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BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM  
PERMANENT UNIVERSITY FUND REFUNDING BONDS  
SERIES 2002A

**FORWARD DELIVERY CONTRACT**

\_\_\_\_\_, 2001

The Board of Regents of  
The University of Texas System  
c/o Director of Finance  
221 West 6th Street, Suite 1700  
Austin, Texas 78701

Ladies and Gentlemen:

The undersigned (hereinafter sometimes called the "Underwriter"), offers to enter into the following agreement (the "Purchase Contract") with the Board of Regents (hereinafter called the "Board" or the "Issuer") of The University of Texas System ((hereinafter called the "System"), which, upon the Board's written acceptance of this offer, as evidenced by the execution of this Purchase Contract by the duly authorized Authorized Representative of the Board (the "Authorized Representative," as defined as in the Resolution, as hereinafter defined), will be binding upon the Board and upon the Underwriter. Capitalized terms used herein and not otherwise defined shall have the respective meanings given to them in the Resolution or the Official Statement (as hereinafter defined).

**1. Purchase and Sale of the Bonds.** (a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriter hereby agrees to purchase from the Board, and the Board hereby agrees to sell and deliver to the Underwriter all (but not less than all) of the \$\_\_\_\_\_ aggregate principal amount of Board of Regents of The University of Texas System Permanent University Fund Refunding Bonds, Series 2002A (the "Bonds").

(b) The Bonds shall be as described in, and shall be issued and secured under the provisions of, a resolution adopted by the Board on February 15, 2001 (the "Resolution"), authorizing the issuance of the Bonds. The Bonds shall be dated, shall be in the aggregate principal amount, shall have the maturities, shall bear interest from the dates and at the rates, and

shall have the other characteristics and terms as set forth in Exhibit A hereto and in the Form of Bond set forth in the Resolution.

(c) The purchase price for the Bonds (the "Purchase Price") shall be \$ \_\_\_\_\_ (representing the par amount of the Bonds of \$ \_\_\_\_\_, less an underwriting discount of \$ \_\_\_\_\_ [plus] [less] a net original issue [premium] [discount:] on the Bonds of \$ \_\_\_\_\_ together with interest accrued on the Bonds, if any, from the date of the Bonds to the Bond Delivery Closing Date (as defined in Section 6 hereof).

(d) It shall be a condition to the Board's obligations to sell and deliver the Bonds to the Underwriter and to the Underwriter's obligations to purchase, to accept delivery of and to pay for the Bonds that the entire principal amount of the Bonds shall be issued, sold and delivered by the Board and purchased, accepted and paid for by the Underwriter at the Bond Delivery Closing (as defined in Section 6 hereof). The Underwriter agrees to make a bona fide public offering of all of the Bonds prior to the Escrow Closing (as defined in Section 6 hereof) at prices not in excess of the initial offering prices or yields set forth on the cover page of the Official Statement, plus interest accrued thereon, if any, from the date of the Bonds to the Bond Delivery Closing Date and to provide certification at, or prior to, the Escrow Closing, in form and substance satisfactory to Bond Counsel (as hereinafter defined) and an Authorized Representative, as to the prices and yields at which a substantial portion of the Bonds (including each maturity) were sold to the public by the Underwriter to enable the Board to determine the "Issue Price" of the Bonds for purposes of Section 148 of the Code (as hereinafter defined),

**2. Liquidated Damages.** (a) If the Underwriter fails (other than for a reason permitted in Section 9) to accept and pay for the Bonds on the Bond Delivery Closing Date as provided herein, the Underwriter shall pay to the Board as full liquidated damages and not as a penalty, an amount equal to \$ \_\_\_\_\_ (which amount the Authorized Representative has determined to be equal to the net present value savings that would be realized by the Board if the Bonds were issued as contemplated hereby, plus expenses paid by the Board in connection with the transactions contemplated hereby) and payment of that sum by the Underwriter to the Board shall constitute a full release and discharge of all claims and damages for such failure and for any and all such defaults hereunder on the part of the Underwriter. The Board and the Underwriter mutually acknowledge and confirm that it would be extremely difficult, if not impossible, to determine the exact amount of damages that would be suffered by the Board as a result of a failure of the Underwriter (other than for a reason permitted hereunder) to accept and pay for the Bonds on the Bonds Delivery Closing Date as provided herein and that the liquidated damages provided herein are a reasonable good faith estimate of the actual damages that would be suffered and are not a penalty.

(b) The Underwriter may satisfy its obligations under this Purchase Contract by payment to the Board on the Bond Delivery Closing Date of an amount equal to \$ \_\_\_\_\_ (which amount the Authorized Representative has determined to be equal to the net present value savings that would be realized by the Board if the Bonds were issued as contemplated hereby, plus expenses paid by the Board in connection with the transactions contemplated hereby).

3. **Official Statement; Amendment and Rule 15c2-12.** (a) The Preliminary Official Statement of the Board dated \_\_\_\_\_, 2001, relating to the Bonds, including the cover page and appendices thereto (the "Preliminary Official Statement"), as amended to conform to the terms of this Purchase Contract and with such changes and amendments as have been mutually agreed to by the Board and the Underwriter to the date hereof, is attached hereto as Exhibit B and is hereinafter referred to as the "Official Statement." Within seven (7) Business Days after the execution of this Purchase Contract, the Board shall deliver to the Underwriter copies of the final form of the Official Statement in the form attached hereto as Exhibit B (with only such changes therein as shall have been approved by the Underwriter in such quantities as the Underwriter may reasonably request in order for the Underwriter to comply with the Rules of the Municipal Securities Rulemaking Board (the "MSRB") and Rule 15c2-12(b)(4) under the Securities Exchange Act of 1934, as amended (the "1934 Act"). The Board hereby ratifies and consents to the use of the Preliminary Official Statement by the Underwriter on or before the date hereof in connection with the offering of the Bonds and hereby authorizes the use by the Underwriter of the Resolution, the Official Statement, and any amendments thereof or supplements thereto pursuant to this Section, and the information contained in any of the foregoing, in connection with the offering and sale of the Bonds.

