

Meeting No. 881

THE MINUTES OF THE BOARD OF REGENTS  
OF  
THE UNIVERSITY OF TEXAS SYSTEM

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December 1, 1994

Edinburg, Texas

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 OF  
 THE UNIVERSITY OF TEXAS SYSTEM  
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MEETING NO. 881

THURSDAY, DECEMBER 1, 1994.--The members of the Board of Regents of The University of Texas System convened in regular session at 10:20 a.m. on Thursday, December 1, 1994, in Room 316 of the Marialice Shary Shivers Administration Building at The University of Texas - Pan American, Edinburg, Texas, with the following in attendance:

ATTENDANCE.--

<u>Present</u>	<u>Absent</u>
Chairman Rapoport, presiding	
Vice-Chairman Temple	
Vice-Chairman Lebermann	
Regent Cruikshank	
Regent Hicks	
Regent Holmes	
Regent Loeffler	
Regent Ramirez	
Regent Smiley	

Executive Secretary Dilly

Chancellor Cunningham  
Executive Vice Chancellor Duncan  
Executive Vice Chancellor Mullins  
Executive Vice Chancellor Burck

Chairman Rapoport announced a quorum present and called the meeting to order.

RECESS TO BRIEFING AND EXECUTIVE SESSIONS.--Chairman Rapoport announced that the Board would recess to convene a briefing session and Executive Session pursuant to Texas Government Code, Chapter 551, Sections 551.071, 551.072, and 551.074 to consider those matters listed on the Executive Session agenda.

RECONVENE.--At 1:20 p.m., the Board reconvened in open session in the Ballroom of the University Center.

WELCOME BY DR. MIGUEL A. NEVAREZ, PRESIDENT OF THE UNIVERSITY OF TEXAS - PAN AMERICAN.--Chairman Rapoport expressed the Board's appreciation to Regent Mario E. Ramirez and Dr. Miguel A. Nevarez, President of The University of Texas - Pan American, for their very special and gracious hospitality last evening (November 30) and for the opportunity for the Board to interact with so many of U. T. Pan American's good friends and supporters. He then called on Dr. Nevarez for any welcoming remarks on behalf of the host institution.

On behalf of the faculty, staff, and students of U. T. Pan American, President Nevarez welcomed the members of the Board and other guests to Edinburg.

INTRODUCTION OF MR. JOE OCHOA, MAYOR OF THE CITY OF EDINBURG, TEXAS.--President Nevarez introduced Mr. Joe Ochoa, Mayor of the City of Edinburg, Texas, who welcomed the members of the Board to Edinburg and expressed the City's appreciation for the Board's strong support of The University of Texas - Pan American. Mr. Ochoa noted that, since the historic merger of U. T. Pan American with The University of Texas System in 1989, higher education opportunities in South Texas have dramatically improved. He reemphasized the City's commitment to build a strong working relationship with the Board and reaffirmed the community's interest in promoting the continued development of U. T. Pan American. In closing, Mayor Ochoa noted that the City of Edinburg was working closely with the leadership of the Texas Legislature to promote U. T. Pan American and to enhance higher education in South Texas.

U. T. BOARD OF REGENTS: APPROVAL OF MINUTES OF REGULAR MEETING HELD ON OCTOBER 7, 1994.--Upon motion of Vice-Chairman Temple, seconded by Regent Cruikshank, the Minutes of the regular meeting of the Board of Regents of The University of Texas System held on October 7, 1994, in Richardson, Texas, were approved as distributed by the Executive Secretary. The official copy of these Minutes is recorded in the Permanent Minutes, Volume XLII, Pages 1 - 532.

#### SPECIAL ITEM

U. T. Board of Regents: Adoption of Resolution in Support of Institutional Plans to be Submitted to the Texas Higher Education Coordinating Board in Accordance with the Access and Equity 2000 Texas Educational Opportunity Plan for Public Higher Education for the Period September 1994 Through August 2000.--The University of Texas System Administration and the U. T. degree-granting component institutions participated in the Texas Equal Educational Opportunity Plan for Higher Education which was undertaken voluntarily by the State of Texas during the period from 1983 to 1988 and in the five-year plan entitled the "Texas Educational Opportunity Plan for Public Higher Education: September 1989 to August 1994."

The Texas Higher Education Coordinating Board has adopted a six-year plan entitled Access and Equity 2000: The Texas Educational Opportunity Plan for Public Higher Education, September 1994 through August 2000, and individual institutional plans in support of the state plan were due to the Coordinating Board by December 1, 1994.

Without objection, the Board adopted the resolution set out on Page 3 in support of institutional plans prescribed by the Texas Higher Education Coordinating Board in Access and Equity 2000: The Texas Educational Opportunity Plan for Public Higher Education, September 1994 through August 2000, and authorized the U. T. System Administration to distribute copies of the resolution to the Texas Higher Education Coordinating Board, the Governor of the State of Texas, and others as appropriate.

As required by this plan, institutions will submit statistical reports to the Coordinating Board by December 15 of 1995, 1997, and 1999, and narrative reports by July 15 of 1996, 1998, and 2000.

RESOLUTION

WHEREAS, The Board of Regents of The University of Texas System does hereby reaffirm its long-standing policy against discrimination, that to the extent provided by applicable law, no person shall be excluded from participation in, denied the benefits of, or be subject to discrimination under, any program or activity sponsored or conducted by the System or any of its component institutions, on the basis of race, color, national origin, religion, sex, veteran status, or disability (Regents' Rules and Regulations, Part Two, Chapter I, Section 6);

WHEREAS, The University of Texas System has for many years recognized its role in helping to overcome any effects of past discrimination;

WHEREAS, The Texas Higher Education Coordinating Board has adopted Access and Equity 2000: The Texas Educational Opportunity Plan for Public Higher Education, September 1994 through August 2000 and has directed public institutions of higher education to submit individual plans in accordance with Access and Equity 2000;

WHEREAS, The Honorable Ann W. Richards, Governor of Texas, has called on higher education administrators to place their highest priority on improving minority students' enrollment, retention, and graduation rates;

WHEREAS, The degree-granting component institutions of The University of Texas System and the U. T. System Administration have adopted policies and developed programs and activities in support of the two previous statewide educational opportunity plans;

WHEREAS, The University of Texas System Administration and the component institutions have implemented programs designed to attract a diverse student population in undergraduate and graduate programs and have established programs to encourage persistence of students through completion of degrees; and

WHEREAS, The University of Texas System Administration and the component institutions have also established programs to attract a diverse work force; now, therefore, be it

RESOLVED, That The University of Texas System Board of Regents does hereby endorse the educational opportunity plan for public higher education for 1994-2000, Access and Equity 2000; be it further

RESOLVED, That the U. T. Board of Regents endorses the institutional plans for the U. T. System general academic institutions, the degree-granting health institutions, and the System Administration, to be effective from September 1994 through August 2000; and, be it further

RESOLVED, That the Chancellor and the chief administrative officers of the component institutions are hereby directed to implement the respective institutional plans, to endeavor to achieve the goals and the objectives contained therein, and to report to the U. T. Board of Regents and the Texas Higher Education Coordinating Board on progress and accomplishments in accordance with Access and Equity 2000.



RECESS FOR COMMITTEE MEETINGS AND COMMITTEE REPORTS TO THE BOARD.--At 1:35 p.m., the Board recessed for the meetings of the Standing Committees, and Chairman Rapoport announced that at the conclusion of each committee meeting the Board would reconvene to approve the report and recommendations of that committee.

The meetings of the Standing Committees were conducted in open session and the reports and recommendations thereof are set forth on the following pages.

REPORTS AND RECOMMENDATIONS OF STANDING COMMITTEES

REPORT OF EXECUTIVE COMMITTEE (Pages 5 - 13).--In compliance with Section 7.14 of Chapter I of Part One of the Regents' Rules and Regulations, Chairman Rapoport reported to the Board for ratification and approval all actions taken by the Executive Committee since the last meeting. Unless otherwise indicated, the recommendations of the Executive Committee were in all things approved as set forth below:

1. U. T. System: Authorization to Replace the Automobile Liability Insurance Policy with a Policy Underwritten by Zurich Insurance Company, Schaumburg, Illinois, Effective September 8, 1994 Through September 7, 1995 (Exec. Com. Letter 95-2).--Upon recommendation of the Executive Committee, the Board authorized The University of Texas System to replace the existing Automobile Liability Insurance Policy issued by United Community Insurance Company, Albany, New York, with a policy underwritten by Zurich Insurance Company, Schaumburg, Illinois, effective September 8, 1994 through September 7, 1995, at an annual premium of \$325,000.

The premium for this policy is based on (and adjusted at year-end) the inventory of institutional motorized vehicles and equipment and is prorated to each component institution based on its reported inventory.

2. U. T. Arlington - Student Apartment Complex Project (Phase II): Authorization of Project; Approval to Conclude Negotiations on Ground Lease and Related Necessary Documents with Century Development, a Texas Limited Partnership, Houston, Texas, as Limited Partner and Owner of General Partnership Entity in Arlington Residence Partnership II, Ltd., a Texas Limited Partnership, Houston, Texas, Lessee; and Authorization for Chairman of the U. T. Board of Regents to Execute Ground Lease and Related Documents (Exec. Com. Letter 95-4).--In December 1993, the U. T. Board of Regents approved the construction of Phase I of a student apartment complex project on The University of Texas at Arlington campus by Century Development, Houston, Texas. That initial phase (known as the Centennial Court Apartments), which was completed and ready for occupancy in August 1994, consists of 200 units on a tract of approximately 7.6 acres leased to Arlington Residence Partnership I, Ltd., a Texas limited partnership, Houston, Texas, comprised of Century Development as sole limited partner and Arlington Housing Corporation, Houston, Texas, for an initial term of 40 years. The complex is operated by Century Property Management Company pursuant to an Operating Agreement that terminates when the Ground Lease ends.

U. T. Arlington currently has an enrollment of 23,200 students and estimates a student population of 28,000 by the year 2000. As previously approved by the Board, the University plans to provide on-campus housing for 15% of those students. Current capacity totals 2,266 beds including the 504 beds provided by Century Development - Phase I.

In an effort to meet the growing demands for housing on or near the campus, the Board, upon recommendation of the Executive Committee:

- a. Authorized initiation of Phase II of a student apartment complex project by a private developer on the U. T. Arlington campus to consist of approximately 176 units on a tract of approximately 5.5 acres
- b. Authorized U. T. Arlington, the Office of Academic Affairs, and the Office of General Counsel to conclude negotiations on a Ground Lease and related necessary documents with Century Development, a Texas Limited Partnership, Houston, Texas, as Limited Partner and Owner of General Partnership Entity in Arlington Residence Partnership II, Ltd., a Texas Limited Partnership, Houston, Texas, as Lessee
- c. Authorized the Chairman of the U. T. Board of Regents to execute the Ground Lease and related documents in a form substantially similar to the Ground Lease for Phase I of the apartment project previously approved by the U. T. Board of Regents upon review and recommendation by the Executive Vice Chancellor for Academic Affairs, the Executive Vice Chancellor for Business Affairs, and the Office of General Counsel and upon the condition that all obligations of the Lessee under the existing Ground Lease shall have been satisfactorily performed.

Phase II of this project will add approximately 176 apartments (approximately 460-472 beds) designed to accommodate the needs of students, faculty, and staff. The exact number of each style of unit is as follows:

Efficiency Units	12
Two bedroom/two bath units	104
Four bedroom/two bath units	60

3. U. T. Austin: Authorization to Purchase from Cray Research, Inc., Eagan, Minnesota, the CRAY Model J916/16-4096 Supercomputer as a Replacement for the CRAY Y-MP 8/864 Model D Supercomputer and to Purchase Peripheral Equipment for Supercomputer from Veritas Seismic Ltd., Calgary, Alberta, Canada (Exec. Com. Letter 95-4).--At its August 1994 meeting, the U. T. Board of Regents approved the dissolution of The University of Texas System Center for High Performance Computing effective September 1, 1994, and the transfer of assets to The University of Texas at Austin. U. T. Austin was authorized to issue a request for proposal to acquire, by lease or purchase with or without trade-in of the U. T. System CRAY Y-MP 8/864 Model D supercomputer, the following:
  - a. A mid-scale vector processor computer system which is binary compatible with the present CRAY computer
  - b. A mid-scale massively parallel computer system

- c. A large data storage facility
- d. Appropriate software.

U. T. Austin issued the requisite invitation to bid for items (a) and (d) above in the form of a CRAY Model J916/16-4096 supercomputer (which is binary compatible with the Y-MP supercomputer), associated peripheral tape and disk storage systems, and appropriate software. The invitation requested bids for both lease and purchase of the CRAY Model J916/16-4096 and for optional trade-in of the CRAY Y-MP supercomputer.

Following a careful review of the lease and purchase options, the U. T. System Administration was of the opinion that the purchase option represented the most economic and valuable method of acquisition. In accordance with that judgment, the Executive Committee accepted an amended recommendation as presented by Executive Vice Chancellor Burck. The Board concurred in the amended recommendation which:

- a. Authorized the purchase from Cray Research, Inc., Eagan, Minnesota, of a CRAY Model J916/16-4096 supercomputer with a guaranteed trade-in option between the twenty-fourth and thirty-sixth month after installation equal to the remaining principal balance of an assumed lease at a rate of \$22,235 per month for the 36-month period. Purchase price is \$689,075.
- b. Authorized payment of the one-time cost to Cray Research, Inc. of transportation (\$4,000), peripheral integration fee (\$40,611), and software licenses (\$89,500)
- c. Authorized the purchase of tape and disk storage peripheral equipment for the new supercomputer at a cost of \$273,040 from Veritas Seismic Ltd., Calgary, Alberta, Canada.

Purchasing this equipment through Veritas Seismic Ltd. will save U. T. Austin \$136,849 in purchase cost versus obtaining the peripheral equipment from Cray Research. Cray Research will integrate and certify the Veritas Seismic Ltd. equipment for a fee of \$40,611, and the savings amount cited above takes that fee into account. In addition, maintenance of the Veritas Seismic Ltd. peripheral equipment will provide a savings of \$109,440 over a 36-month period versus the cost of maintaining CRAY peripheral equipment.

The new supercomputer will permit a reduction of over \$500,000 in annual operating costs compared to the CRAY Y-MP.

The source of funds for the above costs is the capital fund reserve accumulated under the Cray Research University Research and Development Grant Program.

4. U. T. Dallas: Approval to Name Center for Space Sciences as The William B. Hanson Center for Space Sciences (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, Naming of Facilities Other Than Buildings) (Exec. Com. Letter 95-3).--In accordance with the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, relating to the naming of facilities other than buildings, the Center for Space Sciences at The University of Texas at Dallas was named The William B. Hanson Center for Space Sciences in honor of the late Professor William B. Hanson who was Director of the Center for Space Sciences and holder of the Cecil H. and Ida M. Green Honors Chair in Natural Sciences and Mathematics until his death on September 11, 1994.
5. U. T. El Paso - Liberal Arts/Science Renovation Projects - Old Main Building Renovation (Project No. 201-819): Award of Construction Contract to Rudy G. Construction, Inc., El Paso, Texas (Exec. Com. Letter 95-4).--The Executive Committee recommended and the Board awarded a construction contract for The University of Texas at El Paso - Liberal Arts/Science Renovation Projects - Old Main Building Renovation to the lowest responsible bidder, Rudy G. Construction, Inc., El Paso, Texas, for the Base Bid in the amount of \$1,720,000.

Rudy G. Construction, Inc. stated in its Historically Underutilized Business (HUB) Plan that it will have HUB participation of approximately 100% for minority-owned firms in the contract.

The total project cost is comprised of the following elements:

General Construction Cost	\$1,720,000
Fees and Administrative Expenses	193,510
Future Work	22,300
Miscellaneous Expenses	40,000
Project Contingency	<u>13,190</u>
Total Project Cost	\$1,989,000

This project was approved by the Texas Higher Education Coordinating Board in July 1994, and is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget for a total project cost of \$1,989,000 to be funded from Tuition Revenue Bond Proceeds.

6. U. T. Pan American - Thermal Energy Plant Expansion for the Engineering Building (Project No. 901-821) - 2,000 Ton Centrifugal Water Chiller (R-134a) Prepurchase: Award of Procurement Contract to Carrier Corporation - Engineered Systems Sales, San Antonio, Texas (Exec. Com. Letter 95-5).--The Board awarded a procurement contract for the prepurchase of a 2,000 ton centrifugal water chiller (R-134a) for the Thermal Energy Plant Expansion for the Engineering Building at The University of Texas - Pan American to the lowest responsible bidder, Carrier Corporation - Engineered Systems Sales, San Antonio, Texas, for Alternate Bid No. 1 in the amount of \$370,200.

The project for the Thermal Energy Plant Expansion for the Engineering Building is divided into two phases. Phase One is the prepurchase of a 2,000 ton centrifugal water chiller, and Phase Two is the general construction of the plant and thermal energy distribution system.

The total project was approved by the Texas Higher Education Coordinating Board in July 1994, and is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget for a total project cost of \$3,800,000 to be funded with \$2,946,000 from Tuition Revenue Bond Proceeds, \$700,000 from Unexpended Plant Funds, and \$154,000 from Higher Education Assistance Funds (HEAF).

7. U. T. San Antonio - Business Building (Formerly Academic Building) (Project No. 401-756): Award of Construction Contract to Bartlett Cocke, Inc., San Antonio, Texas; and Approval of Plaque Inscription (Exec. Com. Letter 95-5).--The Board, upon recommendation of the Executive Committee:

- a. Awarded a construction contract for The University of Texas at San Antonio Business Building (formerly Academic Building) to the lowest responsible bidder, Bartlett Cocke, Inc., San Antonio, Texas, for the Base Bid and Alternate Bid Nos. 1, 4, and 5 in the amount of \$20,555,000.

