additional cost to the U. T. Southwestern Medical Center - Dallas, since the present funding will adequately meet the cost of the new program. In the last two years, funding of the existing program has increased by 50% in anticipation of the needed increase in faculty salaries and clerical support. The source of these additional funds is from faculty practice funds, continuing education, and salary support from Medical School departments.

## Summary

U. T. Southwestern Medical Center - Dallas is requesting authorization to establish a Master of Physical Therapy degree program as a substitute for an existing baccalaureate-level program and to submit the proposed degree program to the Texas Higher Education Coordinating Board for approval. There is a



strong need for this degree in the region. The proposed degree will help to fill this need and to fulfill the desire by the U. T. Southwestern Medical Center - Dallas to meet the educational needs of students and community constituents in its region.

A copy of the proposal for the Master of Physical Therapy degree at the U. T. Southwestern Medical Center - Dallas is on file in the U. T. System Office of Health Affairs.

5. U. T. M.D. Anderson Cancer Center: Recommendation to Approve Patent and Technology License, Stock Purchase, Warrants, and Stockholders' Agreements with BioCyte Therapeutics, Inc., Houston, Texas; Request for Approval to Accept Stock; and Request for Approval for Individual to Serve on the Board of Directors of BioCyte Therapeutics, Inc.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs and President Mendelsohn that the U. T. Board of Regents:

- a. Approve the following agreements between the U. T. Board of Regents, for and on behalf of the U. T. M.D. Anderson Cancer Center, and BioCyte Therapeutics, Inc., Houston, Texas:

Patent and Technology License Agreement  
(Pages HAC 16 - 32)

Stock Purchase Agreement  
(Pages HAC 33 - 45)

Warrants Agreement  
(Pages HAC 46 - 66)

Stockholders' Agreement  
(Pages HAC 67 - 99)

- b. Approve the receipt of founders' stock in BioCyte Therapeutics, Inc. by the U. T. Board of Regents for and on behalf of the U. T. M.D. Anderson Cancer Center

- c. Approve (1) service on the board of directors of BioCyte Therapeutics, Inc. by faculty member Gabriel Lopez-Berestein, M.D., and (2) his acceptance in the future of stock from the company for such service.

#### BACKGROUND INFORMATION

BioCyte Therapeutics, Inc. (BioCyte) is a Delaware corporation with principal offices in Houston, Texas, formed and funded by the investment banking firm of Harris, Webb & Garrison of Houston, Texas, to develop and commercialize products and services for the diagnosis, prognosis, and therapy of cancer and other diseases. Under the Patent and Technology License Agreement (License Agreement), BioCyte is granted a royalty-bearing, exclusive, worldwide license to make, have made, use, or sell products and services incorporating technologies developed at U. T. M.D. Anderson Cancer Center by Francis Ali-Osman, Gabriel Lopez-Berestein, John Buolamwini, Gamil Antoun, Hui-Wen Lo, Charles Keller, and Olanike Akande. The License Agreement also grants to BioCyte a nonexclusive right to negotiate license rights to other inventions that U. T. M.D. Anderson Cancer Center, in its discretion, may disclose to BioCyte. The technology to be licensed initially is "Discovery and targeting of novel glutathione S-transferase-pi (GST-pi) genes and gene products for diagnosis, prognosis, and therapy of cancer and other diseases" docketed by U. T. M.D. Anderson Cancer Center as ID96-25.

As consideration for the license, BioCyte will pay the U. T. Board of Regents a royalty comprising a percentage of adjusted net sales of licensed products as well as half of sublicensing income. In addition, BioCyte will transfer to the U. T. Board of Regents common shares of stock of the company equivalent to 49% of the founders' shares. Royalties and sublicensing income but not stock will be shared with the inventors pursuant to the Regents' Rules and Regulations, Part Two, Chapter XII. BioCyte also will fund all pre-clinical and clinical development costs and will reimburse U. T. M.D. Anderson Cancer Center for patent expenses in connection with the licensed technology. Transfer of the stock will be a cashless transaction for U. T. M.D. Anderson Cancer Center pursuant to the Stock Purchase, Warrants, and Stockholders' Agreements.

In his personal capacity, Dr. Lopez-Berestein will serve on the board of directors of BioCyte which is permissible upon approval by the U. T. Board of Regents pursuant to the Regents' Rules and Regulations, Part Two, Chapter XII, Subsection 7.1. Dr. Lopez-Berestein will be compensated by BioCyte with that company's stock for his service on the board of directors.

The proposed arrangements are consistent with Section 51.912 of the Texas Education Code and corresponding provisions of the U. T. System Intellectual Property Policy. Pursuant to Part Two, Chapter XII, Subsections 7.1 and 7.2 of the Regents' Rules and Regulations, approval by the U. T. Board of Regents is necessary for Dr. Lopez-Berestein to serve as a director of BioCyte concurrent with approval of the License Agreement with such company.

## **PATENT AND TECHNOLOGY LICENSE AGREEMENT**

THIS seventeen (17) page AGREEMENT ("AGREEMENT") is made on this 14th day of November, 1996 by and between the BOARD OF REGENTS ("BOARD") of THE UNIVERSITY OF TEXAS SYSTEM ("SYSTEM"), an agency of the State of Texas, whose address is 201 West 7th Street, Austin, Texas 78701, THE UNIVERSITY OF TEXAS M. D. ANDERSON CANCER CENTER ("MDA"), a component Institution of the SYSTEM and **BIOCYTE THERAPEUTICS, INC.**, a Delaware corporation having a principal place of business located at 5599 San Felipe, Suite 310, Houston, Texas, 77056 ("LICENSEE").

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## RECITALS

- A. BOARD owns certain PATENT RIGHTS and TECHNOLOGY RIGHTS related to LICENSED SUBJECT MATTER, which were developed at MDA, a component institution of SYSTEM.
- B. BOARD and MDA desire to have the LICENSED SUBJECT MATTER developed in the LICENSED FIELD and used for the benefit of LICENSEE, the inventor, MDA, BOARD, and the public as outlined in the Intellectual Property Policy promulgated by the BOARD.
- C. LICENSEE wishes to obtain an exclusive license from BOARD to practice LICENSED SUBJECT MATTER.

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the parties hereto agree as follows:

### I. EFFECTIVE DATE

- 1.1 Subject to approval by BOARD, this AGREEMENT shall be effective as of the date written herein above ("EFFECTIVE DATE").

### II. DEFINITIONS

As used in this AGREEMENT, the following terms shall have the meanings indicated:

- 2.1 AFFILIATE shall mean any business entity more than 50% owned by LICENSEE, any business entity which owns more than 50% of LICENSEE, or any business entity that is more than 50% owned by a business entity that owns more than 50% of LICENSEE.
- 2.2 LICENSED FIELD shall mean all uses of the LICENSED SUBJECT MATTER.
- 2.3 LICENSED PRODUCTS shall mean any product or service SOLD by LICENSEE comprising LICENSED SUBJECT MATTER pursuant to this AGREEMENT.
- 2.4 LICENSED SUBJECT MATTER shall mean inventions and discoveries defined herein as PATENT RIGHTS or as TECHNOLOGY RIGHTS.
- 2.5 LICENSED TERRITORY shall mean all national political jurisdictions in which LICENSED PRODUCTS are sold by LICENSEE.
- 2.6 NET SALES shall mean the gross revenues received by LICENSEE from the SALE of LICENSED PRODUCTS less: (i) sales and/or use taxes actually paid; (ii) import and/or export duties actually paid; (iii) outbound transportation prepaid or allowed; (iv) amounts allowed or credited due to returns (not to exceed the original billing or invoice amount); and (v) amounts actually paid to third parties as running

royalties on sales pursuant to license agreements entered into by LICENSEE in order to practice any INVENTION hereunder which otherwise would constitute infringement of the patent rights of said third party.

- 2.7** NET MARGIN shall mean NET SALES less LICENSEE'S direct cost to manufacture and distribute LICENSED PRODUCTS as determined by generally accepted accounting principles.
- 2.8** PATENT RIGHTS shall only mean any and all of BOARD'S rights in information or discoveries claimed in invention disclosures, patents, and/or patent applications, whether domestic or foreign, and all divisionals, continuations, continuations-in-part, reissues, reexaminations or extensions thereof, and any letters patent that issue thereon as defined in Exhibit I hereto subject to the limitations, if any, set forth therein.
- 2.9** SALE or SOLD shall mean the transfer or disposition of a LICENSED PRODUCT for value to a party other than LICENSEE or an AFFILIATE.
- 2.10** Subject to the limitations, if any, set forth in Exhibit I hereto, TECHNOLOGY RIGHTS shall mean BOARD'S rights in any technical information, know-how, process, procedure, composition, device, method, formula, protocol, technique, software, design, drawing or data created by the inventors listed in Exhibit I hereto and relating to LICENSED SUBJECT MATTER which is not claimed in PATENT RIGHTS but which is necessary for practicing PATENT RIGHTS regardless of whether any patent is actually issued during the term of this AGREEMENT.

### **III. LICENSE**

- 3.1** BOARD hereby grants to LICENSEE a royalty-bearing, exclusive license under LICENSED SUBJECT MATTER to manufacture, have manufactured, use and/or sell LICENSED PRODUCTS within LICENSED TERRITORY for use within LICENSED FIELD and, subject to Article 4.5 herein, shall extend to BOARD'S undivided interest in any LICENSED SUBJECT MATTER developed during the term of this AGREEMENT and jointly owned by BOARD and LICENSEE. This grant shall be subject to Paragraph 14.2 and 14.3, hereinbelow, the payment by LICENSEE to MDA of all consideration as provided in Paragraph 4.2 of this AGREEMENT, (as well as the timely payment of all amounts due MDA under any Sponsored Research Agreement between MDA and LICENSEE in effect during the term of this AGREEMENT) and shall be further subject to rights retained by BOARD and MDA to:
- (a)** Publish the general scientific findings from research related to LICENSED SUBJECT MATTER; and
  - (b)** Subject to the provisions of ARTICLE XI herein below, use any information contained in LICENSED SUBJECT MATTER for research, teaching, patient care, and other educationally-related purposes.

- 3.2** LICENSEE shall have the right to extend the license granted herein to any AFFILIATE provided that such AFFILIATE consents to be bound by all of the terms and conditions of this AGREEMENT.
- 3.3** Consistent with the terms of this AGREEMENT and subject to the Article 3.4 herein below, LICENSEE shall have the right and agrees to grant sublicenses under LICENSED SUBJECT MATTER to third parties for applications and uses of LICENSED SUBJECT MATTER which LICENSEE elects not to commercialize and sell LICENSED PRODUCTS, provided that LICENSEE shall be responsible for its sublicensees relevant to this AGREEMENT, and for diligently collecting all amounts due LICENSEE from sublicensees. In the event a sublicensee pursuant hereto becomes bankrupt, insolvent or is placed in the hands of a receiver or trustee, LICENSEE, to the extent allowed under applicable law and in a timely manner, agrees to use its best reasonable efforts to collect any and all consideration owed to LICENSEE and to have the sublicense agreement confirmed or rejected by a court of proper jurisdiction.
- 3.4** LICENSEE agrees to deliver to MDA a true and correct copy of each sublicense granted by LICENSEE, and any modification or termination thereof, within thirty (30) days after execution, modification, or termination.
- 3.5** Upon termination of this AGREEMENT, BOARD agrees to accept as successors to LICENSEE, existing sublicensees in good standing at the date of termination of this AGREEMENT provided that such sublicensees consent in writing to be bound by all of the terms and conditions of this AGREEMENT.
- 3.6** During the term of this AGREEMENT, MDA may, at its sole discretion disclose on a voluntary, non-exclusive basis and to give notice to LICENSEE pursuant to Article 15.2 hereinbelow, new inventions made at MDA (i) which are disclosed completely in an Invention Disclosure Report to MDA's Office of Technology Development; and (ii) to which no other party has any prior rights.
- 3.7** To provide LICENSEE (and any third parties) adequate time to evaluate the commercial prospects of new inventions, MDA will not enter into a license agreement covering any new invention disclosed pursuant to Article 3.6 hereinabove for a period of sixty (60) days following such disclosure.
- 3.8** Should LICENSEE provide MDA with written notice of its interest and an offer to license any new invention disclosed to LICENSEE pursuant to Article 3.6 hereinabove, and should any such invention still be available for licensing following the sixty (60) day period provided for in Article 3.7 hereinabove, and MDA and BOARD in their sole judgement agree to accept LICENSEE'S offer, MDA and BOARD agree to amend Exhibit I of this AGREEMENT to include such new inventions pursuant to the Amendment Form attached hereto as Exhibit II.

#### IV. CONSIDERATION, PAYMENTS AND REPORTS

4.1 In consideration of rights granted by BOARD to LICENSEE under this AGREEMENT, LICENSEE agrees to pay MDA the following for each LICENSED PRODUCT or LICENSED PRODUCT candidate comprising LICENSED SUBJECT MATTER:

- (a) \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for all out-of-pocket expenses incurred by MDA through June 30, 1996 in filing, prosecuting, enforcing and maintaining PATENT RIGHTS licensed hereunder, and all future expenses incurred by MDA, for so long as, and in such countries as, this AGREEMENT remains in effect. MDA will invoice LICENSEE upon approval of this AGREEMENT by BOARD, and upon a quarterly basis thereafter beginning September 1, 1996 for expenses incurred by MDA after June 30, 1996 and the amounts invoiced will be due and payable by LICENSEE within thirty (30) days thereafter, and
  
- (b) After LICENSEE has recovered all of its direct investment to research, develop, test and protect the LICENSED SUBJECT MATTER as reflected in LICENSEE'S audited quarterly financial statements prepared according to generally accepted accounting principles, plus a preferred return of thirty-five percent (35%) thereof, (i) a running royalty equal to fifty percent (50%) of LICENSEE'S NET MARGIN resulting from LICENSEE'S NET SALES of LICENSED PRODUCTS in the LICENSED TERRITORY, and (ii) fifty percent (50%) of all consideration other than Research and Development ("R&D") money received by LICENSEE from any sublicensee pursuant to Articles 3.3 and 3.4 herein above, including but not limited to royalties, up-front payments, marketing, distribution, franchise, option, license, or documentation fees, bonus and milestone payments and equity securities, all payable within thirty (30) days after March 31, June 30, September 30, and December 31 of each year during the term of this AGREEMENT, at which time LICENSEE shall also deliver to MDA a true and accurate report, giving such particulars of the business conducted by LICENSEE and its sublicensees, if any exist, during the preceding three (3) calendar months under this AGREEMENT as necessary for MDA to account for LICENSEE'S payments hereunder. Such report shall include all pertinent data, including, but not limited to: (a) LICENSEE'S audited quarterly financial statements; (b) the total quantities of LICENSED PRODUCTS produced; (c) the total SALES, (d) the calculation of NET MARGIN, including details of all direct costs, and the royalties thereon; and (e) the total royalties or other payments so computed and due MDA. Simultaneously with the delivery of each such report, LICENSEE shall pay to MDA the amount, if any, due for the period of such report. If no payments are due MDA, it shall be so reported.



- 4.2** During the Term of this AGREEMENT and for one (1) year thereafter, LICENSEE shall keep complete and accurate records of its and its sublicensees' direct investments pursuant to ARTICLE 4.1(b), SALES, NET SALES, and NET MARGIN of LICENSED PRODUCTS to enable the royalties payable hereunder to be determined. LICENSEE shall permit MDA or its representatives, at MDA'S expense, to periodically examine its books, ledgers, and records during regular business hours for the purpose of and to the extent necessary to verify any report required under this AGREEMENT. In the event that the amounts due to MDA are determined to have been underpaid in an amount equal to or greater than five percent (5%) of the total amount due during the period of time so examined, LICENSEE shall pay the cost of such examination, and accrued interest at the highest allowable rate.
- 4.3** Upon the request of MDA but not more often than once per calendar year, LICENSEE shall deliver to MDA a written report as to LICENSEE'S (and sublicensees') efforts and accomplishments during the preceding year in diligently commercializing LICENSED SUBJECT MATTER in the LICENSED TERRITORY and LICENSEE'S (and sublicensees') commercialization plans for the upcoming year.
- 4.4** All amounts payable hereunder by LICENSEE shall be payable in United States funds without deductions for taxes, assessments, fees, or charges of any kind. Checks shall be made payable to The University of Texas M. D. Anderson Cancer Center and mailed by U.S. Mail to Box 297402, Houston, Texas 77297 Attention: Manager, Sponsored Programs.
- 4.5** No payments due or royalty rates under this AGREEMENT shall be reduced as the result of co-ownership of LICENSED SUBJECT MATTER by BOARD and LICENSEE.

## **V. SPONSORED RESEARCH**

- 5.1** If LICENSEE desires to fund sponsored research within the LICENSED SUBJECT MATTER, and particularly where LICENSEE receives money for sponsored research payments pursuant to a sublicense under this AGREEMENT, LICENSEE shall notify MDA in writing of all opportunities to conduct such sponsored research (including clinical trials, if applicable), shall solicit research and/or clinical proposals from MDA for such purpose, and shall give good faith consideration to funding such proposals from MDA to the extent that MDA has the resources, capability and interest in drug development, including animal testing, drug formulation, pharmacokinetics, and clinical testing of the LICENSED SUBJECT MATTER.

## VI. PATENTS AND INVENTIONS

- 6.1 If after consultation with LICENSEE it is agreed by MDA and LICENSEE that a new patent application should be filed for LICENSED SUBJECT MATTER, MDA will prepare and file appropriate patent applications, and LICENSEE will pay the cost of searching, preparing, filing, prosecuting and maintaining same. If LICENSEE notifies MDA that it does not intend to pay the cost of an application, or if LICENSEE does not respond or make an effort to agree with MDA on the disposition of rights of the subject invention, then MDA may file such application at its own expense and LICENSEE shall have no rights to such invention. MDA shall provide LICENSEE with a copy of the application for which LICENSEE has paid the cost of filing, as well as copies of any documents received or filed during prosecution thereof.

## VII. INFRINGEMENT

- 7.1 LICENSEE shall have the obligation of enforcing at its expense any patent exclusively licensed hereunder against infringement by third parties and shall be entitled to retain recovery from such enforcement. LICENSEE shall pay MDA fifty percent (50%) of any monetary recovery to the extent that such monetary recovery by LICENSEE exceeds its non-reimbursed out-of-pocket litigation costs and is held to be damages or a reasonable royalty in lieu thereof. In the event that LICENSEE does not file suit against an infringer of such patents within six (6) months of knowledge thereof, then MDA and BOARD shall have the right to enforce any patent licensed hereunder on behalf of itself and LICENSEE (MDA retaining all recoveries from such enforcement) and/or reduce the license granted hereunder to non-exclusive.
- 7.2 MDA and BOARD shall have the right, but not the obligation, to take any and all actions to protect its interests in the LICENSED SUBJECT MATTER in the event of suit or threat of suit, by a third party for LICENSEE's alleged infringement of third party's proprietary rights as a result of commercialization of a LICENSED PRODUCT, including but not limited to assuming control of legal actions deemed necessary in the sole judgement of BOARD and MDA to protect BOARD's and MDA's interests.
- 7.3 In any suit or dispute involving an infringer, the parties shall cooperate fully, and upon the request and at the expense of the party bringing suit, the other party shall make available to the party bringing suit at reasonable times and under appropriate conditions all relevant personnel, records, papers, information, samples, specimens, and the like which are in its possession.

## VIII. PATENT MARKING

- 8.1 LICENSEE agrees that all packaging containing individual LICENSED PRODUCT(S), and documentation therefor, sold by LICENSEE, SUBSIDIARIES, and sublicensees of LICENSEE will be marked permanently and legibly with the number of the applicable patent(s) licensed hereunder in accordance with each country's patent laws, including Title 35, United States Code.

## IX. INDEMNIFICATION

- 9.1 LICENSEE shall hold harmless and indemnify BOARD, SYSTEM, MDA, its Regents, officers, employees, students, and agents from and against any claims, demand, or causes of action whatsoever, costs of suit and reasonable attorney's fees including without limitation those costs arising on account of any injury or death of persons or damage to property caused by, or arising out of, or resulting from, the exercise or practice of the license granted hereunder by LICENSEE or its officers, employees, agents or representatives.

## X. USE OF BOARD AND COMPONENT'S NAME

- 10.1 LICENSEE shall not use the name of (or the name of any employee of) MDA, SYSTEM or BOARD without the advance, express written consent of BOARD secured through:

The University of Texas  
M. D. Anderson Cancer Center  
Office of Public Affairs  
1515 Holcombe Boulevard  
Box 229  
Houston, Texas 77030  
ATTENTION: Stephen C. Stuyck

## XI. CONFIDENTIAL INFORMATION

- 11.1 MDA and LICENSEE each agree that all information contained in documents marked "confidential" which are forwarded to one by the other shall be received in strict confidence, used only for the purposes of this AGREEMENT, and not disclosed by the recipient party (except as required by law or court order), its agents or employees without the prior written consent of the other party, unless such information (a) was in the public domain at the time of disclosure, (b) later became part of the public domain through no act or omission of the recipient party, its employees, agents, successors or assigns, (c) was lawfully disclosed to the recipient party by a third party having the right to disclose it, (d) was already known by the recipient party at the time of disclosure, (e) was independently developed or (f) is required to be submitted to a government agency pursuant to any preexisting obligation.

- 11.2** Each party's obligation of confidence hereunder shall be fulfilled by using at least the same degree of care with the other party's confidential information as it uses to protect its own confidential information. This obligation shall exist while this AGREEMENT is in force and for a period of three (3) years thereafter.

## **XII. ASSIGNMENT**

- 12.1** This AGREEMENT may not be assigned by LICENSEE without the prior written consent of MDA.

## **XIII. TERMS AND TERMINATION**

- 13.1** Subject to Articles 13.2, 13.3 and 13.4 hereinbelow, the term of this AGREEMENT shall extend from the Effective Date set forth hereinabove to the full end of the term or terms for which PATENT RIGHTS have not expired, and if only TECHNOLOGY RIGHTS are licensed and no PATENT RIGHTS are applicable, for a term of fifteen (15) years.
- 13.2** MDA shall have the right at any time after the EFFECTIVE DATE of this AGREEMENT to terminate the license to any LICENSED SUBJECT MATTER or any use or application thereof granted herein in any national political jurisdiction within the LICENSED TERRITORY if LICENSEE, within ninety days after written notice from MDA of such intended termination, fails to provide written evidence satisfactory to MDA that LICENSEE has commercialized or is actively and effectively attempting to commercialize any aspect of LICENSED SUBJECT MATTER licensed hereunder within such jurisdiction(s). Accurate, written evidence provided by LICENSEE to MDA within said ninety (90) day period that LICENSEE has an effective, ongoing and active research, development, manufacturing, marketing, or sales program, as appropriate, directed toward obtaining regulatory approval and/or production and/or sale of LICENSED PRODUCTS incorporating PATENT RIGHTS or incorporating TECHNOLOGY RIGHTS within such jurisdiction shall be deemed satisfactory evidence.
- 13.3** Subject to any rights herein which survive termination, this AGREEMENT will earlier terminate in its entirety:
- (a) automatically if LICENSEE shall become bankrupt or insolvent and/or if the business of LICENSEE shall be placed in the hands of a receiver or trustee, whether by voluntary act of LICENSEE or otherwise; or

- (b) (i) upon thirty (30) days written notice by MDA if LICENSEE shall breach or default on the payment obligations of ARTICLE IV, or use of name obligations of ARTICLE X; or (ii) upon ninety (90) days written notice by MDA if LICENSEE shall breach or default on any other obligation under this AGREEMENT; provided, however, LICENSEE may avoid such termination if before the end of such thirty (30) or ninety (90) day period if LICENSEE provides notice and accurate, written evidence satisfactory to MDA that such breach has been cured and the manner of such cure; or.
- (c) at any time by mutual written agreement between LICENSEE, MDA and BOARD, or without cause upon one hundred eighty (180) days written notice by LICENSEE to MDA and BOARD, subject to any provisions herein which survive termination.

**13.4 Upon termination of this AGREEMENT for any cause:**

- (a) nothing herein shall be construed to release either party of any obligation matured prior to the effective date of such termination.
- (b) LICENSEE covenants and agrees to be bound by the provisions of ARTICLES IX, X AND XI of this AGREEMENT.
- (c) LICENSEE may, after the effective date of such termination, sell all LICENSED PRODUCTS and parts therefore that it may have on hand at the date of termination, provided that LICENSEE pays the earned royalty thereon and any other amounts due pursuant to ARTICLE IV of this AGREEMENT.
- (d) LICENSEE grants to MDA and BOARD a non-exclusive royalty bearing license with the right to sublicense others with respect to improvements made by LICENSEE (including improvements licensed by LICENSEE from third parties) in the LICENSED SUBJECT MATTER. LICENSEE and MDA agree to negotiate in good faith the royalty rate for said non-exclusive license. MDA'S right to sublicense others hereunder shall be solely for purposes of permitting others to develop and commercialize the entire technology package.