(b) If, after the date of this Purchase Contract and until the Escrow Closing Date (as defined in Section 6 hereof), any event shall occur, or circumstances shall exist or its occurrence or existence becomes known, that might or would cause the Official Statement, as then amended or supplemented, to contain any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, the Board shall notify the Underwriter thereof, and if, in the reasonable opinion of the Underwriter or counsel for the Underwriter, such event requires an amendment of or a supplement to the Official Statement, the Board will prepare and furnish to the Underwriter either an amendment of or a supplement to the Official Statement so that the Official Statement, as so amended or supplemented, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances when the Official Statement is so amended or supplemented, not misleading. The Board also agrees that it will furnish, before the Official Statement is amended or supplemented, a copy of each proposed amendment or supplement to the Underwriter, who shall have the right to approve such amendment or supplement, which approval shall not be withheld unreasonably.

(c) The Underwriter agrees to: (i) promptly file a copy of the final Official Statement (the "Final Official Statement" or "Official Statement") with a "nationally recognized municipal securities information repository" within the meaning of Securities and Exchange Commission Rule 15c2-12 (a "Repository" and "Rule 15c2-12") upon receipt of the final Official Statement (with any required forms) by delivering such Official Statement to the MSRB or its designee pursuant to MSRB Rule C-36 within one (1) Business Day of receipt of the final Official Statement; and (ii) to take any and all other actions necessary to comply with applicable Securities and Exchange Commission and MSRB rules governing the offering, sale and delivery of the Bonds to ultimate purchasers. The Underwriter shall notify the Board of the date on which the Final Official Statement is filed with a Repository.

(d) The Resolution contains the Continuing Disclosure Undertaking of the Board that provides that prior to the Bond Delivery Closing Date, the Board shall file in a timely fashion, in accordance with applicable federal securities law: (a) annually required information in accordance with the Continuing Disclosure Undertaking; and (b) notice of the occurrence of any of the material events listed in subsection (b)(5)(i)(C) of Rule 15c2-12 but, prior to the Bond Delivery Closing Date, solely as such events would apply to any outstanding bonds secured by the Interest of the System in the Available University Fund if the Continuing Disclosure Undertaking was applicable to such bonds. The Underwriter acknowledges that the Continuing Disclosure Undertaking will enable the Underwriter to comply with subsection (b)(5) of Securities and Exchange Commission Rule 15c2-12 ("Rule 15c2-12"). The Board hereby agrees that, if between the Escrow Closing Date and the Bond Delivery Closing Date there shall have been a change in subsection (b)(S) of Rule 15c2-12 which establishes requirements applicable to obligated persons more stringent than those in effect on the Escrow Closing Date as a condition of the Underwriter's not being prohibited from purchasing or selling the Bonds (a "Modified Rule"), the Board will comply with reasonable requests by the Underwriter to amend the Continuing Disclosure Undertaking such that it will meet the requirements of the Modified Rule as in effect on the Bond Delivery Closing Date.

(e) Unless otherwise notified in writing by the Underwriter by the Escrow Closing Date, the Board can assume that the "end of the underwriting period" for purposes of Rule 15c2-12 shall be the Escrow Closing Date. In the event such notice is so given in writing by the Underwriter, the Underwriter agrees to notify the Board in writing following the occurrence of the "end of the underwriting period" as defined in Rule 15c2-12. The "end of the underwriting period" as used in this Purchase Contract shall mean the Escrow Closing Date or such later date as to which notice is given by the Underwriter in accordance with the preceding sentence.

(f) Prior to or concurrently with the acceptance hereof by the Board, the Board has delivered to the Underwriter one certified copy of the Resolution.

4. **Use of Documents; Certain Covenants and Agreements of the Board.** The Board covenants and agrees:

(a) To apply the proceeds from the sale of the Bonds as provided in and subject to all of the terms and provisions of the Resolution authorizing their issuance, and not to take or omit to take any action which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds under the Internal Revenue Code of 1986, as amended (the "Code").

(b) If, after the date of this Purchase Contract to and including the date the Underwriter is no longer required pursuant to Rule 15c2-12 to provide the Official Statement to potential customers requesting an Official Statement (such date being the earlier of (A) 90 days from the end of the underwriting period and (B) the time when the Official Statement is available to any person from a Repository, but in no case less than 25 days after the end of the

underwriting period), any event shall occur as a result of which it is necessary to amend or supplement the Official Statement in order to make the statements therein, in the light of the circumstances when the Official Statement is delivered to a purchaser, not misleading, or if it is necessary to amend or supplement the Official Statement to comply with applicable law, to notify the Underwriter (and for the purposes of this clause (b) to provide the Underwriter with such information as they may from time to time request), and to cooperate with the Underwriter in the preparation of either amendments or supplements to the Official Statement so that the statements in the Official Statement as so amended and supplemented will not, in light of the circumstances when the Official Statement is delivered to a purchaser, be misleading or so that the Official Statement will comply with applicable law.

(c) To furnish such information and execute such instruments and take such action in cooperation with the Underwriter as the Underwriter may reasonably request (A) to (y) qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions in the United States as the Underwriter may designate and (z) determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions and (B) to continue such qualifications in effect so long as required for the distribution of the Bonds; provided, however, that the Board will not be required to qualify as a foreign corporation or otherwise to do business or to file any general or special consents to service of process under the laws of any state. The Board hereby consents to the use of the Resolution, the Preliminary Official Statement, the Official Statement and this Purchase Contract (and drafts of the Preliminary Official Statement and this Purchase Contract prior to the availability of such documents in final form) by the Underwriter in obtaining such qualifications and determining such eligibilities.