Bartlett Cocke, Inc. stated in its proposal that it will have Historically Underutilized Business participation of approximately 3.9% for women-owned firms and 2.3% for minority-owned firms in the contract.

- b. Approved the inscription set out below for a plaque to be placed on the building in accordance with the standard pattern approved by the U. T. Board of Regents in June 1979.

BUSINESS BUILDING  
1994

BOARD OF REGENTS

Bernard Rapoport, Chairman  
Ellen Clarke Temple,  
Vice-Chairman  
Lowell H. Lebermann, Jr.,  
Vice-Chairman  
Robert J. Cruikshank  
Thomas O. Hicks  
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Tom Loeffler  
Mario E. Ramirez, M.D.  
Martha E. Smiley

William H. Cunningham  
Chancellor, The University  
of Texas System  
Samuel A. Kirkpatrick  
President, The University  
of Texas at San Antonio  
  
Ford, Powell & Carson  
Architects & Planners,  
Inc.  
Project Architect  
Bartlett Cocke, Inc.  
Contractor

The total project cost is comprised of the following elements:

General Construction Contract	\$20,555,000
Fees and Administrative Expenses	1,722,162
Furniture and Equipment	4,355,000
Future Work	133,450
Project Contingency	176,949
Miscellaneous Expenses	<u>57,439</u>
Total Project Cost	\$27,000,000

This project was approved by the Texas Higher Education Coordinating Board in January 1994, and is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget at a total project cost of \$27,000,000 to be funded with \$500,000 from Permanent University Fund Bond Proceeds and \$26,500,000 from Tuition Revenue Bond Proceeds as authorized by the 73rd Session of the Texas Legislature as part of the South Texas/Border Initiative.

8. U. T. Board of Regents: Approval to (a) Restructure the Regular Meetings of the Board of Regents to a Quarterly Basis and (b) Require Meetings or Briefings of Each of the Standing Committees Between Quarterly Regular Meetings of the Board.--Following a detailed study by The University of Texas System Process Review Committee, chaired by Vice-Chairman Lebermann, and upon recommendation of the Executive Committee, the Board adopted a procedure which (a) implements regular meetings of the Board on a quarterly basis timed to the quarters of the fiscal year and (b) requires a meeting or briefing session of each of the Standing Committees between the quarterly regular meetings of the Board.

In compliance with this restructured format and effective with the fiscal year beginning on September 1, the Board meeting and committee meeting/briefing schedules for calendar 1995 were established as set forth below:

<u>Fiscal Quarter Ends</u>	<u>Agenda Items to Board of Regents</u>	<u>Committee Meetings<sup>1</sup></u>	<u>Board Meeting<sup>2</sup></u>
Nov. 30	Jan. 12	Jan. 1-15	Feb. 9
Feb. 28	April 13	April 1-15	May 11
May 31	July 13	July 1-15	Aug. 10
Aug. 31	Oct. 12	Oct. 1-15	Nov. 9

<sup>1</sup> Date to be arranged among the committee chair, appropriate executive vice chancellor, and Office of the Board of Regents.

<sup>2</sup> Meeting date retained as second Thursday of month.

The current scheduling of regular meetings of the Board of Regents on a bimonthly basis does not coincide with standard fiscal reporting periods or the standard availability of performance and measurement data which is generally calculated on a quarterly basis. In addition, the current schedule does not lend itself to the regular involvement of Regental committees in the development, review, and evaluation of agenda items and other policy issues to be considered by the full Board and an important mechanism for the education and involvement of Regents has not been fully utilized.

This new schedule will ensure the timeliness of fiscal and investment performance data, provide committee input to proposed agenda items, provide a sounding board for policy changes being considered by the executive staff, and allow for the consideration of other matters which could become policy issues. It will also allow each Standing Committee -- Business Affairs and Audit, Academic Affairs, Health Affairs, Facilities Planning and Construction, and Asset Management -- to become more fully informed regarding the scope of programs and activities within its jurisdiction.

In summary, implementation of this restructuring will:

- Be cost effective, especially in terms of staff time, while enhancing the Board's timely review of fiscal and asset management performance
- Enhance Board committee involvement and expertise in functional areas
- Provide the executive staff with routine access to Board committees for their consultation and advice
- Permit the Board to focus quarterly on performance and operational reports especially if many current routine agenda items are moved to the Docket for approval
- Allow more Board visitation to the several components, especially if Board committee meetings/briefings were held at various campus locations.

On behalf of the Board, Chairman Rapoport expressed appreciation to Vice-Chairman Lebermann and the System Process Review Committee for their efforts to increase the economy and efficiency of the Board's processes and procedures.

9. U. T. Board of Regents: Authorization to Increase the Use of the Docket as a Method for Regental Approval of Certain Routine Matters, Delegation to the Chancellor for Final Approval of Membership of Component Development Boards and Advisory Councils, and Authorization for the Executive Secretary to the Board to Make Appropriate Editorial Amendments to the Regents' Rules and Regulations.--The University of Texas System Process Review Committee, chaired by Vice-Chairman Lebermann, has suggested that the efficiency and effectiveness of the regular meetings of the Board would be increased by removing certain routine matters from the Material Supporting the Agenda and providing for necessary Regental approval of those matters via the Docket process.



In accordance with those suggestions and upon recommendation of the Executive Committee, the Board authorized the following:

a. Change in the current Docket process:

The Gift Section of the Docket will be amended to include only (a) gifts of \$500,000 or more when the gift (either cash or in-kind) is for nonendowment, unrestricted purposes and (b) gifts of \$50,000 or more when the gift (either cash or in-kind) is for any type of restricted purpose including continuing payments to established endowments.

b. Docket approval of certain routine and non-controversial matters which are currently processed via the Agenda:

- (1) Delete from the Asset Management Committee Agenda and include in Component Dockets
  - Establishment or redesignation of endowments within current Endowment Policy Guidelines
  - Acceptance of bequests, remainder interests, etc., within existing policy
- (2) Delete from the Executive Committee Agenda and include in the System Administration Docket
  - Approval (ratification) of actions previously approved via Executive Committee Letter
- (3) Delete from the Academic Affairs or Health Affairs Committee Agenda and include in the Component Dockets
  - Initial Appointments to Endowed Academic Positions
  - Approval of Third-Year Leave of Absence
  - Approval of Dual Positions of Honor, Trust, or Profit
  - Naming of Facilities Other than Buildings
  - General Student Fees, Parking Fees, Housing/Dormitory Rates, etc.
  - Logos, Colors, Mascots, etc.
  - "Teaming" Agreements to Pursue Research Contracts
  - Non-Foreign Consortium Agreements for Limited Purposes.

Further, the final approval of the membership of component development boards and advisory councils was delegated to the Chancellor following consultation with the appropriate Executive Vice Chancellor.

In addition, the Board authorized the Executive Secretary to the Board, in consultation with the Office of General Counsel, to make such editorial changes in the Regents' Rules and Regulations as are necessary to complete the above actions.

All of the requirements for Docket administrative approval will remain in place and the Docket items will be designed to keep the Board fully informed.

It is anticipated that the Board meeting time previously taken by these noncontroversial items will be replaced by informational, evaluative, and status reports which are appropriate to the Board's primary responsibility for governance and policy making.

REPORT AND RECOMMENDATIONS OF THE BUSINESS AFFAIRS AND AUDIT COMMITTEE (Pages 14 - 41).--Committee Chairman Loeffler reported that the Business Affairs and Audit Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Business Affairs and Audit Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. System: Approval of Chancellor's Docket No. 79 (Catalog Change).--Upon recommendation of the Business Affairs and Audit Committee, the Board approved Chancellor's Docket No. 79 in the form distributed by the Executive Secretary. It is attached following Page 195 in the official copies of the Minutes and is made a part of the record of this meeting.

It was expressly authorized that any contracts or other documents or instruments approved therein had been or shall be executed by the appropriate officials of the respective institution involved.

It was ordered that any item included in the Docket that normally is published in the institutional catalog be reflected in the next appropriate catalog published by the respective institution.

2. U. T. Board of Regents - Regents' Rules and Regulations, Part Two: Amendments to Chapter IV, Sections 4 (Purchases of Supplies and Equipment) and 5 (Purchasing Procedures).--The Board, upon recommendation of the Business Affairs and Audit Committee, amended the Regents' Rules and Regulations, Part Two, Chapter IV, Section 4, regarding purchases of supplies and equipment, and Section 5, regarding purchasing procedures, to read as set forth below:

Sec. 4. Purchases of Supplies, Materials, Services, and Equipment.

- 4.1 In making purchases of supplies, materials, services, and equipment on behalf of the System, the General Services Commission (the "Commission") is required to comply with the State Purchasing and General Services Act, Article 3 of Article 601b, Vernon's Texas Civil Statutes (the "Act"), including the rules and regulations promulgated by the Commission thereunder.
- 4.2 The Act permits the Commission to delegate purchasing functions to a state agency, including an institution of higher education. The Act authorizes institutions of higher education to purchase materials, supplies, or equipment through group purchasing programs that offer discount prices to institutions of higher education, subject to rules to be promulgated by the Commission. In making purchases under such delegated authority or under

such group purchasing programs subject to rules of the Commission, the System shall follow the Commission's applicable procedures or rules.

- 4.3 The Act provides that the Commission's authority does not extend to acquisition of:
- (a) specified categories of supplies, materials, services, or equipment for libraries operated as part of university systems or institutions of higher education;
  - (b) materials, supplies, or equipment purchased by state-owned hospitals or clinics through certain group purchasing programs;
  - (c) professional services or consulting services; or
  - (d) supplies, materials, services, or equipment for resale, for auxiliary enterprises, for organized activities relating to instructional departments, or from gifts or grants, including industrial or federal grants or contracts in support of research.
- 4.4 The System has no obligation to comply with the Act or the rules and regulations issued thereunder in making purchases to which the Commission's authority does not extend, or for which the System's purchasing authority is not delegated from the Commission under the Act or expressly subject to rules by the Commission but rather is a different statute. With respect to such purchases not subject to the Act or the rules and regulations issued thereunder, the policies and procedures to be used by a System component shall be approved by its chief business officer pursuant to Section 5 below.

Sec. 5. Purchasing Procedures

- 5.1 The official purchasing agent of each component institution shall promulgate procedures to facilitate and expedite the purchasing function. Such procedures shall be developed in accordance with sound business practices and applicable state law. Purchasing procedures shall be implemented only after appropriate review and approval for inclusion in the institutional Handbook of Operating Procedures, including review and approval of the chief business officer.
- 5.2 Closed or noncompetitive specifications shall not be used except in unusual instances clearly justified as being essential to efficient operating performance. Reports of all such exceptions shall be maintained by the chief business officer.

These amendments will allow The University of Texas System component institutions flexibility to adopt purchasing policies consistent with industry standards for purchases not subject to the Act. This will in turn allow the component institutions to reduce their structural costs.

3. U. T. Board of Regents - Regents' Rules and Regulations, Part Two: Approval of Amendments to Chapter V, Section 3 (Employee Training, Education, and Development).--The Business Affairs and Audit Committee recommended and the Board amended the Regents' Rules and Regulations, Part Two, Chapter V, Section 3, regarding employee training, education, and development, to read as set forth below:

Sec. 3. Employee Training, Education, and Development.

- 3.1 The State Employees Training Act, Texas Government Code, Sections 656.041 et seq. recognizes that programs for the training and education of state administrators and employees materially aid effective state administration and requires each State agency to adopt rules governing such programs, subject to written approval of the Governor of the State of Texas. The Director of the Office of Human Resources, as delegated by the Executive Vice Chancellor for Business Affairs, is responsible for promulgating the necessary policies and procedures for implementation of the State Employees Training Act, consistent with the guidelines already approved by the Governor and the Regents' Rules and Regulations.
- 3.2 Through implementation of the State Employees Training Act, the U. T. System encourages the establishment of policies which promote training programs that will greatly benefit employees. In addition, the use of various types of training programs will be designed to encourage the initiative of all employees and stimulate and motivate less productive employees. Organized training programs will, moreover, help identify employees who exercise their initiative and demonstrate high levels of performance and also identify areas where employees need assistance in adapting to change and adopting change and improved procedures and programs.
- 3.3 The following general objectives of the overall training effort will lead to more efficiency and economy:
- 3.31 Developing well trained managerial, supervisory, professional and support staff;
- 3.32 Assisting all employees toward achieving their highest potential;
- 3.33 Motivating employees and encouraging employee participation;
- 3.34 Evaluating the training and its benefit to the organization.
- 3.4 The program elements for this general training program are:
- 3.41 Identifying staff members who need staff development in order to determine the exact kind and scope of program needed;

- 3.42 Training individuals for current assignments and developing them for future assignments, as a means of improving the quality and quantity of work;
  - 3.43 Providing training so that supervisors are prepared to assume and discharge their primary responsibility for the maximum utilization of personnel, the training of their staff members, and the maintenance of sound employee relations;
  - 3.44 Advising and assisting employees with respect to continuing education and means by which they can increase their effectiveness;
  - 3.45 Evaluating all training and education activities to determine whether they are effective.
- 3.5 With these objectives and general program elements as a background, the establishment of four specific training programs is encouraged. The administration and implementation of the following training programs at the U. T. System Administration and each component are to be primarily the task and responsibility of the institutional human resources/personnel director or an individual designated by the chief administrative officer.
- 3.6 Higher Education Tuition Support Program.
- 3.61 Definition: This program will provide financial assistance for graduate or undergraduate level training leading to a degree. It provides for full-time or part-time student enrollment and is to be for selected, qualified employees of the U. T. System. This program will be provided on the basis of institutional need and to the extent funds are available.
  - 3.62 Objective: To provide a college or university education for qualified employees as specifically required in their areas of employment.
  - 3.63 Program Elements: This training is to provide full-time or part-time student enrollment in a graduate or undergraduate program leading to a degree that directly relates to that employee's current or future employment.
  - 3.64 Administration: Eligibility Requirements.
    - 3.641 Selected employees must have necessary academic qualifications to meet all entrance requirements of the college or university where training is provided.
    - 3.642 Degree training must be directly related to an existing job or job series.
    - 3.643 Selected employees should be scheduled for appointment to a job requiring the degree training on completion of schooling.
    - 3.644 Selected employees must meet requirements and be recommended through the chief administrative

officer and approved by the institutional human resources/personnel director or the Director of the Office of Human Resources.

3.645 Selected employees on educational stipend shall be considered as employees on official leave of absence while in student status. Vacation, sick leave, group insurances, and other benefits will be governed under appropriate rules regarding such official leaves of absence.

3.646 Participating employees must receive grades of "C" or better in undergraduate classes and "B" or better in graduate courses to continue eligibility.

3.65 Administration: Obligations. Employees who receive financial assistance under this program, in completion of either undergraduate or advanced degrees, will be obligated to fulfill the following terms and conditions:

3.651 An agreement to be bound by the rules and regulations contained herein and such other policies, rules, and procedures as may be promulgated by the employing entity.

3.652 An agreement to return to the employing entity upon graduation and attainment of the degree and to remain in the employment for a period of time subsequent to graduation that is proportionate either to the period of time the employee has received financial assistance to attend college or university or to the amount of financial assistance received, or at the institution's option.

3.653 An agreement to execute a formal obligatory document between the employing entity and the recipient of assistance under this program, to repay in a lump sum or such alternate arrangement as the employing entity may prescribe, the amount of money expended for the cost of such college education if the individual for any reason, except circumstances beyond the individual's control, fails to complete the training or otherwise defaults in any provision of the agreement or agreements.

3.7 Human Resource Development Program.

3.71 Definition: Human resource development may include on-the-job training, training in preparation for future job responsibilities, and continuing training programs that are designed to increase job effectiveness.

- 3.72 Objectives: To equip an individual to perform job specific tasks and/or to equip the employee to deal with new technological and legal developments, to develop additional work capabilities, or increase the employee's level of effectiveness.
- 3.8 Outside Staff Development Program.
- 3.81 Definition: This program is to provide training through workshops, seminars, institutes, training sessions, extension courses, college or university courses (with or without academic credit), and other special programs or activities offered either within or outside the state. Such programs must be of concentrated, precise content and designed to improve the individual's professional or technical knowledge in the performance of the individual's present or prospective duties and responsibilities.
- 3.82 Objectives: To improve and enhance the individual's professional and technical knowledge and ability in the performance of the individual's present or prospective duties and responsibilities.
- 3.83 Program Elements: This program is generally the type that meets the following criteria: relatively short term; specific in content; and presented outside the employing agency.
- 3.84 Administration: Eligibility Requirements. The training and education must be related to the employee's current or prospective duty assignment during the period of his or her participation.
- 3.85 Administration: Obligations. Employees receiving Outside Staff Development will be obligated to fulfill such terms and conditions as the chief administrative officer may prescribe, compatible with the nature and extent of the training or education.
- 3.9 Internship/Mentoring Program.
- 3.91 Definition: Internship training is intended to provide the type of learning experience that can be obtained only through actual work experience. Internship programs will normally be of a longer duration than training mentioned under the heading of Outside Staff Development and Human Resource Development Program. This training will be provided to those individuals selected under the standards listed below in Subdivision 3.95, Eligibility Requirements. This training will be provided on the basis of need of the employing entity and to the extent funds are available.
- 3.92 Objectives: This type of training and education has a broader objective than other types of training in that it serves



not only the employing entity but also the State of Texas in the following ways:

- 3.921 It allows screening of potential employees while simultaneously enjoying an advantageous recruiting position.
  - 3.922 It facilitates the infusion of new people and new ideas into the information interchange which is continually taking place between state government and the U. T. System.
  - 3.923 It will allow the gain of trained personnel who can carry a heavier work load in a relatively short period of time.
  - 3.924 Internship programs produce a work product, although this is not the justification for any internship program.
- 3.93 Program Elements: Type I Internships are those that are within the U. T. System for nonemployees of the state.
- 3.931 Type I Internships are held with the U. T. System Administration or a component institution by persons who are not employed by the state or the U. T. System.
  - 3.932 Such internships relate to the educational program of the person serving the internship, which suggests that there will be a constant interchange and evaluation between both the U. T. System and the sponsor of the person's educational program.
  - 3.933 These internships should be initiated only to the extent that they can provide a meaningful working role and learning experience.
  - 3.934 Type I Internships are not designed primarily to produce a work product. (Example: The employee of a private data processing equipment firm observing and being trained in the Information Technology Department of a component institution which serves as the training ground.)
- 3.94 Program Elements: Type II Internship Programs are for the State of Texas and/or U. T. System employees.
- 3.941 Type II(a) Internships provide for the State of Texas to be the trainee represented by a person in the employ of another state agency. [Example: An employee of another state agency (State Auditor's office) serving as an intern trainee.]
  - 3.942 Type II(b) Internships provide for the State of Texas to be the trainee represented by a person in the employ of the U. T. System. A Type II(b) Internship

may be served either within the U. T. System or with other state agencies. Employees on Type II(b) Internship status should be considered as employees of the U. T. System as they would if they were physically present on the job. (Example: An employee of a component serving as an intern trainee at another component or with another state agency, i.e., an accountant from a component business office serving as a trainee in the business office of another component or in the State Auditor's office.)