**XIV. WARRANTY: SUPERIOR-RIGHTS**

- 14.1** Except for the rights, if any, of the Government of the United States as set forth hereinbelow, BOARD represents and warrants its belief that it is the owner of the entire right, title, and interest in and to LICENSED SUBJECT MATTER, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.

- 14.2** LICENSEE understands that the LICENSED SUBJECT MATTER may have been developed under a funding agreement with the Government of the United States of America and, if so, that the Government may have certain rights relative thereto. This AGREEMENT is explicitly made subject to the Government's rights under any such agreement and any applicable law or regulation, including P.L. 96-517 as amended by P.L. 98-620. To the extent that there is a conflict between any such agreement, applicable law or regulation and this AGREEMENT, the terms of such Government agreement, applicable law or regulation shall prevail.
- 14.3** LICENSEE understands and agrees that BOARD, by this AGREEMENT, makes no representation as to the operability or fitness for any use, safety, efficacy, approvability by regulatory authorities, time and cost of development, patentability, and/or breadth of the LICENSED SUBJECT MATTER. BOARD, by this AGREEMENT, makes no representation as to whether there are any patents now held, or which will be held, by others or by BOARD in the LICENSED FIELD, nor does BOARD make any representation that the inventions contained in PATENT RIGHTS do not infringe any other patents now held or that will be held by others or by BOARD.
- 14.4** LICENSEE, by execution hereof, acknowledges, covenants and agrees that LICENSEE has not been induced in anyway by BOARD, SYSTEM, MDA or employees thereof to enter into this Agreement, and further agrees that LICENSEE has conducted sufficient due diligence with respect to all items and issues pertaining to Article XIV herein and all other matters pertaining to this Agreement and agrees to accept all risks inherent herein.

## **XV. GENERAL**

- 15.1** This AGREEMENT constitutes the entire and only AGREEMENT between the parties for LICENSED SUBJECT MATTER and all other prior negotiations, representations, agreements and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.

**15.2** Any notice required by this AGREEMENT shall be given by prepaid, first class, certified mail, return receipt requested, and addressed in the case of MDA and BOARD to:

BOARD OF REGENTS  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701  
ATTENTION: Office of General Counsel

and:

The University of Texas  
M.D. Anderson Cancer Center  
Office of Technology Development  
1020 Holcombe Boulevard, Suite 1405  
Houston, Texas 77030  
ATTENTION: William J. Doty

or in the case of LICENSEE to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTENTION: \_\_\_\_\_

or such other address as may be given from time to time under the terms of this notice provision.

- 15.3** LICENSEE covenants and agrees to comply with all applicable federal, state and local laws and regulations in connection with its activities pursuant to this AGREEMENT.
- 15.4** This AGREEMENT shall be construed and enforced in accordance with the laws of the United States of America and of the State of Texas.
- 15.5** Failure of BOARD or MDA to enforce a right under this AGREEMENT shall not act as a waiver of that right or the ability to later assert that right relative to the particular situation involved.
- 15.6** Headings included herein are for convenience only and shall not be used to construe this AGREEMENT.
- 15.7** If any provision of this AGREEMENT shall be found by a court to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this AGREEMENT.

**IN WITNESS WHEREOF, parties hereto have caused their duly authorized representatives to execute this AGREEMENT.**

**THE UNIVERSITY OF TEXAS  
M.D. ANDERSON CANCER CENTER**

**BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM**

By \_\_\_\_\_  
David J. Bachrach  
Executive Vice President  
for Administration and Finance

By \_\_\_\_\_  
Ray Farabee  
Vice Chancellor and  
General Counsel

**APPROVED AS TO CONTENT:**

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
William J. Doty  
Director, Technology Development

By \_\_\_\_\_  
Dudley R. Dobie, Jr.  
Manager, Intellectual Property

**BIOCYTE THERAPEUTICS, INC.:**

By: \_\_\_\_\_  
Jerald S. Cobbs  
President and CEO



**EXHIBIT I**

**ID96-25**

**'Discovery and targeting of novel glutathione S-transferase-pi (GST-pi) genes and gene products for diagnosis, prognosis and therapy of cancer and other diseases''**

Francis Ali-Osman, Gabriel Lopez-Berestein, John Buolanwini, Gamil Antoun, Hui-Wen Lo, Charles Keller, and Olanike Akande, Inventors

**EXHIBIT II**

**AMENDMENT NO. \_\_\_\_\_  
TO THE  
PATENT AND TECHNOLOGY LICENSE AGREEMENT**

This is AMENDMENT NO. \_\_\_\_\_ effective this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_ ("EFFECTIVE AMENDMENT NO. \_\_\_ DATE") to the Patent and Technology License Agreement dated November 15, 1996 (hereinafter referred to as the "AGREEMENT"), by and between THE UNIVERSITY OF TEXAS M.D. ANDERSON CANCER CENTER (hereinafter referred to as "MDA"), located at Houston, Texas, and which is a component institution of THE UNIVERSITY OF TEXAS SYSTEM (hereinafter referred to as "SYSTEM") which is governed by a BOARD OF REGENTS (hereinafter referred to as "BOARD") and **BIOCYTE THERAPEUTICS, INC.**, located at \_ 5599 San Felipe, Suite 301, Houston, Texas, 77056 (hereinafter referred to as "LICENSEE").

**RECITALS**

- A. BOARD is the owner of the PATENT AND TECHNOLOGY RIGHTS of the invention entitled "\_\_\_\_\_ " (UTMDACC Ref. UTSC: \_\_\_\_\_ ("NEW INVENTION(S)").
- B. LICENSEE is a company interested in the development and commercialization of new technologies directed to the treatment of human diseases, to which end LICENSEE, MDA and BOARD entered into the AGREEMENT noted hereinabove.
- C. LICENSEE wishes to add the NEW INVENTION(S) to its rights and obligations under the AGREEMENT.
- D. BOARD and MDA wish to grant LICENSEE rights to the NEW INVENTION(S) under the AGREEMENT to promote its (their) practical development for the benefit of the MDA's patients and for the benefit of the people of the state of Texas.
- E. The definitions set forth in the AGREEMENT shall apply in this AMENDMENT NO. \_\_\_\_\_, except to the extent that a definition herein is specific to this AMENDMENT NO. \_\_\_\_\_.

AMENDMENT NO. \_\_\_\_\_

Page 2

NOW, THEREFORE, in consideration for the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the parties hereby agree to the following:

**AMENDED TERMS**

- 1. EXHIBIT I to the AGREEMENT is hereby amended to include the NEW INVENTION(S) attached hereto as EXHIBIT A.
- 2. In addition to the reimbursements for patent expenses provided for under the AGREEMENT and all other amendments thereto, LICENSEE shall reimburse MDA within thirty (30) days of the EFFECTIVE AMENDMENT NO. \_\_\_ DATE for all outstanding and unreimbursed patent expenses related to the NEW INVENTION(S) and shall further reimburse MDA for all future and continuing patent expenses for the NEW INVENTION(S) pursuant to Article 4.1(a) of the AGREEMENT for the term of the AGREEMENT, pursuant to invoicing by MDA.

OTHERWISE, the terms and provisions of the original AGREEMENT and all previous amendments thereto shall remain in full force and effect, provided, however, that in the event of a conflict in the terms and conditions between this AMENDMENT NO. \_ \_ and the AGREEMENT, the terms and conditions of the AGREEMENT shall prevail.

**IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this AMENDMENT NO. \_\_\_\_\_.**

THE UNIVERSITY OF TEXAS  
M.D. ANDERSON CANCER CENTER

BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM

By \_\_\_\_\_  
David J. Bachrach  
Executive Vice President  
for Administration and Finance

By \_\_\_\_\_  
Ray Farabee  
Vice Chancellor and  
General Counsel

APPROVED AS TO CONTENT

APPROVED AS TO FORM

By: \_\_\_\_\_  
William J. Doty  
Director, Technology Development

By: \_\_\_\_\_  
Dudley R. Dobie, Jr.  
Manager, Intellectual Property

BIOCYTE THERAPEUTICS, INC.

By \_\_\_\_\_  
Jerald S. Cobbs  
President and CEO

**EXHIBIT A**

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**STOCK PURCHASE AGREEMENT**

**BY AND AMONG**

**BIOCYTE THERAPEUTICS, INC.,**

**THE BOARD OF REGENTS  
OF THE UNIVERSITY OF TEXAS SYSTEM**

**AND**

**THE UNIVERSITY OF TEXAS  
M.D. ANDERSON CANCER CENTER**

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## STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT (this "*Agreement*") is entered into as of \_\_\_\_\_, 1996, by and between Biocyte Therapeutics, Inc., a Delaware corporation ("*Company*"), the Board of Regents (the "*Board of Regents*") of the University of Texas System, an agency of the State of Texas, and The University of Texas M.D. Anderson Cancer Center, a component institution of such System ("*MDA*").

### WITNESSETH:

WHEREAS, the Company, MDA and the Board of Regents propose to enter into that certain Patent and Technology License Agreement dated as of November 14, 1996 (the "*License Agreement*");

WHEREAS, the Company desires to issue and sell to the Board of Regents shares of the Company's common stock, par value \$.001 per share (the "*Common Stock*"), as partial consideration for the Board of Regents' and MDA's agreement to enter into the License Agreement (such shares to be issued in the name of the Board of Regents for the benefit of MDA); and

WHEREAS, the Board of Regents desires to purchase shares of Common Stock pursuant to the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the premises, and the mutual and dependent promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### ARTICLE 1

#### PURCHASE AND SALE

1.1 **Purchase and Sale of BTI Stock.** Subject to the terms and conditions of this Agreement, at the Closing, the Company agrees to issue and sell to the Board of Regents, and the Board of Regents agrees to purchase and accept from the Company, (i) \_\_\_\_\_ shares of Common Stock (the "*BTI Shares*"), and (ii) pursuant to Section 1.4, the right to receive Contingent Warrants to purchase shares of Common Stock on the closing of Qualified Investments (as hereinafter defined) on or before the occurrence of the first Triggering Event (as hereinafter defined). In consideration of the sale of the BTI Shares and the right to receive the Contingent Warrants, at the Closing, the Board of Regents and MDA shall enter into the License Agreement with the Company (the "*License Consideration*").

1.2 **Closing.** Consummation of the transactions contemplated by this Agreement (the "*Closing*") shall take place at the offices of Porter & Hedges, L.L.P., 700 Louisiana Street, Suite 3500, Houston, Texas 77002, at \_\_\_\_\_ a.m. on \_\_\_\_\_, 1996, or at such other time and place as all parties hereto may mutually agree in writing. The date upon which the Closing occurs is referred to herein as the "*Closing Date*." Notwithstanding, anything herein to the contrary, if the Closing has not occurred by \_\_\_\_\_, 1996, either the Company or the Board of Regents shall have the right to terminate this Agreement.

1.3 **Closing Deliveries.** At the Closing, (a) the Company shall deliver to the Board of Regents one certificate representing all the BTI Shares, such certificate to represent duly authorized, validly issued, fully paid and non-assessable shares of Common Stock, sufficient and in good form to properly transfer such shares to the

Board of Regents as set forth in Section 1.1, (b) the Board of Regents and MDA shall deliver the License Consideration to the Company, and (c) the Company, the Board of Regents and MDA shall deliver to one another all other documents, instruments and agreements required under this Agreement.

#### 1.4 Contingent Warrants.

(a) *Generally.* Upon the closing of each Qualified Investment occurring on or prior to the first Triggering Event, the Company shall issue to the Board of Regents a warrant (singly, the "Contingent Warrant" and collectively, the "Contingent Warrants") to purchase shares of Common Stock based on a formula applied on the closing of such Qualified Investment. No Contingent Warrant shall be exercisable prior to the occurrence of the first Triggering Event, and no Contingent Warrants shall be issued or issuable after the first occurrence of a Triggering Event. The actual number of shares of Common Stock subject to each Contingent Warrant shall be computed as to each Qualified Investment using the formula described in Section 1.4(b) below. The initial exercise price per share of Common Stock subject to each Contingent Warrant shall be the Exercise Price attributable to the Qualified Investment resulting in the issuance of such Contingent Warrant. The parties hereto acknowledge and agree that no Contingent Warrants shall be issued by the Company to the Board of Regents with respect to the Initial Financing. The Contingent Warrants shall (i) have a five year term from the date of issuance (ii) be non-transferable other than to Affiliates of the Board of Regents (as defined in Section 2.7); (iii) provide for unlimited "piggy-back" registration rights for a period of five years from the date of issuance; and (iv) contain standard adjustments to the exercise price and the number of shares of Common Stock subject to such Contingent Warrant. The Contingent Warrants to be issued on each Qualified Investment shall be substantially in the form attached hereto as Exhibit A.

(b) *Formula for Calculation of Number of Shares.* Upon the closing of a Qualified Investment, the initial number of shares of Common Stock underlying the Contingent Warrant to be issued pursuant to Section 1.4(a) shall be computed based the quotient of (i) the Board of Regents Post-Preferred Return, divided by (ii) the Exercise Price per share paid by the Qualified Investor(s) in such Qualified Investment. By way of example, attached hereto as Schedule 1.4(b) is a calculation of the amount of Contingent Warrants to be issued to the Board of Regents in the event of Initial Financing of \$2,000,000, with subsequent Qualified Investments of \$5,000,000, \$10,000,000 and \$30,000,000, respectively, together with the other assumptions set forth in such schedule.

(c) *Termination.* Upon satisfaction by the Company of its obligations under this Section 1.4 on the occurrence of the first Triggering Event, the Company shall have no further obligation to issue to the Board of Regents any additional Contingent Warrants under this Section 1.4.

(d) *Certain Defined Terms.* As used in this Section 1.4, the following terms have the meaning set forth below:

"*Exercise Price*" means, with respect to any Qualified Investment, the price per share of Common Stock paid by the Qualified Investor(s) in such Qualified Investment. In the event the Qualified Investment is in securities of the Company convertible into Common Stock, such Exercise Price shall be computed as if the securities were converted into Common Stock on the investment date.

"*Initial Financing*" means a cash investment in equity capital of the Company facilitated by Harris Webb & Garrison ("HWG") (which may include a direct investment by HWG, among others) of not less than \$1,000,000, which investment shall be consummated simultaneously with the Closing pursuant to Section 4.1(h).

*"Board of Regents Post-Preferred Return"* means with respect to any Qualified Investment, the product of (x) 50%, multiplied by (y) the difference between (A) the New Value attributable to such Qualified Investment and (B) 1.5 times the Old Value attributable to all previous Qualified Investments. Solely, for purposes of the definitions of the Board of Regents Post-Preferred Return, New Value and Old Value, the Initial Financing shall constitute a Qualified Investment.

*"New Value"* means, with respect to any Qualified Investment, the product of the (x) Exercise Price attributable to the Qualified Investment at issue, multiplied by (y) the total number of shares of Common Stock attributable to all previous Qualified Investments (computed on an as-if-converted basis).

*"Old Value"* means, with respect to any Qualified Investment, the aggregate cash investment attributable to such Qualified Investment.

*"Qualified Investment"* means a cash investment (or a series of related investments within a twelve month time period) by a Qualified Investor or group of Qualified Investors in Common Stock or other securities of the Company, which by their terms, are convertible into Common Stock, in an aggregate amount of not less than \$1,000,000. For purposes of this definition cash investments by non-Affiliated Qualified Investors (or groups thereof) shall not be aggregated for purposes of the \$1,000,000 limitation described herein.

*"Qualified Investor"* means any person other than the Board of Regents, HWG or any of their respective Affiliates (as defined in Section 2.5).

*"Triggering Event"* means the earliest of the following events to occur: (w) the consummation of an initial public offering involving the sale of Common Stock by the Company to the general public in a bona fide firm commitment underwritten public offering pursuant to a registration statement filed with, and declared effective by, the Securities Exchange Commission under the Securities Exchange Act of 1933, as amended, pursuant to which the Company receives gross proceeds of at least \$10,000,000, and with the Common Stock having an initial purchase price to the public of not less than \$5.00 per share; (x) any consolidation, merger or other reorganization involving the Company and in which the surviving corporation is neither the Company nor its Affiliates (as defined in Section 2.7 and as existed prior to such consolidation, merger or reorganization); (y) any transaction or series of related transaction whereby the then existing stockholders of the Company propose to transfer in excess of 50% of the Company's voting power (other than to Affiliates of the Company as defined in Section 2.7); or (z) sale or transfer of more than 50% by value of the assets of the Company (other than to Affiliates of the Company as defined in Section 2.7).

1.5 **Legend.** In addition to any other legends required by law or other agreements entered into in connection herewith, the certificates representing the BTI Shares, Contingent Warrants or any shares of Common Stock issued pursuant to the exercise of a Contingent Warrant (collectively, the "Securities") shall bear a legend substantially to the effect that (a) the Securities have not been registered under the Securities Act of 1933, as amended (the "Securities Act") or registered or qualified under the securities laws of any state, and (b) the Securities may not be sold or otherwise transferred in the absence of such registration and qualification, unless (i) pursuant to a registration statement which has been filed with the Securities Exchange Commission and has become effective, and pursuant to any registration and qualification requirement under any applicable state



securities laws or (ii) the Company receives an opinion of counsel reasonably acceptable to it stating that such sale or transfer is exempt from the registration and qualification requirements of the Securities Act and any applicable state securities laws.

## ARTICLE 2

### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to MDA and the Board of Regents that the following representations and warranties are true and correct as of the date hereof:

**2.1 Organization.** The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all the necessary powers to own and to carry on the business in which it is currently engaged. The Company is qualified as a foreign corporation, and is licensed, admitted or approved to do business as a foreign corporation in the State of Texas.

**2.2 Authority and Enforceability.** The Company has the requisite power and authority to enter into and perform its obligations under this Agreement, the Stockholders' Agreement and the License Agreement, and no approval or consent of any person, third party or governmental agency or body is necessary in connection therewith. This Agreement, together with all other agreements, documents and instruments executed in connection herewith by the Company, including, without limitation, the Stockholders' Agreement, the License Agreement, constitute, or will constitute upon its execution and delivery by the Company, valid and legally-binding obligations of the Company, and are enforceable against the Company in accordance with their terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors' rights generally and subject to general principles of equity.

**2.3 No Violations or Conflicts.** Neither the execution and delivery of this Agreement, the Stockholders' Agreement or the License Agreement by the Company nor the performance by the Company of its obligations thereunder will (a) violate or conflict with any provision of the charter documents, or bylaws, as amended to date, of the Company; (b) violate or conflict with any provision of any statute, law, code, ordinance, rule, regulation, order, permit, license, certificate, writ, judgment, injunction or decree promulgated by any federal, state or local governmental body or authority (collectively, the "Laws"), applicable to the Company, or its businesses or assets; (c) result in a breach of, or constitute a default (or with notice or lapse of time or both result in a breach of or constitute a default) under or otherwise give any person the right to terminate or accelerate payment under or performance of any note, bond, loan agreement, contract, lease, license, franchise, permit, or other agreement or instrument to which the Company is a party or to which any of its assets are subject; or (d) result in, or require the creation or imposition of any security interest, mortgage, deed of trust, pledge, lien or other encumbrance of any nature whatsoever (collectively, the "Encumbrance") upon or with respect to any of the assets of the Company. The Company is not in violation of its charter documents or bylaws as amended to date, or in default in the performance or observance of any note, bond, loan agreement, contract, lease, license franchise, permit or other agreement or instrument to which the Company is a party or to which any of its assets are subject, except to the extent such default would not have a material adverse effect on the Company's business prospects or financial position.

**2.4 Litigation.** There are no legal or governmental proceedings pending to which the Company is a party or of which any property of the Company is the subject.

2.5 **Capitalization.** The total number of shares of all classes of stock which the Company has authority to issue is \_\_\_\_\_ shares, of which \_\_\_\_\_ shares are designated common stock, par value \$ \_\_\_\_\_ per share, and \_\_\_\_\_ shares are designed preferred stock, par value \$ \_\_\_\_\_ per share. Immediately preceding the Closing Date, the issued and outstanding shares of the capital stock of the Company is set forth on Schedule 2.5. Upon issuance of the BTI Shares to MDA in accordance with the terms and conditions hereunder, such BTI Shares shall represent duly authorized, validly issued, fully paid, and non-assessable shares of the Company's Common Stock. No shares of the Company's capital stock have been issued in violation of the Company's charter documents or bylaws, or the preemptive rights of any person. Other than as contemplated hereby or as set forth on Schedule 2.5, there are no outstanding subscriptions, options, rights, warrants, calls, preemptive rights, convertible securities, or other agreements or commitments of any kind obligating the Company to sell, convey, issue, exchange, transfer from treasury, or otherwise dispose of, any additional shares of any class of the Company's capital stock, or other equity or debt security of the Company. The shares of Common Stock, if any, to be issued upon the exercise of the Contingent Warrants pursuant to the terms thereof shall be reserved by the Company upon issuance of the Contingent Warrants and such shares, when issued, shall represent duly authorized, validly issued, fully paid and non-assessable shares of the Company Common Stock.

2.6 **Subsidiaries.** The Company has no subsidiaries.

2.7 **Brokers.** Except as set forth on Schedule 2.7, neither the Company nor any of its Affiliates have employed any broker, agent, investment banker or finder, or incurred any liability for any brokerage fees, agent's fees, commissions, investment banking fee or finder's fee in connection with the transactions contemplated by this Agreement.

For purposes of this Agreement, the term "*Affiliate*," (including the term "Affiliated") when used to indicate a relationship with any person, shall mean: any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, or is an officer or director of, such person. As used in the definition of Affiliate, the term "control" (including the terms "controlling," "controlled by" or "under common control with") means the possession, direct or indirect, of the power to direct, cause the direction of or influence the management and policies of a Person, whether through the ownership of voting securities, by contract, through the holding of a position as a director or officer of such person, or otherwise.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES OF MDA

MDA and the Board of Regents hereby, jointly and severally, represent and warrant that the following representations and warranties are true and correct as the date hereof:

3.1 **Organization.** MDA is a component institution of the University of Texas System, which is an agency of the State of Texas.

3.2 **Authority and Enforceability.** MDA and the Board of Regents have the requisite power and authority to enter into and perform its obligations under this Agreement, the Stockholders' Agreement and the License Agreement, and no approval or consent of any person, third party or governmental agency or body (other than the Board of Regents in the case of MDA) is necessary in connection therewith. This Agreement, together with all other agreements, documents, certificates and instruments executed by MDA in connection therewith, including, without limitation, the Stockholders' Agreement, License Agreement, constitute, or will constitute upon

its execution by MDA, valid and legally-binding obligations of MDA, and are enforceable against MDA, in accordance with their terms, subject to (i) the Constitution and the laws of the State of Texas and (ii) bankruptcy, receivership, insolvency, reorganization, moratorium or other similar Laws affecting or relating to creditors' rights generally and subject to general principles of equity.

**3.3 No Violations or Conflicts.** Neither the execution and delivery of this Agreement, the Stockholders' Agreement or the License Agreement by MDA or the Board of Regents nor the performance by MDA or the Board of Regents of its obligations thereunder will: (a) violate or conflict with any provision of the charter documents, or bylaws, as amended to date, of MDA or the Board of Regents; (b) violate or conflict with any provision of any Laws applicable to MDA or the Board of Regents, or their respective businesses or assets; or (c) result in a breach of, or constitute a default (or with notice or lapse of time or both result in a breach of or constitute a default) under or otherwise give any person the right to terminate or accelerate payment under or performance of any contract, license, or other agreement or instrument relating to any Licensed Subject Matter (as such term is defined in the License Agreement) or with respect to MDA's and the Board of Regents' obligations to the Company with respect to new inventions pursuant to the License Agreement.

**3.4 Investment Representations.** Each of MDA and the Board of Regents acknowledges, represents and agrees that:

(a) the BTI Shares, the Contingent Warrants and the shares of Common Stock issued pursuant to the exercise of the Contingent Warrants (collectively, the "Securities") have not, or will not have been registered under the Securities Act, or registered or qualified under any applicable state securities laws;

(b) the Securities are being issued, or will be issued, hereunder in reliance upon exemptions from such registration or qualification requirements, and the availability of such exemptions depends in part upon MDA's bona fide investment intent with respect to the Securities.