(d) To advise the Underwriter immediately of receipt by the Board of any notification with respect to the suspension of the qualification of the Bonds for sale in any jurisdiction or the initiation or threat of any proceeding for that purpose.

(e) To not issue any additional bonds, notes or other obligations for borrowed money payable in whole or in part from the Interest of the System in the Available University Fund (other than as contemplated in the Resolution or the Official Statement) between the date hereof and the Escrow Closing Date without the prior written consent of the Underwriter.

5. **Representations and Warranties of the Hoard.** The Board hereby represents, warrants and agrees, as of the date hereof, that:

(a) The System is duly organized and existing as an agency of the State of Texas, and the Board is the duly appointed governing body of the System. The Board and the System have the powers and authority, among others, set forth in Article 7, Section 18 of the Constitution of the State of Texas and the Texas Education Code, to adopt the Resolution and to issue the Bonds;

(b) The Board has full legal right, power and authority (i) to enter into this Purchase Contract and (ii) to adopt the Resolution, to pledge the Interest of the System in the

will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(h) If the Official Statement is supplemented or amended pursuant to Paragraph 3(b), at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the period up to and including the date the Underwriter is no longer required pursuant to Rule 15c2-12 to provide the Official Statement 'to potential customers requesting an Official Statement, the Official Statement as so supplemented or amended will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(i) The proceeds of the sale of the Bonds shall be applied as described in the Official Statement under the caption "SOURCES AND USES OF FUNDS."

(j) The financial statements of, and other financial information regarding, the Permanent University Fund and the Interest of the System in the Available University Fund in the Official Statement fairly present the financial position and results of the Permanent University Fund and the Interest of the System in the Available University Fund as of the dates and for the periods therein set forth. Subsequent to the respective dates as of which information is given in the Official Statement, up to and including the date hereof, there has been no material adverse change in the financial position, results of operations or condition, financial or otherwise, of the Permanent University Fund or the Interest of the System in the Available University Fund;

(k) Except as described in the Official Statement, there is not any action, suit, investigation, inquiry or proceeding (whether or not purportedly on behalf of the Board) pending or, to the best knowledge of the Vice Chancellor and General Counsel of the System, threatened, or that could be reasonably asserted, against the Board in any court, governmental agency, public board or body or before any arbitrator or any government board or body, (i) affecting the System's existence as a state agency or the Board's appointment as its governing body or its powers, or the title of its officers to their respective offices, or (ii) seeking to restrain or enjoin the issuance or delivery of the Bonds, or the application of the Interest of the System in the Available University Fund to pay the principal of and interest on the Bonds, or (iii) in any way contesting or affecting the tax-exempt status of the interest on the Bonds or the Refunded Bonds, or (iv) in any way contesting or affecting the validity or enforceability of the Bonds, the Resolution, this Purchase Contract, the Refunded Bonds, the Escrow Agreement or the Prior Resolutions, or (v) contesting in any manner the completeness, accuracy, or fairness of the Preliminary Official Statement or the Official Statement, or (vi) any legal authority of the Board pertaining to the Bonds, the Resolution, the Escrow Agreement or this Purchase Contract, or (vii) which might in any material respect adversely affect the transactions contemplated herein.

(l) Any certificate or copy of any certificate signed by an Authorized Representative and delivered to the Underwriter pursuant hereto or in connection herewith shall be deemed a representation by the Board to the Underwriter as to the truth of the statements therein made.

(m) The Authorized Representative is authorized to act on behalf of the Board, for the purpose of selling the Bonds to the Underwriter, fixing the terms of the Bonds and taking the other actions provided for herein and in the Resolution, and such actions by the Authorized Representative shall be deemed to be actions by the Board.

(n) The Authorized Representative has been duly authorized to act on behalf of the Board for the purpose of taking the actions provided for herein.

(o) The Board has not failed to comply in any material respect with any continuing disclosure agreement made by it in accordance with Rule 15c2-12.

(p) The Constitutional Provision creates a valid lien on the Interest of the System in the Available University Fund. and the Bonds, when validly executed, authenticated, certified and delivered in accordance with the Constitutional Provision and the Resolution and sold to the Underwriter as provided herein will be validly issued and outstanding obligations of the Board entitled to the benefits of the Constitutional Provision and the Resolution.

**6. Escrow Closing and Bond Delivery Closing.** (a) On March \_\_, 2001 or on such other date as may be agreed upon by the Board and the Underwriter, (such date as finally determined is referred to herein as the "Escrow Closing Date"), the certificates, opinions and other documents required pursuant to Section 7(f) hereof shall be executed and delivered at the offices of Vinson & Elkins, L.L.P. in Austin, Texas. or such other place as shall have been mutually agreed upon by the Board and the Underwriter. Such execution and delivery of documents into escrow is herein called the "Escrow Closing." Following the Escrow Closing, the Board shall be obligated to deliver and the Underwriter shall be obligated to accept delivery of and pay for the Bonds as provided in Section 8(b) hereof on the Bond Delivery Closing Date.