- 3.943 The primary objective sought by both of the Type II Internship programs is for the trainee to gain skills from the training agency and to promote the ability of persons to work with broader situations and more competently in the multilevels of administration of the state or the U. T. System.
- 3.95 Administration: Eligibility Requirements.
  - 3.951 Internship education and training will be conducted primarily for the benefit of the U. T. System.
  - 3.952 Internship training and education must be approved by the chief administrative officer or his or her delegate on recommendation of the head of the employing department or unit.
- 3.96 Administration: Obligations.
  - 3.961 Type I - No obligatory arrangement is required.
  - 3.962 Type II - The following standards should be observed:
    - 3.9621 The need for these programs will vary according to skills required and the availability of pre-employment training within the State of Texas and/or the U. T. System.
    - 3.9622 The employee has an obligation to successfully complete the training program.
    - 3.9623 Employees receiving internship training will be obligated to fulfill such terms and conditions as may be prescribed, compatible with the nature and extent of the training or education.

These amendments are intended to bring the available employee training, education, and development programs in compliance with recent codification of underlying statutory authorization at Sections 656.041 et seq. of the Texas Government Code (formerly Article 6252-11a), simplify program descriptions, and replace unclear or outdated language.

These revised rules will be submitted to the Governor for approval as required by the Texas Government Code.

4. U. T. Board of Regents: Approval to Revise the Annual Operating Budget Process and the Format of Budgetary Information Reported to the U. T. Board of Regents.-- The University of Texas System Process Review Committee, chaired by Vice-Chairman Lebermann, was appointed to, among other things, study and make recommendations for changing the processes by which information is reported to the U. T. Board of Regents. One such process reviewed by that Committee was the preparation and reporting of the annual operating budget. A subcommittee consisting of U. T. System Administration and component administrative officials made a thorough review of the budget process, including a comparison of other major university budgets, and recommended proposed improvements and format changes in The University of Texas System budgetary process.

Following a brief overview of the proposed changes in the budget process by Executive Vice Chancellor Burck and upon recommendation of the Business Affairs and Audit Committee, the Board approved the following revisions to the U. T. System annual operating budget process and the format of budgetary information reported to the U. T. Board of Regents:

- a. Prepare a "primary" budget document which includes budget information for each department or budget unit but does not include departmental salary rosters. Salary recommendations will be provided as companion documents to the primary budget document.
- b. Continue the current practice of organizing the Educational and General Budget in accordance with the line items of the Appropriations Act. Budget funds at the subaccount level for each department or budgetary unit to include subaccounts for Administrative and Professional Salaries, Faculty Salaries, Teaching Assistants, Classified Salaries, Wages, Maintenance and Operation, Travel, and other subaccounts as may be needed. Include FTE personnel numbers for each salary subaccount.
- c. Adopt a two-year comparison format for the Educational and General Budget to adequately reflect budget changes
- d. Include normal summary information in the budget document for Designated Funds, Auxiliary Enterprises Funds, Contract and

Grant Funds, and Gift Funds in a consistent format. Budget pages for each fund group should be color coded.

- e. Develop a salary roster to accompany the primary budget document in a format which is consistent with the needs of the U. T. Board of Regents, the U. T. System Administration, and the component institutions
- f. Include an "all funds" budget summary as the first schedule in the budget
- g. Discontinue the practice of scheduling budget hearings after the budget is prepared. Resource allocation hearings will be scheduled in advance of writing the budget. Draft budgets will continue to be submitted to U. T. System Administration for review.
- h. U. T. System Administration will approve reappropriation of prior year balances which exceed \$100,000. Balances less than \$100,000 will be approved at the institutional level.
- i. Remove the time limit of November 30 for lapsing unfilled and uncommitted line item faculty salaries to the institutional Unallocated Faculty Salaries account
- j. Eliminate the requirement for U. T. System Administration to approve changes of clinical faculty appointments including medical hospital staff, without salary
- k. Eliminate the requirement for U. T. System Administration to approve Summer Session budgets as a separate process from approval of the annual operating budget. Delegate approval of Summer Session budgets to the component chief administrative officer.
- l. Implement a review of supplemental reports which have historically been filed with the budget to determine if they continue to be needed by either U. T. System Administration or the U. T. Board of Regents.

These changes will enhance the Board's ability to focus on overall budgetary administration and execution, reduce the budgeting detail needed only at the institutional level, and substantially limit the staff time and paper flow associated with the Board's approval of the annual operating budget.

On behalf of the Business Affairs and Audit Committee, Regent Loeffler thanked Vice-Chairman Lebermann for his leadership of the System Process Review Committee and the efforts to increase the efficiency of the budgetary process.

5. U. T. System: Approval of the System-wide Internal Audit Plan for Fiscal Year 1994-95.--In compliance with the Texas Internal Auditing Act passed by the 71st Legislature which requires in Section 4(1) that an annual audit plan be prepared using risk assessment techniques, the Board approved the System-wide Internal Audit Plan for Fiscal Year 1994-95 as set forth on Pages 25 - 37.

The development of the Internal Audit Plan is based on a System-wide risk assessment. Implementation of the Plan will be coordinated with the institutional auditors to ensure coverage without duplication of effort.

**THE UNIVERSITY OF TEXAS**

**SYSTEM WIDE  
AUDIT PLAN  
FOR  
FISCAL YEAR 1994-95**

## OVERVIEW

The Texas Internal Auditing Act, Article **6252-5d**, Vernon's Texas Civil Statutes, passed by the Seventy-first Legislature established guidelines for a program of internal auditing. The intent was to assist agency administrators by furnishing independent analyses, appraisals, and recommendations concerning agency operations. The act also mandated that the internal audit program conform to the standards for the Professional Practice of Internal Auditing as promulgated by the Institute of Internal Auditors (IIA).

IIA Standards require that internal auditors develop an audit plan based on assignment of risk. Input from the component internal audit directors and top-level management, as well as input from mid-and top-level management at System Administration, was solicited. The audit areas suggested by the components and System Administration were evaluated based on certain risk factors, which included potential risk of loss, strategic plan/mission objectives, public/management "expectations," laws and regulations, management interest. and date and results of last audit of the various areas. After assessing the risk of each area, and considering management's input, the following areas were selected for review at the component institutions:

Departmental Internal Controls  
Follow-up on Prior Year Audit Recommendations  
Environmental Health and Safety (**UTA,UTB,UTEP,UTPA,UTSA,UTT,UTHCT**)  
NCAA Programs (**UTSA, UTEP, UTA, and UTPA**)  
EDP Audits

The Standards for the Professional Practice of Internal Auditing address the scope of work as follows:

"The scope of work should include the examination and review of the adequacy and effectiveness of the system of internal control, and the quality of performance in carrying out responsibilities. Internal auditors should:

- review the **reliability and integrity of financial and operating information** and the means used to identify, measure, classify, and report such information.
- review the systems established to ensure **compliance** with those policies, plans, procedures, laws, and regulations which could have a significant impact on operations and reports and should determine whether the organization is in compliance.
- review the means of **safeguarding assets** and, as appropriate, verify the existence of such assets.
- appraise the **economy and efficiency** with which resources are employed.
- review **operations and programs** to ascertain whether results are consistent with established objectives and goals and whether the operations or programs are being carried out as planned.

The planned scope of each of the audits listed above is described under "System Administration Audit Plan"

## **BUDGET AND STAFFING**

The budget for the System Audit Office was prepared in accordance with System Administration guidelines and was approved at the August 1994 Board of Regents' meeting.

Degrees and certifications held by the staff includes 6 auditors with advanced degrees and 8 auditors with CPA certifications. Career development for the staff is a strategic goal of the System Audit Office and it is the Director's intent to create a working environment that will facilitate career opportunities for the audit staff within and outside the office. The Office will continue its efforts towards developing current staff to its fullest potential through the performance of operational audits, exposure to higher levels of management, and training targeted at non-traditional audit areas.



# SYSTEM ADMINISTRATION AUDIT PLAN

## FISCAL YEAR 1994-95

### *SYSTEMADMINISTRATIONAUDITS*

**Self Insured Medical Benefits** - The scope of this audit includes reliability and integrity of data, compliance, safeguarding of assets, and economy and efficiency of operations. The audit will include tests of payments to providers and participants and premiums remitted by component institutions.

**Institutional Funds Short/ Intermediate Term Fund** - The scope of this audit includes reliability and integrity of data, compliance, and safeguarding of assets. The review will include the testing of transactions, controls, and policies and procedures.

**Medical Liability Fund** - The scope of this audit includes reliability and integrity of data, compliance, and safeguarding of assets. This audit will include tests of account balances and control processes to assess and resolve malpractice claims.

**Oil and Gas Audits** - The scope of this audit includes reliability and integrity of data, compliance, and safeguarding of assets. The audits will include tests of stock inventory and accuracy of royalties received as well as tests for compliance with lease provisions.

**Workers' Compensation Insurance and Unemployment** - The scope of this audit includes reliability and integrity of data, compliance, program results, and safeguarding of assets. The audit will include procedures to follow-up on recommendations made in the previous audit.

### *Component Institution Audits*

**Internal Controls** - The scope of these audits will include safeguarding of assets, compliance, and reliability and integrity of data.

**NCAA Programs (UTSA, UTEP, UTA, UTPA)** - These audits consist of agreed-upon procedures regarding internal controls, revenues, expenditures, and Booster Club activity related to intercollegiate athletics programs,

**Environmental Health and Safety (UTA, UTB, UTEP, UTPA, UTSA, UTT, and UTHCT)** - The scope of these audits includes economy and efficiency, program results, and compliance. The audits will include a review of the programs in place to manage hazardous waste.

**Internal Audit Work (UTPB)** - The scope of the internal audit work at this component will include safeguarding of assets, economy and efficiency, program results, compliance, and reliability and integrity of data.

**EDP Audits** - These audits will include general controls at the academic institutions which do not have EDP auditors on the institutions staff.

**COMPONENT AUDIT PLANS**  
FISCAL YEAR 1994-1995

**ACADEMIC INSTITUTIONS**

**THE UNIVERSITY OF TEXAS AT ARLINGTON**

Payroll and Fringe Benefits

Inventories ▪ Sales

Cash ▪ Change/Purchase Funds

State and Local Compliance:

    Faculty Sick Leave

    Faculty Teaching Workload

    Expenditures

    Demand Account Reconciliations

    Holds for Indebtedness

EDP:

    Systems Design/Applications Reviews

    Electronic Transcripts

    LANs Provided by Academic Computing Services

    Address Database System Review

Performance:

    Center for Professional and Executive Development

    Expenditures Growth Analysis

    Admissions

    Registrar

    Special Recruiting Effort ▪ Fall 94

    Bits & Bytes

Federal Compliance:

    Financial Aid

    Equipment

Internal Control Environment:

    Review Internal Control System and Update Documentation

    Findings Follow-up

**Departmental Audits:**

    History

    Biology

    Engineering Graphics

    Urban and Regional Affairs

    Architecture

    International Office

    Environmental Health and Safety

    Maverick Stadium

    Motor Pool

Other Area:

    Management Requests Audits

    Auditor Judgment

    Assist State/System Auditors

**THE UNIVERSITY OF TEXAS AT AUSTIN**

Cash:

    Retail Operations

    Petty Cash

    Cash Receipts

    Training

    Bursar's Office

Internal Control, Compliance, Financial:  
New Deans, Directors and Chairpersons  
Spot-Check Audit  
Development Office  
Student Fees

Electronic Data Processing (EDP)

Federal

Unplanned Projects:

Investigations  
Management Request

Follow-up Audits

Performance Reviews

Economic/Efficiency Audits  
Program Audits, or  
Management Control Audits

### THE UNIVERSITY OF TEXAS AT BROWNSVILLE

Sponsored Research Programs  
Financial Assistance Programs  
Student Fees  
Cash Handling on Campus  
Records Management

### THE UNIVERSITY OF TEXAS AT DALLAS

**Annual** Financial Report Reviews  
Discretionary Funds  
Internal Controls Update  
Follow-up Audits  
Lena **Callier** Trust  
Monitoring Grant Subrecipients  
Inventories  
Quality Assurance Review  
Special Requests by President, Management  
Surprise Petty Cash Counts  
Information Resources (EDP Audits)  
Top Secret Security Package  
Electronic Forms Systems  
Financial Aid  
Property Administration  
Contracts **&** Grants  
School of Management  
Utilities  
School of General Studies  
Cash, Appropriations, and Investment  
**Telecommunication** Services  
Admissions **&** Records  
Student Services  
University Police

### THE UNIVERSITY OF TEXAS AT EL PASO

Intercollegiate Athletics  
KTEP-FM  
Follow-up Audits  
Environmental Health and Safety  
Internal Controls

Quality Assurance Review  
State Audits  
UT System Audits  
Miner Foundation  
Music Department Review Recognition  
Development and Alumni Office  
Vouchering Office  
Special Request Audits  
Computer Center and Business Information System  
Student Grade Changes  
Bursar's office  
Cash Handling Operations  
Special Projects

#### **THE UNIVERSITY OF TEXAS - PAN AMERICAN**

Departmental Cash Handling - Internal Controls  
Intercollegiate Athletics  
South Texas Border Initiatives - Review of Expenditures  
Office of Admissions and Records  
School of Education  
Gifts and Donations  
Office of the Comptroller  
Voice Response  
Telecommunications - Telephone System  
Disaster Recovery  
Pre-Implementation Review - On-Line Purchase Requisitioning  
Computer Network Security  
Follow-up Audits

#### **THE UNIVERSITY OF TEXAS OF THE PERMIAN BASIN**

The audit plan for UTPB was developed by the UT System Audit Office, which will provide internal auditing services for UTPB. Areas to be audited include:

Departmental Audit (Internal Controls):  
    Humanities and Fine Arts  
    Behavioral Science  
    Laboratory Division  
    Graduate Studies and Research  
    Science and Mathematics  
Operational Audits  
    Contracts and Grants  
Internal Control Action Plan ( Training)  
Cost Committee  
Follow-Up on Prior Audits

#### **THE UNIVERSITY OF TEXAS AT SAN ANTONIO**

Resale Inventories  
Annual Cash Counts & Surprise Cash Counts  
Capital Inventory Counts  
Texas Folklife Festival Financial Audit  
Grants and Contracts  
Departmental Internal Control Assessments  
Follow-up Audits  
Admissions and Registrar:  
    Recruitment  
    Admissions Processing  
Student Financial Aid

Bursar's Office  
Payroll  
Research Development  
Office of Instructional Resources  
Institute of Texan Cultures • Business Office  
Campus Mail Room

**THE UNIVERSITY OF TEXAS AT TYLER**

Deferred Revenues  
Student Financial Aid  
Purchasing  
Hazardous Waste  
Continuing Education  
Dean's Office:  
    School of Education and Psychology  
    School of Sciences and Mathematics  
    School of Liberal Arts  
    School of Business Administration  
Data Processing Center  
Personnel  
Inventory • Year End  
Petty Cash and Change Funds  
Million Dollar Hole-In-One Contest  
Audits In-Progress at Year-end 1994  
Follow-up Audits  
Special Requests

***HEALTH INSTITUTIONS***

**THE UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL BRANCH AT DALLAS**

MSRDP  
    Financial Planning and Analysis  
    Collections & Expenditures  
Physical Plant • Utilities  
Aston Center • Business Area  
Human Resources  
    Faculty Benefits  
    Employee Services  
Medical School  
    Cardiopulminology  
    Nephrology  
    Obstetrics and Gynecology  
    Pediatrics  
    Limited Internal Control Reviews  
        ▪ Pharmacology  
        ▪ Physiology  
        ▪ Neurosurgery  
        ▪ Dermatology  
Payroll  
State Appropriations  
State Grants  
EDP • Budget System  
Mail Service  
Continuing Education Performance Audit

Allied Health  
All Departments  
Faculty Practice Plan  
Inventory  
Physical Plant  
General Stores  
Petty Cash