(c) the acquisition of the Securities is solely for its own account for investment, and are not being acquired for the account of any other person or with a view toward resale, assignment, fractionalization, or distribution thereof;

(d) neither MDA nor the Board of Regents shall offer for sale, sell, transfer, pledge, hypothecate or otherwise dispose of any of the Securities except in accordance with the registration requirements of the Securities Act and applicable state securities laws or upon delivery to the Company of an opinion of legal counsel reasonably satisfactory to the Company that an exemption from registration is available;

(e) MDA and the Board of Regents have such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of an investment in the Securities and making an informed investment decision;

(f) MDA and the Board of Regents have had the opportunity to ask questions of, and receive answers from the Company's officers and directors concerning the acquisition of the Securities and to obtain such other information concerning the Company and the Securities, to the extent they possessed the same or could acquire it without unreasonable effort or expense, as MDA or the Board of Regents deemed necessary in connection with making an informed investment decision;

(g) since the Securities have not, or will not have been registered under the 1933 Act or applicable state securities laws, MDA and the Board of Regents must bear the economic risk of holding the Securities for an indefinite period of time, and is capable of bearing such risk; and

(h) the Company has been formed during the past year as a start-up business and has no financial or operating history, and accordingly, the investment in the Securities involves substantial risk, including, without limitation, the complete loss thereof.

3.5 **Brokers.** Neither MDA, the Board of Regents nor any of their respective Affiliates have employed any broker, agent, or finder, or incurred any liability for any brokerage fees, agent's fees, commissions or finder's fees in connection with the transactions contemplated herein.

## ARTICLE 4

### CONDITIONS

4.1 **Conditions Precedent to Obligations of MDA and the Board of Regents.** The obligations of MDA and the Board of Regents to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction of the following conditions, at or before the Closing:

(a) *Representations and Warranties of the Company True on Closing Date.* The representations and warranties of the Company herein contained shall be true as of and at the Closing Date in all material respects with the same effect as though made at such date, except as affected by transactions permitted or contemplated by this Agreement; the Company shall have performed and complied in all material respects with all covenants required by this Agreement to be performed or complied with by the Company before the Closing Date; and the Company shall have delivered to MDA a certificate dated the Closing Date and signed by an authorized officer of the Company to both such effects;

(b) *Certificates of Public Officials.* The Company shall have delivered to MDA certificates of existence and good standing of a recent date with respect to the Company in each jurisdiction where the Company owns property or conducts operations;

(c) *No Litigation.* No suit, action, or other proceeding shall be pending or threatened in which it will be, or it is, sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby;

(d) *Opinion of Counsel of the Company.* MDA shall have received a favorable opinion, dated as of the Closing Date, from Porter & Hedges, L.L.P., counsel for the Company, in form and substance reasonably acceptable to MDA;

(e) *Tender of Stock.* The Company shall have delivered to MDA a certificate representing the BTI Shares;

(f) *License Agreement.* The Company shall have entered into the License Agreement with MDA and the Board of Regents on terms and conditions acceptable to MDA and the Board of Regents;

(g) *Stockholders' Agreement.* HWG and all other stockholder purchasing shares of Common Stock, or securities of the Company convertible into Common Stock, at or prior to the Closing shall have executed and delivered an adoption agreement with respect to all the terms and conditions of the Company's Stockholders' Agreement dated \_\_\_\_\_, 1996.

(h) *Initial Financing.* The consummation and closing of the Initial Financing shall occur concurrently with the Closing.

(i) *Consents and Approvals.* The Company shall have obtained any consents or approvals from third parties (including, any from governmental bodies or authorities) which are required under any laws or by agreement in order to consummate the transactions contemplated hereby; and

(j) *Other.* All other items required to be delivered hereunder or as may be reasonably requested by MDA or the Board of Regents to facilitate the Closing, in form and substance reasonably satisfactory to MDA, shall have been delivered to MDA or the Board of Regents.

**4.2 Conditions Precedent to Obligations of the Company.** The obligations of the Company to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction of the following conditions, at or before the Closing:

(a) *Representations and Warranties of MDA and the Board of Regents True on Closing Date.* The representations and warranties of MDA and the Board of Regents herein contained shall be true as of and at the Closing Date in all material respects with the same effect as though made at such date, except as affected by transactions permitted or contemplated by this Agreement; MDA and the Board of Regents shall have performed and complied in all material respects with all covenants required by this Agreement to be performed or complied with by them on or before the Closing Date; and each of MDA and the Board of Regents shall have delivered to the Company a certificate, dated as of the Closing Date and signed by an authorized officer of the Board of Regents and MDA to both such effects;

(b) *No Litigation.* No suit, action, or other proceeding brought by any person shall be pending or threatened in which it will be, or is, sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby;

(c) *License Agreement.* The Board of Regents shall have entered into the License Agreement with the Company on terms and conditions acceptable to the Company;

(d) *Stockholders' Agreement.* The Board of Regents shall have executed and delivered an adoption agreement with respect to all the terms and conditions of the Company's Stockholders' Agreement dated \_\_\_\_\_, 1996;

(e) *Initial Financing.* The consummation and closing of the Initial Financing shall occur concurrently with the Closing.

(f) *Consents and Approvals.* MDA and the Board of Regents shall have been obtained, any consents or approval from third parties (including from any governmental bodies or authorities) which are required under any laws or by agreement in order to consummate the transaction contemplated hereby; and

(g) *Other.* All other items required to be delivered hereunder or as may be reasonably requested by the Company to facilitate the Closing, in form and substance reasonably satisfactory to the Company, shall have been delivered to the Company.

## ARTICLE 5

### INDEMNIFICATION

5.1 **Survival of Representations and Warranties.** The representations and warranties contained herein, shall survive the execution and delivery of this Agreement and the Closing without limitation, notwithstanding any investigation or due diligence theretofore made by or on behalf of any party hereto. All claims for breach of representation or warranty and for indemnification by the Company, MDA or the Board of Regents with respect to a breach of a representation or warranty must be made in writing, and none of the Company, MDA or the Board of Regents will have liability for any such claims unless made in writing. All covenants and agreements contained herein shall survive the Closing without limitation, except as otherwise provided herein.

5.2 **Indemnification of MDA and the Board of Regents.** In addition to any other remedies available to MDA and the Board of Regents under this Agreement, at law or in equity, the Company shall indemnify, defend and hold harmless MDA, the Board of Regents and their respective Affiliates against and in respect of any and all claims, demands, actions, costs, damages, losses, diminution in value, expenses, obligations, liabilities, recoveries, judgments, settlements, suits, proceedings, causes of action or deficiencies, including interest penalties and reasonable attorneys' fees (collectively, the "Claims") that such indemnified persons shall incur or suffer, which arise, result from or relate to any breach of, or failure by the Company to perform, any of its representations, warranties, covenants or agreements in or under this Agreement.

5.3 **Indemnification of the Company.** To the extent authorized by the Constitution and the laws of the State of Texas and in addition to any other remedies available to the Company under this Agreement, at law or in equity, MDA and the Board of Regents shall indemnify, defend and hold harmless the Company and its Affiliates against and in respect of any and all Claims that the Company shall incur or suffer, which arise, result from or relate to any breach of, or failure by MDA and the Board of Regents to perform, any of their respective representations, warranties, covenants or agreements in or under this Agreement.

5.4 **Indemnification Procedure.** Promptly upon the discovery of facts giving rise to a claim for indemnity under this Article 5 or the receipt of notice of any Claim, judicial or otherwise, with respect to any matter as to which indemnification may be claimed under this Article 5, the indemnified party shall give written notice thereof to the indemnifying party together with such information respecting such matter as the indemnified party shall then have; *provided, however,* the failure of the indemnified party to give notice as provided herein shall not relieve the indemnifying party of any obligations, to the extent the indemnifying party is not materially prejudiced thereby. If indemnification is sought with respect to a third-party (*i.e.*, one who is not a party to this Agreement) Claim asserted or brought against an indemnified party, the indemnifying party shall be entitled to participate in and to assume the defense thereof, jointly with any other indemnifying party similarly notified, to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party. After such notice from the indemnifying party to such indemnified party of its election to so assume the defense of such a third-party Claim, the indemnifying party shall not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof, other than reasonable and necessary costs of investigation, unless the indemnifying party has failed to assume and diligently prosecute the defense of such third-party Claim and to employ counsel reasonably satisfactory to such indemnified person. An

indemnifying party who elects not to assume the defense of a third-party Claim shall not be liable for the fees and expenses of more than one counsel in any single jurisdiction for all parties indemnified by such indemnifying party with respect to such Claim or with respect to Claims separate but similar or related in the same jurisdiction arising out of the same general allegations. Notwithstanding any of the foregoing to the contrary, the indemnified party will be entitled to select its own counsel and assume the defense of any action brought against it if the indemnifying party fails to select counsel reasonably satisfactory to the indemnified party or if counsel fails to diligently defend, the expenses of such defense to be paid by the indemnifying party. No indemnifying party shall consent to entry of any judgment or enter into any settlement with respect to a claim without the consent of the indemnified party, which consent shall not be unreasonably withheld. No indemnified party shall consent to entry of any judgment or enter into any settlement of any such action the defense of which has been assumed by an indemnifying party without the consent of such indemnifying party, which consent shall not be unreasonably withheld.

5.5 **Limitation on Indemnification.** The obligations of MDA and the Board of Regents under this Article 5 are subject to any restrictions or limitations regarding such obligations under the Constitution and laws of the State of Texas.

## ARTICLE 6

### MISCELLANEOUS

6.1 **Further Assurances.** From time to time, as and when requested by any party hereto, any other party hereto shall execute and deliver, or cause to be executed and delivered, such documents and instruments and shall take, or cause to be taken, such further or other actions as may be reasonably necessary to effectuate the transactions contemplated hereby, including, without limitation, the transfer to MDA of the entire legal and beneficial ownership of the BTI Shares.

6.2 **Public Announcements.** Except as mutually agreed, none of MDA, the Board of Regents, the Company nor any of their respective Affiliates shall issue any press release or public announcement regarding the execution of this Agreement or the transactions contemplated hereby, unless in the reasonable judgment of such person such release is required by applicable securities laws, provided the other party shall have a reasonable opportunity to review and approve such release prior to issuance.

6.3 **Expenses.** MDA, the Board of Regents and the Company shall bear their own respective legal and accounting fees, and other costs and expenses with respect to the negotiation, execution and delivery of this Agreement, the Shareholders' Agreement, the License Agreement, and consummation of the transactions contemplated hereby.

6.4 **Notices and Waivers.** Any notice, instruction, authorization, request, demand or waiver hereunder shall be in writing, and shall be delivered either by personal delivery, by telegram, telex, telecopy or similar facsimile means, by certified or registered mail, return receipt requested, or by courier or delivery service, addressed to the parties hereto at the address indicated beneath their respective signatures on the execution pages of this Agreement, or at such other address and number as a party shall have previously designated by written notice given to the other parties in the manner hereinabove set forth. Notices shall be deemed given when received, if sent by facsimile means (confirmation of such receipt by confirmed facsimile transmission being deemed receipt of communications sent by facsimile means); and when delivered and receipted for (or upon the date of attempted delivery where delivery is refused), if hand-delivered, sent by express courier or delivery service, or sent by certified or registered mail, return receipt requested.

6.5 **Certain References.** Whenever the context requires, the gender of all words used herein shall include the masculine, feminine and neuter. References to Articles or Sections shall be to Articles or Sections of this Agreement unless otherwise specified. The headings and captions used in this Agreement are solely for convenient reference and shall not affect the meaning or interpretation of any article, section or paragraph herein, or this Agreement. The terms "hereof," "herein" or "hereunder" shall refer to this Agreement as a whole and not to any particular article, section or paragraph. The terms "including" or "include" are used herein in an illustrative sense and not to limit a more general statement. When computing time periods described by a number of days before or after a stated date or event, the stated date or date on which the specified event occurs shall not be counted and the last day of the period shall be counted.

6.6 **Successors and Assigns.** This Agreement shall bind, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, and if an individual, by his executors, administrators, and beneficiaries of his estate by will or the laws of descent and distribution. This Agreement and the rights and obligations hereunder shall not be assignable or delegable by any party; provided, that MDA or the Board of Regents may assign their rights and obligations hereunder to an Affiliate.

6.7 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and of the United States applicable in Texas, excluding, however any rule of conflict-of-laws that would direct or refer the resolution of any issue to the laws of any other jurisdiction. Each party hereto hereby acknowledges and agrees that it has consulted legal counsel in connection with the negotiation of this Agreement and that it has bargaining power equal to that of the other parties hereto in connection with the negotiation and execution of this Agreement. Accordingly, the parties hereto agree that the rule that an agreement shall be construed against the draftsman shall have no application in the construction or interpretation of this Agreement.

6.8 **Amendment and Entirety.** This Agreement may be amended, modified, or superseded only by written instrument executed by all parties hereto. This Agreement sets forth the entire agreement and understanding of the parties with respect to the transactions contemplated hereby and supersedes all prior agreements, arrangements, and understandings relating to the subject matter hereof. Except as expressly permitted by this Agreement, the contents of schedules and exhibits hereto shall not be deemed to negate or modify any representation, warranty, covenant or agreement contained in this Agreement. Without limiting the generality of the preceding sentence, any representation, warranty, covenant or other agreement contained in any document, instrument or agreement delivered pursuant hereto or entered into in connection herewith is made in addition to, and not in lieu of, any representation, warranty, covenant or other agreement contained herein.

6.9 **Rights of Parties.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective successors and assigns, nor shall any provision give any third persons any right of subrogation or action over against any party to this Agreement. Without limiting the generality of the foregoing, it is expressly understood that this Agreement does not create any third party beneficiary rights.

6.10 **Time of Essence.** Time is of the essence in the performance of this Agreement.

6.11 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all which together shall constitute one and the same instrument.



IN WITNESS WHEREOF, this Stock Purchase Agreement is executed and delivered as of the date first above written.

**BOARD OF REGENTS:**

**BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM**

By: \_\_\_\_\_  
Name : \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 201 W. 7th Street  
Austin, Texas 78701  
Attn: Office of the General Counsel  
Telecopy: (512) 499-4523

**MDA:**

**THE UNIVERSITY OF TEXAS  
M.D. ANDERSON CANCER CENTER**

By: \_\_\_\_\_  
Name : \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 1020 Holcombe Boulevard, Suite 1405  
Houston, Texas 77030  
Attn: William J. Doty  
Telecopy: (713) \_\_\_\_\_

**COMPANY:**

**BIOCYTE THERAPEUTICS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 5599 San Felipe, Suite 310  
Houston, Texas 77056  
Attn: Jerald S. Cobbs  
Telecopy: (713) 993-4696

THE SECURITIES REPRESENTED BY THESE WARRANTS AND THE COMMON STOCK ISSUABLE THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY OTHER APPLICABLE SECURITIES LAW. THE SECURITIES REPRESENTED BY THESE WARRANTS MAY NOT BE TRANSFERRED, EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER, OR IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER, THE SECURITIES ACT AND IN ACCORDANCE WITH ANY OTHER APPLICABLE SECURITIES LAWS.

## WARRANTS

to Purchase Common Stock of

**BIOCYTE THERAPEUTICS, INC.**

Expiring on \_\_\_\_\_, 20\_\_

This Common Stock Purchase Warrant (the "Warrant") certifies that for value received, the Board of Regents of the University of Texas System (the "Holder"), or its permitted assigns, is entitled to subscribe for and purchase from the Company (as hereinafter defined), in whole or in part, \_\_\_\_\_ shares of duly authorized, validly issued, fully paid and nonassessable shares of Common Stock (as hereinafter defined) at the Exercise Price (as hereinafter defined) per share of \$\_\_\_\_\_, subject, however, to the provisions and upon the terms and conditions hereinafter set forth. The number of Warrants (as hereinafter defined), the number of shares of Common Stock purchasable hereunder, and the Exercise Price therefor are subject to adjustment as hereinafter set forth. These Warrants and all rights hereunder shall expire at 5:00 p.m., Houston, Texas time, on \_\_\_\_\_, 20\_\_ (five years after the date of grant) (the "Expiration Date").

### ARTICLE I

#### Definitions

As used herein, the following terms shall have the meanings set forth below:

1.1 "*Affiliate*" shall mean any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, or is an officer or director of, such person. As used in the definition of Affiliate, the term "control" (including the terms "controlling," "controlled by" or "under common control with") means the possession, direct or

indirect, of the power to direct, cause the direction of or influence the management and policies of a Person, whether through the ownership of voting securities, by contract, through the holding of a position as a director or officer of such person, or otherwise.

1.2 "*Company*" shall mean BioCyte Therapeutics, Inc., a Delaware corporation, and shall also include any successor thereto with respect to the obligations hereunder, by merger, consolidation or otherwise.

1.3 "*Common Stock*" shall mean and include the Company's Common Stock, par value \$.001 per share, now or hereafter authorized and shall also include (i) in case of any reorganization, reclassification, consolidation, merger, share exchange or sale, transfer or other disposition of assets, the stock or other securities provided for herein, and (ii) any other shares of common stock of the Company into which such shares of Common Stock may be converted.

1.4 "*Exercise Price*" shall mean the initial purchase price of \$ \_\_\_\_\_ per share of Common Stock payable upon exercise of the Warrants, as adjusted from time to time pursuant to the provisions hereof.

1.5 "*Market Price*" for any day, when used with reference to Common Stock, shall mean the price of said Common Stock determined as follows: (i) the last reported sale price for the Common Stock on such day on the principal securities exchange on which the Common Stock is listed or admitted to trading or if no such sale takes place on such date, the average of the closing bid and asked prices thereof as officially reported, or, if not so listed or admitted to trading on any securities exchange, the last sale price for the Common Stock on the Nasdaq Stock Market on such date, or, if there shall have been no trading on such date or if the Common Stock shall not be listed on such system, the average of the closing bid and asked prices in the over-the-counter market as furnished by any NASD member firm selected from time to time by the Company for such purpose. If the price of a share of Common Stock shall not be so reported, the Market Price of a share of Common Stock shall be determined in good faith by the Company's Board of Directors, provided that, if the Holder disagrees with the Board's determination of the Market Price, the Company will retain an investment advisor (the cost of which shall be borne equally by the Company and the Holder) which is reasonably satisfactory to Holder to determine such Market Price, which Market Price shall be binding on the Company and the Holder for purposes of these Warrants as of the relevant date at issue.

1.6 "*Permitted Transferee*" shall mean with respect to the Holder any Affiliate of Holder, *provided, however*, that such Permitted Transferees shall be subject to the provisions of these Warrants and shall be considered holders for purposes of these Warrants and, *provided further*, that each such Permitted Transferees agrees that it shall not thereafter transfer these Warrants to any person who is not an Affiliate of Holder.

1.7 "*Stockholders' Agreement*" shall mean that certain Stockholders' Agreement dated \_\_\_\_\_, 1996, among the Company and its Stockholders, a copy of which is attached hereto as **Exhibit A**.

1.8 "*Triggering Event*" means the earliest of the following events to occur: (w) the consummation of an initial public offering involving the sale of Common Stock by the Company to the general public in a bona fide firm commitment underwritten public offering pursuant to a registration statement filed with, and declared effective by, the Securities Exchange Commission under the Securities Act, pursuant to which the Company receives gross proceeds of at least \$10,000,000, and with the Common Stock having an initial purchase price to the public of not less than \$5.00 per share; (x) any consolidation, merger or other reorganization involving the Company and in which the surviving corporation is neither the Company nor its Affiliates (as existed prior to such consolidation, merger or reorganization); (y) any transaction or series of related transaction whereby the then existing stockholders of the Company propose to transfer in excess of 50% of the Company's voting power (other than to Affiliates of the Company as defined in Section 2.5); or (z) sale or transfer of more than 50% by value of the assets of the Company (other than to Affiliates of the Company).

1.9 "*Warrant*" shall mean the right upon exercise to purchase one Warrant Share.

1.10 "*Warrant Shares*" shall mean the shares of Common Stock purchased or purchasable by the holder hereof upon the exercise of the Warrants.

## ARTICLE II

### Exercise of Warrants and Conversion

2.1 *Method of Exercise.* The Warrants represented hereby may be exercised by the holder hereof, in whole or in part, at any time and from time to time within the period commencing on the occurrence of the first Triggering Event on or after the date hereof, and expiring at 5:00 p.m., Houston, Texas time, on the Expiration Date (the "Exercise Period"). To exercise the Warrants, the holder hereof shall deliver to the Company, at the Warrant Office designated herein, (i) a written notice in the form of the Subscription Notice attached as an exhibit hereto, stating therein the election of such holder to exercise the Warrants in the manner provided in the Subscription Notice; (ii) payment in full of the Exercise Price in cash or by bank check for all Warrant Shares purchased hereunder, (iii) these Warrants and (iv) an Adoption of Stockholders' Agreement pursuant to Section 2.8. The Warrants shall be deemed to be exercised on the date of receipt by the Company of the Subscription Notice and the Adoption of Stockholders' Agreement (if not currently a party thereto), accompanied by payment for the Warrant Shares and surrender of these Warrants, as aforesaid, and such date is referred to herein as the "Exercise Date". Upon such exercise, the Company shall, as soon as reasonably practicable and in any event within fifteen business days thereafter, issue and deliver to such holder a certificate or certificates for the full number of the Warrant Shares purchased by such holder hereunder, and shall, unless the Warrants have expired, deliver to the holder hereof a new Warrant representing the number of Warrants, if any, that shall not have been exercised, in all other respects identical to these Warrants, together with cash in lieu of any fraction of a share as provided in Section 2.7. As permitted by applicable law, the person in whose name the certificates for Common Stock are to be issued shall be deemed to have become a holder of record of such Common Stock on the Exercise Date and shall be entitled to all of the benefits of such holder on the Exercise Date, including without limitation the right to receive dividends and other distributions for which the record date falls on or after the Exercise Date and to exercise voting rights.

2.2 *Conversion of Warrants.* The holder hereof shall have the right to convert these Warrants (the "Conversion Right"), in whole but not in part, at any time during the Exercise Period, into shares of Common Stock as provided for in this Section 2.2. Upon exercise of the Conversion Right, the holder of these Warrants shall be entitled to (without payment of any Exercise Price) that number of shares of Common Stock equal to the quotient obtained by dividing (x) the value of these Warrants at the time the Conversion Right is exercised (determined by subtracting the aggregate Exercise Price for these Warrants in effect immediately prior to the exercise of the Conversion Right from the amount obtained by multiplying the number of shares of Common Stock issuable upon the exercise of these Warrants by the Market Price immediately prior to the exercise of the Conversion Right) by (y) the Market Price of one share of Common Stock immediately prior to the exercise of the Conversion Right. To exercise the Conversion Right, the holder hereof shall deliver to the Company, at the Warrant Office designated herein, (i) a written notice in the form of the Conversion Notice attached as an exhibit hereto, stating therein the election of such holder to exercise the Conversion Rights in the manner provided in the Conversion Notice, (ii) these Warrants and (iii) an Adoption of Stockholders' Agreement pursuant to Section 2.8. The Warrants shall be deemed converted on the date of receipt by the Company of the Conversion Notice and the Adoption of Stockholders' Agreement (if not currently a party thereto), and surrender of these Warrants, as aforesaid, and such date is referred herein as the "Conversion Date." Upon such conversion, the Company shall, as soon as reasonably practicable and in any event within fifteen business days thereafter, issue and deliver to such holder a certificate or certificates for the full number of the Warrant Shares issuable upon such conversion, together with cash in lieu of any fraction of a share as provided in Section 2.7. As permitted by applicable law, the person in whose name the certificates of Common Stock are to be issued shall be deemed to have become a holder of record of Common Stock on the Conversion Date, including without limitation the right to receive dividends and other distributions for which the record date falls on after the Conversion Date and to exercise voting rights.

2.3 *Expenses and Taxes.* The Company shall pay all expenses and taxes (including, without limitation, all documentary, stamp, transfer or other transactional taxes) other than income taxes attributable to the preparation, issuance or delivery of the Warrants and of the shares of Common Stock issuable upon exercise or conversion of the Warrants.

2.4 *Reservation of Shares.* The Company shall reserve at all times so long as the Warrants remain outstanding, free from preemptive rights, out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the exercise or conversion of the Warrants, a sufficient number of shares of Common Stock to provide for the exercise or conversion of the Warrants.