(b) At 9:00 a.m., local time. on April 2, 2002 or at such other time or on such other date as shall have been mutually agreed upon by the Board and the Underwriter (such date as finally determined is referred to herein as the "Bond Delivery Closing Date"), the certificates, opinions and other documents required pursuant to Section 8(b) hereof shall be executed and delivered at the offices of Vinson & Elkins, L.L.P. in Austin, Texas, or such other place as shall have been mutually agreed upon by the Board and the Underwriter. Prior to the Bond Delivery Closing (as defined below), the Bonds, duly executed and authenticated, shall have been delivered at the office of The Depository Trust Company ("DTC") in New York, New York, or at such other place as the Board and the Underwriter may mutually agree upon. The Underwriter shall accept the delivery of such Bonds and pay the Purchase Price of the Bonds (as set forth in Section 1 hereof) by the delivery to the Board of immediately available federal funds payable to the order of the Board in an aggregate amount equal to such Purchase Price, less the amount of any drawing described in Section 2(b) hereof. The deliveries of such Bonds and such funds are referred to herein as the "Bond Delivery Closing,," The Bonds shall be issued in form to satisfy the requirements of The Depository Trust Company book entry system. The Bonds shall be made available to the Underwriter for purposes of inspection at any time not less than one (1) Business Day prior to the Bond Delivery Closing Date.

**7. Conditions of Escrow Closing and Termination of Underwriter's Obligation.**

The obligation of the Underwriter to accept delivery of and pay for the Bonds at the Bond Delivery Closing shall be subject to the performance by the Board, prior to or concurrently with the Escrow Closing, of their respective obligations to be performed on or prior to such date under this Purchase Contract and to the accuracy of the representations and warranties of the Board contained in this Purchase Contract as of the date hereof and as of the Escrow Closing Date, as if made on and as of the Escrow Closing Date (it being specifically understood: (i) that for purposes of satisfying this condition and the conditions in Section 7(f) hereof, other than clause (B) of Section 7(f)(8), the term "Official Statement" shall include any amendments thereof or supplements thereto prior to the Escrow Closing Date pursuant to Section 3(b) hereof; and (ii) the Underwriter shall be estopped from asserting, subsequent to the Escrow Closing Date, the failure by the Board to satisfy any condition of the Escrow Closing if the Underwriter delivers to the Board on the Escrow Closing Date a certificate acknowledging or waiving performance of such condition, which waiver may, in the absolute discretion of the Underwriter, be expressly conditioned upon subsequent performance). Accordingly, the Underwriter's obligations under this Purchase Contract to purchase, to accept delivery of and to pay for the Bonds shall be conditioned upon the performance by the Board of its obligations to be performed hereunder and under such documents and instruments at or prior to the Escrow Closing, and shall also be subject to the following additional conditions:

(a) The representations and warranties of the Board contained herein shall be true, complete and correct on the date hereof and on and as of the Escrow Closing Date, as if made on the Escrow Closing Date.

(b) At the time of the Escrow Closing, the Resolution shall be in full force and effect and shall not have been amended, modified or supplemented, and the Official Statement shall not have been supplemented or amended, except in any such case as may have been agreed to by the Underwriter.

(c) At the time of the Escrow Closing, all official action of the Board relating to this Purchase Contract, the Bonds, the Resolution and the Escrow Agreement shall be in full force and effect and shall not have been amended, modified or supplemented; and the Underwriter shall have received, in appropriate form, evidence thereof.

(d) At the time of the Escrow Closing, there shall not have occurred any change in the condition, financial or otherwise, or in the earnings or operations of the Board, from that set forth in the Official Statement that, in the judgment of the Underwriter, is material and adverse and that makes it, in the judgment of the Underwriter, impracticable to market the Bonds on the terms and in the manner contemplated in the Official Statement, and the Board shall not have failed to pay principal or interest when due on any of its outstanding obligations for borrowed money or otherwise be in default on any such obligation, and there does not exist any event which, with the giving of notice, would constitute a default.

(e) The Underwriter shall not have elected to cancel the Underwriter's; obligation hereunder to purchase the Bonds, which election may be made by notice to the Board, upon the happening of any of the following between the date hereof and the Escrow Closing, Date:

(1) legislation (including any amendment thereto) shall have been introduced in or adopted by either House of the Congress of the United States or recommended to the Congress or otherwise endorsed for passage by any legislative committee with jurisdiction thereof, or a decision shall have been rendered by a court established under Article III of the Constitution of the United States or by the United States Tax Court, or an order, tiling, ruling or regulation shall have been issued or proposed by or on behalf of the Treasury Department of the United States or the Internal Revenue Service, the effect of which. in the opinion of Bond Counsel, in any such case would be to impose, directly or indirectly, federal income taxation upon interest received on obligations of the general character of the Bonds or upon income of the general character to be derived by the Board, other than as imposed on the Bonds and income therefrom under the federal tax laws in effect on the date hereof. in such a manner as in the judgment of the Underwriter would materially adversely affect the market price of the Bonds;

(2) there shall occur any event which, in the reasonable judgment of the Underwriter, either (A) makes untrue or incorrect in any material respect any statement or information contained in the Preliminary Official Statement and the Final Official Statement (other than any statement or information provided by the Underwriter), or (B) is not reflected in the Preliminary Official Statement or the Final Official Statement but should be reflected therein in order to make the statements and information contained therein not misleading in any material respect and. in either such event, the Board refuses to permit the Preliminary Official Statement or the Final Official Statement to be supplemented to correct or supply such statement or information, or the effect of the Preliminary Official Statement of the Final Official Statement as so corrected or supplemented is, in the reasonable judgment of the Underwriter, to materially adversely affect the market for the Bonds or the sale of the Bonds by the Underwriter, at the contemplated offering price or prices (or yield or yields);

(3) legislation shall have been enacted by the federal government or the State of Texas, a decision of any federal or State of Texas court shall have been made, or a ruling or regulation (proposed, temporary or final) of the Securities and Exchange Commission or other governmental agency shall have been made or issued that, in the opinion of Underwriter' Counsel, has the effect of requiring the contemplated distribution of the Bonds or any agreement offered in connection therewith to be registered under the Securities Act of 1933. as amended, or the Resolution to be qualified as an indenture under the Trust Indenture Act of 1939, as amended;