**THE UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON**

Follow-up Audits  
Human Resources Management System  
Cardiac Catheterization Lab  
Computer Change Control  
Hospital Monitoring Service  
Psychiatry Charge  
Drug Company Investigation  
Cash Collection Profess  
Clinical Trials  
Customer Information Control Software  
Bookstore Automation  
Bank Account Review  
Recharge Centers Review  
Sealy Smith Ultrasound Lab  
Computing Service Center Report Utilization  
Special Requests  
Bookstore  
Family Practice Residency Program  
MSRDP  
Financial Statement Review  
Abstracting Process  
Budgeting and Expenditure Control  
UT System Internal Control Initiative  
UT System Cost Reduction Initiative  
Information Systems Technical Reviews  
Human Resources Management System  
General Ledger and Time and Attendance  
**Invision** (Order Entry)  
Emergency Preparedness  
General ledger and Time and Attendance  
LAN  
Departmental Reviews  
Computing Service Center  
Emergency Department  
Home Health  
Human Biological Chemistry & Genetics  
Human Resources  
Moody Independent School District  
Nursing Service  
Otolaryngology  
**Phamacology & Toxicology**  
Physical Plant  
Preventative Medicine & Community Health  
School of Allied Health Sciences  
School of Medicine  
**Surgery**  
Transportation

Process Audit Efforts

Acquisition of and Payment for Goods and Services

Human Resources/Payroll

- HRMS Segment (Integrated)
- 1099 Segment

Campus Environment

- Equipment Accountability

Deliver Patient Care

- Bill for Services (Invision) Segment (Integrated)

Pharmacy Co-oping

Other Co-oping

**THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON**

Survey of Outside Remuneration

Leave Balances

'94 FYE Inventories

Follow-up Audits

Employee Assistance Program

Nursing Services Billing System

Accounting • Cash Receipts Review

'94 FYE Residency Programs (All)

**Hermann** Hospital Contracts

Application and Awards Process - Sponsored Research

Internal Medicine Operations (MSRDP)

Indirect Cost Review

Budget and Cost Management Operations

Hazardous Materials

'95 FYE Inventory

Development Office Operations

Medical Foundation Operations

Telecommunications Charge/Billing

Physical Plant Service Departments Operations

Energy Management

Special Assignments

Information System Audits

Internal Staff Assistance • Mainframe

Internal Staff Assistance • PC

Assist External Auditors

Information Resources Risk Analysis

Student Information System Applications

DIR Proposal

Various LAN reviews

Special Assignments

MSRDP

Financial Audit • Summary of Operations

Anesthesiology Charge Capture

Pediatrics Charge Capture

Neurology Charge Capture

Surgery Operations

Central Business Office Limited Operations

Special Assignments

HCPC:

FYE Inventory • Pharmacy

Activity Therapy

Clinical Social Services

Nursing Service Follow-up

Patient Financial Services

Special Assignments

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO

Accounts Payable  
MSRDP Central Office  
General Practice  
Industry ▪ University Cooperative  
    Research Center/ State Industry Cooperative Research Center  
Equipment Inventory  
Appropriations  
Travel Expenditures  
Budget  
Petty Cash  
Payroll  
Purchasing  
Federal Grants and Contracts  
Private Grants and Contracts  
Computing Resources ▪ DIR Requirements  
**MSRDP/DSRDP** Financial Review  
Physical Plant ▪ Construction & Building Maintenance  
Physical Plant ▪ Utilities  
University Police  
Printing Services  
Instrumentation Services  
Library  
Registrar  
Student Financial Aid  
Endowments  
Allied Health Continuing Education  
Emergency Medical Technology  
Clinical Research - Dental School  
Dental Outpatient Clinic  
DSRDP  
Endodontics  
Periodontics  
Biochemistry  
Family Practice Residency Program  
Medicine  
Obstetrics and Gynecology  
Pediatrics  
Radiology  
**Surgery**  
University Clinic  
South Texas Research Center  
Area Health Education Center  
Health Education Training Centers Alliance  
School of Nursing  
Advanced Research Program/Advanced Technology Program Grants  
Follow-up Audits  
Internal Audit Quality Assurance Review

THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER

Cardiopulmonary Service  
Diagnostic Imaging  
Physician Referral Service ▪ Annual Financial  
Payroll Delivery  
Petty Cash Counts  
Pediatrics  
1995 Year-End Inventory  
Bad Debt Write-Off Confirmation



Human Resources • COSO Overview  
 Nursing, Hospital  
 Medical Records  
**Office** of Managed Care  
**Office** of Education  
 FRAP  
 Pharmacy  
 Building Services  
 EDP Audits:  
   Diagnostic Imaging Radiotherapy Information System  
   Electronic Data Interchange  
   Operating Room System Automation  
   Pharmacy **DATASTAT** System  
   Radiotherapy RAMS System  
   FSA General Ledger • **USAS**  
   MVS Operating System Audit  
   Netware Operating System Audit  
   Omegamon Monitor  
   Production Test Certification Methodology  
   System Development Life Cycle  
   Tape Management System (TMS)  
   Telecommunication • Data  
   UNIX Operating System Audit  
   VM Operating System Audit  
   Patient Care Information System Re-engineering  
   Financial Resources and Assessment Planning Budget System • Hospital/Clinic  
   Global Data Security Administration  
   Human Resources Management System  
   Institutional Disaster Recovery Plan  
   LAN New Development  
   Radiology Information System Upgrade  
   Computer-based Patient Record  
   Automated Time & Attendance System  
   EDP Software Retrieval  
   EDP Software Training  
   EDP Staff Support  
 Prior **Year** Audits  
   1994 Year-End Inventories  
   Lab Medicine  
   Leukemia • Station 77  
   Melanoma • Station 55  
   Dental Oncology • Station 59  
   Urology  
   Ambulatory Treatment Center • Station 19 & Green Park  
   Bone Marrow Transplant • Stations 73 & 75  
   State Follow Up Management control  
   General Ledger to AFR  
   Telecommunication • Voice  
 Investigations • WWIR  
 Follow Ups  
   Accounts Receivable • Patient Accounting and PRS  
   Medicare Cost Report  
   Procurement Services  
   General Accounting • Internal Control  
   Grants and Contracts • Private  
   Genitourinary Oncology -St. 14  
   **HRIS**- Human Resources  
   1994 Year-End Inventories  
   Payroll Delivery  
   Pediatric/Volunteer Services

Laboratory Medicine  
Leukemia • St. 77  
**Melanoma.Sarcoma** • St. 55  
Dental Oncology • St. 59  
Ambulatory Treatment Centers • ST. 19  
Bone Marrow Transplant • **STs. 73 & 75**  
Petty Cash Counts  
Data Security  
Nursing Payroll System  
Lab Medicine System Automation  
Change Control

THE UNIVERSITY OF TEXAS HEALTH CENTER AT TYLER

Travel  
Equipment PUF  
Cash Receipts  
    MSRDP  
    General  
    Grants  
Timekeeping  
Repair and Renovation  
Development Office  
Information Systems  
Investment In Plant  
Inventories - Consumable Supplies  
MSRDP - Compliance with BPM #3 1 (Policies and Procedures for Business Operations)  
Family Practice Coordinating Board Grant  
System Audit Follow-up  
Follow-up on Previous Audits  
Billing & Collection - Professional Fees (MSRDP Only)  
Capital Assets • Inventories & Controls  
**Staff Benefits**  
Outside Managed Care Services  
Risk Management/Quality Assurance  
Payroll • General  
Payroll - Tax & FICA  
Central Stores  
Pathology  
Ambulatory Care Facilities  
Budgetary Control  
Oncology Clinic  
MSRDP Revenue  
Restricted Funds  
Unexpended Plant Funds (Other)  
Surgery  
Surgery Clinic  
Hospital Revenue  
Construction (& Safety)  
Managed Care Clinic  
Managed Care Financial Services  
Managed Care Marketing & Patient Services  
Neurology Clinic  
Supplies Processing and Distribution  
Augmentation Allotment

6. U. T. System: Authorization to Renew the Comprehensive Crime Policy with National Union Fire Insurance Company, Pittsburgh, Pennsylvania, Effective November 1, 1994 Through November 1, 1995.--Authorization was given to renew The University of Texas System Comprehensive Crime Policy with National Union Fire Insurance Company, Pittsburgh, Pennsylvania, effective November 1, 1994 through November 1, 1995, at an annual premium of \$115,000.

The majority of the institutions selected a \$50,000 deductible with an annual premium of \$115,000. The same terms and conditions will apply with the renewal policy.

7. U. T. System: Progress Report on the Historically Underutilized Business (HUB) Program for Fiscal Year 1994.--Committee Chairman Loeffler called on Mr. Lewis Wright, Associate Vice Chancellor for Business Affairs, to present a progress report on The University of Texas System Historically Underutilized Business (HUB) program for Fiscal Year 1994.

Mr. Wright distributed to the members of the Board a report entitled "The University of Texas System Historically Underutilized Business (HUB) Program Review," a copy of which is on file in the Office of the Board of Regents. With the aid of viewgraphs, Mr. Wright presented the following report on the U. T. System Historically Underutilized Business program highlighting the experience in Fiscal Year 1994:

Report on The University of Texas System  
Historically Underutilized Business Program

Mr. Chairman, members of the Board, Chancellor Cunningham -- This fourth annual briefing reports the status of the legislatively mandated Historically Underutilized Business (HUB) program in U. T. System and what is known of future program developments.

**Attachment 1** summarizes legislative and administrative guidelines that govern HUB program development and operational activities. Supplementing legislative guidelines, the Regents' Policy on Utilization of Historically Underutilized Business (HUB) Firms was promulgated in April of this year. It outlines a grand strategy to be followed by each component in structuring its HUB program. Additionally, component and System Administration HUB strategic plans have been developed and filed with the Governor's Office and the Legislative Budget Board. The System Administration and U. T. Arlington HUB strategic plans are included as **Attachments 2 and 3**, respectively, for your reference. HUB action plans detailing program implementation strategies have been developed and filed with the Joint Select Committee on Historically Underutilized Businesses as well. The U. T. Health Science Center - Houston continues participation in the TEXCAL pilot project. In another pilot project, U. T. System

is employing the Owner-Controlled Insurance Program (OCIP) concept in connection with the Phase II - Bertner Complex and Clinic Services Facility at the U. T. M.D. Anderson Cancer Center. Expected premium cost savings are \$2.2 million.

Finally, program policy development and operations conferences are listed on page 2 of Attachment 1. The U. T. System Administration and U. T. Austin, members of the HUB Cooperative State Agency Committee, contributed program expertise, production funding, and subsequently purchased a supply of HUB program videotapes produced by the Committee for use in outreach and internal education programs. Three copies of the videotape will be distributed to each component this month. The U. T. System continues its close cooperation with the General Services Commission (GSC) in hosting statewide economic opportunity forums. Materials included as **Attachment 4** outline planning for the 1995 EOF series.

**Attachments 5 through 12** report program outcomes for FY 1994. Basic data is taken from the GSC FY 1994 report, excerpts from which are included in the reference section of this report.

**Attachment 5** displays total dollars expended with HUB firms in Column I (output measure). For U. T. System as a whole, that amount is \$90,334,787. Column III displays the percentage of total delegated purchases dollars spent with HUB firms (outcome measure). For U. T. System as a whole, that percentage is 10.3. The U. T. System has documented goods and services totaling \$243,088,030 (Column IV) for which no HUB vendors have been located (see Reference B). After adjusting total delegated purchases for this amount (Column V), the resulting outcome measure is 14.2 percent (Column VI). The outcome measures in Column III do not, with two notable exceptions (U. T. Brownsville and U. T. Pan American), approach the 30 percent goal. However, the goal has been established on the assumption that sufficient ready, willing, and able HUB vendors exist in relevant supply markets to support 30 percent HUB participation on a competitive basis. Until HUB vendor availability/capacity is determined more objectively, no final judgment about achieved program outcomes can be made. It is reasonable to expect, however, that the U. T. System, both as individual agencies and collectively, should match or exceed the statewide average outcome measure of 11.9 percent.

**Attachments 6 and 7** analyze the growth or contraction behavior of the components of the outcome measure -- total HUB purchases and total delegated purchases. U. T. Austin and U. T. Medical Branch - Galveston account for 34 percent and 44 percent, respectively, of the systemwide growth in HUB purchases. The rate of growth in total HUB purchases must exceed the rate of growth in total delegated purchases if improvement in the outcome measure is to be achieved. The effects of changes in those outcome measure components is recorded in **Attachment 8**.

**Attachment 9** shows the distribution by amount and percentage of total HUB expenditures (\$90.3 million) across HUB ethnic/gender groups.

The comparison of the FY 1994 distribution to prior years in **Attachment 10** reveals a significant improvement in the participation of African American firms.

The report of HUB participation in design and construction contracts awarded in FY 1994 is included as **Attachment 11**. It is important to observe that the FY 1993 data are payments data and the FY 1994 data are contract award data. Payments on contracts awarded in FY 1994 will be made over a period extending one or more years beyond that fiscal year.

**Attachment 12** permits the comparison of current program outcomes with both current and future projections. While only FY 1995 projections are shown in the attachment, projections through FY 1999 are included in strategic plans.

Section 55.03, Texas Education Code, requires that the Board report annually to the Governor and each house of the Legislature the extent of HUB participation in contracts awarded in connection with the revenue financing program authorized by H.B. 2058. A copy of the academic year 1994 report is included as **Attachment 13**. The legislation establishes a good faith effort goal of 25 percent HUB participation in contracts related to the issuance of bonds and in contracts related to items financed by such bonds. In FY 1994, one contract for paying agent services was awarded under which \$1,195 was paid. Four banks were solicited for bids. We are not aware of any minority or women-owned banks that can provide this service. Regarding contracts relating to items to be financed, 210 contracts totaling \$53,336,614 were awarded during the reporting period. Minority or women-owned firms submitted 245 bids or 57 percent of total bids received. HUB firms received \$11.8 million or 22.2 percent of total contract awards.

Before taking a brief look into the future of the HUB program, it is appropriate to recognize U. T. Medical Branch - Galveston (UTMB) for its intensive care as mentor and sponsor in facilitating the establishment of a major, new minority-owned business in its supply market area. Qualiticare, a Baltimore, Maryland, based African American-owned medical/surgical supply distribution company, will establish operations in Houston, Texas. Qualiticare has been granted a Certificate of Authority by the Secretary of State to transact business in the state and is a GSC certified HUB vendor. When fully operational, the company anticipates local hiring of 36 full-time employees and expects first-year sales of \$16 million. Potentially, Qualiticare can provide significant HUB capacity for many commodities currently defined by U. T. System components as HUB noncapacity supplies. In addition to other U. T. System health components, UTMB has been instrumental in introducing Qualiticare to other leading health-care providers around the state.

Initiatives by the Joint Select Committee (JSC) on Historically Underutilized Businesses during the 74th Legislature and rules that proceed from the Disparity Study are the major future influences on the HUB program.

The JSC has held hearings throughout the state during the past year. Some areas of interest to the Committee are listed in **Attachment 14**.

The Office of the Comptroller expects to receive the Disparity Study this month. **Attachment 15** summarizes U. T. System participation in the study and some study features.

In his discussion of disparity studies, Dr. LaNoue states:

"Cities control the allocation of public prime contracts, often by a low bid process. If there is contemporary discrimination, then, someone or something in the city process is responsible, and the city would have a clear obligation to do something about it. Subcontracts are dispensed through private agreements between prime contractors and generally smaller more specialized subcontractors. Private construction, of course, results from agreements between clients, primes and subs. Justice O'Connor remarked in Croson:

'Thus, if the city could show that it had essentially become a "passive participant" in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the city could take affirmative steps to dismantle such a system. It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.'

That language implies that cities can regulate the relationships between prime and subcontractors in public contract lest they become a "passive participant" in racial exclusion financed by public dollars."

At the conclusion of Mr. Wright's presentation, Regent Smiley noted that she was very pleased with the report and the progress that has been made in the last year and expressed appreciation to the chief administrative officers, Chancellor Cunningham, and Mr. Wright for their leadership in making this program a major priority.

In closing, Regent Loeffler thanked Mr. Wright for this very informative report and noted that the Board is pleased to hear that progress is continuing in this area. He further noted that the Board recognizes that there is still a long way to go to fully involve the HUB community in the business areas of the U. T. System.

REPORT AND RECOMMENDATIONS OF THE ACADEMIC AFFAIRS COMMITTEE (Pages 42 - 57).--Committee Chairman Holmes reported that the Academic Affairs Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Academic Affairs Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. Board of Regents - Regents' Rules and Regulations, Part One: Amendments to Chapter III, Section 24 (Compensation for Correspondence and Extension Teaching).--Upon recommendation of the Health Affairs and Academic Affairs Committees, the Board amended the Regents' Rules and Regulations, Part One, Chapter III, Section 24, regarding compensation for correspondence and extension teaching, to read as set forth below:

Sec. 24. Compensation for Correspondence and Extension Teaching.--Full-time employees on twelve (12) month appointments may receive additional compensation for correspondence course and/or extension center teaching, but may not receive additional compensation for summer school teaching. Full-time employees on nine (9) month appointments may receive additional compensation for correspondence course and/or extension center teaching during the nine (9) month period and also may be paid for summer school teaching. Compensation rates for correspondence course and extension center teaching shall be paid at rates set from year to year by the chief administrative officer and approved via the operating budget approval process.

This amendment deletes the requirement that compensation rates for correspondence course and extension center teaching be approved by the appropriate Executive Vice Chancellor and the Chancellor and authorizes approval of such rates via the operating budget approval process.

2. U. T. Board of Regents - Regents' Rules and Regulations, Part One: Approval of Amendments to Chapter IV, Section 2, Subsections 2.4 and 2.5 (Institutional, College, School, and Departmental Faculties and Legislative Bodies).--The Board, upon recommendation of the Health Affairs and Academic Affairs Committees, amended the Regents' Rules and Regulations, Part One, Chapter IV, Section 2, Subsections 2.4 and 2.5, regarding institutional, college, school, and departmental faculties and legislative bodies, to read as set forth below:

Sec. 2. Institutional, College, School, and Departmental Faculties and Legislative Bodies.