2.5 *Valid Issuance.* All shares of Common Stock that may be issued upon exercise or conversion of the Warrants will, upon issuance by the Company, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof and, without limiting the generality of the foregoing, the Company shall take no action or fail to take any action which will cause a contrary result (including, without limitation, any action that would cause the Exercise Price to be less than the par value, if any, of the Common Stock).

2.6 *Acknowledgment of Rights.* At the time of the exercise or conversion of the Warrants in accordance with the terms hereof and upon the written request of the holder hereof, the Company

will acknowledge in writing its continuing obligation to afford to such holder any rights (including, without limitation, any right to registration of the Warrant Shares) to which such holder shall continue to be entitled after such exercise or conversion in accordance with the provisions of these Warrants; *provided, however*, that if the holder hereof shall fail to make any such request, such failure shall not affect the continuing obligation of the Company to afford to such Holder any such rights.

2.7 *No Fractional Shares.* The Company shall not be required to issue fractional shares of Common Stock on the exercise or conversion of these Warrants. If more than one Warrant shall be presented for exercise or conversion at the same time by the same holder, the number of full shares of Common Stock which shall be issuable upon such exercise or conversion shall be computed on the basis of the aggregate number of whole shares of Common Stock purchasable on exercise or issuable upon conversion, as the case may be, of the Warrants so presented. If any fraction of a share of Common Stock would, except for the provisions of this Section, be issuable on the exercise or conversion of these Warrants, the Company shall pay an amount in cash calculated by it to be equal to the Market Price of one share of Common Stock at the time of such exercise multiplied by such fraction computed to the nearest whole cent.

2.8 *Stockholders' Agreement.* As a condition of the holder's exercise or conversion of these Warrants, the holder shall execute and deliver to the Company an Adoption of Stockholders' Agreement, whereby the holder shall become a party to the Stockholders' Agreement; *provided, however*, no such requirement shall apply if the holder is then currently a party to such Stockholders' Agreement.

## ARTICLE III

### Transfer

3.1 *Warrant Office.* The Company shall maintain an office for certain purposes specified herein (the "Warrant Office"), which office shall initially be the Company's offices at 5599 San Felipe, Suite 310, Houston Texas 77056, and may subsequently be such other office of the Company or of any transfer agent of the Common Stock in the continental United States as to which written notice has previously been given to the Holder. The Company shall maintain, at the Warrant Office, a register for the Warrants in which the Company shall record the name and address of the person in whose name these Warrants have been issued, as well as the name and address of each permitted assignee of the rights of the registered owner hereof.

3.2 *Ownership of Warrants.* The Company may deem and treat the person in whose name the Warrants are registered as the holder and owner hereof until provided with notice to the contrary. The Warrants may be exercised or converted by a Permitted Transferee for the purchase of Warrant Shares without having new Warrants issued.

3.3 *Restrictions on Transfer of Warrants.* These Warrants shall not be transferred, in whole or in part, by the Holder, except to a Permitted Transferee. The Company agrees to maintain at the Warrant Office books for the registration and transfer of the Warrants. The Company, from time to time, shall register any permitted transfer of the Warrants in such books upon surrender of these Warrants at the Warrant Office properly endorsed or accompanied by appropriate instruments

of transfer and written instructions for transfer. Upon any such permitted transfer and upon payment by the Holder or its transferee of any applicable transfer taxes, new Warrants shall be issued to the transferee and the transferor (as their respective interests may appear) and the surrendered Warrants shall be canceled by the Company. Any transfer or attempted transfer of these Warrants, in whole or in part to any person other than a Permitted Transferee shall be void and ineffectual and shall not operate to transfer any interest or title in the purported transferee.

3.4 *Compliance with Securities Laws.* Subject to the terms hereof and notwithstanding any other provisions contained in these Warrants, the Holder understands and agrees that the following restrictions and limitations shall be applicable to all Warrant Shares and to all resales or other transfers thereof pursuant to the Securities Act of 1933, as amended (the "Securities Act"):

3.4.1 The holder hereof agrees that the Warrant Shares may not be sold or otherwise transferred unless the Warrant Shares are registered under the Securities Act and applicable state securities or blue sky laws or are exempt therefrom.

3.4.2 A legend in substantially the following form will be placed on the certificate(s) evidencing the Warrant Shares, together with such other legends as may be required by applicable law or the Stockholders' Agreement:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY OTHER APPLICABLE SECURITIES LAW AND, ACCORDINGLY, THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY NOT BE RESOLD, PLEDGED, OR OTHERWISE TRANSFERRED, EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER, OR IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER, THE SECURITIES ACT AND IN ACCORDANCE WITH ANY OTHER APPLICABLE SECURITIES LAWS."

3.4.3 Stop transfer instructions will be imposed with respect to the Warrant Shares so as to restrict resale or other transfer thereof.

## ARTICLE IV

### Adjustments

4.1 *Stock Splits and Reverse Splits.* In the event that the Company shall at any time subdivide its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision shall be proportionately reduced and the number of Warrant Shares purchasable pursuant to the exercise or conversion these Warrants immediately prior to such subdivision shall be proportionately increased, and conversely, in the event that the outstanding shares of Common Stock shall at any time be combined into a smaller number of shares, the Exercise Price in effect immediately prior to such combination shall be proportionately increased and the number of Warrant Shares purchasable upon the exercise or conversion of these Warrants immediately prior to such combination shall be proportionately reduced.

4.2 *Reorganizations and Asset Sales.* If any capital reorganization or reclassification of the capital stock of the Company, or any consolidation, merger or share exchange of the Company with another person, or the sale, transfer or other disposition of all or substantially all of its assets to another person shall be effected in such a way that holders of Common Stock shall be entitled to receive capital stock, securities or assets with respect to or in exchange for their shares, then the following provisions shall apply:

4.2.1 As a condition of such reorganization, reclassification, consolidation, merger, share exchange, sale, transfer or other disposition, lawful and adequate provisions shall be made whereby the holder hereof shall thereafter have the right to purchase and receive upon the terms and conditions specified in these Warrants and in lieu of the Warrant Shares immediately theretofore receivable upon the exercise or conversion of the rights represented hereby, such shares of capital stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of Warrant Shares immediately theretofore so receivable had such reorganization, reclassification, consolidation, merger, share exchange or sale not taken place, and in any such case appropriate provision reasonably satisfactory to such holder shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including, without limitation, provisions for adjustments of the Exercise Price and of the number of Warrant Shares receivable upon the exercise or conversion) shall thereafter be applicable, as nearly as possible, in relation to any shares of capital stock, securities or assets thereafter deliverable upon the exercise or conversion of Warrants.

4.2.2 If as a result of a merger, share exchange or consolidation of the Company with or into another person the number of shares of common stock or its equivalent of the successor person issuable to holders of Common Stock is greater or lesser than the number of shares of Common Stock outstanding immediately prior to such merger, share exchange or consolidation, then the Exercise Price in effect immediately prior to such merger, share exchange or consolidation shall be adjusted in the same manner as though there were a subdivision or combination of the outstanding shares of Common Stock.

4.2.3 The Company shall not effect any such consolidation, merger, share exchange, sale, transfer or other disposition unless prior to or simultaneously with the consummation thereof the successor person (if other than the Company) resulting from such consolidation, share exchange or merger or the person purchasing or otherwise acquiring such assets shall have assumed by written instrument executed and mailed or delivered to the holder hereof at the last address of such holder appearing on the books of the Company the obligation to deliver to such holder such shares of capital stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to receive, and all other liabilities and obligations of the Company hereunder. Upon written request by the holder hereof, such successor person will issue a new Warrant revised to reflect the modifications in these Warrants effected pursuant to this Section.

4.2.4 If a purchase, tender or exchange offer is made to and accepted by the holders of 50% or more of the outstanding shares of Common Stock, the Company shall not effect any consolidation, merger, share exchange or sale, transfer or other disposition of all or substantially all of the Company's assets with the person having made such purchase, tender or exchange offer or with any affiliate of such person, unless prior to the consummation of such consolidation, merger, share



exchange, sale, transfer or other disposition the holder hereof shall have been given a reasonable opportunity, not to exceed 15 business days, to then elect to receive upon the exercise or conversion of the Warrants either the capital stock, securities or assets then issuable with respect to the Common Stock or the capital stock, securities or assets, or the equivalent, issued to previous holders of the Common Stock in accordance with such purchase, tender or exchange offer.

4.3 *De Minimis Adjustments.* No adjustment in the number of shares of Common Stock purchasable hereunder shall be required unless such adjustment would require an increase or decrease of at least one share of Common Stock purchasable upon an exercise or conversion of each Warrant and no adjustment in the Exercise Price shall be required unless such adjustment would require an increase or decrease of at least \$0.01 in the Exercise Price; provided, however, that any adjustments which are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations shall be made to the nearest full share or nearest one hundredth of a dollar, as applicable.

4.4 *Notice of Adjustment.* Whenever the Exercise Price or the number of Warrant Shares issuable upon the exercise of the Warrants shall be adjusted as herein provided, or the rights of the holder hereof shall change by reason of other events specified herein, the Company shall compute the adjusted Exercise Price and the adjusted number of Warrant Shares in accordance with the provisions hereof and shall prepare an officer's certificate setting forth the adjusted Exercise Price and the adjusted number of Warrant Shares issuable upon the exercise of the Warrants or specifying the other shares of stock, securities or assets receivable as a result of such change in rights, and showing in reasonable detail the facts and calculations upon which such adjustments or other changes are based. The Company shall cause to be mailed to the holder hereof copies of such officer's certificate together with a notice stating that the Exercise Price and the number of Warrant Shares purchasable upon exercise of the Warrants have been adjusted and setting forth the adjusted Exercise Price and the adjusted number of Warrant Shares purchasable upon the exercise of the Warrants.

4.5 *Notifications to Holders.* In case at any time the Company proposes after the occurrence of a Triggering Event:

- (i) to declare any dividend upon its Common Stock payable in capital stock or make any special dividend or other distribution (other than cash dividends) to the holders of its Common Stock;
- (ii) to offer for subscription pro rata to all of the holders of its Common Stock any additional shares of capital stock of any class or other rights;
- (iii) to effect any capital reorganization, or reclassification of the capital stock of the Company, or consolidation, merger or share exchange of the Company with another person, or sale, transfer or other disposition of all or substantially all of its assets; or
- (iv) to effect a voluntary or involuntary dissolution, liquidation or winding up of the Company,

then, in any one or more of such cases, the Company shall give the holder hereof (a) at least 10 days (but not more than 90 days) prior written notice of the date on which the books of the Company shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such issuance, reorganization, reclassification, consolidation, merger, share exchange, sale, transfer, disposition, dissolution, liquidation or winding up, and (b) in the case of any such issuance, reorganization, reclassification, consolidation, merger, share exchange, sale, transfer, disposition, dissolution, liquidation or winding up, at least 10 days (but not more than 90 days) prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (a) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and such notice in accordance with the foregoing clause (b) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock, as the case may be, for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, share exchange, sale, transfer, disposition, dissolution, liquidation or winding up, as the case may be.

## ARTICLE V

### Registration Rights

5.1 *Registrable Stock.* As used in this Article V, the term "Registrable Stock" shall mean all Warrant Shares issued pursuant to the provisions of these Warrants, but shall not include the actual Warrant.

5.2 *Incidental Registration.*

5.2.1 If the Company proposes, at any time during the period commencing six months after an initial public offering of Common Stock and expiring on the Expiration Date, to file a registration statement on a general form of registration under the Securities Act, and relating to shares of Common Stock issued or to be issued by it for cash (other than a registration effected solely to implement an employee benefit plan or solely with respect to a transaction to which Rule 145 under the Securities Act is applicable), then it shall give at least 20 days written notice before the initial filing with the Securities Exchange Commission of such registration statement to all holders of Registrable Stock and any other holders of securities of the Company having any rights to include securities in such registration. Upon the written request of the holder of any shares of Registrable Stock given within 10 days after receipt of any such notice (stating the number of shares of Registrable Stock to be disposed of and the intended method of disposition of such shares by such holder or holders), the Company will use its best efforts to promptly cause all such shares of Registrable Stock intended to be disposed of, the holders of which shall have so requested registration thereof, to be registered under the Securities Act so as to permit the sale or other disposition by such holder or holders of the shares so registered, subject to the limitations set forth in Section 5.2.2.

5.2.2 If any of the Company's managing underwriters advises the Company in writing that, in its opinion, the distribution of the Registrable Stock requested to be included in the registration concurrently with the securities being registered by the Company, together with any other securities of the Company held by holders with similar incidental registration rights which have so

requested to be included in such registration (such securities and such Registrable Stock collectively referred to as the "Requested Securities"), may jeopardize the successful completion of the offering of the Company's securities, then the holders of Requested Securities shall reduce the amount of Requested Securities each intended to distribute through such offering on a pro rata basis or until all such securities of the Company have been eliminated from such offering. Notwithstanding any provision contained herein to the contrary, the Company shall have the right to terminate or withdraw any registration initiated by it under this Article V prior to the effectiveness of such registration whether or not any holder of Registrable Stock has elected to include any such Registrable Stock in such registration.

### 5.3 *Registration Procedures.*

5.3.1 If and when the Company is required by the provisions of this Article V to use its best efforts to effect promptly the registration of shares of Registrable Stock under the Securities Act, the Company will, as expeditiously as possible:

(i) prepare and file with the Securities and Exchange Commission (the "Commission") a registration statement with respect to such shares and use its best efforts to cause such registration statement to become and remain effective as provided herein for a period of not less than six months, except that the Company shall not be required to conduct any special audit and if such an audit would be required, the Company may delay such registration statement until such time as such special audit is no longer required;

(ii) prepare and file with the Commission such amendments and supplements to such registration statement and prospectus used in connection therewith as may be necessary to keep such registration statement effective and current and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all shares covered by such registration statement, including such amendments and supplements as may be necessary to reflect the intended method of disposition from time to time of the prospective seller or sellers of such shares for a period of not less than six months;

(iii) furnish to each prospective seller such number of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as such seller may reasonably request in order to facilitate the public sale or other disposition of the shares owned by such seller; and

(iv) use its best efforts to register or qualify the shares covered by such registration statement under such other securities or blue sky or other applicable laws of such jurisdictions within the United States, as each prospective seller shall reasonably request (provided, however, that the Company shall not be obligated to qualify as a foreign corporation to do business under the laws of any jurisdiction in which it is not then qualified or to file any general consent to service of process), and do such other reasonable act and things as may be required to enable such prospective seller to consummate the public sale or other disposition in such jurisdictions of the shares owned by such seller.

(v) notify each seller of Registrable Stock covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances then existing, not misleading, and at the request of any such seller, prepare and furnish to such seller a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances then existing, not misleading;

(vi) cause all such Registrable Stock registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed;

(vii) provide a transfer agent and registrar for all Registrable Stock registered pursuant to such registration statement and a CUSIP number for all such Registrable Stock, in each case not later than the effective date of such registration; and

(viii) comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve months, but not more than eighteen months, beginning with the first month after the effective date of the registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act.

5.3.2 Each prospective seller of Registrable Stock and each underwriter designated by such seller (other than each underwriter selected by the Company in connection with the sale by the Company of shares of Common Stock) shall be required to furnish to the Company such information as the Company may reasonably require from such seller or underwriter for inclusion in the registration statement (and the prospectus included therein).

5.3.3 The holders of shares included in the registration statement will not (until further notice) effect sales thereof after receipt of telegraphic or written notice from the Company to suspend sales in order to permit the Company to correct or update a registration statement or prospectus; but the obligations of the Company with respect to maintaining any registration statement current and effective shall be extended by a period of days equal to the period such suspension is in effect.

5.4 *Expenses.* All expenses incurred in effecting any registration pursuant to this Article V including, without limitation, all registration and filing fees (including, all expenses incident to filing with the NASD), printing expenses, expenses of compliance with Blue Sky laws and fees and disbursements of counsel for the Company shall be borne by the Company. Notwithstanding the foregoing, the Company shall not be liable for (i) any fees, discounts or commissions to any

underwriter in respect of the securities sold by such holder of Registrable Stock or (ii) any fees or expenses of counsel to the holders of Registrable Stock.

## 5.5 *Indemnification.*

5.5.1 The Company agrees to indemnify each holder requesting or joining in a registration pursuant to this Article V, each of its officers, regents, directors, partners, and each person or entity who controls such holder within the meaning of Section 15 of the Securities Act, and each underwriter and selling broker of the securities so registered, and their respective successors, against all claims, losses, damages, liabilities, fines and penalties (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus, offering circular or other document incident to any registration, qualification or compliance (or in any related registration statement, notification or the like) or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by the Company of any rule or regulation promulgated under the Securities Act applicable to the Company and relating to action or inaction required of the Company in connection with any such registration, qualification or compliance, and agrees to reimburse each such holder, each of its officers, regents, directors, partners, and each person or entity who controls such holder within the meaning of Section 15 of the Securities Act, and each such underwriter, and their respective successors, for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, *provided, however*, that the Company will not be liable in any such case if (and to the extent that) such statement or omission was made in reliance upon information (including, without limitation written responses to inquiries) furnished to the Company by an instrument duly executed by such holder or underwriter and stated to be specifically for use in such prospectus, offering circular or other document (or related registration statement, notification or the like) or any amendment or supplement thereto.

5.5.2 To the extent authorized by the Constitution and the laws of the State of Texas, each holder requesting or joining in a registration pursuant to this Article V and each underwriter of the securities so registered will indemnify the Company each of its officers, regents, directors, partners, and each person, if any, who controls any thereof within the meaning of Section 15 of the Securities Act and their respective successors against all claims, losses, damages, liabilities, fines and penalties (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus, offering circular or other document incident to any registration, qualification or compliance (or in any related registration statement, notification or the like) or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Company, as applicable, and each other person indemnified pursuant to this paragraph 5.5.2 for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action; *provided, however*, that this paragraph 5.5.2 shall apply only (and only to the extent that) such statement or omission was made in reliance upon information (including, without limitation, written responses to inquiries) furnished to the Company by an instrument duly executed by such holder or underwriter and stated to be specifically for use in such prospectus, offering circular or other document (or related registration statement, notification or the like) or any amendment or supplement thereto.

5.5.3 Each party entitled to indemnification under this Section 5.5 shall give notice to the party required to provide indemnification promptly after such indemnified party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the indemnifying party to assume the defense of any such claim or any litigation resulting therefrom; *provided*, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under this Section 5.5. The indemnified party may participate in such defense at such party's expense; *provided, however*, that the indemnifying party shall pay such expense if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between the indemnified party and any other party represented by such counsel in such proceeding. No indemnifying party, in the defense of any such claim or litigation shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation, and no indemnified party shall consent to entry of any judgment or settle such claim or litigation without the prior written consent of the indemnifying party (which consent shall not be unreasonably withheld).

5.5.4 The obligations of the Company and the selling holders of the Registrable Stock under this Section 5.5 shall survive the completion of any offering of Registrable Stock in a registration statement under this Article V and otherwise.

5.5.5 The obligations of the holder hereof under this Section 5.5 shall be subject to any restrictions and limitations relating to such obligations under the Constitution and the laws of the State of Texas.

5.6 *Assignability.* The registration rights granted to Holder pursuant to these Warrants are not transferrable to any subsequent holder of Registrable Stock unless the transferee or assignee is an Affiliate of the Holder, *provided*, that any such transferee or assignee shall execute a counterpart of, or shall otherwise become bound in writing by the requirements of this Article V and Article VI hereof and shall become a party to the Stockholders' Agreement in a manner satisfactory to the Company.

5.7 *Rule 144 Reports.* With a view to making available the benefits of certain rules and regulations of the Commission that may permit the sale of the Registrable Stock to the public without registration, the Company agrees to use its best efforts to:

5.7.1 make and keep public information regarding the Company available as those terms are understood and defined in Rule 144 under the Securities Act, at all times from and after 90 days following the effective date of the first registration statement under the Securities Act filed by the Company for an offering of its securities to the general public;

5.7.2 file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), at any time after it has become subject to such reporting requirements; and

5.7.3 so long as a holder hereof owns any restricted Registrable Stock, furnish to such holder forthwith upon written request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 (at any time from and after 90 days following the effective date of the first registration statement filed by the Company for an offering of its securities to the general public), and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed as a holder hereof may reasonably request in availing itself of any rule or regulation of the Commission allowing such holder to sell any such securities without registration.

## ARTICLE VI

### Other Agreements

6.1 *Market Stand-Off Agreement.* If requested by any managing underwriter of securities of the Company, each holder of Registrable Stock shall not sell or otherwise transfer or dispose of any securities of the Company held by such holder during the one hundred eighty (180) day period following the effective date of a registration statement (other than securities subject to or covered by such registration); provided, that such agreement shall only apply to the first two registration statements covering the offered securities to be sold on the Company's behalf to the public in an underwritten offering.

## ARTICLE VII

### Representations and Warranties

The Company represents and warrants to Holder as follows:

7.1 *Existence.* The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of its jurisdiction of incorporation, with power and authority (corporate and other) to own its properties and conduct its business, and the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions, if any, in which it owns or leases properties or in which the conduct of its business requires such qualification.

7.2 *Corporate and Other Action.* The Company has all requisite power and authority (corporate and other), and has taken all necessary corporate action, to authorize, execute, deliver and perform this Agreement, to execute, issue, sell and deliver the Warrants, to authorize and reserve for issuance, upon payment from time to time of the Exercise Price, to issue, sell and deliver, the shares of the Common Stock issuable upon exercise of the Warrants, and to perform all of its obligations under this Agreement. This Agreement has been duly executed and delivered by the Company and is a legal, valid and binding agreement of the Company enforceable in accordance with its terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and by general principles of equity. No authorization, approval, consent or other order of any governmental or regulatory authority is required for such authorization, issue or sale.

7.3 *No Violation.* The execution and delivery of these Warrants, the consummation of the transactions herein contemplated and the compliance with the terms and provisions of these Warrants will not conflict with, or result in a breach of, or constitute a default or an event permitting acceleration under, any statute, the Certificate of Incorporation or Bylaws of the Company or any indenture, mortgage, deed of trust, note, bank loan, credit agreement, franchise, license, lease, permit, or any other agreement, understanding, instrument, judgment, decree, order, statute, rule or regulation to which the Company is a party or by which it is bound.

7.4 *Validity.* These Warrants, when delivered to you, will be duly authorized, executed and delivered and will be a legal, valid and binding obligation of the Company enforceable in accordance with its terms. The shares of Common Stock of the Company issued upon exercise of the Warrants will be duly authorized and validly issued and outstanding, fully paid and nonassessable and free of preemptive rights.

7.5 *Investment Company Act.* Neither the Company nor any of its subsidiaries is an "investment company" registered or required to be registered under the Investment Company Act of 1940 as amended. The Company is not controlled by such a company.

7.6 *Securities Laws.* The offer, issuance and sale of the Warrants and the Warrant Shares are and will be (a) exempt from the registration and prospectus delivery requirements of the Securities Act, (b) have been registered or qualified (or are exempt from registration and qualification) under the registration, permit or qualification requirements of all applicable state securities laws, and (c) accomplished in conformity with all other federal and applicable state securities laws.

## ARTICLE VIII

### Covenants of the Company

8.1 *Performance of Warrant Terms.* Except as contemplated or as otherwise permitted by these Warrants, the Company will not, by amendment of its certificate of incorporation or through any reorganization, sale or transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of these Warrants.

8.2 *Listing on Securities Exchanges.* If the Company at any time shall list any Common Stock on any national securities exchange, the Company will use its best efforts to, at its expense, simultaneously list on such exchange, upon official notice of issuance upon the exercise of the Warrants, and maintain such listing of, all shares of the Common Stock from time to time issuable upon the exercise of the Warrants.

8.3 *Title to Stock.* All shares of Common Stock delivered upon the exercise of the Warrants shall be validly issued, fully paid and nonassessable; each holder of a Warrant shall receive good and marketable title to the Common Stock, free and clear of all voting and other trust arrangements, liens, encumbrances, equities and claims whatsoever; and the Company shall have paid all taxes, if any, in respect of the issuance thereof.



## ARTICLE IX

### Miscellaneous

9.1 *Entire Agreement.* These Warrants, the Stock Purchase Agreement dated \_\_\_\_\_, among the Holder, The University of Texas M.D. Anderson Cancer Center and the Company, and the Stockholders' Agreement, contain the entire agreement between the holder hereof and the Company with respect to the Warrant Shares purchasable upon exercise hereof and the related transactions and supersedes all prior arrangements or understandings with respect thereto.

9.2 *Governing Law.* These warrants shall be governed by and construed in accordance with the laws of the State of Texas, without reference to the conflicts of law principles thereof.