(4) (A) trading generally shall have been suspended or materially limited on or by, as the case may be, the New York Stock Exchange, (B) a general moratorium on commercial banking activities in New York shall have been declared by either Federal or

New York State authorities, or (C) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis that, in the reasonable judgment of the Underwriter, is material and adverse and such event, singly or together with any other such event, has the effect, in the judgment of the Underwriter, to materially adversely affect the market for the Bonds or the sale of the Bonds by the Underwriter, at the contemplated offering price or prices (or yield or yields); or

(5) the purchase of and payment for the Bonds by the Underwriter, or the resale of the Bonds by the Underwriter, on the terms and conditions herein provided shall be prohibited by any applicable law, governmental regulation or order of any court, governmental authority, board, agency or commission.

(f) At or prior to the Escrow Closing, the Underwriter shall have received each of the following documents:

(1) The Final Official Statement, executed on behalf of the Board by the Authorized Representative;

(2) The Resolution certified by the Board's Executive Secretary, under the Board's seal as having been duly adopted by the Board and as being in effect, with such changes or amendments as may have been agreed to by the Underwriter, and the Resolution shall contain the agreement of the Board, in form satisfactory to the Underwriter, which is described under the heading "Continuing Disclosure of Information" in the Preliminary Official Statement;

(3) A letter from Vinson & Elkins L.L.P. to the Underwriter stating that, if the Bonds were to be delivered upon the date of such letter, such counsel would be able to deliver its approving opinion substantially in the form included in the Official Statement as Appendix D and, in the absence of any material amendment or repeal of the Constitutional provisions and statutes governing the Permanent University Fund, the Interest of the System in the Available University Fund and the Board, such counsel currently expects to be able to deliver its approving opinion in substantially such form upon the delivery of the Bonds;

(4) An opinion of Vinson & Elkins L.L.P., in substantially the form attached to this Purchase Contract as Exhibit C;

(5) *Depending upon the position to be taken by the Attorney General's office, one of the following requirements will be used.* [An unqualified approving opinion or certificate of the Attorney General of the State of Texas approving the Bonds as required by law;] or [A preliminary approval letter from the Attorney General of the State of Texas to the effect that the Bonds have been given preliminary approval subject only to receipt of (i) evidence of the establishment of irrevocable procedures to defease the Refunded Bonds, including the verification report described in Section 8(b) and (ii) evidence of the

(9) A certificate dated the date of the Escrow Closing, by an Authorized Representative to the effect that, on the basis of the facts, estimates, and circumstances in effect on the date of the Escrow Closing, it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be arbitrage bonds within the meaning of Section 148 of the Code;

(10) *This requirement is to be included as a condition to the Escrow Closing only if the approving opinion of the Attorney General of the State of Texas is to be received at the time of the Escrow Closing. If the Attorney General's opinion is to be received at the time of the Bond Delivery Closing, then this requirement will become a condition of the Bond Delivery Closing.* A report of [verification agent] independent certified public accountants, stating that such firm has verified the mathematical accuracy of certain computations based upon assumptions provided to them relating to the adequacy of the maturing principal amounts of the Defeasance Obligations and the interest thereon held in the escrow fund required by the Prior Resolution and the Escrow Agreement to pay when due all of the principal of and interest on all of the Refunded Bonds;

[(10)] *Alternate requirement in the event that item 10 becomes a requirement of the Bond Delivery Closing.* [Evidence that the Board could comply with the conditions to the issuance of the Bonds on a parity with the Outstanding PUF Bonds on the Escrow Closing Date if the Bonds were being issued on that date, including certifications to the effect of the those set forth in Section 3.04 of the Resolution.]

(I 1) Letters from Standard & Poor's Corporation, Fitch Investors Service and Moody's Investors Service to the effect that all of the Bonds have been rated AAA, AAA, and Aaa, respectively;

(12) A certificate of an Authorized Representative stating in effect that the information supplied to the Underwriters relating to the outstanding principal amount of Refunded Bonds including their interest rates and redemption dates, is true and correct in all material respects;

(13) Evidence that provisions have been made to insure that the Refunded Bonds have been or will be called for redemption on the dates shown in the report of [verification agent]; and

(14) Such additional legal opinions, certificates, instruments, and other documents as the Underwriter may reasonably request to evidence the truth, accuracy, and completeness, as of the date hereof and as of the date of the Escrow Closing, of the Board's representations and warranties contained herein and of the statements and information contained in the Official Statement, and the due performance and satisfaction by the Board at or prior to the Escrow Closing Date of all agreements then to be performed and all conditions then to be satisfied by the Board.

All the opinions, letters, certificates, instruments, and other documents mentioned above or elsewhere in this Purchase Contract shall be deemed to be in compliance with the provisions hereof if, but only if, they are satisfactory to the Underwriter.