- 2.4 Approval of Degree Candidates.--It shall be the duty of the several institutional faculties to recommend approval or disapproval of all candidates for degrees. This duty may be delegated by affirmative vote of the institutional faculty, or its legislative body, to the respective deans or other appropriate official. Should

this duty not be delegated, then the institutional registrar, or his or her equivalent, shall furnish to the members of the institutional faculty a complete list of the degree candidates for recommendation.

- 2.5 List of Degree Candidates in Minutes.--The institutional registrar, as soon as possible after each commencement, shall provide the secretary of his or her institutional faculty, or its legislative body, with a complete list of all successful degree candidates.

These amendments simplify the required procedure for approval of degree candidates and delete the current requirement that the list of degree candidates be included in the faculty legislative body minutes.

3. U. T. Austin: Permission for Professor Ray Marshall to Serve as a Trustee of the German Marshall Fund Board [Regents' Rules and Regulations, Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11)].--Permission was granted for Professor Ray Marshall, holder of the Audre and Bernard Rapoport Centennial Chair in Economics and Public Affairs at The University of Texas at Austin, to serve as a Trustee of the German Marshall Fund Board for an initial term beginning October 1994 and ending October 1998, with the possibility of reappointment to a subsequent four-year term.

Professor Marshall will serve without compensation except for reimbursement of travel expenses associated with his service on this Board.

Professor Marshall's service on this Board is of benefit to the State of Texas, creates no conflict with his position at U. T. Austin, and is in accordance with approval requirements for positions of honor, trust, or profit provided in Chapter 574 of the Texas Government Code and Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11) of the Regents' Rules and Regulations.

4. U. T. Austin: Approval to Name Room 101 in the West Mall Office Building as the Jane N. Lippmann Room (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, Naming of Facilities Other Than Buildings) (No Publicity).--In accordance with the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, relating to the naming of facilities other than buildings, Room 101 in the West Mall Office Building at The University of Texas at Austin was named the Jane N. Lippmann Room in recognition of Professor Jane N. Lippmann's thirty years of distinguished service to the Colleges of Arts and Sciences, Humanities, and Liberal Arts.

It was requested that no publicity be given to this matter so that Professor Lippmann may be surprised by an announcement at the Spring commencement ceremony for the College of Liberal Arts.



5. U. T. Brownsville: Authorization to Establish a Bachelor of Science in Computer Science Degree and to Submit the Degree Program to the Coordinating Board for Approval (Catalog Change).--Authorization was granted to establish a Bachelor of Science in Computer Science degree at The University of Texas at Brownsville and to submit the proposal to the Texas Higher Education Coordinating Board for review and appropriate action. The Bachelor of Science in Computer Science degree is consistent with U. T. Brownsville's approved Table of Programs and institutional plans for offering quality degree programs to meet student needs.

The Bachelor of Science in Computer Science degree requires a minimum of 126 semester credit hours including 60 semester credit hours of general education, 15 semester credit hours of computer science foundation courses, 39 semester credit hours of computer science major courses (including 12 hours of designated electives), and 12 semester credit hours of approved free electives. Three new courses are included in the program, although all courses required for the degree are in the department's current course inventory. A minor is not required because of the broad nature of the program. This program will be administered by the Computer Science Department in the College of Science, Mathematics and Technology. The first students are expected to be enrolled in the program in the Fall of 1995.

The current faculty of six persons all have at least a Master of Science degree in Computer Science. One additional faculty member will be needed to initiate the program with another one required in the third year. Initially, no part-time faculty or additional clerical help will be needed.

Current faculty are already teaching courses relevant to the program. The Computer Science Department has been offering undergraduate courses in computer science for ten years and has necessary equipment in place to support the program. A minimal equipment budget is necessary to replace old computers, to improve on the current networking capabilities, and to purchase specialized equipment not presently available. The Computer Science Department will be housed in the new science and engineering technology building which will be furnished with state-of-the-art equipment when it is completed. Any costs associated with the program that are not covered by revenues resulting from the funding formula will be covered by the anticipated continuance of the special legislative appropriation for South Texas/Border Initiative program development. When the program is in full operation, the regular faculty salary and departmental expense funding formulas are expected to meet the direct costs of the program.

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

6. U. T. Brownsville and U. T. Pan American: Approval of a United States Army Cross Enrollment Agreement and Authorization for Component Presidents to Execute Agreement.--Approval was given to a United States Army Cross Enrollment Agreement between The University of Texas at Brownsville and The University of Texas - Pan American as set out on Pages 46 - 48. This agreement will provide senior division academic instruction of the Army Reserve Officers' Training Corps for U. T. Brownsville students who will be cross-enrolled at U. T. Pan American.

Further, Presidents Garcia and Nevarez were authorized to execute the agreement with the understanding that any and all specific agreements arising from this agreement are to be submitted for prior administrative review and approval as required by the Regents' Rules and Regulations.



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
DEPARTMENT OF MILITARY SCIENCE  
THE UNIVERSITY OF TEXAS-PAN AMERICAN  
1201 WEST UNIVERSITY DRIVE  
EDINBURG, TEXAS 78539-2099



US ARMY CROSS ENROLLMENT AGREEMENT  
BETWEEN  
THE UNIVERSITY OF TEXAS-BROWNSVILLE  
AND  
THE UNIVERSITY OF TEXAS-PAN AMERICAN

1. Under the provisions of Public Law 66-647, and section 2102, Title 10, and United States Code, a senior ROTC unit was established at The University of Texas-Brownsville and The University of Texas-Pan American effective \_\_\_\_\_. This ROTC unit was established pursuant to an agreement between the governing authorities of The University of Texas-Brownsville signed by Dr. Juliet V. Garcia, President, on \_\_\_\_\_, and the governing authorities of The University of Texas-Pan American signed by Miguel A. Nevarez, President, on \_\_\_\_\_ and approved for the Secretary of the Army by \_\_\_\_\_, Department of the Army, on \_\_\_\_\_. Copies of the agreement are on file at both Colleges/Universities and the Department of the Army.

2. This CROSS ENROLLMENT AGREEMENT between The University of Texas-Brownsville and The University of Texas-Pan American is entered into pursuant to the above authorities, and Army Regulation 145-1 which authorizes the cross enrollment of students between host ROTC and non-ROTC institutions.

3. Contingent upon the acceptance of this AGREEMENT by both parties, the Professor of Military Science, UT Pan American agrees to the following:

a. To provide Senior Division academic instruction of the Army Reserve Officers' Training Corps for students cross enrolled from The University of Texas-Brownsville. Such instruction will be available to all eligible students and nondiscriminatory with respect to admission or subsequent treatment of students on the basis of sex, race, color, or national origin.

b. To provide such military personnel as may be required for the necessary and proper conduct of the Army Reserve Officers' Training instruction subject to the availability of military personnel from US Army resources. As a general rule, faculty will travel to the crossenrolled school when ten or more students are registered for each class offering. If less than ten, the students will travel to the host institution.

c. To provide for **use** in the Army Reserve **Officers' Training** corps instructional program such available US government property as may be authorized by law and applicable tables of **allowances**.

d. To **issue**, subject to the availability of funding, at the **expense** of US Government, **textbooks** for students not enrolled in the ROTC program, but taking military **science courses** taught by military **instructors**. Title to these **books** remains with the US Government. All books will be returned at the completion of the **course**.

e. To provide grade **reports in the form of a certified letter** to The University of Texas-Brownsville registrar for each **student** enrolled in **courses** taught by military **instructors**.

4. **Contingent upon the acceptance of the above provisions, The University of Texas-Brownsville agrees to the following:**

a. To authorize **its students** to **enroll in and attend ROTC classes** at The University of Texas-Pan American. Enrollment will be nondiscriminatory **with respect to admission or subsequent treatment of students on the basis of sex, race, color, or national origin**.

b. To provide to the **Professor of Military Science** grade reports and transcripts of enrolled University of Texas-Brownsville ROTC students, **as required, to enable monitoring of student's academic progress per Army Regulation 145-1**. Charges for such **services** will be on the same **basis as** provided other department of The University of Texas-Brownsville.

c. To grant academic credit **in accordance with The University of Texas-Pan American policy for Military Science courses** taught by the Military Science Department.

d. To recognize the Senior Military officer assigned to The University of Texas-Pan American as Professor of Military Science.

e. To withhold transcripts of grades and certificates of **graduation** of students and former students who **fail** to return government property upon disenrollment or at the **conclusion** of their **course of ROTC instruction**.


5. It is mutually understood and agreed **as follows:**


a. The **final authority to conduct ROTC instruction for students** at The University of Texas-Brownsville is vested in the Commander, Fourth **ROTC** Region.


b. The University of Texas-Brownsville students will receive equal opportunity with respect to competing for ROTC **scholarships**.


c. This agreement may be terminated by Any signatory by giving written notice of such intent to thm other8 one academic year prior to actual termination.

d. That this AGREEMENT shall become effective when approved and signed by the Appropriate authorities of each institution.

  
\_\_\_\_\_  
JULIET V. GARCIA      DATE  
President  
University of Texas-Brownsville

  
\_\_\_\_\_  
MIGUEL A. NEVAREZ      7-12-94  
President      DATE  
University of Texas-Pan American

  
\_\_\_\_\_  
DALE A. LAZO      12-JULY 1994  
Major, Infantry      DATE  
Acting Professor of Military  
Science  
University of Texas-Pan American

  
\_\_\_\_\_  
JOHN E. ALLEY      6 Oct 94  
colonel, US Army      DATE

7. U. T. Pan American: Authorization to Name Art Gallery Located in the Fine Arts Complex as the Charles and Dorothy Clark Art Gallery (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, Naming of Facilities Other Than Buildings).--The art gallery located in the Fine Arts Complex at The University of Texas - Pan American was named the Charles and Dorothy Clark Art Gallery in accordance with the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, relating to the naming of facilities other than buildings.

The naming of this gallery is in tribute to Charles and Dorothy Clark, whose initial donations in the 1960's from their expansive art collection were used to establish what is now the U. T. Pan American Art Collection.

8. U. T. Pan American: Authorization to Reorganize the Academic Administrative Structure and to Submit the Proposal to the Coordinating Board for Approval (Catalog Change).--Upon recommendation of the Academic Affairs Committee, the Board approved the reorganization of the academic administrative structure at The University of Texas - Pan American as set forth below and authorized submission of this reorganization to the Texas Higher Education Coordinating Board for review and appropriate action:

- a. Divided the College of Arts and Sciences into three colleges with departments assigned as indicated below; divided the current Department of Mathematics and Computer Science into separate departments; and renamed the Bachelor of Arts in Government as the Bachelor of Arts in Political Science:

(1) College of Liberal and Performing Arts

- Department of Art
- Department of Communication
- Department of English
- Department of History and Philosophy
- Department of Modern Languages and Literature
- Department of Music

(2) College of Science and Engineering

- Department of Biology
- Department of Chemistry
- Department of Computer Science
- Department of Engineering
- Department of Mathematics
- Department of Physics and Geology

- (3) College of Social and Behavioral Sciences
  - Department of Criminal Justice
  - Department of Military Science
  - Department of Political Science
  - Department of Psychology and Anthropology
  - Department of Sociology
  
- b. Renamed the School of Business Administration as the College of Business Administration and divided the current three departments into four departments as follows:
  - (1) Department of Accounting and Business Law
  - (2) Department of Economics, Finance, and General Business
  - (3) Department of Management, Marketing, and International Business
  - (4) Department of Quantitative Methods and Information Systems
  
- c. Renamed the School of Education as the College of Education, which will retain the same departments, as follows:
  - (1) Department of Curriculum and Instruction
  - (2) Department of Educational Psychology
  - (3) Department of Health and Kinesiology
  - (4) Department of School Administration and Supervision
  
- d. Renamed the School of Health Sciences as the College of Health Sciences and Human Services with departments and programs as set out on Page 51; created the Department of Communication Disorders and transferred programs in Bachelor of Arts in Speech and Hearing Therapy and Master of Arts in Communication Disorders from the current College of Arts and Sciences to the Department of Communication Disorders in the College of Health Sciences and Human Services, renaming the Bachelor of Arts in Speech and Hearing Therapy as the Bachelor of Arts in Communication Disorders; transferred the Department of Social Work from the current College of Arts and Sciences to the College of

Health Sciences and Human Services; and renamed the Program in Medical Technology as the Program in Clinical Laboratory Sciences:

- (1) Department of Communication Disorders
- (2) Department of Nursing
- (3) Department of Social Work
- (4) Program in Clinical Laboratory Sciences
- (5) Program in Dietetics
- (6) Program in Rehabilitative Services

This reorganization of the academic administrative structure is based on extensive study and deliberation by a University-wide committee consisting of representatives from each of the departments in the College of Arts and Sciences and the deans of the other colleges and schools. No significant new costs are associated with these changes.

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

9. U. T. Pan American: Approval of a United States Army Cross-Enrolled Agreement with South Texas Community College, McAllen, Texas, and Authorization for the President of the Institution to Execute Agreement.--Approval was given to the United States Army Cross-Enrolled Agreement between The University of Texas - Pan American and South Texas Community College, McAllen, Texas, as set out on Pages 52 - 55.

Further, President Nevarez was authorized to execute the agreement with the understanding that any and all specific agreements arising from this agreement are to be submitted for prior administrative review and approval as required by the Regents' Rules and Regulations.

This agreement will provide for cross enrollment of students from South Texas Community College in the U. T. Pan American Reserve Officer Training Corps (ROTC) Program.



U.S. ARMY CROSS-ENROLLED AGREEMENT  
BETWEEN  
UNIVERSITY OF TEXAS-PAN AMERICAN  
AND  
SOUTH TEXAS COMMUNITY COLLEGE

1. **Purpose:** The purpose of this memorandum is to provide an agreed basis for cross-enrollment of students from South Texas Community College in the University of Texas-Pan American ROTC Program.

2. **Objective:** The specific objectives of this memorandum are to identify responsibilities, establish relationships, and outline procedures between University of Texas-Pan American and South Texas Community College for the accomplishment of those elements of their respective tasks which involve matters of mutual interest.

3. **General:**

a. Under the provisions of Public Law **88-647**, and section **2102**, Title 10, United States Code, a senior ROTC unit was established at University of Texas-Pan American. This ROTC unit was established pursuant to an agreement between the governing authorities of the University of Texas-Pan American signed by Dr. Miguel A. Nevarez, President, on 2 September 1981, and approved for the Secretary of the Army by LTC Ernest L. Isbell, on 1 December 1981. Copies of this agreement are on file at the University of Texas-Pan American, at 4th Region (ROTC) Headquarters, Cadet Command, and the Department of the Army.

b. This Cross-Enrolled Agreement between University of Texas-Pan American and South Texas Community College is entered into pursuant to the above authorities, and Army Regulation 145-1, which authorizes the cross-enrollment of students between host ROTC and non-ROTC institutions.

4. **Agreement.**

a. Whereas, University of Texas-Pan American is the Department of the Army's ROTC host institution and conducts a voluntary course of ROTC instruction for interested students, and

b. Whereas, South Texas Community College has agreed to offer a voluntary course of ROTC instruction for qualified students in its curriculum, beginning on the Spring 95 semester, and

c. Whereas, the Department of the Army requires a mutually satisfactory agreement with regard to certain administrative procedures, be it known that officials of both institutions, University of Texas-Pan American and South Texas Community College, agree to the following points listed below:

5. Contingent upon the acceptance of this agreement by both parties, the U.S. Army agrees to the following:

a. To provide Senior Division academic instruction of the Army Reserve Officers' Training Corps for students enrolled from South Texas Community College on the same basis as for students enrolled in ROTC at the host institution. Such instruction will be available to all eligible students and will be nondiscriminatory with respect to admission or subsequent treatment of students on the basis of gender, race, color, religion, national origin or marital status.

b. To issue, subject to availability of funding, at the expense of the US government, uniforms, textbooks and equipment required for South Texas Community College students enrolled in Army ROTC at University of Texas-Pan American. Title to these items remains with the US government. Non-enrolled students participating in ROTC classes will be provided textbooks.

c. To provide grade reports in the format required by the South Texas Community College registrar for each student enrolled in courses taught by military instructors.

d. The ROTC courses offered by the Military Science Department will be considered as South Texas Community College resident courses and credit for such courses will be the same as the academic credit granted at University of Texas-Pan American.

6. Contingent upon the acceptance of the above provisions, South Texas Community college agrees to the following:

a. To authorize its students to enroll in and attend ROTC classes through The University of Texas-Pan American. ROTC classes will be provided at The University of Texas-Pan American campus.

b. To recognize the Senior Military officer assigned to The University of Texas-Pan American as Professor of Military Science.

c. To provide to the Professor of Military Science or his **designated** Assistant Professor of Military Science grade reports and transcripts of enrolled South Texas Community College ROTC students, as required, consistent with Privacy Act requirements, to enable monitoring of students academic progress per Army Regulation 145-1. Charges for such **services** will be on the same basis as provided other department of South Texas Community College.

d. To accept grades and credits awarded by the University of Texas-Pan American PMS for the respective Military Science course(s) as stated by paragraph 5.d. above, which shall be entered on the student's official South Texas Community College permanent records.

e. To include all Military Science courses in the South Texas Community College catalog. The number of credit hours for each course will be equivalent to the credit hours offered by the University of Texas-Pan American.

f. To make available at South Texas Community College, without charge to the United States Army, the necessary storage space, government vehicle parking space, staff parking space and other required facilities in the same manner at the same level as is provided to other departments within the institution.

g. To require its students to return all government uniforms, books and equipment upon disenrollment or upon completion of the course. To provide for the protection of all public property used in support of the ROTC program and to take all reasonable measures within the power of South Texas Community College to recover US government property which is improperly in the hands of students or former students. This will include withholding of ROTC grades of students or former students who fail to return government property upon disenrollment or at the conclusion of their course of ROTC instruction.

h. To assist in recruiting students for the program by affording ROTC instructor personnel the opportunity to communicate directly with individual students and faculty members in connection with Army ROTC and ROTC recruiting.

i. To ensure equal representation for ROTC personnel during recruiting, enrollment, counseling, course scheduling, financial assistance and other students-oriented actions by the administration and faculty.