9.3 *Waiver and Amendment.* Any term or provision of these Warrants may be waived at any time by the party which is entitled to the benefits thereof and any term or provision of these Warrants may be amended or supplemented at any time by agreement of the holder hereof and the Company, except that any waiver of any term or condition, or any amendment or supplementation, of these Warrants shall be in writing. A waiver of any breach or failure to enforce any of the terms or conditions of these Warrants shall not in any way effect, limit or waive a party's rights hereunder at any time to enforce strict compliance thereafter with every term or condition of these Warrants.

9.4 *Illegality.* In the event that any one or more of the provisions contained in these Warrants shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in any other respect and the remaining provisions of these Warrants shall not, at the election of the party for whom the benefit of the provision exists, be in any way impaired.

9.5 *Copy of Warrant.* A copy of these Warrants shall be filed among the records of the Company.

9.6 *Notice.* Any notice or other document required or permitted to be given or delivered to the holder hereof shall be in writing and delivered at, or sent by certified or registered mail or by facsimile to such holder at, the last address (or facsimile number) shown on the books of the Company maintained at the Warrant Office for the registration of these Warrants or at any more recent address of which the holder hereof shall have notified the Company in writing. Any notice or other document required or permitted to be given or delivered to the Company, other than such notice or documents required to be delivered to the Warrant Office, shall be delivered at, or sent by certified or registered mail or by facsimile to, the offices of the Company at 5599 San Felipe, Suite 310, Houston, Texas 77056 (facsimile number (713) 993-4696) or such other address within the continental United States of America as shall have been furnished by the Company to the holder of these Warrants.

9.7 *Limitation of Liability; Not Stockholders.* No provision of these Warrants shall be construed as conferring upon the holder hereof the right to vote, consent, receive dividends or receive notices (other than as herein expressly provided) in respect of meetings of stockholders for the election of directors of the Company or any other matter whatsoever as a stockholder of the

Company. No provision hereof, in the absence of affirmative action by the holder hereof to purchase shares of Common Stock, and no mere enumeration herein of the rights or privileges of the holder hereof, shall give rise to any liability of such holder for the purchase price of any shares of Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

9.8 *Exchange, Loss, Destruction, etc. of Warrant.* Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, mutilation or destruction of these Warrants, and in the case of any such loss, theft or destruction upon delivery of an appropriate affidavit in such form as shall be reasonably satisfactory to the Company and include reasonable indemnification of the Company (to the extent authorized by the Constitution and the laws of the State of Texas), or in the event of such mutilation upon surrender and cancellation of these Warrants, the Company will make and deliver new Warrants of like tenor, in lieu of such lost, stolen, destroyed or mutilated Warrants. Any Warrants issued under the provisions of this Section in lieu of any Warrants alleged to be lost, destroyed or stolen, or in lieu of any mutilated Warrants, shall constitute an original contractual obligation on the part of the Company. These Warrants shall be promptly canceled by the Company upon the surrender hereof in connection with any exchange or replacement. The Company shall pay all taxes (other than securities transfer taxes or income taxes) and all other expenses and charges payable in connection with the preparation, execution and delivery of Warrants pursuant to this Section.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company and the Holder have caused these Warrants to be signed in their respective names.

Dated: \_\_\_\_\_, \_\_\_\_\_

**BIOCYTE THERAPEUTICS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## SUBSCRIPTION NOTICE

The undersigned, the holder of the foregoing Warrants, hereby elects to exercise purchase rights represented thereby for, and to purchase thereunder, \_\_\_\_\_ shares of the Common Stock covered by such Warrants, and herewith makes payment in full for such shares, and requests (a) that certificates for such shares (and any other securities or other property issuable upon such exercise) be issued in the name of, and delivered to, \_\_\_\_\_ and (b), if such shares shall not include all of the shares issuable as provided in such Warrants, that new Warrants of like tenor and date for the balance of the shares issuable thereunder be delivered to the undersigned.

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

## CONVERSION NOTICE

The undersigned, the holder of the foregoing Warrants, hereby elects to exercise the Conversion Right represented thereby for, and to purchase thereunder, \_\_\_\_\_ shares of Common Stock covered by such Warrants, and herewith tenders in full payment for such shares these Warrants, all in accordance with the terms thereof. The undersigned requests that a certificate for such shares (and any other securities or other property issuable upon such conversion) be issued in the name of, and delivered to, \_\_\_\_\_

\_\_\_\_\_

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

## ASSIGNMENT

For value received, \_\_\_\_\_, hereby sells, assigns and transfers unto \_\_\_\_\_ these Warrants, together with all rights, title and interest therein, and does irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer such Warrants on the books of the Company, with full power of substitution.

\_\_\_\_\_

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

**STOCKHOLDERS' AGREEMENT**

**by and among**

**BioCyte Therapeutics, Inc. and its Stockholders**

\_\_\_\_\_, 1996

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## STOCKHOLDERS' AGREEMENT

THIS STOCKHOLDERS' AGREEMENT (this "Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 1996, by and among BioCyte Therapeutics, Inc., a Delaware corporation (the "Company"), the Stockholders (as hereinafter defined) of the Company listed on the attached Schedule A, and the spouses of the individual Stockholders of the Company listed on the execution pages of this Agreement.

### WITNESSETH:

WHEREAS, the parties to this Agreement collectively own beneficially and of record all of the issued and outstanding shares of the Company's capital stock, as more fully described on the attached Schedule A which is incorporated fully herein by this reference; and

WHEREAS, each of the parties to this Agreement believes that it is in the best interests of all parties hereto to join together to restrict the transferability of shares of the Company's capital stock in order to attempt to secure continuity and stability of policy and management of the Company.

NOW, THEREFORE, for and in consideration of the premises, and the mutual and dependent promises contained in this Agreement, the parties hereto, intending to be legally bound by this Agreement, hereby agree as follows:

### ARTICLE 1

#### DEFINITIONS

As used in this Agreement, each of the following terms shall have the meaning ascribed to it in this Article 1:

"Affiliates" shall mean any person or entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, or is acting as agent on behalf of, or is an employee of, the person or entity in question including, in the case of individual Stockholders, members of his or her Immediate Family.

"Board" shall mean the members of the Board of Directors of the Company.

"cash" shall include cash or other immediately available funds constituting or payable in legal tender of the United States of America.

"Commission" shall mean the United States Securities and Exchange Commission, or any other federal agency administering the Securities Act at any given time.

"Common Stock" shall mean shares of the Company's common stock, par value \$.001 per share.

"Confidential Information" shall mean and include, but is not limited to, the following forms of information relating to the Company or to its business, and other information of a similar nature (whether or not reduced to a tangible manifestation or designated as confidential): information designated as "Confidential Information" and which relates to the Company pursuant to Section 11.1 of the Patent and Technology License

Agreement, as amended and in effect from time to time, among the Board of Regents of the University of Texas System, The University of Texas M.D. Anderson Cancer Center and the Company; trade secrets; proprietary information; discoveries; ideas; concepts; designs; drawings; specifications; techniques, methods and procedures; computer flow charts, data bases, programs, software and applications; models; data; documentation; diagrams; research; development; processes; procedures; "know-how;" business development, marketing, and advertising plans and techniques; materials; plans; customer, agent, distributor, supplier or vendor names and lists; files and other information related to past, existing and prospective customers, vendors, suppliers or agents; contracts; and cost data, pricing policies, and financial and accounting information. "Confidential Information" shall also include any information described in the preceding sentence which the Company obtains from another party and which the Company treats or has agreed to treat as confidential. "Confidential Information" shall not include information which was or becomes generally available to the public other than as a result of its direct or indirect use or disclosure by Stockholders.

**"Immediate Family"** shall mean parents, siblings, spouses during marriage and not incident to divorce, lineal descendants (including those by adoption) and spouses of lineal descendants.

**"Initial Public Offering"** shall mean the consummation of the sale of Common Stock by the Company to the general public in a bona fide firm commitment underwritten public offering pursuant to a registration statement filed with, and declared or ordered effective by, the Commission under the Securities Act, pursuant to which the Company receives gross proceeds of at least \$10,000,000, and with the Common Stock having an initial purchase price to the public of not less than \$5.00 per share.

**"Offering Stockholder"** shall mean a Stockholder who intends to Transfer all or any portion of his Shares to any person other than a Permitted Transferee.

**"Permitted Transferee"** shall mean any of the persons listed in Section 3.7.

**"Required Interest"** shall mean the Stockholders who, at any given time, own of record and beneficially more than 50% of the combined voting power of the then issued and outstanding Shares. For purposes of determining a Required Interest, Shares representing outstanding securities of the Company convertible (for no additional consideration) into shares of Common Stock shall be deemed to have been converted into Common Stock as of such time and possess the voting power attributable to such Common Stock.

**"Securities Act"** shall mean the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at any given time.

**"Shares"** shall mean, at any given time, the issued and outstanding shares of the Common Stock (excluding treasury shares), and any security which is convertible (for no additional consideration) into shares of Common Stock. All references to Shares owned by an individual Stockholder include the community interest, if any, of the spouse of that Stockholder.

**"Stockholder"** shall mean any person who is or becomes a party to this Agreement pursuant to the terms hereof, and at any given time owns Shares. A "Stockholder" shall also include the executor or legal representative of a deceased Stockholder's estate, the Trustee of a trust created under a deceased Stockholder's Last Will and Testament, or a legatee, beneficiary, heir or successor in interest of a Stockholder.

**"Spouse"** shall mean the spouse by marriage of an individual Stockholder.

**“Transfer”** shall mean any direct or indirect sale, assignment, gift, devise, pledge, hypothecation or other encumbrance, or any other disposition of Shares (or any interest in or voting power of Shares) either voluntarily or by operation of law.

**“Transfer Notice”** shall mean a written notice of the terms and conditions relating to a proposed Transfer of Shares, which shall describe the number and class of Shares which the Stockholder proposes to Transfer, the proposed transferee's name and address, and all of the terms and conditions of the proposed Transfer.

## ARTICLE 2

### TRANSFER RESTRICTIONS GENERALLY

**2.1 Stockholders' Agreement.** Each Stockholder and Spouse (if any) covenants and agrees that he shall not Transfer or permit to be Transferred all or any portion of the Shares now owned or subsequently acquired by him except in accordance with and subject to the terms and conditions of this Agreement. A counterpart of this Agreement, as it may be amended from time to time, shall be maintained by the Company at its principal place of business.

**2.2 New Stockholders.** The parties agree that no Shares shall be issued or Transferred to any person unless such person and his spouse (if any) become parties to this Agreement. Such person and his spouse shall become parties to this Agreement by the execution of an adoption agreement (“Adoption Agreement”) substantially in the form attached hereto as Exhibit 2.2. Each Stockholder and Spouse hereby authorizes the Company to execute on its behalf and as agent of each Stockholder and Spouse such Adoption Agreement.

**2.3 Securities Laws Compliance.** Prior to any Transfer of Shares, the Company may require that the transferring Stockholder provide to the Company a legal opinion (in form and substance satisfactory to the Company) rendered by counsel with substantial experience in securities regulation matters to the effect that the proposed Transfer will not violate federal or applicable state securities laws.

## ARTICLE 3

### VOLUNTARY TRANSFER RESTRICTIONS

**3.1 Notice Requirement.** Prior to any voluntary Transfer of any Shares, the Offering Stockholder shall first simultaneously send a Transfer Notice to the Company and each other Stockholder of his intention to Transfer all or a portion of his Shares to a transferee who has a bona fide intent and the ability to acquire the subject Shares in accordance with the terms of such Transfer Notice. The period beginning on the date which is five calendar days after the date of a Transfer Notice which is sent in accordance with the preceding sentence through and including the forty-fifth (45th) day after such date shall be the “Option Period.” The Transfer Notice simultaneously shall constitute (1) an offer to sell the number and class of Shares set forth in the Transfer Notice (the “Offered Shares”) in whole or in part to the Company, and (2) an offer to sell to the other Stockholders that number of Offered Shares which the Company does not elect to purchase, in accordance with the terms and conditions of this Article 3. The Offering Stockholder promptly shall notify the Company and the other Stockholders in writing of any changes in the terms of the Transfer Notice, which subsequent notice shall constitute a new offer for purposes of this Article 3. All offers to the Company and the other Stockholders under this Section 3.1 shall be irrevocable during the Option Period.

**3.2 Company's Rights.** During the first fifteen (15) days of the Option Period, the Company shall have the exclusive right and option, but not the obligation, to elect to purchase all or any portion of the Offered Shares at the offering price specified in the Transfer Notice and on the terms and condition described in the Transfer Notice; *provided, however*, that if any consideration to be paid under the Transfer Notice is other than cash, the Company may substitute therefor cash equal to the fair market value of such non-cash consideration. If the Company desires to exercise its option to purchase all or any portion of the Offered Shares, then no later than 11:59 P.M. central standard time on the fifteenth (15) day of the Option Period, it shall deliver written notice to the Offering Stockholder which indicates its acceptance of the offer to purchase Offered Shares and the number of Offered Shares which it has elected to purchase.

**3.3 Stockholders' Rights.**

(a) If and to the extent that the Company elect to purchase less than 100% of the Offered Shares (the "Remaining Shares"), then the other Stockholders shall have the right and option to elect to purchase all or any portion of the Remaining Shares at the offering price specified in the Transfer Notice, and on the terms and conditions described in the Transfer Notice; *provided, however*, that if any consideration to be paid under the Transfer Notice is other than cash, the other Stockholders may substitute therefor cash equal to the fair market value of such non-cash consideration.

(b) If any other Stockholder desires to exercise his option in whole or in part to purchase Remaining Shares ("Buying Stockholder"), then no later than 11:59 P.M. central standard time on the last day of the Option Period, he shall deliver written notice to the Company and the Offering Stockholder which indicates his acceptance of the offer to purchase Remaining Shares, and the maximum number of Remaining Shares which he has elected to purchase. The actual number of Remaining Shares which each Buying Stockholder who has delivered such notice will be entitled to purchase shall be equal to the product of (1) the lesser of (i) the number of Remaining Shares or (ii) the total number of Remaining Shares which all Buying Stockholders have elected to purchase, multiplied by (2) a fraction, the numerator of which shall be the total number of shares of Common Stock held by the Buying Stockholder (or which may be acquired upon the conversion of any then outstanding Shares) and the denominator of which shall be the total number of shares of Common Stock held by all Buying Stockholders (or which may be acquired upon the conversion of any then outstanding Shares). If as a result of such allocation any Buying Stockholder is allocated a number of Shares to purchase which is greater than the number of Shares which he committed to purchase, then the excess Shares shall be reallocated in one or more successive allocations on the same basis among the remaining Buying Stockholders who were not allocated the full number of Shares which they committed to purchase using the formula specified above, except that item (1) shall be replaced with the total number of excess Shares and the term "Buying Stockholder" shall refer to the remaining Buying Stockholders who were not allocated the full number of committed Shares.

**3.4 Allocation Notices.** With respect to the Company or those other Stockholders who have timely delivered notice of exercise of their respective options in accordance with this Article 3 (the "Exercising Parties"), the Company and the Offering Stockholder shall, within two days after the last day of the Option Period, consult to determine the allocation of Offered Shares to those of the Exercising Parties who have timely elected to purchase Offered Shares. Within two days after the last day of the Option Period, either the Company or the Offering Stockholder shall notify each of the Exercising Parties of the number of Offered Shares, if any, which it shall be obligated to purchase, which notice shall disclose the underlying calculations. Notwithstanding any other provision of this Article 3, an Exercising Party shall be obligated to purchase that number of Offered Shares which it is determined in accordance with the provisions of this Article 3 that such Exercising Party is entitled to purchase.

**3.5 Lapse.** If and to the extent that the Company and the other Stockholders do not timely notify the Offering Stockholder of their respective elections to purchase Offered Shares or collectively specify for purchase less than 100% of the Offered Shares, then the offers by the Offering Stockholder to the Company and the other Stockholders to the extent not timely accepted shall lapse. Upon the lapse in whole or in part of the Offering Stockholder's offers to the Company and the other Stockholders, the Offering Stockholder shall be free to Transfer that number of Offered Shares which it is entitled to Transfer in accordance with this Article 3 in strict compliance with the terms of the Transfer Notice for a period of sixty (60) days thereafter, but after such sixty (60) day period, the restrictions of this Agreement shall again apply. Shares so Transferred shall be subject to the terms and conditions of this Agreement.

**3.6 Buy-Out Offers.** Notwithstanding any other provision of this Article 3 and subject to the provisions of this Section 3.6, if any Stockholder or the Company receives a Buy-Out Offer (as defined below) and a Required Interest elects to accept such offer as to their Shares, then the Required Interest shall have the right to require that all Stockholders sell 100% of their Shares to the Buy-Out Offeror (as defined below) on the same terms and subject to the same conditions of purchase and sale; provided, that Stockholders holding Shares representing securities convertible (for no additional consideration) into shares of Common Stock shall participate in such Buy-Out Offer with respect to such Shares as if such Shares had been converted on the date of such Buy-Out Offer. A "Buy-Out Offer" means an offer made by any person who is not then a Stockholder to purchase all but not less than all of the then issued and outstanding Shares. A "Buy-Out Offeror" means the person(s) who makes a Buy-Out Offer.

(a) **Buy-Out Notice.** The Stockholder receiving a Buy-Out Offer (the "Notifying Stockholder") shall promptly deliver to the Company and all other Stockholders a written notice (the "Buy-Out Notice") that contains the information required to be set forth in a Transfer Notice. The Notifying Stockholder shall promptly deliver written notice to the Company and the other Stockholders and in writing of any changes in the terms of the Buy-Out Notice, which subsequent notice shall constitute a new offer for purposes of this Section 3.6

(b) **Special Meeting.** Upon receipt of the Buy-Out Notice or a Buy-Out Offer, the Company shall call a special meeting of the Stockholders to vote on whether to accept the Buy-Out Offer. Such meeting shall be held within 30 days of the date of the Company's receipt of the Buy-Out Notice or Buy-Out Offer, as the case may be.

(c) **Consummation.** If a Required Interest vote to accept the Buy-Out Offer, the Company will deliver written notice to all Stockholders indicating that a Required Interest has voted to accept the Buy-Out Offer and that all Stockholders will be required to participate in the sale contemplated by the Buy-Out Notice. The Notifying Stockholder(s) shall promptly advise the Buy-Out Offeror that all communications from the Buy-Out Offeror relating to the Buy-Out Offer must be delivered to all Stockholders, and for a period of 90 days after the date of the Buy-Out Notice, each Stockholder shall be obligated to sell Shares to the Buy-Out Offeror pursuant to terms and conditions that are identical for all Stockholders and to those described in the Buy-Out Notice as to the purchase price per Share and terms of payment; provided, that Stockholders holding Shares representing securities convertible (for no additional consideration) into shares of Common Stock shall participate in such Buy-Out Offer with respect to such Shares as if such Shares had been converted on the date of such Buy-Out Offer. Each selling Stockholder shall pay his own costs and expenses incurred in connection with the sale of his Shares. If a Required Interest does not vote to accept the Buy-Out Offer, then any Transfer of Shares made to the Buy-Out Offeror shall be subject to the conditions of Sections 3.1 through 3.5 (inclusive).

(d) **Credit Agreements.** Notwithstanding any other provision of this Agreement, a Transfer of Shares shall not be permitted if, in the Company's reasonable judgment (as evidenced conclusively by a resolution of the Board), that Transfer would cause an event of default under any credit agreement or loan agreement to which the Company is a party as a borrower, and the lender in the credit agreement or loan agreement has not waived the default which would result from the proposed Transfer.

**3.7 Permitted Transfers.** Notwithstanding any provision contained in this Agreement to the contrary, the provisions of Sections 3.1 through 3.5 (inclusive) shall not apply to any Transfer by a Stockholder to an Affiliate.

**3.8 Cross-References.** References in other Articles and Sections of this Agreement to the application of the provisions of this Article 3 shall exclude Section 3.6 regarding Buy-Out Offers.

## ARTICLE 4

### INVOLUNTARY TRANSFER RESTRICTIONS

**4.1 Involuntary Transfers.** Whenever a Stockholder has any notice or knowledge of any attempted, impending or consummated involuntary Transfer of, or lien or charge upon any of, its Shares, whether by operation of law or otherwise, it shall give immediate written notice to the Company specifying the number of Shares which are subject to such involuntary Transfer. Whenever the Company has notice or knowledge of any such attempted, impending or consummated involuntary Transfer, lien or charge, it promptly shall give written notice to the other Stockholders specifying the number of Shares which are subject to such involuntary Transfer. In either case, the Stockholder agrees to immediately disclose to the Company and the other Stockholders all pertinent information in its possession relating to the Transfer. If any Share is subjected to an involuntary Transfer, lien or charge, the Stockholder(s) and/or other record owner of such Shares shall be deemed an Offering Stockholder(s), and the Company and the other Stockholders shall at all times have the immediate and continuing exclusive option, but not the obligation, to purchase the subject Shares in the priorities of, and in accordance with Article 3 for each successive 45 day period, except the purchase price shall be determined pursuant to Section 6.1 and the purchase shall be on the terms and conditions described in Section 6.2, and any Shares so purchased shall in every case be free and clear of the Transfer, lien or charge. The purchase price shall first be paid directly to the holder of the encumbrance on the Shares in an amount sufficient to discharge the obligation underlying, and release, the encumbrance. The balance of the purchase price, if any, shall be paid to the Offering Stockholder.

**4.2 Transfers in Bankruptcy.** If a Stockholder or Spouse is the named debtor in bankruptcy or receivership proceedings and a Transfer of Shares is proposed or directed, the Company and the other Stockholders shall have an exclusive right of first refusal to purchase the named debtor's Shares to the same extent as if such Transfer constituted an offer to sell Shares under Article 3, and the provisions of Article 3 shall accordingly control the exercise of this right of first refusal, except the purchase price shall be determined pursuant to Section 6.1 and the purchase shall be on the terms and conditions described in Section 6.2. For purposes hereof, the "Option Period" shall commence as of the later of the date that all other Stockholders receive notice that a Transfer of Shares is proposed or directed pursuant to this Section 4 or the date the purchase price is established pursuant to Section 6.1.

## ARTICLE 5

### PURCHASE UPON DEATH OR DIVORCE

**5.1 Death of Spouse.** If any Shares are owned by an individual Stockholder and his Spouse jointly and the Spouse predeceases such Stockholder, then the surviving Stockholder immediately shall simultaneously send written notice to the Company and the other Stockholders specifying the date of death of his Spouse and the nature of the deceased Spouse's interest in the Shares. Such interest may be Transferred directly to the surviving Stockholder. If the Spouse predeceases such Stockholder and the Spouse's interest in the Shares is not Transferred directly to such Stockholder, then the Company and the other Stockholders shall have the option, but not the obligation, to purchase the Spouse's interest in the Shares under the terms of Section 5.2 as if the surviving Stockholder rather than the Spouse had died, and all provisions of Section 5.2 shall apply. Upon the exercise of any such option, the legal representative or trustee of the deceased Spouse's estate shall be obligated to sell such interest, and perform any further acts and execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement. In all other respects, the interest in the Shares of the Spouse shall be subject to the restrictions and terms of this Agreement.

**5.2 Death of Stockholder.** Upon learning of the death of any individual Stockholder, the Company immediately shall simultaneously send written notice to the other Stockholders, specifying the date of death and the number of Shares owned by the deceased Stockholder (the "Notice"). For a period of 45 days after the date the Notice is sent, the Company and the surviving Stockholders shall have the option, but not the obligation, to purchase all or any portion of the Shares owned by such deceased Stockholder on the date of his death in the priorities of, and in accordance with the provisions of Article 3, at the purchase price determined pursuant to Section 6.1 and on the terms and conditions described in Section 6.2, except that the Offering Stockholder shall be the legal representative or trustee of the deceased Stockholder. Upon the exercise of any option under this Section 5.2, the legal representative or trustee of the deceased Stockholder's estate shall sell the deceased Stockholder's Shares to the Company and/or the surviving Stockholders, as the case may be, and perform any further acts and execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement. If the Company or the surviving Stockholders do not purchase all of the deceased Stockholder's Shares, then his estate and any beneficiaries of his estate to whom the estate distributes Shares shall be subject to the restrictions and provisions of this Agreement and shall execute an Adoption Agreement pursuant to Section 2.2.