**8. Conditions of Bond Delivery Closing and Termination of Underwriter's Obligation.** The obligation of the Underwriter to purchase and pay for the Bonds at the Bond Delivery Closing shall be further subject to the continued performance by the Board, prior to or concurrently with the Bond Delivery Closing, of its obligations to be performed under Sections 3(d), 4, and 5(b) hereof and shall also be subject to the following additional conditions:

(a) (i) Each of the Resolution, this Purchase Contract, the Escrow Agreement and the Bonds shall have been duly authorized, executed and delivered, and each of the foregoing shall be in full force and effect and shall not have been amended, modified or supplemented, except as may have been agreed to by the Underwriter, (ii) the Board shall have duly adopted and there shall be in full force and effect such additional resolutions or agreements as shall be necessary, in the opinion of Bond Counsel, in connection with the transactions contemplated hereby, (iii) the Board shall perform or have performed all of its obligations required under or specified in the Resolution, the Escrow Agreement or this Purchase Contract to be performed at or prior to the Bond Delivery Closing and (iv) the Official Statement shall not have been amended or supplemented, except in such manner as may have been approved by the Underwriter pursuant to Section 3(b) hereof; and

(b) Prior to the issuance and delivery of the Bonds on the Bond Delivery Closing Date, there shall be delivered to the parties hereto and to Bond Counsel the following documents, in each case satisfactory in form and substance to the Underwriter:

(1) The approving legal opinion regarding the Bonds, dated the Bond Delivery Closing Date, of Vinson & Elkins L.L.P. substantially in the form attached to the Final Official Statement as Appendix D and a letter from Vinson & Elkins L.L.P. addressed to the Underwriter authorizing the Underwriter to rely upon such opinion as if such opinion was addressed to the Underwriter.

(2) Such quantities of the Final Official Statement (amended and supplemented as of the Escrow Closing Date) as the Underwriter may reasonably request.

(3) A certificate, dated the Bond Delivery Closing Date, of the Vice Chancellor and General Counsel of the System to the effect that there is not any action, suit, investigation, inquiry or proceeding (whether or not purportedly on behalf of the Board) pending, or, to the best of his or her knowledge, threatened or that could be reasonably asserted, against the Board, the Permanent University Fund or the Interest of the System in the Available University Fund in any court, governmental agency, public board or body or before any arbitrator or before or by any governmental body, (A) affecting the Board's existence as a state agency or the Board's appointment as its governing body or its powers, or the title of its officers to their respective offices, or (B) seeking to restrain or

enjoin the issuance or delivery of the Bonds, or the collection or application of the Interest of the System in the Available University Fund to pay the principal of and interest on the Bonds, or (C) in any way contesting or affecting the tax-exempt status of the interest on the Bonds or the Refunded Bonds, or (D) in any way contesting or affecting the validity or enforceability of the Bonds, the Resolution, this Purchase Contract, the Escrow Agreement, the Refunded Bonds or the Prior Resolutions or the proceedings for the defeasance of the Refunded Bonds, or (E) contesting in any manner the completeness, accuracy, or fairness of the Preliminary Official Statement or the Official Statement, or (F) which involves the possibility of any ruling, order, judgment or uninsured liability which may result in any material adverse change in the business, properties or assets or the condition, financial or otherwise, of the Permanent University Fund or the Interest of the System in the Available University Fund, or (G) which might in any material respect adversely affect the transactions contemplated herein.

(4) A certificate, dated the Bond Delivery Closing Date, signed by an Authorized Representative, in form and substance satisfactory to Bond Counsel and the Underwriter, to the effect that (A) attached to such certificate is a correct and complete copy of a transcript of all proceedings (including the Resolution) relating to the authorization of the Bonds, (B) the Board has duly performed all of its obligations hereunder and under the Resolution to be performed at or prior to the Bond Delivery Closing Date, (C) to the best of his or her knowledge each of the representations and warranties of the Board contained herein and in the Bonds and Resolution are true and correct in all material respects on and as of the Bond Delivery Closing Date as if made on the Bond Delivery Closing Date (it being specifically understood that, for purposes of satisfying this condition, the representations contained in Section 5(g) hereof shall be deemed to be addressed only to facts in existence on the Escrow Closing Date, and the term "Official Statement" shall include any amendments thereof or supplements thereto); and (D) none of the proceedings of the Board relating to the authorization of the Bonds have been amended, rescinded, superseded or repealed

(5) A letter dated the Bond Delivery Closing Date of each counsel to any party to a document referred to herein who delivered an opinion described in Section 7(f), dated the Bond Delivery Closing Date and addressed to the Underwriter: (A) to the effect that no fact has come to such counsel's attention which would prevent them from delivering such opinion as of the Bond Delivery Closing Date (provided, that such letter need not address the accuracy or adequacy of the Final Official Statement as of any date subsequent to the Escrow Closing Date); and (B) authorizing the Underwriter to rely upon any legal opinion (other than an opinion described in other clauses of this Section 8(c)) regarding the Bonds dated during the period from the Escrow Closing Date through the Bond Delivery Closing Date and addressed by such counsel to the Board.

(6) A certificate dated the Bond Delivery Closing Date, signed by an Authorized Representative stating that he or she has reviewed the Final Official Statement and that no fact in existence as of the Escrow Closing Date has come to his or her attention which, if known upon the Escrow Closing Date, would have prevented an Authorized

Representative from delivering the certificate set forth in Section 7(f)(S)(B); provided, that such supplemental certificate need not address the accuracy or adequacy of the Final Official Statement as of any date subsequent to the Escrow Closing Date.

(7) A certificate dated the Bond Delivery Closing Date, signed by an Authorized Representative affirming as of such date the compliance of the Board with the Continuing Disclosure Undertaking in all respects.

(8) A legal opinion dated the Bond Delivery Closing Date of McCall, Parkhurst & Horton L.L.P., or such other counsel as may be appointed by the Underwriter, addressed to the Underwriter to the effect that the Bonds are qualified under, or are not subject to the registration requirements of, the Securities Act of 1933, as amended, and the Resolution is qualified under, or is exempt from qualification pursuant to, the Trust Indenture Act of 1939, as amended.

(9) If any of Moody's Investors Service, Standard & Poor's Ratings Group or Fitch IBCA, Inc. had assigned a provisional rating to the Bonds on or prior to the Escrow Closing Date, evidence that such rating agency has assigned a non-provisional rating to the Bonds.