7. The following matters are mutually understood and agreed:

a. The final authority to conduct ROTC instruction for students at South Texas Community College is vested in the Commander, 4th Region (ROTC).

b. That each South Texas Community College student enrolled in the ROTC Program will meet eligibility requirements for admission to this program as stipulated in current Department of the Army regulations.

c. That Department of the Army procedures for administration of records, reporting and training will be the same for South Texas Community College ROTC students as for University of Texas-Pan American students.

d. That funds received for reimbursement and subsistence to students who are enrolled at South Texas Community College will be distributed from the Department of the Army through The University of Texas-Pan American ROTC Department.

e. That cross-enrolled South Texas Community College students shall be considered as members of the University of Texas-Pan American Corps of Cadets, and as such may participate in any military function. Further, such students are eligible for participation in host battalion extracurricular activities.

f. South Texas Community College students will receive equal opportunity with respect to competing for ROTC scholarships.

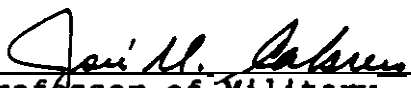
g. This agreement may be terminated by the 4th Region (ROTC) Commander or either president, with due consideration for the rights of students involved and for the proper dispensation of US government property involved, by giving written notice of such intent to the others one academic year prior to actual termination. In the event of war, other national emergency or legislation eliminating continued program funding, the US Army may exercise accelerated agreement termination.

h. This agreement may be modified by mutual written agreement of the appropriate authorities of each institution.

i. That this agreement shall become effective when approved and signed by the appropriate authorities of each institution.

\_\_\_\_\_  
President                      DATE  
The University of Texas-Pan American  
DR. MIGUEL A. NEVAREE

\_\_\_\_\_  
President  
South Texas Community College  
DR. SHIRLEY REED

  
\_\_\_\_\_  
Professor of Military Science      DATE  
The University of Texas-Pan American  
JOSE M. CABRERO  
MAJ, U.S. Army

\_\_\_\_\_  
Commanding Officer  
4th Region (ROTC)  
JOHN E. ALLEY  
Colonel, U.S. Army

10. U. T. San Antonio: Dr. Joe L. Martinez, Jr. Appointed Initial Holder of The Ewing Halsell Chair in Biology Effective January 1, 1995.--The Academic Affairs Committee recommended and the Board appointed Dr. Joe L. Martinez, Jr. as initial holder of The Ewing Halsell Chair in Biology at The University of Texas at San Antonio effective January 1, 1995.

Dr. Martinez will become a Professor in the Division of Life Sciences and Director of the Division of Life Sciences at U. T. San Antonio effective January 1, 1995.

11. U. T. System: Progress Report on Activities Related to the South Texas/Border Initiative Program.--Committee Chairman Holmes called on Dr. Mario J. Gonzalez, Associate Vice Chancellor for South Texas/Border Area Development, for a progress report on the current activities related to The University of Texas System South Texas/Border Initiative (STBI) program.

With the aid of [viewgraphs](#), copies of which were distributed to the members of the Board and are on file in the Office of the Board of Regents, Dr. Gonzalez presented the second annual update on the South Texas/Border Initiative program and noted that the current activities of the program are moving forward on schedule. He commented that in his first report on this program a year ago he spoke of dreams, ambitions, hopes, and the flurry of activity on all the campuses and noted that many of the dreams are close to realization.

Dr. Gonzalez reported that STBI total dollars for academic program development (\$33,243,562) and facilities (\$161,000,000) for the five STBI components (The University of Texas at Brownsville, The University of Texas at El Paso, The University of Texas - Pan American, The University of Texas at San Antonio, and The University of Texas Health Science Center at San Antonio) remain unchanged from last year. He noted that program development covers a broad set of categories such as new degree programs, library enhancement, addition of telecommunications, computers, student recruitment, and summer academies. Dr. Gonzalez pointed out that over a ten-year plan the program development summary for the five STBI components includes a total of 163 bachelor's, master's, and Ph.D. programs.

In the area of facilities development, Dr. Gonzalez noted that these construction projects are coming before the Board as quickly as effective planning will allow.

In closing, Dr. Gonzalez reviewed some of the other STBI activities including campus visits, program development, the STBI newsletter, and collaboration with The Texas A&M University System with regard to education, health professions, engineering, business, and marine science.

In response to a request from Regent Ramirez, Dr. Gonzalez reported briefly on the trip that Regent Ramirez and several officials of U. T. System Administration and The University of Texas at Austin made to Mexico City and Monterrey in early September 1994 to visit with alumni and officials of the universities in both cities regarding graduate business education and engineering programs.

On behalf of the Board, Chairman Rapoport thanked Dr. Gonzalez for his very informative report.

REPORT AND RECOMMENDATIONS OF THE HEALTH AFFAIRS COMMITTEE (Pages 58 - 60).--Committee Chairman Ramirez reported that the Health Affairs Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Health Affairs Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. Southwestern Medical Center - Dallas: Alfred G. Gilman, M.D., Ph.D., Designated Regental Professor (Regents' Rules and Regulations, Part One, Chapter III, Subsection 1.86).--On October 10, 1994, Alfred G. Gilman, M.D., Ph.D., Chairman of the Department of Pharmacology at The University of Texas Southwestern Medical Center at Dallas, was awarded the Nobel Prize in Physiology or Medicine. In recognition of this prestigious achievement, the Board designated Dr. Gilman as Regental Professor. As specified in the Regents' Rules and Regulations, Part One, Chapter III, Subsection 1.86, this special academic recognition is reserved for those who have been awarded the Nobel Prize.

In addition, the Board allocated \$500,000 from the Permanent University Fund (PUF) over the next five years to further the research efforts of this Nobel Laureate. Professor Gilman will be granted \$100,000 annually from these PUF funds, \$50,000 for general programmatic and research support and \$50,000 for equipment purchases.

2. U. T. Southwestern Medical Center - Dallas: Approval to Appoint Paul C. Peters, M.D., as Ashbel Smith Professor Effective Immediately.--Authorization was given to appoint Paul C. Peters, M.D., Clinical Professor in the Division of Urology at The University of Texas Southwestern Medical Center at Dallas, as Ashbel Smith Professor effective immediately.
3. U. T. Southwestern Medical Center - Dallas: Appointment of Initial Holders to Endowed Academic Positions Effective Immediately.--Upon recommendation of the Health Affairs Committee, the Board approved the following initial appointments to endowed academic positions at The University of Texas Southwestern Medical Center at Dallas effective immediately:
  - a. Peter E. Lipsky, M.D., Professor in the Department of Internal Medicine and Microbiology, to the Harold C. Simmons Professorship in Arthritis Research  
  
See Page 88 related to the establishment of this Professorship.
  - b. Maurice Korman, Ph.D., Professor and Chairman of the Division of Psychology in the Department of Psychiatry, to the Elizabeth H. Penn Professorship in Clinical Psychology  
  
See Page 87 related to the establishment of this Professorship.

- c. Eugene P. Frenkel, M.D., Professor in the Department of Internal Medicine and Radiology, to the A. Kenneth Pye Professorship in Cancer Research

See Page 88 related to the establishment of this Professorship.

- d. Terry D. Allen, M.D., Professor in the Division of Urology, to the Rosemary Haggar Professorship in Urology
- e. Norris K. Lee, M.D., Assistant Professor in the Department of Otolaryngology, to the American Airlines Professorship in Cancer Research
- f. John L. Coscia, M.D., Assistant Professor in the Department of Radiology, to the Robert B. and Virginia Payne Professorship in Oncology

See Page 87 related to the establishment of this Professorship.

- g. B. Hudson Berrey, M.D., Associate Professor in the Department of Orthopaedic Surgery, to the David Bruton, Jr. Professorship in Clinical Cancer Research.

- 4. U. T. Southwestern Medical Center - Dallas: Report on Completion of Special Private Fund Development Campaign.--Pursuant to the Regents' Rules and Regulations, Part One, Chapter VII, Section 2, Subsection 2.4, Subdivision 2.44, the U. T. Board of Regents, at its December 1991 meeting, authorized The University of Texas Southwestern Medical Center at Dallas to conduct a special private fund development campaign to raise financial support for research by faculty in the area of basic biomedical research as it relates to cancer, neuroscience, developmental biology, and genetics.

It is herewith reported that gifts and pledges totaling \$156,406,054 have been received, exceeding the goal of \$150,000,000 to be raised by December 31, 1994.

- 5. U. T. Medical Branch - Galveston: Appointment of William D. Willis, Jr., M.D., Ph.D., as Initial Holder of the Cecil H. and Ida M. Green Chair in Marine Sciences Effective Immediately.--Upon recommendation of the Health Affairs Committee, the Board appointed William D. Willis, Jr., M.D., Ph.D., Director of the Marine Biomedical Institute, as initial holder of the Cecil H. and Ida M. Green Chair in Marine Sciences at The University of Texas Medical Branch at Galveston effective immediately.



6. U. T. Health Science Center - Houston: Initial Appointments to Endowed Academic Positions Effective Immediately - (a) Sharon K. Ostwald, Ph.D., to the Theodore J. and Mary E. Trumble Professorship in Aging Research and (b) Joseph A. Jachimczyk, M.D., to the Endowed Professorship in Forensic Pathology.--The Board, upon recommendation of the Health Affairs Committee, approved the following initial appointments to endowed academic positions at The University of Texas Health Science Center at Houston effective immediately:

- a. Sharon K. Ostwald, Ph.D., Professor of Nursing and Associate Director for Research in the Center on Aging, to the Theodore J. and Mary E. Trumble Professorship in Aging Research
- b. Joseph A. Jachimczyk, M.D., Clinical Professor of Pathology and Laboratory Medicine, to the Endowed Professorship in Forensic Pathology.

See Page 90 related to the establishment of this Professorship.

7. U. T. Health Science Center - San Antonio: Appointment of Julio C. Palmaz, M.D., as Initial Holder of the Stewart R. Reuter, M.D. Professorship in Radiology Effective Immediately.--Approval was given to appoint Julio C. Palmaz, M.D., Professor in the Department of Radiology at The University of Texas Health Science Center at San Antonio, as initial holder of the Stewart R. Reuter, M.D. Professorship in Radiology effective immediately.

8. U. T. Health Center - Tyler: Authorization to Conduct a Special Endowment Fund Campaign (Regents' Rules and Regulations, Part One, Chapter VII, Section 2, Subsection 2.4, Subdivision 2.44).--In accordance with the Regents' Rules and Regulations, Part One, Chapter VII, Section 2, Subsection 2.4, Subdivision 2.44, and upon recommendation of the Health Affairs Committee, the Board authorized The University of Texas Health Center at Tyler to conduct a Special Endowment Fund Campaign.

The public campaign will be conducted over a three-year period (beginning September 1995 and ending August 1998) and will have an initial goal of \$3,000,000.

REPORT AND RECOMMENDATIONS OF THE FACILITIES PLANNING AND CONSTRUCTION COMMITTEE (Pages 61 - 79).--Committee Chairman Temple reported that the Facilities Planning and Construction Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, all actions set forth in the Minute Orders which follow were recommended by the Facilities Planning and Construction Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. Austin - Biological Sciences - Molecular Biology Building (Project No. 102-659) and Molecular Biology Building Equipment: Approval to Increase Total Project Cost for the Building; Authorization of a Project for Equipment and Approval of Increase in Equipment Cost; Approval of Final Plans and Specifications; Authorization to Advertise for Bids and for the Executive Committee to Award Contracts; Approval to Waive the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.1 and Name the Building the Louise and James Robert Moffett Molecular Biology Building; Approval to Name One Wing of the Building the Waggoner Wing and Another Wing the Freeport-McMoRan Wing (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, Naming of Facilities Other Than Buildings); and Additional Appropriations Therefor.--Upon recommendation of the Facilities Planning and Construction Committee, the Board:
  - a. Approved an increase in the authorized total project cost for the Molecular Biology Building at The University of Texas at Austin from \$25,000,000 to \$26,145,000
  - b. Authorized a project for the purchase of Molecular Biology Building Equipment and approved an increase in the Molecular Biology Building Equipment account from \$8,000,000, as approved in the FY 1993 Capital Improvement Program, to \$9,355,000
  - c. Approved final plans and specifications for the Molecular Biology Building within the authorized total project cost of \$26,145,000
  - d. Authorized the Office of Facilities Planning and Construction to advertise for bids upon completion of final review and the Executive Committee to award all contracts associated with this project within the authorized total project cost
  - e. Waived the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.1, which requires that persons to be honored with the naming of a building "shall have been deceased at least five years," and named the Molecular Biology Building the Louise and James Robert Moffett Molecular Biology Building in recognition of Mr. and Mrs. Moffett's very generous gift for the construction of this building

- f. Named one wing of the Molecular Biology Building the Waggoner Wing, or a name to be designated by Mr. J. Virgil Waggoner, and named another wing the Freeport-McMoRan Wing in accordance with the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, relating to the naming of facilities other than buildings, and in recognition of generous gifts from these benefactors
- g. Appropriated \$13,000,000 in Permanent University Fund Bond Proceeds, \$4,000,000 in Gifts and Grants, \$7,870,000 in General Fee Balances, \$100,000 from Permanent University Fund Bond Proceeds Reserves previously designated in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget for Repair and Rehabilitation, along with \$1,175,000 previously appropriated from General Fee Balances for total project funding of \$26,145,000
- h. Appropriated an initial \$1,500,000 from General Fee Balances for the Molecular Biology Building Equipment project.

The Molecular Biology Building project was authorized in August 1989 at an estimated total project cost of \$25,000,000. The recently completed detailed cost estimate based on final plans and specifications indicated that the total project cost would need to be increased to \$26,145,000 in order to construct the project as originally designed.

The cost for Molecular Biology Building Equipment in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget will also need to be increased from \$8,000,000 to \$9,355,000 because \$1,355,000 has been designated for use in the Molecular Biology Building project for built-in equipment. Some of the additional equipment will be purchased and temporarily placed in use at other locations prior to completion of the Molecular Biology Building.

Approval of this item amends the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget accordingly.

Total project funding for Molecular Biology Building Equipment is \$9,355,000 from General Fee Balances. General Fee Revenue will be used in future years to support the annual debt requirements of the Permanent University Fund Bonds to the extent that Available University Fund Revenue is not available as set forth in the Memorandum of Understanding dated December 3, 1992, between U. T. Austin and the U. T. Board of Regents.

2. U. T. El Paso - Classroom and Faculty Office Building (Project No. 201-806): Approval of Final Plans and Specifications; Authorization to Advertise for Bids and for Executive Committee to Award Contracts; Additional Appropriation Therefor; and Approval of Use of Revenue Financing System Parity Debt, Receipt of Certificate, and Finding of Fact with Regard to Financial Capacity.--The Board, upon recommendation of the Facilities Planning and Construction Committee:
- a. Approved the final plans and specifications for the Classroom and Faculty Office Building at The University of Texas at El Paso within the authorized total project cost of \$15,000,000
  - b. Authorized the Office of Facilities Planning and Construction to advertise for bids upon completion of final review and the Executive Committee to award all contracts associated with this project within the authorized total project cost
  - c. Appropriated an additional \$14,700,000 from Tuition Revenue Bond Proceeds issued under the Revenue Financing System for total project funding. Previous appropriations had been \$300,000 from Tuition Revenue Bond Proceeds and \$300,000 from Unexpended Plant Funds which will be reimbursed from this Tuition Revenue Bond appropriation.

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 64, the Board resolved 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 Board relating to the Financing System
- c. U. T. component institutions, which are "Members" as such term is used in the Master Resolution, possess the financial capacity to satisfy their Direct Obligations as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of tax-exempt Parity Debt in the amount of \$15,000,000

- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

This project was reviewed by the Texas Higher Education Coordinating Board in July 1994, and is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget. Funding for this project is **\$15,000,000** in Tuition Revenue Bond Proceeds as authorized by the 73rd Session of the Texas Legislature as part of the South Texas/Border Initiative.

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 Board of Regents pursuant to Section 5(a) (ii) of the Master Resolution in connection with the authorization by the Board to issue "**Parity Debt**" pursuant to the Master Resolution to finance the cost of the construction of a Classroom and Faculty Office Building at U. T. El Paso, and do certify that to the best of my knowledge the Board of Regents is in compliance with all covenants contained in the Master Resolution, **First** Supplemental Resolution Establishing an Interim Financing Program, and the Second Supplemental Resolution, and is not in default of any of the terms, provisions and conditions in said Master Resolution, First Supplemental Resolution and Second Supplemental Resolution as amended.