**5.3 Life Insurance.** In order to fund the payment of the purchase price for the Shares which may be purchased by the Company under this Agreement on the death of any Stockholder, the Company may apply for and maintain permanent and/or term life insurance policies on the lives of any or all of such Stockholders in such amounts as the Board, in its sole and absolute discretion, may deem appropriate and necessary. Each policy shall belong solely to the Company and, subject to the provisions of this Agreement, the Company reserves all the powers and rights of ownership of such insurance. The Company shall be named as the primary beneficiary of each policy and shall pay all premiums as they become due. No Stockholder shall exercise any of the powers of ownership of any policy by changing the named beneficiary, canceling the policy, electing optional methods of payment, converting the policy, borrowing against it, or in any way changing its nature, value, or the rights under the policy or policies. No proceeds of any insurance policy funded by the Company shall be available to any person other than the Company. Any dividends paid on any policy or policies before maturity or the insured's death shall be paid to the Company and shall not be subject to this Agreement. Upon an insured Stockholder's death, the Company shall file the necessary proofs of death and collect the proceeds of any outstanding policies of life insurance. All insurance proceeds obtained pursuant to this Section 5.3 shall be applied to pay the



purchase price of the Shares in cash at the time of purchase, if any, and any excess shall be added to the Company's working capital.

**5.4 Divorce of Stockholder and Spouse.** If any Shares are owned by an individual Stockholder and his Spouse jointly, and the marriage of that Stockholder and his Spouse is terminated by divorce or annulment, and that Stockholder does not obtain all of his Spouse's interest in the Shares incident to the divorce or annulment, then such Stockholder shall simultaneously give written notice to the other Stockholders and the Company within thirty (30) days after the effective date of the final, nonappealable divorce decree or of the annulment. The written notice shall specify the effective date of termination of the marriage and the number of Shares to which any interest retained by the Stockholder's former Spouse relates. For a period of thirty (30) days after the determination of the purchase price pursuant to Section 6.1 hereof, the divorced Stockholder shall have an exclusive option, but not the obligation, to purchase all or any portion of his former Spouse's retained interest in the Shares at the purchase price determined pursuant to Section 6.1 and on the terms and conditions described in Section 6.2. The divorced Stockholder's thirty (30) day option shall be exercised by delivering to his former Spouse, the Company, and the other Stockholders a written notice specifying the number of Shares or interest in the Shares as to which the option is being exercised. If the divorced Stockholder does not purchase all of his former Spouse's interest in the Shares, then the Stockholder's Spouse shall be deemed an Offering Stockholder, and for the 45 day period commencing with the expiration of the divorced Stockholder's thirty (30) day option, the Company and the other Stockholders shall have an exclusive option, but not the obligation, to purchase all or any portion of the former Spouse's retained interest in the Shares in the priorities of, and in accordance with the provisions of Article 3, at the purchase price described pursuant to Section 6.1, and on the terms and conditions described in Section 6.2. If any option is exercised pursuant to this Section 5.4, then the former Spouse shall sell any interest in the Shares retained incident to divorce or annulment.

**5.5 Termination of Employment.** If the Company's employment of any Stockholder is terminated for any reason other than death, then the terminated Stockholder shall be deemed an Offering Stockholder, and for the 45 day period commencing with the date of termination, the Company and the other Stockholders shall have an exclusive option to purchase all or any portion of the Shares owned by the Offering Stockholder in the priorities of, and in accordance with, the provisions of Article 3, except that the purchase price shall be determined pursuant to Section 6.1, and the terms and conditions shall be as described in Section 6.2. On termination of a Stockholder-employee, the Company shall promptly given written notice to the other Stockholders, such notice specifying the termination date and the number of Shares owned by the Offering Stockholder.

## ARTICLE 6

### PURCHASE PRICE AND TERMS

**6.1 Purchase Price.** Whenever any Shares shall be offered at the "purchase price," or at any offering price determined with reference to the purchase price, except as otherwise provided herein, the purchase price shall be the price per share of Common Stock set forth on Exhibit 6.1(a), which exhibit shall be amended by the mutual written agreement of all of the parties hereto beginning on the date hereof, on each February 1 and August 1 thereafter during the term of this Agreement, and at such other times as the parties hereto mutually agree. If such Shares represent securities of the Company convertible (for no additional consideration) into shares of Common Stock, the aggregate purchase price shall be determined as if such Shares had been converted into Common Stock as of the date of the event or notice which fixes the obligation to Transfer the Shares. If the parties hereto have, at any time, failed to enter into a mutual written amendment of Exhibit 6.1(a) within the time

period set forth above, and such failure shall have continued during a time in which the "purchase price" is to be determined in accordance with this section, then the purchase price per Share shall be determined by any appraiser listed on Exhibit 6.1(b) hereto which is chosen by the party which is offering Shares under the terms hereof. If such an appraiser is not engaged by such party within 30 days after the event which has caused the offering of Shares pursuant to the terms hereof, the Company shall appoint any partner in the Houston office of Arthur Andersen & Co. (or if Arthur Andersen & Co. refuses to act, then any partner in the Houston office of a nationally recognized accounting firm) as the person who shall select the appraiser for the purposes hereunder, which appraiser may be any person or entity with demonstrated experience in the valuation of bio-tech companies and which is not listed on Exhibit 6.1(b) hereto. In all events, any such appraisal shall be in accordance with the valuation method set forth in Section 6.1(b) and shall be completed and delivered to all parties hereto within 90 days of the event which caused the offering of Shares hereunder.

(a) **Fees and Expenses of Appraisal.** The Company and the Offering Stockholder shall each bear 50% of the fees and expenses of the appraiser if one is selected pursuant to the terms hereof.

(b) **Valuation Method.** In deriving the fair market value of the Shares pursuant to this section, the appraiser shall apply such appraisal techniques and methodologies as it deems appropriate to determine the fair market value of the Company as a going concern and shall not consider any factors which would be applicable only to the value of less than 100% of the Company. The per share price of the shares to be purchased shall equal the fair market value of the Company so computed divided by the total Shares then issued and outstanding (computed on a fully diluted basis).

**6.2 Payment of Purchase Price.** Payment of the purchase price for Shares purchased pursuant to this Agreement shall be made as follows provided that the purchasing party, whether the Company or a Buying Stockholder, may always elect to pay the purchase price in full in cash instead of on the following terms:

(a) On the closing date, the Company or the Buying Stockholders, as the case may be, shall deliver to the Offering Stockholder a down payment in cash equal to twenty-five percent (25%) of the total purchase price. The balance of the total purchase price shall be paid in accordance with the terms of a three (3) year promissory note bearing interest at a rate equal to the fluctuating per annum rate of interest reported in *The Wall Street Journal* as the "prime rate" (the base rate on corporate loans of large U.S. money center commercial banks), payable in thirty- six (36) equal monthly installments of principal and interest. The promissory note shall be substantially in the form attached hereto as Exhibit 6.2(a).

(b) Upon receipt of the cash down payment and the promissory note, the Offering Stockholder shall deliver to the Company or the Buying Stockholders, as the case may be, the number of Shares purchased, properly endorsed or accompanied by an executed stock transfer power.

(c) The payment of all sums due under the promissory note shall be secured by a pledge of all of the Shares purchased in the transaction to which the promissory note relates. In the event of a default in payment of the principal or interest of the promissory note, the selling Stockholder shall have recourse against the Shares being held as collateral and shall have recourse against the purchaser of the Shares. The pledge agreement shall be substantially in the form attached hereto as Exhibit 6.2(c).

(d) In the event the Company is the beneficiary of life insurance proceeds payable upon the death of a Stockholder, and if the successor in interest of a Stockholder sells the Shares of the deceased Stockholder to the Company, the Company shall utilize one hundred percent (100%) of the life insurance

proceeds as a down payment for the Shares to the extent of the purchase price of such Shares. The down payment shall be payable on the Closing Date and the principal amount of the promissory note will be correspondingly reduced. If the life insurance proceeds are less than the twenty-five percent (25%) cash down payment described in Section 6.2(a), then the Company shall pay the deficiency in cash.

## ARTICLE 7

### EFFECTIVE DATES

**7.1 Closing Date.** Whenever an Offering Stockholder, the Stockholders or the Company are obligated to sell or purchase Shares to one another under the terms of this Agreement, the closing date of the transaction shall be a business day and hour specified by the Company at a designated location. Unless the parties agree to the contrary the closing date shall not be more than seventy-five (75) days after the occurrence of the event or notice which fixed the obligation to Transfer the Shares. Notice of the details of closing shall be furnished by the Company no later than ten (10) days prior to the closing date. At the specified time of closing, certificates for the Shares purchased shall be delivered, together with stock transfer instruments sufficient to effect the Transfer, duly endorsed by the transferring Stockholder and transferred of record to the respective purchasers against payment to the transferring Stockholder in cash or by certified check of the purchase price or the offering price (except as otherwise provided herein), as the case may be.

**7.2 Notices; Offers; Acceptances.** Any notice, instruction, authorization, request or demand required or permitted hereunder shall be in writing, and shall be delivered either by personal delivery, by telegram, telex, telecopy or similar facsimile means, by certified or registered mail, return receipt requested, or by courier or delivery service, addressed to the parties hereto at the address indicated beneath their respective signatures on the execution pages of this Agreement or the adoption agreement contemplated by Section 2.2, as applicable, or at such other address and number as a party shall have previously designated by written notice given to the other parties in the manner hereinabove set forth. Notices shall be deemed given when received, if sent by facsimile means (confirmation of such receipt by confirmed facsimile transmission being deemed receipt of communications sent by facsimile means); and when delivered and received for (or upon the date of attempted delivery where delivery is refused), if hand-delivered, sent by express courier or delivery service, or sent by certified or registered mail, return receipt requested.

## ARTICLE 8

### ENFORCEMENT

**8.1 Endorsements on Stock Certificates.** Each certificate representing Shares now owned or hereafter owned by the Stockholders or any transferee shall bear conspicuous restrictive legends worded substantially as follows, in addition to any other legends required by law:

THE SECURITIES EVIDENCED HEREBY ARE SUBJECT TO CERTAIN RESTRICTIONS AGAINST TRANSFER PURSUANT TO THE TERMS OF, AND TO A VOTING AGREEMENT CONTAINED IN, A STOCKHOLDERS AGREEMENT BETWEEN THIS CORPORATION AND ITS STOCKHOLDERS WHICH PROVIDES FOR, AMONG OTHER THINGS, AN OPTION IN FAVOR OF THE COMPANY AND ITS STOCKHOLDERS TO PURCHASE THESE SECURITIES IN CERTAIN INSTANCES. THE CORPORATION WILL FURNISH WITHOUT CHARGE A COPY OF SUCH AGREEMENT TO THE RECORD HOLDER OF THIS CERTIFICATE UPON WRITTEN REQUEST TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"), OR UNDER ANY APPLICABLE STATE SECURITIES LAWS, AND THEY CANNOT BE OFFERED FOR SALE, SOLD, TRANSFERRED, PLEDGED OR OTHERWISE HYPOTHECATED EXCEPT IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE ACT AND SUCH STATE LAWS OR UPON DELIVERY TO THIS CORPORATION OF AN OPINION OF LEGAL COUNSEL SATISFACTORY TO THE CORPORATION THAT AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

THE CORPORATION IS AUTHORIZED TO ISSUE SHARES OF MORE THAN ONE CLASS OF STOCK OR MORE THAN ONE SERIES OF A CLASS. THE CORPORATION WILL FURNISH A STATEMENT OF THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OR STOCK OR SERIES THEREOF AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND/OR RIGHTS, WITHOUT CHARGE, TO THE HOLDER OF THIS CERTIFICATE UPON RECEIPT BY THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS OR REGISTERED OFFICE OF A WRITTEN REQUEST FROM THE HOLDER REQUESTING SUCH COPY.

**8.2 Breach.** Any purported Transfer in breach of any provision of this Agreement shall be void and ineffectual and shall not operate to Transfer any interest or title in the purported transferee.

## ARTICLE 9

### TERMINATION

This Agreement shall terminate upon (i) the written agreement of the Company (which will require Board approval) and a Required Interest of the Stockholders which shall be determined by reference to the number of Shares held by the Stockholders, provided that no termination shall adversely affect any rights of any party under this Agreement which have vested prior to termination; (ii) naming of the Company as Debtor in bankruptcy proceedings for a period of sixty (60) days without dismissal, the execution by the Company of an assignment for the benefit of its creditors, the appointment of a receiver for the Company, or the voluntary or involuntary liquidation or dissolution of the Company; or (iii) the Company's consummation of an Initial Public Offering.

The Company promptly shall deliver written notice of any termination of this Agreement to all parties hereto.

## ARTICLE 10

### OTHER AGREEMENTS

**10.1 Voting Agreement.** At each annual meeting of the Stockholders, at each special meeting of the Stockholders called for the purpose of electing directors of the Company, and at any time at which Stockholders of the Company shall have the right to, or shall, vote for directors of the Company, then, in each event, each Stockholder shall vote all Shares then owned by each Stockholder in such a manner as to ensure that the number of directors of the Company is three and that each of:

Director No.

- 1 Jerald S. Cobbs
- 2 Robert Garrison
- 3 William J. Doty (or another person designated by the Board of Regents of the University of Texas System)

are elected as the three members of the Board, and shall vote against the removal of each of such person from the Board whenever a removal vote is taken, subject to the terms of this provision. Each Stockholder shall so vote his Shares as to Director No. 1-3 for so long as each of Jerald S. Cobbs, Robert Garrison and the Board of Regents of the University of Texas System own of record or beneficially Shares, provided, that if any such person ceases to so own such Shares, the Stockholders' agreement to vote for (or against the removal of) such person shall cease, but the voting agreement with respect to the persons that remain Stockholders shall still apply.

**10.2 Confidentiality.** For purposes of this Section 10.2, the term "Company" shall also include its Affiliates.

(a) Each Stockholder acknowledges and agrees that (i) its ownership interest in the Company affords it access to Confidential Information regarding the Company and its business; (ii) the dissemination or use of Confidential Information in any manner inconsistent with protecting and furthering the Company, its business, and its prospects would cause the Company great loss and irreparable harm; and (iii) one of the duties of ownership in the Company is to prevent the dissemination or use of Confidential Information of the Company in any manner inconsistent with protecting and furthering the Company, its business and its prospects.

(b) Accordingly, each Stockholder agrees that it shall not for itself, himself, herself or on behalf of any other person (whether as an individual, agent, servant, employee, employer, officer, director, stockholder, investor, principal, consultant or in any other capacity) directly or indirectly use or disclose to any person any Confidential Information of the Company, provided, however, that (after reasonable measures have been taken to maintain confidentiality and after giving reasonable notice to the Company specifying the information involved and the matter and extent of the proposed disclosure thereof) any disclosure of such information may be made to the extent required by applicable laws or judicial or regulatory process. Notwithstanding any provision contained in this Section 10.2 to the contrary, with respect to any employee of The University of Texas M.D. Anderson Cancer Center ("MDA") (other than any such employee who becomes a director or officer of the Company under the terms of this Agreement or otherwise) the term "Confidential Information" for purposes of this Section 10.2 shall have the meaning given to such term under Section 11.1 of the Patent and Technology License Agreement, as amended and in effect from time to time, among the Board of Regents of the University of Texas System, MDA and the Company.

**10.3 "Market Stand-Off" Agreement.** Each Stockholder hereby agrees that, (i) during the period of duration specified by the Company and an underwriter of Common Stock or other securities of the Company and agreed to by a Required Interest following the effective date of a registration statement of the Company filed under the Securities Act, such Stockholder shall not, to the extent requested by the Company and such underwriter, directly or indirectly sell, offer to sell, contract to sell (including, without limitation, any short sale), grant any option to purchase or otherwise transfer or dispose of any securities of the Company held by him at any

time during such period except securities of the Company included in such registration statement and (ii) such Stockholder shall execute any and all agreements reasonably requested by such underwriter to enforce such lockup. In order to enforce this covenant, the Company may impose stop-transfer instructions with respect to any Shares until the end of such period. This Section 10.3 shall survive the termination of this Agreement.

## ARTICLE 11

### MISCELLANEOUS

**11.1 Representations and Warranties.** All parties hereto represent, warrant and covenant that they have full power and authority to enter into and perform this Agreement in accordance with its terms, and that they will perform all agreements made by them hereunder in accordance herewith.

**11.2. Amendment.** This Agreement may be amended at any time by a written instrument adopted by the Company and executed and agreed to by a Required Interest; *provided, however*, that (i) an amendment reducing or increasing the required Stockholder Consent or vote in this Agreement is effective only with the consent or vote of the Stockholders theretofore required, and (ii) an amendment which would affect the rights of a person who is no longer a Stockholders, shall require the consent of the person so effected.

**11.3. Spouses.** The Spouses are fully aware of, understand, and fully consent and agree to the provisions of this Agreement and its binding effect on any interest that Spouse may have by reason of marriage to a Stockholder or otherwise in any Shares subject to the terms of this Agreement held in the Stockholder's name on the stock records of the Company at or subsequent to the date of execution of this Agreement. Any obligation of a Stockholder or his legal representative to sell or offer to sell his Shares under the terms of this Agreement includes an obligation on the part of that Spouse to sell or offer to sell any interest she may have in the Shares in the same manner.

**11.4. Binding Effect.** This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto, their respective heirs, legatees, devisees, legal representatives, successors and permitted assigns.

**11.5. Previous Agreements Superseded.** This Agreement supersedes all previous agreements by and among any one or more of the Company, the Stockholders and Spouses relating to the subject matter hereof.

**11.6. Severability.** If any one or more provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, then the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**11.7. Governing Law.** This Agreement shall be construed in accordance with, and governed by, the internal law, and not the law of conflicts, of the State of Texas.

**11.8. Gender.** Whenever the context requires, the gender of all words used herein shall include the masculine, feminine and neuter.

**11.9. Counterparts.** This Agreement may be executed in multiple counterparts by means of original or facsimile signatures, each of which shall be considered an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement on and effective as of the day first above written.

**COMPANY:**

**BIOCYTE THERAPEUTICS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: BioCyte Therapeutics, Inc.  
5599 San Felipe, Suite 310  
Houston, Texas 77056

Telecopy: (713) 993-4696  
Attention: Board of Directors

**STOCKHOLDERS:**

**SPOUSE:**

**HARRIS WEBB & GARRISON**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: Harris Webb & Garrison  
5599 San Felipe, Suite 310  
Houston, Texas 77056

Telecopy: (713) 993-4696  
Attention: \_\_\_\_\_

THE BOARD OF REGENTS OF  
THE UNIVERSITY OF TEXAS SYSTEM

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: 221 W. 7th Street  
Austin, Texas 78701

Telecopy: (512) 499-4523  
Attention: \_\_\_\_\_

with copy to:

The University of Texas  
M.D. Anderson Cancer Center  
Address: 1020 Holcombe Boulevard, #1405  
Houston, Texas 77030  
Telecopy: (713) 794-1356  
Attention: William J. Doty

\_\_\_\_\_  
Name Spouse  
Address: Address:

\_\_\_\_\_  
Name Spouse  
Address: Address:



## **SCHEDULE AND EXHIBIT LIST**

<b>SCHEDULE A</b>	<b>Stockholder List</b>
<b>EXHIBIT 2.2</b>	<b>Form of Adoption Agreement</b>
<b>EXHIBIT 6.1(a)</b>	<b>Fair Market Value per Share</b>
<b>EXHIBIT 6.1(b)</b>	<b>Approved List of Appraisers</b>
<b>EXHIBIT 6.2(a)</b>	<b>Form of Promissory Note</b>
<b>EXHIBIT 6.2(c)</b>	<b>Form of Pledge Agreement</b>

EXHIBIT 2.2

**ADOPTION OF STOCKHOLDERS' AGREEMENT**

THIS ADOPTION OF STOCKHOLDERS' AGREEMENT (this "Adoption Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, by and among BioCyte Therapeutics, Inc., a Delaware corporation (the "Company"), Stockholders and Spouses (as each undefined term is defined below).

**WITNESSETH:**

WHEREAS, the Company, the Stockholders and Spouses entered into a Stockholders' Agreement dated \_\_\_\_\_, 1996 (the "Agreement");

WHEREAS, Section 2.2 of the Stockholders' Agreement provides that as a condition precedent to the acquisition of Shares by a transferee or issuee, each Stockholder and Spouse authorizes and directs the Company upon the issuance of Shares to any transferee to execute, on the Company's behalf and as agent for each Stockholder and Spouse, with the transferee or issuee and spouse, if applicable, an agreement pursuant to which the transferee or issuee and spouse, for themselves and for their respective successors, successors in interest, heirs, legatees, devisees and legal representatives to be bound by the terms and conditions of the Agreement, as if an original party to the Agreement; and

WHEREAS, the undersigned \_\_\_\_\_, and spouse (if applicable), \_\_\_\_\_, desire to acquire Shares of the Company.

NOW, THEREFORE, for and in consideration of the premises and mutual and dependent covenants and agreements herein contained, the Company, on its own behalf and as agent for each Stockholder and Spouse, and \_\_\_\_\_ and spouse (if applicable) \_\_\_\_\_, agree as follows:

1. A true and correct copy of the Agreement, as heretofore amended and together with all adoption agreements heretofore entered into pursuant to Section 2.2, is attached hereto and incorporated fully herein by reference. All undefined capitalized terms used in this Adoption Agreement shall have the meaning ascribed to them in the Agreement.
2. The undersigned, \_\_\_\_\_, and spouse (if applicable) \_\_\_\_\_, having acquired \_\_\_\_ Shares, hereby take the Shares subject to all of the terms, covenants, conditions, limitations, restrictions and provisions contained in the Agreement. By execution of this Adoption Agreement, the undersigned agree to be bound by the terms and conditions of the Agreement and agree that the Agreement shall be binding upon and inure to the benefit of the heirs, legatees, devisees, legal representatives, successors and permitted assigns of the undersigned.
3. \_\_\_\_\_ and \_\_\_\_\_ acknowledge receipt of a true and correct copy of the Agreement and further acknowledge that we have read Agreement and understand and agree to abide by all terms, covenants, conditions, limitations, restrictions and provisions contained in the Agreement.

4. \_\_\_\_\_ and \_\_\_\_\_ hereby become a "Stockholder" and a "Spouse" as determined in accordance with the terms of the Agreement for all purposes of the Agreement as if original parties to the Agreement.

IN WITNESS WHEREOF, \_\_\_\_\_

\_\_\_\_\_ and the Company have executed this Adoption Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

**BIOCYTE THERAPEUTICS, INC.**  
(a Delaware corporation)

By: \_\_\_\_\_  
President, on behalf of the  
Company and as agent for each  
Investor, Stockholder and Spouse

\_\_\_\_\_  
(Printed Name of New Stockholder or  
Investor)

Address: \_\_\_\_\_

Telecopy No.: \_\_\_\_\_

Attention: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name of Spouse)

Address if different: \_\_\_\_\_

EXHIBIT 6.1(a)

**FAIR MARKET VALUE PER SHARE**

To Come

**EXHIBIT 6.1(b)**

**APPROVED LIST OF APPRAISERS**

**To Come**

EXHIBIT 6.2(a)

PROMISSORY NOTE

\$ \_\_\_\_\_

FOR VALUE RECEIVED, on or before \_\_\_\_\_, the undersigned, \_\_\_\_\_, a \_\_\_\_\_ ("Debtor"), hereby promises to pay to the order of \_\_\_\_\_, a \_\_\_\_\_ ("Creditor"), at its office at \_\_\_\_\_, in lawful money of the United States of America, the principal amount of \_\_\_\_\_ DOLLARS AND \_\_\_\_\_ CENTS (\$ \_\_\_\_\_), together with interest on the unpaid balance of said principal amount from time to time remaining outstanding, from the date hereof until maturity, in like money, at said office, at a rate per annum equal to \_\_\_\_\_ percent (\_\_\_\_%) (the "Note Rate"). Interest on this Note shall be calculated at a rate per annum based upon the actual number of days elapsed in an actual calendar year (365 days or 366 days in a leap year, as may be applicable).

All past due principal of, and interest on, this Note shall bear interest from the due date thereof (whether by acceleration or otherwise) until paid at a per annum rate equal to the Note Rate.

This Note is due and payable in \_\_\_\_\_ (\_\_\_\_) equal installments of principal and interest, each such installment of which shall be in the amount of \_\_\_\_\_ DOLLARS AND \_\_\_\_\_ CENTS (\$ \_\_\_\_\_), and the final installment being in the amount of the balance of principal plus accrued interest then due hereon. The first such installment is due and payable on \_\_\_\_\_, and the remaining installments are due and payable in consecutive order on the same day of each and every succeeding calendar month thereafter until all sums called for hereunder have been paid in full, with the final such installment due and payable on \_\_\_\_\_.

Debtor shall have the right, from time to time, without premium or penalty, to prepay the indebtedness evidenced by this Note, in full or in part.