(10) A copy of each certificate of an Authorized Representative or of any advisor or agent of the Board, and of each legal opinion of Vice Chancellor and General Counsel of the System with respect to the Bonds, which are addressed to the Board and delivered during the period from the Escrow Closing Date through the Bond Delivery Closing Date, in each case addressed to the Underwriter or accompanied by a letter addressed to the Underwriter authorizing the Underwriter to rely thereon as if such certificate or opinion was addressed to the Underwriter.

(11) A fully executed Escrow Agreement and appropriate documentation that evidences that all Defeasance Obligations and cash required to be deposited with the Escrow Agent to effect the defeasance of the Refunded Bonds have been purchased by or delivered to the Escrow Agent, together with certificates, dated as of the date of the Bond Delivery Closing, executed by an appropriate official of the Escrow Agent, to the effect that such Escrow Agreement has been duly authorized, executed, and entered into by the Escrow Agent.

(12) Such additional legal opinions, certificates, instruments and other documents as the Underwriter may reasonably request to evidence the truth, accuracy, and completeness, as of the date hereof and as of the date of the Bond Delivery Closing, of the Board's representations and warranties contained herein and of the statements and information contained in the Official Statement, and the performance and satisfaction by the Board at or prior to the Bond Delivery Closing Date of all agreements then to be performed and all conditions then to be satisfied by the Board [*including satisfaction of item 10 of Section 7(f) in the event that that requirement has become a requirement of the Bond Delivery Closing*].

**9. Non-satisfaction of Conditions.** (a) If on the Escrow Closing Date any of the conditions to the obligations of the Underwriter to be satisfied on or prior to the Escrow Closing Date shall not have been satisfied when and as required herein, all obligations of the Underwriter hereunder may be terminated by the Underwriter at, or at any time prior to, the Escrow Closing by written notice to the Board. The Underwriter may, in its discretion, waive one or more of the conditions to the Escrow Closing and proceed with the Escrow Closing, and, if such condition is not also an express condition to the Bond Delivery Closing hereunder, any such waiver shall preclude the subsequent termination of the obligations of the Underwriter on the basis of such condition.

(b) If on the Bond Delivery Closing Date, any of the conditions to the obligations of the Underwriter contained in this Purchase Contract shall not have been satisfied when and as required herein, all obligations of the Underwriter hereunder with respect to the Bonds may be terminated by the Underwriter upon written notice to the Board. The Underwriter may, in its discretion, waive one or more of the conditions to the Bond Delivery Closing and proceed with the Bond Delivery Closing.

(c) If the Board shall fail to satisfy the respective conditions to the obligation of the Underwriter contained in this Purchase Contract or if the obligation of the Underwriter shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract may be canceled by the Underwriter and, upon such cancellation, neither the Underwriter nor the Board shall be further obligated hereunder except that the respective obligations of the Board and the Underwriter as provided in Section IO hereof shall continue in full force and effect.

(d) It is expressly understood that, subsequent to the Escrow Closing, the Board shall be under no obligation to: (i) enter into or execute and deliver any amendment or supplement to the Resolution, the Bonds, any tax certificate or compliance agreement, or (except as provided in Section 3(d) thereof), any other document which has been executed and delivered by the Board in connection with the issuance of the Bonds as of the Escrow Closing Date (other than an amendment to a tax certificate or compliance agreement reasonably necessary to permit compliance with Section 8(c)(I) hereof which does not, in the reasonable judgment of the obligated or potentially obligated party, impose any additional material obligation or materially alter any existing obligation of the Board thereunder); (ii) agree to, or to undertake, any additional material obligations or undertakings to the Underwriter or to any other party; or (iii) make any changes to its organization, activities or operations as a condition to effectuating the delivery of the documents or the satisfaction of any conditions specified in Section 8. The Board shall have no liability to the Underwriter for fees and expenses resulting from the failure of the Board or any other person to satisfy the conditions specified in Section 8; provided, however, that the Board agrees to work in good faith with the Underwriter to consummate the delivery of the Bonds on the Bond Delivery Closing Date.

(e) Any other provision hereof to the contrary notwithstanding, the obligations of the Underwriter hereunder shall also be subject to termination, without liability, if, on the Bond Delivery Closing Date, as a result of a Change in Law, the Underwriter is or would

be prohibited (other than a judgment, ruling, or order resulting from an action or omission by the Underwriter which is determined to violate applicable law) from lawfully purchasing the Bonds as provided in this Purchase Contract or lawfully selling or delivering the Bonds or beneficial ownership interests therein to bona fide purchasers. The Underwriter agrees to work in good faith with the Board during the period between the Escrow Closing Date and the Bond Delivery Date to identify any Change in Law and to take such reasonable actions as may be necessary to consummate the delivery of the Bonds on the Bond Delivery Closing Date (it being specifically understood that such undertaking by the Underwriter shall not be deemed to be a condition of the right of the Underwriter described in the immediately preceding sentence).

(f) A "Change in Law" is defined for purposes of this Purchase Contract as:

(i) any legislation enacted by the Congress of the United States or recommended for passage by any legislative committee with jurisdiction thereof (if such enacted or recommended legislation has a proposed effective date which is on or before the Bond Delivery Closing Date); (ii) any legislation (including any state constitutional amendment) enacted by the Texas State Legislature or recommended for passage by any legislative committee having jurisdiction thereof (if such enacted or recommended legislation has a proposed effective date which is on or before the Bond Delivery Closing Date); (iii) any law, rule or regulation, or amendment thereto, proposed or enacted by any governmental body, department, or agency (if such proposed or enacted law, rule or regulation has a proposed effective date which is on or before the Bond Delivery Closing Date); or (iv) any judgment, ruling, or order issued by any court or administrative body, which in any case, would, as to the Underwriter, prohibit (or have the retroactive effect of prohibiting, if enacted, adopted, passed, or finalized) the Underwriter from purchasing the Bonds as provided for herein or selling the Bonds or beneficial ownership interests therein to bona fide purchasers (other than a judgment, ruling, or order resulting from an action or omission by the Underwriter which is determined to violate applicable law); provided, however, that such change in or addition to law, legislation, rule or regulation or judgment, ruling or order shall have become effective, been enacted or recommended, been proposed or been issued, as the case may be, subsequent to the Escrow Closing Date.