EXECUTED **this** 1 day of December, 1994

  
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**Assistant Vice Chancellor** for Finance

3. U. T. El Paso - Liberal Arts/Science Renovation Projects - Liberal Arts Building Renovation (Project No. 201-836): Approval of Preliminary Plans; Authorization to Prepare Final Plans and Specifications; Submission of the Project to the Coordinating Board; Advertisement for Bids; Executive Committee Award of Contracts; Additional Appropriation Therefor; and Approval of Use of Revenue Financing System Parity Debt, Receipt of Certificate, and Finding of Fact with Regard to Financial Capacity.--The Facilities Planning and Construction Committee recommended and the Board:
- a. Approved preliminary plans and specifications for the Liberal Arts/Science Renovation Projects - Liberal Arts Building Renovation at The University of Texas at El Paso at an estimated total project cost of \$2,511,000
  - b. Authorized preparation of final plans and specifications
  - c. Authorized submission of the project to the Texas Higher Education Coordinating Board
  - d. Authorized the Office of Facilities Planning and Construction to advertise for bids upon completion of final review
  - e. Authorized the Executive Committee to award all contracts associated with this project within the authorized total project cost
  - f. Appropriated \$2,441,000 from Tuition Revenue Bond Proceeds issued under the Revenue Financing System to be combined with \$70,000 previously appropriated from Tuition Revenue Bond Proceeds for total project funding of \$2,511,000.

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 66, the Board resolved 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 Board relating to the Financing System

- c. U. T. component institutions, which are "Members" as such term is used in the **Master** Resolution, possess the financial capacity to satisfy their Direct Obligations as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of tax-exempt Parity Debt in the amount of **\$2,511,000**
- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

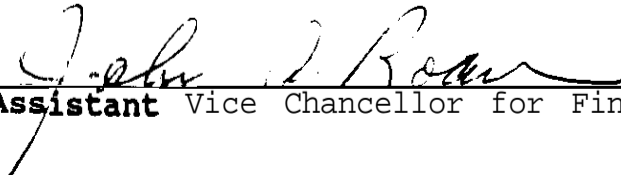
The scope of this remodeling project will consist primarily of modifying the Liberal Arts Building to meet current code requirements, upgrade the **HVAC** system, replace the interior finishes, and replace the existing windows and store fronts.

This project is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget to be funded **by** Tuition Revenue Bond Proceeds as authorized by the 73rd Session of the Texas Legislature as part of the south Texas/Border Initiative.

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 Board of Regents pursuant to Section 5(a) (ii) of the Master Resolution in connection with the authorization by the Board to issue "**Parity Debt**" pursuant to the Master Resolution to finance the cost of the construction of Liberal Arts/Science Renovation Projects - Liberal Arts Building Renovation at U. T. El Paso, and do certify that to the best of my knowledge the Board of Regents is in compliance with all covenants contained in the Master Resolution, First Supplemental Resolution Establishing an Interim Financing Program, and the Second Supplemental Resolution, and is not in default of any of the terms, provisions and conditions in said **Master** Resolution, First Supplemental Resolution and Second Supplemental Resolution as amended.

EXECUTED this d a y o f December, 1994

  
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**Assistant** Vice Chancellor for Finance

4. U. T. San Antonio - Downtown Building (Project No. 401-818): Approval of Preliminary Plans; Authorization to Prepare Final Plans and Specifications for Staged Construction; Submission of the Project to the Coordinating Board; Authorization to Advertise for Bids and for the Executive Committee to Award Contracts for Stage One; Additional Appropriation Therefor; and Approval of Use of Revenue Financing System Parity Debt, Receipt of Certificate, and Finding of Fact with Regard to Financial Capacity.--Following a brief overview of the project by President Kirkpatrick, the preliminary plans and specifications for the Downtown Building at The University of Texas at San Antonio were presented to the Facilities Planning and Construction Committee by Mr. Humberto Saldana, representing the Project Architect, Saldana & Associates Architects, Inc., San Antonio, Texas.

Based upon this presentation, the Board, upon recommendation of the Facilities Planning and Construction Committee:

- a. Approved preliminary plans and specifications for the Downtown Building at U. T. San Antonio at an estimated total project cost of \$20,000,000
- b. Authorized preparation of final plans and specifications in such a manner that contracts can be awarded in the following stages:
  - (1) Site Development (East Campus Yard)
  - (2) General Construction
  - (3) Site Development (Urban Perimeter)
- c. Authorized submission of the project to the Texas Higher Education Coordinating Board
- d. Upon completion of final review, authorized the Office of Facilities Planning and Construction to advertise for bids and the Executive Committee to award all contracts for the first stage. Final plans for the second and third stages will be presented to the U. T. Board of Regents for consideration at a future meeting.
- e. Appropriated an additional \$2,800,000 for an aggregate total of \$3,970,000 from Tuition Revenue Bond Proceeds issued under the Revenue Financing System for fees and administrative expenses through completion of final plans and specifications for the three stages and construction of the first stage. Previous appropriations had been \$1,170,000 from the same source.



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 69, the Board resolved 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 Board relating to the Financing System
- c. U. T. component institutions, which are "Members" as such term is used in the Master Resolution, possess the financial capacity to satisfy their Direct Obligations as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of tax-exempt Parity Debt in the amount of \$3,970,000
- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

This project will be constructed in three stages to expedite implementation. The first stage of construction, which will provide walkways, lighting, landscape planting and irrigation, drainage, utility infrastructure, and other related exterior improvements covering approximately forty percent of the almost 11-acre downtown campus property, will comprise the central feature of the master development plan for the tract and form the primary expanse or yard of exterior campus grounds oriented easterly toward the central business district of the city.

The second stage of construction will provide the initial Downtown Building on the campus tract. This building, which will contain approximately 107,000 gross square feet and house classrooms, instructional laboratories, student services, a commons, resource library and computing center, administrative offices, faculty and college offices, and building support functions, will form the central building unit of the master development plan for the downtown campus property. The construction of a building containing these types of educational facilities is in accordance with the intent of the donor of the downtown property.

The third stage will complete the planned initial site development improvements for the downtown property. Such improvements will comprise the urban roadway frontages along the northern, western, and southern borders of the downtown campus and provide walkways, lighting, landscape

planting and irrigation, utility infrastructure, and other related exterior improvements. In addition, the work will include refurbishment of surface parking lots adapted from the demolished Fiesta Plaza Mall building that once occupied the site.

This project is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget to be funded by **\$20,000,000** from Tuition Revenue Bond Proceeds.

Regent Temple commended the Project Architect on the design of this building.

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 Board of Regents pursuant to Section 5(a) (ii) of the Master Resolution in connection with the authorization by the Board to issue "**Parity Debt**" pursuant to the Master Resolution to finance the cost of the construction of the Downtown Building at U. T. San Antonio, and do certify that to the best of my knowledge the Board of Regents is in compliance with all covenants contained in the Master Resolution, First Supplemental Resolution Establishing an Interim Financing Program, and the Second Supplemental Resolution, and is not in default of any of the terms, provisions and conditions in said Master Resolution, First Supplemental Resolution and Second Supplemental Resolution as amended.

EXECUTED this d 1 y o f December, 1994

John A. Roan  
Assistant Vice Chancellor for Finance

5. U. T. Tyler - Liberal Arts Complex (Project No. 802-719): Approval of Final Plans and Specifications; Authorization to Advertise for Bids and for Executive Committee to Award Contracts; and Additional Appropriation Therefor.-- The Facilities Planning and Construction Committee recommended and the Board:
- a. Approved final plans and specifications for the Liberal Arts Complex at The University of Texas at Tyler within the authorized total project cost of \$19,950,000
  - b. Authorized the Office of Facilities Planning and Construction to advertise for bids upon completion of final review and the Executive Committee to award all contracts associated with this project within the authorized total project cost
  - c. Appropriated an additional \$11,800,000 from Permanent University Fund Bond Proceeds, \$4,750,000 from Gifts and Grants, \$1,019,682 from Permanent University Fund Bond Proceeds Reserves, and \$1,405,318 from General Fee Balances to complete total project funding. Previous appropriations had been \$250,000 from Gifts and Grants, \$200,000 from Permanent University Fund Bond Proceeds, and \$525,000 from General Fee Balances.

This project is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget.

With the allocation of \$12,000,000 from Permanent University Fund Bond Proceeds for this project, the U. T. System remains in compliance with the requirements of the Available University Fund Spending Policy based upon the most recent forecast of income and expenditures.

6. U. T. Health Science Center - San Antonio - Health Sciences Building Program - Allied Health/Public Health/Research Building (Project No. 402-827): Approval of Preliminary Plans; Authorization to Redesignate the Building as the Allied Health/Research Building; Approval of Evaluation of Solar Energy Economic Feasibility; Authorization to Prepare Final Plans and Specifications; Submission of the Project to the Coordinating Board; and Additional Appropriation Therefor.-- Following opening remarks by President Howe and the introduction of Dr. James G. Van Straten, Dean of the U. T. Allied Health Sciences School - San Antonio, Mr. Pat Chumney, representing the Project Architect, Chumney and Associates, San Antonio, Texas, presented the preliminary plans and specifications for the Allied Health/Public Health/Research Building as part of the Health Sciences Building Program at The University of Texas Health Science Center at San Antonio to the Facilities Planning and Construction Committee.

Based on this presentation and upon recommendation of the Facilities Planning and Construction Committee, the Board:

- a. Approved preliminary plans and specifications for the Allied Health/Public Health/Research Building as part of the Health Sciences Building Program at the U. T. Health Science Center - San Antonio at an estimated total project cost of \$19,000,000
- b. Approved the redesignation of the building as the Allied Health/Research Building
- c. Approved the evaluation of solar energy economic feasibility
- d. Authorized preparation of final plans and specifications
- e. Authorized submission of the project to the Texas Higher Education Coordinating Board
- f. Appropriated \$500,000 from Tuition Revenue Bond Proceeds issued under the Revenue Financing System for fees and administrative expenses through completion of final plans. Previous appropriations had been \$400,000 from the same source.

In the early planning stages for the Allied Health/Public Health/Research Building, it was anticipated that this facility would accommodate the needs of the U. T. Health Science Center - Houston satellite Public Health program that is based in San Antonio. Accomplishment of such a goal would have been at the expense of some departments of the U. T. Allied Health Sciences School - San Antonio which needed to be housed in the facility so that the School could be functionally integrated.

Since the U. T. Health Science Center - Houston satellite Public Health program based in San Antonio will not be housed in the new facility as previously planned, this building will be redesignated as the Allied Health/Research Building. The Public Health program will, instead, occupy the space to be available when the Allied Health programs move to the new building.

House Bill 2626 of the 73rd Session of the Texas Legislature requires the governing body of the appropriate state agency to verify in an open meeting the economic feasibility of incorporating solar energy devices into new state buildings. In compliance therewith, the Project Architect prepared an evaluation for this project in accordance with instructions from the State Energy Conservation Office of the General Services Commission. This evaluation determined that a solar-generated domestic hot water system for the project is not economically feasible since steam for this purpose is available at more competitive costs.

This project is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget at a total project cost of \$19,000,000 to be funded by Tuition Revenue Bond Proceeds as authorized by the 73rd Session of the Texas Legislature as part of the South Texas/Border Initiative.

7. U. T. M.D. Anderson Cancer Center (U. T. M.D. Anderson Science Park): Approval to Sell a 160-Acre Tract of Land Located in Smithville, Bastrop County, Texas, to Mr. Daniel R. Renner, Austin, Texas, and Authorization for the Executive Vice Chancellor for Business Affairs to Execute Documents Related Thereto.--Upon recommendation of the Health Affairs and Facilities Planning and Construction Committees, the Board:
  - a. Authorized The University of Texas M.D. Anderson Cancer Center to sell a 160-acre tract adjacent to the U. T. M.D. Anderson Science Park located in Smithville, Bastrop County, Texas, for \$254,752 to Mr. Daniel R. Renner, Austin, Texas
  - b. Authorized the Executive Vice Chancellor for Business Affairs to execute all documents pertaining to this sale.

In June 1977, the U. T. Board of Regents authorized the U. T. M.D. Anderson Cancer Center to acquire this property with gift funds for the purpose of selling single family residential lots to employees of the U. T. M.D. Anderson Science Park. A decision was made several years later that, due to legal and tax issues, resale to employees was not a viable use of the property. The earnest money contract with Mr. Renner exceeds the value placed on the property in an appraisal prepared by the General Land Office and a supplemental opinion of value provided by a local broker.

8. U. T. Board of Regents: Authorization to Revise the Process for Regental Review, Approval, and Oversight of the Capital Improvement Process Including the Capital Improvement Program (CIP), the Capital Improvement Budget, and Individual Capital Projects.--The Board, upon recommendation of the Facilities Planning and Construction Committee and The University of Texas System Process Review Committee, revised the process for Regental review, approval, and oversight of the U. T. System Capital Improvement Process including the Capital Improvement Program (CIP), the Capital Improvement Budget, and individual capital projects as outlined on Pages 74 - 79.

This revised capital improvement process received extensive review by a subcommittee which included both U. T. System Administration staff and component business officers and by the Executive Officers, the System Process Review Committee, the Facilities Planning and Construction Committee, and the Executive Committee. The revised process will reduce formal agenda items from five to three, while increasing Regental oversight through the regular quarterly meetings of the Facilities Planning and Construction Committee. The Capital Improvement Program is strengthened by increasing study requirements for new projects both prior to preparation of the CIP and afterward before committing funds to the preparation of formal

architectural/engineering plans. The Board, as a part of the CIP, will authorize the Chancellor to proceed through the preparation of preliminary plans with a budget limited to 3% of the estimated cost of the project. The Board will be presented the preliminary plans and, if approved, authorize the Chancellor to proceed through the bidding process. The Board will then be presented the results of the construction bids and will, as required by state law, select the lowest responsible bidder as the winning bid. At any time a CIP approved project materially changes in concept or scope or a new project is required, it must be brought to the Board.

Ms. Temple noted that, with this new process, projects will be better prepared and managed by the staff with continued participation at critical junctures by the Board and an improved schedule and agenda for oversight by the Committee. She commended Regent Lebermann, who chaired the System Process Review Committee, for his work and energy in revamping the process in such a positive way for all concerned.

**CAPITAL IMPROVEMENT PROCESS  
EXECUTIVE SUMMARY**

**Program Initiatives and Changes**

1. Institutions required to formalize capital improvement planning and documentation before submitting projects to System Administration.
2. Biennial Capital Improvement Program authorizes projects and delegates authority to Chancellor to proceed through selection of Architect and completion of Preliminary Plans with expenditure of up to 3% of estimated cost. Off-year update is eliminated.
3. Board approval of Preliminary Plans also delegates to Chancellor approval of final plans and authorization to advertise for construction bids so long as estimated Total Project Cost remains within 10% of budget.
4. Reduces formal agenda items from five to three.

**Capital Improvement Process**

1. Institution initiates project planning from strategic and master plan with participation of faculty, staff, and students.
2. With assistance of the Office of Facilities Planning and Construction (OFPC), institution prepares formal request for project authorization and inclusion in Capital Improvement Program (CIP).
3. Six-year CIP is developed at System Administration each two years for submission to Board in August following legislative session. Permanent University Fund (PUF) bond projects are prioritized for inclusion as provided in Available University Fund (AUF) Spending Policy.
4. Board approves CIP and delegates authority to Chancellor to select Architect and prepare preliminary plans with a budget of 3% of preliminary project cost.
5. Institution completes formal Project Building Program document for submission to Chancellor with request to proceed.
6. Upon approval of Chancellor, institution and OFPC select the Project Architect through a competitive process and prepare Preliminary Plans.
7. Preliminary Plans are submitted to Board with request to proceed through completion of final plans and construction bidding so long as the estimated Total Project Cost does not exceed 10% of approved amount.
8. Board selects contractor from lowest responsible bidder and approves contract documents. OFPC provides official "Notice-to-Proceed" to contractor.

**Additional Board Requirements**

1. Projects not in CIP must be brought to the Board for authorization.
2. CIP projects which materially change in concept or scope must be resubmitted to the Board.

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

PROCEDURES TO BE FOLLOWED BY UNIVERSITY OF TEXAS  
SYSTEM INSTITUTIONS TO GAIN AUTHORIZATION OF MAJOR  
NEW CONSTRUCTION AND MAJOR RENOVATION PROJECTS

In anticipation of Step One, institutional administrators, planners, faculty, staff, and students should be engaged in a continuous process of strategic planning and master planning for institutional programs, as well as for the future development and preservation of the physical plant of the campus. To achieve maximum effectiveness, the processes of strategic planning and master planning should be assigned a high priority and should become an important aspect of the "business" of the institution.

**Step One - Earliest Conceptual Phase**

Institutional executive officers and employees (faculty and staff) and, where appropriate, students, will initiate the early "conceptual" plan and proposal for a major construction project for either a new facility or for renovation of an institutional facility. The institutional Building Advisory / Space Committee formalizes the concept. The institutional Chief Administrative Officer (C.A.O.) authorizes preparation of the required ***Preliminary Planning Form for Major New Construction or Renovation of Campus Facilities***.

**Step Two - Very Early/Preliminary Project Definition Phase**

The Preliminary Planning Form for Major New Construction or Renovation of Campus Facilities is completed by the institutional administrator responsible for facilities planning and construction on the campus. The form is needed to identify and justify the new building or facility to be renovated. The institutional administrator must define/describe the area of need, projected requirements, functional purpose, source(s) of funds to be used, predicted construction start date, identification of Coordinating Board reporting requirements regarding actual versus predicted educational and general space conditions of the campus, and Coordinating Board utilization ranking. The form must include the best available Preliminary Project Cost (P.P.C.) for the project being proposed by the institution. At this very early point in the process, this "P.P.C." will be considered a planning estimate. The Office of Facilities Planning and Construction (OFPC) will provide assistance in developing the estimate.

**IMPORTANT:** Institutions should not hesitate to request the assistance from OFPC if a Staff Architect or Engineer is needed. OFPC also maintains a database of costs and other planning information from System projects as well as information from other universities nationwide. U. T. System institutions with recent experience in planning, designing, constructing, equipping new facilities and/or renovating older facilities, may also be available for consultation. Requesting this assistance early in the planning process can move the project ahead at a much faster pace.