The records of Creditor shall constitute rebuttably presumptive evidence of the principal and accrued, earned and unpaid interest remaining outstanding on this Note.

If this Note is collected by suit or through the bankruptcy court, or any judicial proceeding, or if this Note is not paid at maturity, howsoever such maturity may occur, and it is placed in the hands of an attorney for collection (whether or not legal proceedings are instituted), then Debtor agrees to pay, in addition to all other amounts owing hereunder, the collection costs and reasonable attorneys' fees of the holder hereof.

It is expressly stipulated and agreed to be the intent of Debtor and Creditor at all times to comply with the applicable Texas law governing the maximum rate or amount of interest payable in connection with all the sums due hereunder (or applicable United States federal law to the extent that it permits Creditor to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received with respect to the loans evidenced by this Note, or if the acceleration of the maturity of the sums due hereunder or if any prepayment by Debtor results in Debtor having paid any interest in excess of that permitted by law, then

it is Debtor's and Creditor's express intent that all excess amounts theretofore collected by Creditor be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to Debtor), and the provisions hereof immediately be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder. The right to accelerate maturity of sums due hereunder does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration and Creditor does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid Creditor for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the loan evidenced hereby until payment in full so that the rate or amount of interest on account of the loans evidenced hereby does not exceed the applicable usury ceiling.

This Note is given in payment for capital stock owned by the holder or holders of this Note and is secured by a Stock Pledge and Purchase Money Security Agreement of even date herewith, and any other security agreements, guarantees, collateral assignments, deeds of trust and lien instruments executed by Debtor in favor of Creditor, or executed by any other person as security for this Note, including any executed prior to, simultaneously with, or after the date of this Note.

If Debtor fails to pay any principal of or interest on this Note as and when due ("Default"), then the holder of this Note shall have the right to declare the unpaid principal sum of this Note and all interest then accrued, earned and unpaid immediately due and payable by Debtor, and shall have such other rights and remedies provided at law or in equity, all such rights and remedies being cumulative. No delay or failure of the holder hereof to exercise any of such rights and remedies accrued to it because of any such Default shall constitute a waiver of said rights with respect to any such Default or any subsequent Default.

Debtor and all sureties, endorsers and guarantors of this Note waive demand, presentment for payment, notice of non-payment, protest, notice of protest, notice of intent to accelerate maturity, notice of acceleration of maturity and all other notice, filing of suit and diligence in collecting this Note or enforcing any security herefor, and agree to any substitution, exchange or release of any such security, the release of any party primarily or secondarily liable hereon and further agree that it will not be necessary for any holder hereof, in order to enforce payment of this Note, to first institute suit or exhaust its remedies against any security herefor, and consent to any one or more extensions or postponements of time of payment of this Note on any terms or any other indulgences with respect hereto, without notice thereof to any of them.

Time is of the essence in the payment and performance of this Note.

This Note shall be governed by and construed in accordance with the internal law, and not the law of conflicts, of the State of Texas and applicable federal laws of the United States of America.

IN WITNESS WHEREOF, \_\_\_\_\_, Debtor, has caused this Note to be executed on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by, if Debtor is an entity, an officer thereunto duly authorized.

DEBTOR

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name (and Title if applicable)



EXHIBIT 6.2(c)

STOCK PLEDGE AND PURCHASE MONEY SECURITY AGREEMENT

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

I. PARTIES, COLLATERAL AND OBLIGATIONS

FOR VALUE RECEIVED, and for the purpose of enabling \_\_\_\_\_ (hereinafter called "Debtor"), whose address is \_\_\_\_\_, to obtain credit accommodations from \_\_\_\_\_, (hereinafter called "Secured Party"), whose address is \_\_\_\_\_, Debtor hereby grants to Secured Party a security interest in the following property:

All of Debtor's present and after acquired interests in and to \_\_\_\_\_ (\_\_\_\_\_) shares of common stock, par value \$ \_\_\_\_\_ per share (the "Shares") of \_\_\_\_\_, a Delaware corporation (the "Company"), and any and all additions, accessions and substitutions therefor, together with all proceeds, monies, income and benefits attributable or accruing to said property, which Debtor is or may hereafter become entitled to receive on account of said property, including, but not by way of limitation, all interest, premium, redemption proceeds and all dividends and other distributions on or with respect to such Shares, whether payable in cash, stock or other property and all subscription and other rights (all of such foregoing property collectively called the "Collateral").

Immediately upon the execution of this Stock Pledge and Purchase Money Security Agreement (hereinafter referred to as this "Security Agreement") by or on behalf of Debtor, Debtor will deliver or cause to be delivered to Secured Party the instruments, securities and documents (if any) subject to this Security Agreement; furthermore, if any money or monies, certificates of deposit, savings or passbook accounts, bank balances, instruments, securities, documents, chattel paper, letters of credit or advises of credit are, at any time or times, included in the Collateral, whether as proceeds or otherwise, upon demand therefor by Secured Party made after default, Debtor will promptly deliver the same to Secured Party.

The pledge and security interest granted herein secures the prompt and full payment and performance of all of the following indebtedness, liabilities and obligations of Debtor to Secured Party (hereinafter collectively called the "Obligations"), whether joint or several, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and all renewals, extensions, increases, modifications, rearrangements, amendments and/or supplements of the Obligations, and any of the same. Such Obligations shall consist of the indebtedness evidenced by that certain Promissory Note of even date herewith by Debtor to Secured Party in the original principal amount of \_\_\_\_\_ (\$\_\_\_\_) (the "Note"), and including all costs and expenses and attorneys' fees and legal expenses payable by Secured Party in connection herewith or therewith, all in accordance with the terms of the Note and this Security Agreement. Unless otherwise agreed, all of the Obligations shall be payable at the address of Secured Party set forth above.

II. WARRANTIES AND COVENANTS OF OWNER

Debtor hereby warrants, covenants and agrees that:

- (i) Except for the security interest granted hereby, Debtor is the owner and holder of all the Shares free from any adverse claim, security interest, encumbrance, lien, charge or any other right, title or interest of any

Person other than Secured Party; Debtor has full power and lawful authority to sell, transfer and assign the Collateral to Secured Party and to grant to Secured Party a first, prior and valid security interest therein as herein provided; the execution and delivery and the performance hereof are not in contravention of any indenture, agreement or undertaking to which Debtor is a party or by which Debtor (or Debtor's property) is bound; and Debtor will defend the Collateral against all claims and demands of all Persons at any time claiming the same or any interest therein. All agents or representatives acting for or on behalf of Debtor in connection with this Security Agreement or any aspect hereof, or entering into or executing this Security Agreement on behalf of Debtor, having duly authorized thereto and therefor, and are fully empowered to act for and represent Debtor in connection with this Security Agreement and all matters related hereto or in connection herewith. Except for that certain Stockholders' Agreement by and among the Company and its stockholders, dated \_\_\_\_\_, and except as either evidenced on the certificates representing the Shares or otherwise previously disclosed in writing by Debtor to Secured Party, Debtor hereby represents and warrants to Secured Party that the Shares are not subject to any buy-sell agreements, irrevocable proxies or other restrictions.

(2)(a) Debtor has not heretofore signed any financing statement or security agreement which covers any of the Collateral, and in which Debtor is named as or has signed as "debtor," and no such financing statement or security agreement is now on file in any public office.

(b) As long as any amount remains unpaid on any of the Obligations, with respect to the Collateral:  
(i) Debtor will not enter into or execute any security agreement or any financing statement other than those security agreements and financing statements in favor of Secured Party hereunder, and further (ii) there will not be on file in any public office any financing statement or statements (or any documents or papers filed as such) other than financing statements in favor of Secured Party hereunder unless, in any case subject to this paragraph (b), the specific prior written consent and approval of Secured Party shall have been obtained.

(c) Debtor authorizes Secured Party to file, in jurisdictions where this authorization will be given effect, a financing statement signed only by Secured Party covering the Collateral. At the request of Secured Party, Debtor will execute such documents as Secured Party may determine, from time to time, to be necessary or desirable under provisions of the Uniform Commercial Code, as adopted and amended, in the State of Texas (the "UCC"); without limiting the generality of the foregoing Debtor agrees to execute, at Secured Party's request, one or more financing statements in form satisfactory to Secured Party, and Debtor will pay the cost of filing or recording the same, or of filing or recording this Security Agreement in all public offices at any time and from time to time, whenever filing or recording of any such financing statement or of this Security Agreement is deemed by Secured Party to be necessary or desirable. In connection with the foregoing, it is agreed and understood between the parties hereto (and Secured Party is hereby authorized to carry out and implement the following agreements and understandings and Debtor hereby agrees to pay the cost thereof) that Secured Party may, at any time, file as a financing statement any counterpart, copy or reproduction of this Security Agreement signed by Debtor if Secured Party shall elect so to file, and it is also agreed and understood that Secured Party may, if deemed necessary or desirable, file (or sign and file) as a financing statement any carbon copy of, or photographic or other reproduction of, this Security Agreement or of any financing statement executed in connection with this Security Agreement.

(3) Debtor will not sell or offer to sell or otherwise transfer or encumber the Collateral or any interest therein without the express prior written consent of Secured Party; and Debtor will keep the Collateral free from any lien, security interest, encumbrance, charge or claim adverse to the interest of Secured Party; ~~provided, however,~~ prior to the happening of a default hereunder, nothing contained in this Security Agreement shall prohibit Debtor from using "cash collateral" (as defined in Section 9.306 of the UCC).

(4) Except as specifically otherwise permitted or provided herein, if, at any time, Debtor holds or has possession of any Collateral consisting of "non-cash collateral" (as defined in Section 9.306 of the UCC), then the same shall remain in Debtor's possession and control at all times at Debtor's risk of loss, and, if in Debtor's possession, is now kept, and at all times shall be kept, at the address first shown for Debtor at the beginning of this Security Agreement; and Debtor will promptly notify Secured Party of any change in such address and of any new addresses where such Collateral may be kept and of any other change in the above-identified location of all or any part of such Collateral, and Debtor will not move or remove such Collateral, or any part thereof, from the addresses and places described and specified above without the prior written consent of Secured Party.

(5) Secured Party shall exercise reasonable care in the custody of any of the Collateral in its possession or control hereunder at any time or times. Secured Party shall be deemed to have exercised reasonable care if such Collateral is accorded treatment substantially equal to that which Secured Party accords its own property or if Secured Party takes such action with respect to the Collateral as Debtor reasonably requests in writing, but neither failure to comply with any such request nor any omission to do any act requested by Debtor shall be deemed to be a failure to exercise reasonable care. Debtor agrees to take necessary steps to preserve rights against any parties with respect to any Collateral in Secured Party's possession or control, it being understood, however, that Secured Party shall have no responsibility for ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders, renewals, collections or other matters relative to any Collateral, whether or not Secured Party has or is deemed to have knowledge of such matters.

(6) Debtor represents and warrants to Secured Party that the value of the consideration received and to be received, directly or indirectly, by Debtor as a result of the credit accommodations granted and extended by Secured Party to Debtor is fair consideration to Debtor and reasonably worth at least as much as the Obligations, and that the credit accommodations granted and extended by Secured Party have benefitted and may reasonably be expected to benefit Debtor, directly or indirectly.

### III. EVENTS OF DEFAULT

Debtor shall be in default under this Security Agreement upon the happening of any of the following events or conditions provided that Debtor shall fail to cure same within twenty (20) days after written notice by Secured Party to Debtor setting forth the event or condition which occurred, except that in the event of a default arising out of failure to make payments due Secured Party, Debtor shall have only five (5) days for curative action after written notice by Secured Party.

1. Default in the performance of any agreement or obligation of Debtor arising under this Security Agreement or the Promissory Note executed in favor of Secured Party by Debtor.

2. Any warranty, representation or statement made in this Security Agreement or made or furnished to Secured Party in connection with this Security Agreement proves to have been false in any material respect when made or furnished.

3. Levy or any attachment, execution or other process which creates an encumbrance against all or substantially all of the assets of Debtor or against the Collateral.

4. A. The dissolution of the Company.

- B. The filing by the Debtor or Company of a voluntary petition under any chapter of the Federal Bankruptcy Code or any other Federal or State Debtor's Relief Act.
- C. Debtor or the Company is granted a discharge in bankruptcy, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a receiver or trustee with respect to any of its assets.
- D. A receiver or trustee is appointed or an attachment or execution levied with respect to any substantial part of the assets of Debtor or the Company and the appointment is not vacated or the attachment or execution is not released within sixty (60) days thereafter.

5. Transfer of all or substantially all of the assets of the Company in a single transaction or series of transactions.

6. Issue of any securities by the Company for consideration other than cash or property equal to the fair market value of the securities.

#### IV. REMEDIES

(1) In the event of any default in the payment or performance of any of the Obligations or any principal, interest or other amount payable thereunder, when due, or upon the happening of any of the defaults specified in this Security Agreement, and at any time thereafter, Secured Party shall have and may exercise, with reference to the Collateral and the Obligations, any or all of the rights and remedies of a secured party under the UCC, and as otherwise granted herein or under any other law or under any other agreement executed by Debtor, including, without limitation, the right and power to sell, at public or private sale or sales, or otherwise dispose of or utilize the Collateral and any part or parts thereof in any manner permitted by the UCC after default by a debtor, and to apply the proceeds thereof toward payment of any costs and expenses, attorneys' fees and legal expenses thereby incurred by Secured Party and toward payment of the Obligations in such order or manner as Secured Party may elect. To the extent any notice of sale or other disposition of the Collateral is required, Debtor agrees that if such notice is sent as provided in Section V of this Security Agreement, at least ten days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving of notice.

(2) Secured Party is expressly granted the right, at its option, to transfer at any time after a default, to itself or to its nominee the Collateral, or any part thereof, and to receive the monies, income, proceeds or benefits attributable or accruing thereto (including voting rights) and to hold the same as security for the Obligations or to apply the same on the principal and interest or other amounts owing on any of the Obligations, whether or not then due, in such order or manner as Secured Party may elect. Secured Party is expressly granted the rights, exercisable at its option at any time after default, to take control of any proceeds and to notify account debtors, lessees or obligors on any instrument to make all payments directly to Secured Party on any and all accounts, leases or instruments constituting, at any time or from time to time, a part of the Collateral; and Debtor will, upon request of Secured Party, so notify all such account debtors, lessees or obligors.

(3) As to any Person (other than Debtor), all recitals in any instrument of assignment or any other instrument executed by Secured Party incident to the sale, transfer, assignment or other disposition or utilization of the Collateral or any part thereof hereunder shall be full proof of the matters stated therein and no other proof shall be requisite to establish full legal propriety of the sale or other action taken by Secured Party or of any fact,

condition or thing incident thereto and all prerequisites of such sale or other action or of any fact, condition or other incident thereto shall be presumed conclusively to have been performed or to have occurred.

(b) All rights to marshalling of assets of Debtor, including any such right with respect to the Collateral, are hereby waived by Debtor.

## V. GENERAL

(1) Upon the occurrence of a default hereunder, Secured Party may, at its option, whether or not the Obligations are due, demand, sue for, collect or make any compromise or settlement it deems desirable with reference to the Collateral. Except as otherwise expressly provided herein, Secured Party shall not be obligated to take any steps necessary to preserve any rights in the Collateral against other parties, which Debtor hereby assumes to do.

(2) This Security Agreement shall not be construed as relieving Debtor from full liability on the Obligations and any and all future and other indebtedness secured hereby and for any deficiency thereon.

(3) No delay or omission on the part of Secured Party in exercising any right hereunder shall operate as a waiver of any such right or any other right. A waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy on any future occasion.

(4) The execution and delivery of this Security Agreement in no manner shall impair or affect any other security (by endorsement or otherwise) for the payment of the Obligations and no security taken hereafter as security for payment of any part or all of the Obligations shall impair in any manner or affect this Security Agreement, all such present and future additional security to be considered as cumulative security. Any of the Collateral may be released from this Security Agreement without altering, varying or diminishing in any way the force, effect, lien, security interest or charge of this Security Agreement as to the Collateral not expressly released, and this Security Agreement shall continue as a first lien security interest and charge on all of the Collateral not expressly released until all sums and indebtedness secured hereby have been paid in full. Any future assignment or attempted assignment or transfer of the interest of Debtor in and to any of the Collateral shall not deprive Secured Party of the right to sell or otherwise dispose of or utilize all of the Collateral as above provided or necessitate the sale or disposition thereof in parcels or in severalty.

(5) All notices and demands required or made hereunder shall be deemed to have been given three Business Days after being deposited in the United States mails (certified, return receipt requested) addressed to Debtor or Secured Party (as appropriate) at the address for such Person given in the first paragraph of this Security Agreement, or at any other address of which it shall have notified the other signatories hereto in writing; provided, however, actual notice to any signatory hereto, however given or received, shall always be effective.

(6) All rights of Secured Party hereunder shall inure to the benefit of its [insert either "successors and assigns" if Secured Party an entity, or "heirs, administrators, personal and legal representatives and assigns" if Secured Party an individual]; and all obligations of Debtor shall bind its [either "successors and assigns" or "heirs, administrators, personal and legal representatives and assigns"].

(7) Each term used in this Security Agreement, unless the context otherwise requires, and in all events subject to any express definitions set forth in this Security Agreement, shall be deemed to have the same meaning herein as that given each such term under the UCC. As used in this Security Agreement and when required by the context, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

(8) The law governing this secured transaction shall be the internal law, and not the law of conflicts, of the State of Texas existing as of the date hereof; provided, that if any additional rights or remedies are granted by the law of the State of Texas to secured parties or to Persons similarly situated to Secured Party, then Secured Party shall also have and may exercise any such additional rights or remedies.

(9) No amendment, modification or waiver of any provision of this Security Agreement shall in any event be effective unless the same shall be in writing and signed by both the Debtor and Secured Party.

(10) This Security Agreement may be executed in multiple counterparts, and each counterpart, when so executed and delivered, shall constitute but one and the same instrument.

Executed as of the day and year first above written.

DEBTOR:

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title [if applicable]

SECURED PARTY:

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title [if applicable]

**SCHEDULE A**

**Stockholder List**

[TO COME]

**Facilities, Planning & Construction  
Committee**



FACILITIES PLANNING AND CONSTRUCTION COMMITTEE  
Committee Chairman Temple

Date: November 14, 1996

Time: Following the meeting of the Health Affairs  
Committee

Place: Rooms NB2.402 and NB2.403, Simmons Biomedical  
Research Building, U. T. Southwestern Medical  
Center - Dallas

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1. U. T. Board of Regents: Proposed Amendments to the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1 (Naming of Buildings and Other Facilities).--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, and the Executive Vice Chancellor for Health Affairs that the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, relating to the naming of buildings and other facilities, be deleted in its entirety and the new language as set forth below in congressional style be substituted:

Sec. 1. Naming of Buildings and Other Facilities.

- 1.1 The naming of buildings and other facilities, such as laboratories, classrooms, seminar rooms, auditoria, concert halls, clinics, and patient rooms of the U. T. System and its component institutions, whether for an individual or with a functional or historical designation, is the prerogative and responsibility of the Board of Regents and can be initiated by the Board when circumstances warrant. When recommendations for naming of buildings or other facilities originate at other than the level of the Board, such recommendations shall be forwarded to the Board of Regents with recommendations of the Chancellor, appropriate Executive Vice Chancellor, and appropriate chief administrative officer, accompanied by reasons for the recommendation, and campus consultations where appropriate. Recommendations for naming of buildings require Board of Regents' approval via the agenda. Recommendations for naming of other facilities shall be submitted for Regental approval via the docket.

- 1.2 Buildings and other facilities may be named to memorialize or otherwise recognize substantial gifts and significant donors, individuals designated by donors, or individuals who have made exemplary or meritorious contributions to the System, component institution, or society. Such designation may be for a single gift, multiple gifts over time, or for a combination of gifts and other contributions.
- 1.3 Each component institution will develop guidelines for what constitutes substantial and significant donations to warrant a building name. These guidelines may vary from campus to campus and sometimes within a campus dependent upon the nature and purpose of the building or other factors. Institutional donor guidelines are subject to prior administrative review and approval procedures for inclusion in the institutional Handbook of Operating Procedures. Exceptions to any approved guidelines are subject to the same approval process.
- 1.4 The naming of buildings and other facilities in honor of campus administrative officials, faculty, or staff or elected or appointed public officials shall normally occur only after the campus employment or public service has concluded.
- 1.5 When the naming of buildings or other facilities is contemplated as part of a special private-fund development campaign, that campaign, the buildings to be named, and the associated private-fund contributions to be sought shall have prior approval of the appropriate Executive Vice Chancellor, the Chancellor, and the Board as required in Part One, Chapter VII, Section 2, Subdivision 2.44 of the Regents' Rules and Regulations. Recommendations by the Chancellor, appropriate Executive Vice Chancellor, and chief administrative officer regarding the naming of each building or facility included in a fund development campaign shall be submitted to the Board of Regents for approval as set forth in Subsection 1.1 above.

- 1.6 The Chancellor will arrange for the Board of Regents to be briefed periodically by component chief administrative officers and System administrative officials via the annual budget process or other appropriate forum regarding buildings to be named and the private-fund contributions to be sought. Unexpected naming opportunities not covered in such briefings should be reviewed with the Board via regular Board of Regents' briefings. No commitment regarding the naming of a building or facility is to be made prior to the briefings and approvals required by this Section.

#### BACKGROUND INFORMATION

After an extensive review of the policies for the naming of buildings and other facilities at numerous universities in the United States and a review of existing U. T. System institutional policies, it was decided that the current Section 1 of Chapter VIII, Part One of the Regents' Rules and Regulations should be deleted in its entirety and a new Section should be developed. Based on consultation with U. T. System officials, the U. T. System Process Review Committee, and the chief administrative officers, the proposed Section 1 was prepared.

2. U. T. System: Request for Approval to Combine Funding to Achieve the Least Cost Financing for Certain Construction Projects Related to the U. T. Austin Darrell K Royal - Texas Memorial Stadium Renovations.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Business Affairs that the U. T. Board of Regents combine the funding sources, previously approved by the Board, to achieve the least cost financing for the U. T. Austin Memorial Stadium - West Side Addition and Renovation, East Side Renovation and Sky Boxes, Neuhaus/Royal Athletic Center, Combined Track/Soccer Stadium with Parking Garage, and Lowering of the Existing Football Field.

## BACKGROUND INFORMATION

U. T. Austin has the following projects in the FY 1996-2001 Capital Improvement Program that relate to the Memorial Stadium Renovations: (1) West Side Addition and Renovation, (2) East Side Renovation and Sky Boxes, (3) Neuhaus/Royal Athletic Center, (4) Combined Track/Soccer Stadium with Parking Garage, and (5) Lowering of the Existing Football Field. The projects are to be funded with gifts, auxiliary enterprise fund balances, and revenue bond proceeds.

The revenue bonds to be used to finance the projects will be issued on a tax-exempt basis and a more expensive taxable basis when necessary. The taxable debt issuance authority is needed to fund additions and renovations that are to be used for nongovernmental purposes. Tax counsel has recommended that to minimize and delay the issuance of taxable debt, all of the projects be combined for funding purposes. The taxable debt issuance is minimized due to the ability under U. S. Treasury rules to issue tax-exempt debt for nongovernmental projects up to 10% of the total debt to be issued for a project. The taxable debt issuance will also be delayed and possibly eliminated by using gift funds, unless restricted to a specific project, for nonqualifying capital cost. At the time that preliminary plans and funding sources are approved by the U. T. Board of Regents, the funding sources will be combined into the single financing pool with the other identified Memorial Stadium projects. When all of the projects are aggregated, the total amount of debt to be issued will not exceed the amount approved by the U. T. Board of Regents when approving preliminary plans. In addition, the total funding for the project will not be exceeded. The Chancellor is delegated the authority to determine at the time of construction payments which funding source will result in the lowest cost of financing.