**10. Expenses,** (a) The Underwriter shall be under no obligation to pay any expenses incident to the performance of the Board's obligations hereunder, including but not limited to: (i) all costs and expenses incident to preparing and printing or otherwise reproducing (for distribution on or prior to the date of execution of this Purchase Contract) the Resolution, the Escrow Agreement, and the Preliminary Official Statement; (ii) all costs and expenses incident to the preparation for, and the printing of, the Official Statement and each amendment thereof or supplement thereto, including any amendment or supplement prepared and furnished in accordance with Section 3(b) hereof; (iii) all costs of preparing the definitive Bonds; (iv) all fees of rating agencies; and (v) all fees and disbursements of Bond Counsel and any other experts or consultants retained by the Board.

(b) The Underwriter shall pay: (i) all costs of printing any underwriting documents; (ii) all costs of qualifying the Bonds for sale in various states chosen by the Underwriter; (iii) all costs of preparing and printing any blue sky or legal investment surveys to be used in connection with the public offering of the Bonds; (iv) all advertising expenses in

connection with the public offering of the Bonds; and (v) all costs and expenses, including those of the Board and the fees and disbursements of its counsel, incident to the preparation, printing and distribution of each amendment of or supplement to the Official Statement made after the Escrow Closing Date; and (vi) all other expenses incurred by the Underwriter in connection with the public offering and distribution of the Bonds, including the fees and disbursements of counsel retained by the Underwriter and the costs associated with the Underwriter's compliance with Section 3(c) hereof.

11. **Notices.** Any notice or other communication to be given to the Board under this Purchase Contract may be given by delivering the same in writing at 221 West 6th Street, Suite 1700, Austin, Texas 78701, Attention: Director of Finance, and any notice or other communication to be given to the Underwriter under this Purchase Contract may be given by delivering the same in writing to the Representative, Lehman Brothers Inc., 3 World Financial Center, 20th Floor, New York, New York 10285, Attention: John H. Augustine.

12. **Parties in Interest; Survival of Representations and Warranties.** This Purchase Contract as heretofore specified shall constitute the entire agreement between the Board and the Underwriter and is made solely for the benefit of the Board and the Underwriter (including successors or assigns of the Underwriter) and no other person shall acquire or have any right hereunder or by virtue hereof. This Purchase Contract may not be assigned by the Board. All of the Board's representations, warranties and agreements contained in this Purchase Contract shall remain operative and in full force and effect, regardless of (a) any investigations made by or on behalf of the Underwriter; (b) delivery of and payment for the Bonds pursuant to this Purchase Contract; and (c) any termination of this Purchase Contract.

13. **Effectiveness.** This Purchase Contract shall become effective upon the acceptance hereof by the Board and shall be valid and enforceable at the time of such acceptance.

14. **CHOICE OF LAW. THIS PURCHASE CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.**

15. **Severability.** If any provision of this Purchase Contract shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Purchase Contract invalid, inoperative or unenforceable to any extent whatever.

16. **Business Day.** For purposes of this Purchase Contract, "Business Day" means any day on which the New York Stock Exchange is open for trading.

17. **Section or Paragraph Headings.** Section or Paragraph headings have been inserted in this Purchase Contract as a matter of convenience of reference only, and it is agreed

that such paragraph headings are not a part of this Purchase Contract and will not be used in the interpretation of any provisions of this Purchase Contract.

**18. Counterparts.** This Purchase Contract may be executed in several counterparts each of which shall be regarded as an original (with the same effect as if the signatures thereto and hereto were upon the same document) and all of which shall constitute one and the same document.

**19. No Personal Liability.** None of the members of the Board, nor any officer, agent or employee of the Board or the System, shall be charged personally by the Underwriter with any liability, or be held liable to the Underwriter under any term or provision of this Purchase Contract, or because of execution or attempted execution., or because of any breach or attempted breach, of this Purchase Contract.

very truly yours,

**LEHMAN BROTHERS INC.**

By:

Title:

Accepted and agreed to this \_\_\_\_\_

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

By:

Director of Finance  
The University of Texas System

**TERMS OF THE BONDS**

BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM  
PERMANENT UNIVERSITY FUND REFUNDING BONDS  
SERIES 2002A

PRINCIPAL AMOUNT

\$ \_\_\_\_\_

MATURITY SCHEDULE

GENERAL DESCRIPTION OF BONDS

The Bonds will be issued as Current Interest Bonds, will be dated \_\_\_\_\_, will mature on the dates and in the amounts set forth above, and will bear interest at the rates set forth above from their date and will be payable January 1 and July 1 of each year, commencing \_\_\_\_\_ 1, 2002 until maturity.

The Bonds are not subject to redemption prior to maturity,

The Bonds shall be initially issued as one bond for each maturity and registered in the name of Lehman Brothers Inc. Bonds registered in the name of Lehman Brothers Inc. shall, immediately following their delivery, be exchanged for Bonds registered in the name of Cede & Co., as nominee of The Depository Trust Company, pursuant to the Book-Entry Only System described in the Resolution. **Beneficial** ownership of the Bonds may **be** acquired in denominations of \$5,000 or integral multiples thereof.

**OFFICIAL STATEMENT**