3. U. T. Arlington: Request for Authorization to Amend the FY 1996-2001 Capital Improvement Program; Reallocate and Appropriate PUF Bond Special Program Funds; and Authorize Projects and Submit the Newly Authorized Projects to the Coordinating Board for Approval.--

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs and President Witt that the U. T. Board of Regents:

- a. Amend the U. T. System FY 1996-2001 Capital Improvement Program (CIP) by:
1. Deleting Student Services/Registration Building project
  2. Adding Renovation of Finance and Administration Annex project
  3. Adding Roof Replacement project
- b. Reallocate PUF Bond Special Program funds from the deleted Student Services/Registration Building project to the following projects:
- |   |                |
|---|----------------|
| 1. Renovation of Finance and Administration Annex | \$ 750,375     |
| 2. Roof Replacement                               | 864,465        |
| 3. ADA Compliance                                 | 878,125        |
| 4. Asbestos Abatement                             | <u>363,130</u> |
| TOTAL   | \$2,856,095    |
- c. Authorize the Renovation of Finance and Administration Annex project to be completed under the management of U. T. Arlington Administration at a total project cost of \$895,375 to be funded from



\$750,375 in PUF Bond Special Program funds and \$145,000 in Plant Funds and submit the project to the Texas Higher Education Coordinating Board for approval

- d. Authorize the Roof Replacement project to be completed under the management of U. T. Arlington Administration at a total project cost of \$1,105,330 to be funded from \$864,465 in PUF Bond Special Program funds allocated in the 1997 Operating Budget and submit the project to the Texas Higher Education Coordinating Board for approval.

#### BACKGROUND INFORMATION

In February 1996, the U. T. System CIP was amended to include a Student Services/Registration Building project at an estimated project cost of \$2,856,095. Since that time, U. T. Arlington has acquired the Watson Building, to be named the Finance and Administration Annex. The building will provide space for all business service operations in one building. Movement of these functions from Davis Hall will release enough space to provide the student services that would have been incorporated into the new Student Services/Registration Building. By avoiding the construction of the new Student Services/Registration Building, the funds allocated for it can be used for other projects. The project to renovate the Finance and Administration Annex includes renovation of the building, modular furnishings for approximately 60 offices, and connection to the University's telephone and computer system.

The Roof Replacement project expands on renovation needs identified in the FY 1997 Library and Equipment, Repair and Rehabilitation request. Funds will be used to address roof replacement and waterproofing of the Science Building and the Activities Building.

Additional funds will also be allocated to ongoing Americans with Disabilities Act (ADA) compliance activities. The need for additional funds is a result of new interpretations of ADA regulations by the Texas Department of Licensing and

Regulations, an inflationary adjustment from the original project budget, and additional architectural and engineering fees related to finalizing plans and specifications. Work consists of alarm modifications, elevator modifications, and some additional sidewalk repairs.

The balance of the reallocated amount will be used to meet identified asbestos abatement requirements in several buildings, the utility tunnel distribution system, and the crawl space beneath a few older buildings. A campus-wide survey of asbestos problems will also be completed as a part of the ongoing project.

Approval of this item will amend the 1996-2001 Capital Improvement Program and the FY 1996-97 Capital Budget as noted above.

4. U. T. Austin - Renovation and Expansion of Neuhaus/Royal Athletic Center (Project No. 102-864): Request for Approval of Preliminary Plans; Authorization to Prepare Final Plans, Bidding, and Award of Contracts with Management by the Office of Facilities Planning and Construction; Submission of the Project to the Coordinating Board; and Appropriation Therefor.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, and President Berdahl that the U. T. Board of Regents:

- a. Approve preliminary plans for the Renovation and Expansion of Neuhaus/Royal Athletic Center at U. T. Austin at an estimated total project cost of \$9,200,000
- b. Authorize preparation of final plans, bidding, and award of all contracts within the authorized total project cost with management by the Office of Facilities Planning and Construction

- c. Authorize submission of the project to the Texas Higher Education Coordinating Board
- d. Appropriate \$9,200,000 from Gifts and Grants for total project funding.

#### BACKGROUND INFORMATION

The FY 1996-2001 Capital Improvement Program (CIP) was adopted by the U. T. Board of Regents in August 1995, and amended in February 1996, to include a project for the Renovation and Expansion of Neuhaus/Royal Athletic Center at U. T. Austin at an estimated preliminary project cost of \$8,000,000. In accordance with the revised Capital Improvement Program process approved by the U. T. Board of Regents in December 1994, the Chancellor appointed Heery International, Inc., Atlanta, Georgia, as Project Architect for the schematic design. Subsequently, the firm of O'Connell Robertson & Associates, Inc., Austin, Texas, has been appointed to complete the design process.

The proposed renovation and expansion of Neuhaus/Royal Athletic Center is a multi-use building program designed to expand and develop the existing facility for use by both the Women's and Men's Intercollegiate Athletic programs. The expanded center will accommodate growth in programmatic requirements which have occurred since the original structure was built. Specific program features include expansion of the Rehab training area to handle increased demand, expansion of the Equipment/Laundry area to handle a larger number of sports, expansion of the Conference/Study areas to accommodate increased team and academic study, expansion of the Weight Training area to handle new and expanded training techniques as well as increased use by Women's Athletics, addition of a clinic area to provide sports medicine adjacent to the team training, and relocation of the football coaching staff facilities from Belmont Hall.

The total cost for this project has increased from the preliminary estimates as a result of several factors. One factor was unforeseen costs associated with utility relocation. The expanded site will impinge on existing utilities which will have to be moved. Another unexpected cost was the difficulty in implementing the necessary partial demolition of the building necessary for the renovation and expansion while at the

same time maintaining the ability to use the facility. The scope of the project has also been increased as a result of the decision to expand Athletic Department offices to include areas for recruiting activities and move to the second floor of the Neuhaus/Royal Athletic Center. Expanded audiovisual space and additional emphasis on academic and counseling areas were the other factors contributing to the cost increase.

Approval of this item will amend the FY 1996-2001 Capital Improvement Program and the FY 1996-97 Capital Budget as noted above. Funding will be from Gifts and Grants from the Men's Athletic Department.

5. U. T. Austin - Darrell K Royal - Texas Memorial Stadium East Side Renovation and Sky Boxes (Project No. 102-862): Request for Approval of Preliminary Plans; Authorization to Prepare Final Plans, Bidding, and Award of Contracts with Management by the Office of Facilities Planning and Construction; Submission of the Project to the Coordinating Board; Appropriation Therefor; and Approval of Use of Revenue Financing System Parity Debt, Receipt of Certificate, and Finding of Fact with Regard to Financial Capacity.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, and President Berdahl that the U. T. Board of Regents:

- a. Approve preliminary plans for the Darrell K Royal - Texas Memorial Stadium East Side Renovation and Sky Boxes at U. T. Austin at an estimated total project cost of \$36,200,000
- b. Authorize preparation of final plans, bidding, and award of all contracts within the authorized total project cost with management by the Office of Facilities Planning and Construction

- c. Authorize submission of the project to the Texas Higher Education Coordinating Board
- d. Appropriate \$32,000,000 from Revenue Financing System Bond Proceeds and \$4,200,000 from Gifts and Grants.

In compliance with Section 5 of the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System, adopted by the U. T. Board of Regents on February 14, 1991, and amended on October 8, 1993, and upon delivery of the Certificate of an Authorized Representative as set out on Page FPCC - 16, the U. T. Board of Regents resolves that:

- a. Parity Debt shall be issued to pay the project's cost including any project costs paid prior to the issuance of such Parity Debt
- b. Sufficient funds will be available to meet the financial obligations of the U. T. System including sufficient Pledged Revenues as defined in the Master Resolution to satisfy the Annual Debt Service Requirements of the Financing System and to meet all financial obligations of the U. T. Board of Regents relating to the Financing System
- c. U. T. Austin, which is a "Member" as such term is used in the Master Resolution, possesses the financial capacity to satisfy its Direct Obligation as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of Parity Debt for Darrell K Royal - Texas Memorial Stadium East Side Renovation and Sky Boxes in the amount of \$32,000,000
- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

## BACKGROUND INFORMATION

The FY 1996-2001 Capital Improvement Program (CIP) was adopted by the U. T. Board of Regents in August 1995, and amended in February 1996, to include a project for Memorial Stadium East Side Renovation and Sky Boxes at U. T. Austin at an estimated preliminary total project cost of \$32,000,000. In accordance with the revised Capital Improvement Program process approved by the U. T. Board of Regents in December 1994, the Chancellor appointed Heery International, Inc., Atlanta, Georgia, as Project Architect.

Preliminary plans and specifications have been prepared for a project comprised of two fundamental elements: (1) repair and renovation of the East Grandstand and (2) construction of an upper deck and sky boxes.

The repair and renovation of the existing East Grandstand structure includes improved mechanical, electrical, and plumbing systems which support enhanced stadium facilities and services planned for the public concourses and circulation areas. Application of waterproofing material to the lower grandstand deck structure is also planned. The second element involves construction of two levels of sky boxes containing approximately 52 sixteen-seat suites and an upper deck which will provide approximately 5,200 additional seats.

The total cost for this project has increased from the preliminary estimates as a result of several factors. One factor was unforeseen costs associated with the relocation and upgrade of a major electrical and telecommunication duct bank. The relocation is necessary to provide the increased capacity required by the expanded grandstands and Neuhaus/Royal facilities. The scope of the project was also expanded to permit the creation of additional space for concessions and retail activity, club seating and associated club lounge areas, as well as the establishment of formal plaza space to recognize donors to the athletic program.

Approval of this item will amend the FY 1996-2001 Capital Improvement Program and the FY 1996-97 Capital Budget as noted above. Funding will be from Revenue Financing System Bond Proceeds amortized as detailed in the Capital Improvement Program as well as from Gifts and Grants from the Men's Athletic Department.

The project may require the issuance of both tax-exempt and taxable bonds. The use of taxable bonds arises due to the nature of the agreement with the concessionaire and the lease options associated with the luxury sky boxes. An initial review from the U. T. System's bond counsel suggests that these arrangements constitute nongovernmental activity and, therefore, preclude the issuance of tax-exempt bonds.

The forecast of income, expense, and debt service prepared in conjunction with this project assumes the issuance of \$25,200,000 in tax-exempt bonds, \$6,800,000 in taxable bonds and \$4,200,000 from gifts to fund construction. The debt is to be repaid from existing and additional receipts collected by the Department of Intercollegiate Athletics for Men. The additional receipts consist of ticket surcharges for football, basketball, and baseball events as well as lease agreement receipts from luxury sky boxes. Borrowing costs are assumed during the interim construction period at 5.0% for tax-exempt debt and 7.0% for taxable debt. Fixed rate borrowing costs are assumed at 7.0% for tax-exempt and 8.5% for taxable debt. Aggregate debt service for the Darrell K Royal - Texas Memorial Stadium projects, including this project, totals \$4,556,640 annually.

PARITY DEBT CERTIFICATE OF U. T. SYSTEM REPRESENTATIVE

I, the undersigned Assistant Vice Chancellor for Finance of The University of Texas System, a U. T. System representative under the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System adopted by the Board on February 14, 1991, and amended on October 8, 1993 (the "Master Resolution"), do hereby execute this certificate for the benefit of the U. T. Board of Regents pursuant to Section 5 (a) (ii) of the Master Resolution in connection with the authorization by the U. T. Board of Regents to issue "Parity Debt" pursuant to the Master Resolution to finance the construction cost of the Darrell K Royal-Texas Memorial Stadium East Side Renovation and Sky Boxes project at U. T. Austin, and do certify that to the best of my knowledge, the U. T. Board of Regents is in compliance with all covenants contained in the Master Resolution, First Supplemental Resolution Establishing an Interim Financing Program, the Second Supplemental Resolution, the Third Supplemental Resolution, and the Fourth Supplemental Resolution and is not in default of any of the terms, provisions, and conditions in said Master Resolution, First Supplemental Resolution, Second Supplemental Resolution, Third Supplemental Resolution, and Fourth Supplemental Resolution as amended.

EXECUTED this 14<sup>th</sup> day of November, 1996

John A. Roan  
Assistant Vice Chancellor for Finance



6. U. T. Pan American - Library Addition (Project No. 901-871): Request for Approval of Preliminary Plans; Authorize Preparation of Final Plans, Bidding, and Award of Contracts with Management by the Office of Facilities Planning and Construction; Submission of the Project to the Coordinating Board; and Appropriation Therefor.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, and President Nevarez that the U. T. Board of Regents:

- a. Approve preliminary plans for the Library Addition at U. T. Pan American at an estimated total project cost of \$7,400,000
- b. Authorize preparation of final plans, bidding, and award of all contracts within the authorized total project cost with management by the Office of Facilities Planning and Construction
- c. Authorize submission of the project to the Texas Higher Education Coordinating Board
- d. Appropriate \$5,000,000 from Unexpended Plant Funds and \$2,400,000 from Higher Education Assistance Funds for total project funding of \$7,400,000.

#### BACKGROUND INFORMATION

The original library facility was opened in the 1977-78 academic year and has undergone only minor internal modification since that time. This project will construct and furnish additional space and provide for limited renovation to the existing building.

The addition to the library will provide new space to house the library's rapidly growing collection of circulating monographs, library technical services functions, study areas for library users, and two classrooms to be utilized for teaching library patrons about the use of information.

Renovations to space in the existing library building released by the relocation of the functions noted above will permit the expansion of periodicals, microforms, special collections, and other important library formats. These renovations will also address Americans with Disabilities Act requirements.

This project is included in the FY 1996-2001 Capital Improvement Program and the FY 1996-97 Capital Budget at a total project cost of \$7,400,000. Funding will be from Unexpended Plant Funds and Higher Education Assistance Funds.

7. U. T. San Antonio: Request for Authorization to Amend the FY 1996-2001 Capital Improvement Program to Change the Title of the Renovation - Science Building Project to Campus Renovations Project and Increase Total Project Cost; Reallocate Funds from the Power Distribution - West Campus Project to the Downtown Campus; Reallocate Funds from the ITC Thermal Energy Plant Project to the Campus Renovations Project; Authorize the Campus Renovations Project; and Appropriation Therefor.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, and President Kirkpatrick that the U. T. Board of Regents:

- a. Amend the FY 1996-2001 Capital Improvement Program to change the title of the Renovation - Science Building project to Campus Renovations project and increase the total project cost from \$1,162,000 to \$2,031,000

- b. Reallocate \$767,000 of Permanent University Fund Bond Proceeds - Special Program from the Power Distribution - West Campus project to the Downtown Building - Phase I project
- c. Reallocate \$1,400,000 of Permanent University Fund Bond Proceeds - Special Program from the Power Distribution - West Campus project to the Downtown Building - Phase II project
- d. Reallocate \$869,000 of Permanent University Fund Bond Proceeds - Special Program from the ITC Thermal Energy Plant project to the Campus Renovations project
- e. Authorize the Campus Renovations project and appropriate \$2,031,000 in Permanent University Fund Bond Proceeds - Special Program for total project funding with \$1,162,000 provided by the original Renovation - Science Building project and \$869,000 reallocated from the ITC Thermal Energy Plant project.

#### BACKGROUND INFORMATION

The additional funds for the Downtown Campus buildings will provide for upgraded student computing facilities and support U. T. San Antonio's goal of making information technology increasingly available to all students, faculty, and staff. Specific items will include integrated teaching classrooms, distance learning facilities, student computer labs, security systems, integrated teaching stations, as well as lab facilities for science, science education, and foreign languages.

The Campus Renovations project will consist of four to five small projects designed to renovate space in various existing buildings and will increase the space available for classroom, lab, and research activities. Included in these projects is the renovation of the Science Building as provided in the current Capital Improvement Program. The cost of the individual renovation projects will be less than \$600,000 and each will be managed by U. T. San Antonio.

The Power Distribution - West Campus and ITC Thermal Energy Plant projects will be completed by U. T. San Antonio at a later date using different fund sources. These projects are undergoing review as to how they will best fit into the overall institutional strategic plan and will be returned to the U. T. Board of Regents for the necessary approval at the appropriate time.

Approval of this item will amend the FY 1996-2001 Capital Improvement Program as noted above.

8. U. T. San Antonio - Downtown Building - Phase I (Project No. 401-818) and Downtown Building - Phase II (Project No. 401-855): Request for Approval to Name Buildings (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.1, Naming of Buildings) and Approval of Plaque Inscriptions.--

#### RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, and President Kirkpatrick that the U. T. Board of Regents:

- a. Approve redesignation of the U. T. San Antonio Downtown Building - Phase I as the UTSA Downtown Campus - Frio Street Building pursuant to the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.1 relating to naming of buildings
- b. Approve redesignation of the U. T. San Antonio Downtown Building - Phase II as the UTSA Downtown Campus - Buena Vista Street Building pursuant to the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.1 relating to naming of buildings

- c. Approve the inscriptions set out below for a plaque to be placed on each of the buildings in keeping with the standard pattern approved by the U. T. Board of Regents in June 1979:

UTSA DOWNTOWN CAMPUS  
FRIO STREET BUILDING  
1996

BOARD OF REGENTS

Bernard Rapoport Chairman	William H. Cunningham Chancellor, The University of Texas System
Thomas O. Hicks Vice-Chairman	Samuel A. Kirkpatrick President, The University of Texas at San Antonio
Martha E. Smiley Vice-Chairman	
Linnet F. Deily	
Donald L. Evans	Humberto Saldana & Associates, Inc. Project Architect
Zan W. Holmes, Jr.	SpawGlass Contractors, Inc. Contractor
Lowell H. Lebermann, Jr.	
Tom Loeffler	
Ellen Clarke Temple	

UTSA DOWNTOWN CAMPUS  
BUENA VISTA STREET BUILDING  
1996

BOARD OF REGENTS

Bernard Rapoport Chairman	William H. Cunningham Chancellor, The University of Texas System
Thomas O. Hicks Vice-Chairman	Samuel A. Kirkpatrick President, The University of Texas at San Antonio
Martha E. Smiley Vice-Chairman	
Linnet F. Deily	
Donald L. Evans	Saldana & Associates, Inc. Kell Munoz Wigodsky, Inc. A Joint Venture, Project Architect
Zan W. Holmes, Jr.	Contractor to be identified after bid award
Lowell H. Lebermann, Jr.	
Tom Loeffler	
Ellen Clarke Temple	

## BACKGROUND INFORMATION

During the construction of the U. T. San Antonio Downtown Campus, the two building projects have been identified simply as Phase I and Phase II of the Downtown Campus. As the work nears completion and the community begins to identify with the Downtown Campus, it is important that each structure have an official name by which it can be identified in various publications, correspondence, and other materials.

The University proposes to name the buildings by referring to the streets which they face. By doing so, their location will be quickly recognized by people in the community. The names also provide a connection to this historic area of San Antonio.

9. U. T. M.D. Anderson Cancer Center - Combined Backfill Renovations - Phase I, Stage 1, and Nellie Connally Breast Center: Request for Project Authorization; Authorize Preparation of Final Plans, Bidding, and Award of Contracts with Management by U. T. M.D. Anderson Cancer Center Administration and the Office of Facilities Planning and Construction; Submission of the Project to the Coordinating Board; and Appropriation Therefor.--

## RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs, the Executive Vice Chancellor for Business Affairs, and President Mendelsohn that the U. T. Board of Regents:

- a. Authorize a project titled Combined Backfill Renovations - Phase I, Stage 1, at the U. T. M.D. Anderson Cancer Center at a total project cost of \$13,588,000, which includes the Nellie Connally Breast Center at an estimated project cost of \$1,293,000

- b. Authorize preparation of final plans, bidding, and award of all contracts associated with the Combined Backfill Renovations - Phase I, Stage 1, with management of projects below \$600,000 by the U. T. M.D. Anderson Cancer Center Administration and management of projects exceeding \$600,000, as well as the overall project budget and contracting process, by the Office of Facilities Planning and Construction
- c. Authorize preparation of final plans, bidding, and award of all contracts associated with the Nellie Connally Breast Center with management by the U. T. M.D. Anderson Cancer Center Administration
- d. Authorize submission of these projects to the Texas Higher Education Coordinating Board
- e. Appropriate \$13,588,000 of Educational and General Funds to the Combined Backfill Renovations - Phase I, Stage 1, project for total project funding, which includes the Nellie Connally Breast Center at an estimated cost of \$1,293,000.

#### BACKGROUND INFORMATION

The Combined Backfill Renovations - Phase I, Stage 1, project at the U. T. M.D. Anderson Cancer Center consists of renovation of spaces in existing buildings that have been or will be vacated as a result of previous occupants moving into the Clinic Services Facility of the Bertner Patient Care Tower. The renovations included in Phase I are those that will have a high impact on patient-care quality and capacity or will directly support the new construction designed to improve support service efficiencies.

The specific elements of the first phase and their benefits are:

Completion of the Majority of the Disease Site Clinics. The Disease Site Clinics are a new approach to delivering ambulatory care at U. T. M.D. Anderson Cancer Center. Each disease site will be able to provide for virtually all of a patient's needs in one location as opposed to in many locations or stations as in the current approach. This concept should improve patient satisfaction and the multidisciplinary nature could raise the already high quality level of treatment. Further, because of the inherent consolidations in this approach, significant operating economies will be achieved.

Completion of the Ambulatory Care Core Areas. The core areas were identified and programmed as a way to allow many of the clinics to share services and eliminate the duplication of support functions. Development of the care areas will allow the clinics to function properly.

Completion of Medical Records. The Medical Records Department is currently fragmented in more than four locations. This project will allow the department to be consolidated, thus promoting operating efficiencies.

Development of New Patient Services. This service unit is a consolidation of two separate departments. Redesigning their space will allow the U. T. M.D. Anderson Cancer Center to better serve and improve the management of services for all outpatients.

Development of Operating Room (OR) Support. The new Alkek Patient Care Tower includes new operating rooms but it does not include all of the necessary OR support (e.g., staff lockers and change areas, departmental offices, patient waiting room). These functions were programmed to be in existing buildings. This project will complete the OR support.

The project will involve an estimated 154,808 gross square feet and will take place within four existing buildings: Clark Clinic, Anderson East and West, the Anderson Center, and Gimbel. The work has an estimated total project cost of \$13,588,000, approximately \$88 per square foot. This project will be completed in five phases beginning November 1996 and ending September 1998.



While the nature of this project necessitates accomplishment through several design and construction contracts managed both by the U. T. M.D. Anderson Cancer Center Administration and the Office of Facilities Planning and Construction, state and Regental requirements for procurement, professional services, and construction delivery will be maintained. The Office of Facilities Planning and Construction is assigned the responsibility for overseeing compliance with applicable statutes and regulations as well as management of the overall project budget.

Development of the Nellie Connally Breast Center. The Nellie Connally Breast Center project consists of renovating and upgrading the existing outpatient clinic space within the Clark Clinic building. The scope of the project consists of reconfiguring 20,000 square feet of space to create exam and consultation rooms, waiting areas, conference and teaching space, as well as offices and staff areas to support the operation of the Nellie Connally Breast Center.

Both of these projects are included in the FY 1996-2001 Capital Improvement Program and the FY 1996-1997 Capital Budget as a part of the Combined Backfill Renovations - Phase I project. This project has a preliminary total project cost of \$23,500,000 to be funded from Educational and General Funds.

## Executive Session of the Board

BOARD OF REGENTS  
EXECUTIVE SESSION  
Pursuant to Texas Government Code  
Chapter 551, Sections 551.071, 551.072, 551.073, and 551.074

Date: November 13, 1996  
Time: 3:00 p.m.  
Place: Cambridge Room  
Le Meridien Hotel  
650 North Pearl Street  
Dallas, Texas

1. Consultation with Attorney Regarding Pending and/or Contemplated Litigation or Settlement Offers - Section 551.071
  - a. U. T. Southwestern Medical Center - Dallas: Proposed Settlement of Medical Liability Litigation
  - b. U. T. Health Science Center - Houston: Proposed Settlement of Medical Liability Litigation
  - c. U. T. M.D. Anderson Cancer Center: Proposed Settlement of Medical Liability Claim
  
2. Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property - Section 551.072
  - a. U. T. Dallas: Consideration of the Report of the Special Committee on UTD Lands Regarding the Disposition of Surplus Real Property Located in Dallas, Richardson, and Plano, Texas, and Authorization to Implement the Recommendations of the Committee

- b. U. T. Southwestern Medical Center - Dallas: Request for Authorization to Purchase Two Tracts of Land Out of Exchange Park in Dallas, Dallas County, Texas; Authorization to Submit the Purchases to the Coordinating Board for Approval; and Authorization to Execute All Documents Related Thereto
  - c. U. T. Medical Branch - Galveston: Request for Authorization to Purchase Real Property Located in Block 676 East of the 1700 Strand Building and in Blocks 426 and 427 South of the Rebecca Sealy Hospital in Galveston, Galveston County, Texas, and Authorization to Execute All Documents Related Thereto
3. Negotiated Contracts for Prospective Gifts or Donations - Section 551.073
4. Personnel Matters Relating to Appointment, Employment, Evaluation, Assignment, Duties, Discipline, or Dismissal of Officers or Employees - Section 551.074
- U. T. Permian Basin: Consideration of Recommendation of Hearing Tribunal Regarding Termination of Tenured Faculty Member