### **Step Three - Inclusion of Proposed Project in Formal Capital Improvement Program**

After the Preliminary Planning Form for Major New Construction or Renovation of Campus Facilities has been completed (with the assistance of OFPC, as appropriate) the institutional Chief Administrative Officer will submit the document to the appropriate Executive Vice Chancellor for review and approval.

Information from the form will be used by OFPC and the U. T. System Budget Office to prepare the appropriate summarization in the Capital Improvement Program (CIP) which is to be presented to the U. T. System Board of Regents in August following completion of each regular session of the Texas Legislature. The CIP, a six-year plan, will include a two-year detailed expenditure allocation by source(s) of funds. (This will replace the Capital Budget which has been approved by the Board of Regents each year for the last several years.)

### **Projects Eligible for Funding from PUF Bond Proceeds**

The availability of Permanent University Fund Bond Proceeds as a source of project financing is subject to limitations imposed by the Available University Fund Spending Policy and, to the extent funds are then made available, by prioritization of projects. Section A.4. of the Spending Policy sets forth the position of the Board of Regents regarding priority by type and purpose. The CIP will include only those PUF funded projects which meet both the Spending Policy forecast test and are selected through the prioritization process. LERR (Library, Equipment, Rehabilitation and Repair) project funds will be included in summary form in the CIP. Annually, as a part of the institution's Annual Operating Budget, funds will be allocated and appropriated to each component by the Board of Regents.

### **Step Four - Board of Regents' First Review of Projects Included in the Biennial CIP**

The U. T. System Board of Regents approves the Capital Improvement Program and authorizes institutions to proceed with development of a formal Project Building Program document (for each major construction project) in accordance with guidelines developed by OFPC. The Project Building Program document will normally be prepared under the direction of the institutional Ad Hoc Building Committee appointed by the institutional C.A.O. The Project Building Program may also be reviewed and approved by the institutional Campus Building Advisory Committee and by the C.A.O. and other institutional Executive Officers as directed by the C.A.O. (see Step Five, below). OFPC will also provide professional staff advice and assistance to the institutional Ad Hoc Building Committee.

When the Capital Improvement Program is reviewed and approved by the Board of Regents, the Board authorizes the U. T. System Administration and the institutional administration to begin the process including the authority to select the Project Architect, proceed with development of formal Preliminary Plans and Specifications, and determine the appropriate Total Project Cost to be presented to the Board of Regents at a later meeting.

**IMPORTANT:** The point in time in the planning process when the Project Architect is appointed and placed under contract will depend on a number of factors, including the size and complexity of the project being planned and the degree and level of experience of the institution's administrative team and members of the institutional Ad Hoc Building Committee.

At the time of adoption of the CIP, the Board will also be asked to authorize the U. T. System Administration and the institutional administration to spend up to 3% of the P.P.C. so that necessary architectural, engineering, and administrative fees may be paid during the period when Preliminary Plans and Specifications are being developed for later presentation to the Board. This 3% of the Preliminary Project Cost will be expended from institutional funds, subject to being reimbursed from construction project funds at the time that the Board of Regents receives and approves the Preliminary Plans and Specifications for the project or upon start of construction in the case of bond funds. If the Board of Regents does not approve the Preliminary Plans and Specifications, the funds expended by the institution will not be reimbursed.

**Procedure to be Followed for Off-Cycle Projects not Included in Biennial CIP Updates**

For critical or emergency new construction projects or for critical or emergency major renovation and repair projects, institutional chief administrative officers may follow the procedures outlined in Step One - Step Three above. Such projects may be considered by the U. T. System and the Board of Regents as a formal Board of Regents' agenda item which formally amends the biennial Capital Improvement Program prior to the next scheduled biennial CIP update. Subject to such Board of Regents' authorization, the institution will be allowed to proceed with development of the Project Building Program document and with the Preliminary Plans and Specifications after the Project Architect has been selected. When completed, the Preliminary Plans and Specifications will be brought before the Board of Regents in the form of an agenda item. All other guidelines will be followed for "Off-Cycle" projects as if they had been included in the biennial CIP update.

**Step Five - Institution Finalizes the Project Building Program**

The institutional Campus Building Advisory Committee, the Ad Hoc Building Committee, the institutional administrators and others as appointed by the institutional C.A.O. will cooperate to finalize the development of the formal Project Building Program document which must be completed and then submitted for review and approval to the U. T. System Administration (OFPC) via the appropriate Executive Vice Chancellor before the Project Architect can be selected. If, in their judgment, the project has materially changed in either concept or scope from the description which was approved in the CIP update, the project shall be resubmitted to the Board of Regents before proceeding to Step Six.

### **Step Six - Institutional/ U. T. System Selection of Project Architects**

The U. T. System OFPC will advise and assist the institutional administrators in selecting an appropriate number of qualified architectural firms, including H.U.B. architects and engineers to present their credentials along with a statement of their interest in the project. Materials provided in a Request for Proposals will include an Executive Summary of the Project Building Program which was developed in Step Five (above). With the advice and assistance of OFPC, the institutional Campus Building Advisory Committee, the Ad Hoc Building Committee, and institutional administrators will conduct appropriate interviews during which qualified architectural firms may present their credentials and a statement of their interest in the institution's project. Institutional administrators (the C.A.O.) will select the Project Architect and will submit the choice to the U. T. System Administration for approval. Once this approval has been given, the OFPC will be authorized by the Chancellor to complete preparation of all required contract documents which will be reviewed by the U. T. System Office of General Counsel. Working closely with the Project Architect, OFPC will then "guide" the project through Schematic Design and Design Development to the completion of the Preliminary Plans and Specifications. As noted in Step Four, a limited scope engagement of an architect may be required at an earlier stage and shall follow the same process described above.

### **Step Seven - Presentation of Preliminary Plans and Specifications**

After review by the appropriate Executive Vice Chancellor and OFPC, the Preliminary Plans and Specifications and with the estimated Total Project Cost (T.P.C.) will be formally presented as an agenda item to the Board of Regents for project review and approval. If approved, the Board will take the following actions:

- Authorize the establishment of a project account.
- Authorize an appropriation of funds required for the institution and the Project Architect (and the Architect's team) to complete Final Plans and Construction Bid Documents.
- Authorize reimbursement of institutional accounts for expenditures required to pay the Project Architect to complete Preliminary Plans and Specifications.
- Authorize the institution to submit the project to the Texas Higher Education Coordinating Board, if required. This submission will be coordinated through the U. T. System Administration (OFPC).
- Authorize U. T. System Administration (OFPC) and the Office of the Chancellor to review and approve Final Plans as presented by the Project Architect and the institution so long as Final Plans are substantially the same as Preliminary Plans and Specifications previously approved, and the current estimate of the total project cost does not exceed the approved T.P.C. by more than 10%. OFPC will then prepare and distribute copies of the official bid package.

- Authorize the U. T. System Administration to formally advertise for bids, to receive bids from qualified contractors upon completion of Final Plans, and to identify the successful bidder.
- Authorize the Executive Committee to award all contracts within the T.P.C.
- Authorize the U. T. System Administration (OFPC) to prepare required Construction Contract Documents, in cooperation with the Project Architect.
- Appropriate all funds, including bonds, to complete the project.

**IMPORTANT:** If, at any time, the project changes **materially** from the concept and/or the description which was approved in the most recent submission to the Board of Regents, whether such changes occur prior to or after approval of the Preliminary Plans and Specifications, delays will result and the project will have to be re-submitted to the Board of Regents as a formal agenda item.

**Step Eight - Board Approval of Construction Contract Documents and Award of Contract**

In accordance with procedures adopted by the Board, the Board will be presented the results of the bid, award the contract for construction to the lowest responsible bidder in accordance with *Section 51.907* of the Texas Education Code, and authorize the U. T. System Administration to execute and present Construction Contract Documents to the Board of Regents. Upon final contract approval, OFPC will execute all contract documents with the contractor and will give the official "Notice-to-Proceed."

REPORT AND RECOMMENDATIONS OF THE ASSET MANAGEMENT COMMITTEE (Pages 79 - 184).--Committee Chairman Cruikshank reported that the Asset Management Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, all actions set forth in the Minute Orders which follow were recommended by the Asset Management Committee and approved in open session and without objection by the U. T. Board of Regents.

I. PERMANENT UNIVERSITY FUND

1. Summary Investment Report at September 30, 1994.--Committee Chairman Cruikshank reviewed the Report on Permanent University Fund Investments and Income at September 30, 1994, as prepared by the Office of Asset Management and as set forth below:

PERMANENT UNIVERSITY FUND<sup>1</sup>  
SUMMARY REPORT  
(\$ millions)

	<u>FY93-94</u>	<u>FY94-95</u>
	Full Year	Sept.
Beginning Market Value	4,468.7	4,428.0
PUF Lands Receipts <sup>2</sup>	59.6	4.8
Investment Income	242.3	19.8
Investment Income Distributed	(242.3)	(19.8)
Realized Gains (Losses)	108.6	0.7
Change in Unrealized Gains (Losses)	<u>(208.9)</u>	<u>(91.1)</u>
Ending Market Value	4,428.0	4,342.4
AUF Income		
Investment Income	242.3 <sup>3</sup>	19.8
Surface Income	4.3	0.1
Other Income	<u>0.2</u>	<u>0.0</u>
Total	246.8	19.9

<sup>1</sup>Excludes PUF Lands mineral and surface interests with estimated values of \$391.6 million and \$105 million, respectively.

<sup>2</sup>As of September 30, 1994: 764,935 acres under lease, 521,017 producing acres, 2,549 active leases, 2,076 producing leases.

<sup>3</sup>Amended to exclude fees previously reflected as offset to income.

2. Permanent University Fund: Report on Investments for the Fiscal Year Ended August 31, 1994.--Prior to the meeting, each member of the U. T. Board of Regents received a report on Permanent University Fund investments for the fiscal year ended August 31, 1994. Upon recommendation of the Asset Management Committee, the Board approved this report and directed its distribution to the Governor, members of the Legislature, and other State officials, as required by Section 66.05 of the Texas Education Code.

The Permanent University Fund book value of assets, market value, and earnings during the year are shown below:

	<u>Fiscal Year Ended 8/31</u>		<u>Increase (Decrease)</u>	
	<u>1993</u>	<u>1994</u>	<u>Amount</u>	<u>%</u>
Book Value	\$4,044,284,360	\$4,212,476,639	\$168,192,279	4.15%
Market Value	\$4,468,746,378	\$4,427,985,108	(\$ 40,761,270)	(.91%)
Investment Income	\$ 250,251,366	\$ 242,304,280	(\$ 7,947,086)	(3.18%)

## II. TRUST AND SPECIAL FUNDS

### Gifts, Bequests and Estates

1. U. T. Arlington: Acceptance of Gifts from Various Donors and Establishment of the Department of Veterans Affairs Nursing Administration Endowment Fund in the School of Nursing.--The Board, upon recommendation of the Asset Management Committee, accepted \$14,000 in gifts from various donors and established the Department of Veterans Affairs Nursing Administration Endowment Fund in the School of Nursing at The University of Texas at Arlington.

Income earned from the endowment will be used to support faculty with research related to nursing administration.

2. U. T. Arlington: Authorization to Accept Gift from Dr. Charles S. Proctor, Arlington, Texas, and to Establish the Dr. Charles S. Proctor Endowment.--Upon recommendation of the Asset Management Committee, the Board accepted a \$143,458.10 gift, comprised of one-half of the proceeds from two insurance contracts held by Dr. Charles S. Proctor, Arlington, Texas, and established the Dr. Charles S. Proctor Endowment at The University of Texas at Arlington.

Income earned from the endowment will be used to support the Drama Play Production Program at U. T. Arlington.

3. U. T. Austin: Acceptance of Remainder Interest in the John S. Alexander Charitable Remainder Unitrust and Appointment of the U. T. Board of Regents as Successor Trustee.--Approval was given to accept the remainder interest in the John S. Alexander Charitable Remainder Unitrust, initially funded with securities valued at approximately \$100,000 from John S. Alexander, M.D., Fort Worth, Texas (to be held in trust by John S. Alexander, M.D., Fort Worth, Texas), for the benefit of The University of Texas at Austin.

Further, the U. T. Board of Regents accepted appointment as Successor Trustee effective only if the Trustee ceases to serve.

The trust agreement provides for the annual distribution of six percent of the net fair market value of the trust assets, valued as of the first day of the taxable year, to be paid quarterly to John S. Alexander, M.D., during his lifetime. Any income of the Trust in excess of such payments shall be added to the corpus of the Trust.

Upon termination of the Trust, the corpus shall be distributed to the U. T. Board of Regents for the benefit of U. T. Austin to be used to establish the John S. Alexander Endowed Scholarship in the College of Liberal Arts. A request to establish the endowment will be made at that time.

4. U. T. Austin: Acceptance of Gift from Mr. Mark J. Belisle, Austin, Texas, and Transfer of Funds and Establishment of the Mark J. Belisle Family Endowed Scholarship in the Department of Intercollegiate Athletics for Men.--The Asset Management Committee recommended and the Board accepted a \$25,000 gift from Mr. Mark J. Belisle, Austin, Texas, and a \$12,500 transfer of Second Century Fund matching funds for a total of \$37,500 and established the Mark J. Belisle Family Endowed Scholarship in the Department of Intercollegiate Athletics for Men at The University of Texas at Austin.

Income earned from the endowment will be used to provide scholarship support to student athletes participating in the men's athletics program.

5. U. T. Austin: Acceptance of Gift from Mr. O. V. Bennett, Jr., Austin, Texas, and Establishment of the Gordon Clark Bennett Endowed Scholarship in the Department of Intercollegiate Athletics for Women.--Authorization was given to accept a \$25,000 gift from Mr. O. V. Bennett, Jr., Austin, Texas, and to establish the Gordon Clark Bennett Endowed Scholarship in the Department of Intercollegiate Athletics for Women at The University of Texas at Austin.

Income earned from the endowment will be used to provide scholarship support to student athletes in the Department of Intercollegiate Athletics for Women.

6. U. T. Austin: Acceptance of Transfer of Funds and Establishment of the Departmental Visiting Committee General Endowed Scholarship Fund in the College of Engineering.-- Upon recommendation of the Asset Management Committee, the Board accepted a \$10,000 transfer of unrestricted gifts and established a quasi-endowment in the Department of Aerospace Engineering and Engineering Mechanics, College of Engineering, at The University of Texas at Austin to be named the Departmental Visiting Committee General Endowed Scholarship Fund.

Income earned from the endowment will be used to provide scholarship support to junior and senior students in the Department of Aerospace Engineering and Engineering Mechanics who have at least 30 hours of course credit earned at U. T. Austin.

7. U. T. Austin: Acceptance of Bequest from the Estate of Paul B. Miner, Austin, Texas, for the General Libraries.--The Asset Management Committee recommended and the Board accepted a specific bequest of a collection of approximately 30 books on general topics of an undetermined value from the Estate of Paul B. Miner, Austin, Texas, for the benefit of the General Libraries at The University of Texas at Austin.

8. U. T. Austin: Acceptance of Bequest from the Estate of E. Dubose King, Jr., Houston, Texas, and Establishment of the Susanne Spencer Skaggs Endowed Scholarship in Nursing in the School of Nursing.--Approval was given to accept a \$15,000 specific bequest from the Estate of E. Dubose King, Jr., Houston, Texas, and to establish the Susanne Spencer Skaggs Endowed Scholarship in Nursing in the School of Nursing at The University of Texas at Austin.

Income earned from the endowment will be used to provide scholarship support to students in the School of Nursing.

9. U. T. Austin: Acceptance of Gift from Lee's Pharmacy, McAllen, Texas, and Establishment of the Baldomero Vela, Sr. Endowed Presidential Scholarship in Pharmacy in the College of Pharmacy.--Upon recommendation of the Asset Management Committee, the Board accepted a \$25,000 gift from Lee's Pharmacy, McAllen, Texas, and established the Baldomero Vela, Sr. Endowed Presidential Scholarship in Pharmacy in the College of Pharmacy at The University of Texas at Austin.

Income earned from the endowment will be used to provide scholarship support to students in the College of Pharmacy.

10. U. T. Austin: Redesignation of the Hal John Wimberly Memorial Scholarship in the College of Communication as the Hal John and Judy Wimberly Memorial Scholarship in Journalism.--The Board, upon recommendation of the Asset Management Committee, redesignated the Hal John Wimberly Memorial Scholarship in the Department of Journalism, College of Communication, at The University of Texas at Austin as the Hal John and Judy Wimberly Memorial Scholarship in Journalism.



This redesignation was made at the request of the original donor to memorialize both Mr. and Mrs. Hal John (Judy) Wimberly, Houston, Texas, and with the concurrence of the Wimberly family.

11. U. T. Austin - School of Law: Establishment of the (a) J. Henry Doscher, Jr. Endowed Presidential Scholarship in Law, (b) Bill R. Womble Endowed Presidential Scholarship in Corporate/Health Care Law, and (c) Ronald D. Krist Professorship in Law.--The following endowments in the School of Law at The University of Texas at Austin were established with the understanding that the funds for the endowments will be held and administered by The University of Texas Law School Foundation (an external foundation) in accordance with the Regents' Rules and Regulations:

- a. J. Henry Doscher, Jr. Endowed Presidential Scholarship in Law

Income earned from the endowment will be used to award scholarships to law students selected at the discretion of the Dean of the School of Law or the Dean's designee, based on merit or need.

- b. Bill R. Womble Endowed Presidential Scholarship in Corporate/Health Care Law

Income earned from the endowment will be used to award scholarships to law students selected at the discretion of the Dean of the School of Law or the Dean's designee, based on merit or need, with preference given to qualified first-year students interested in practicing corporate/health care law.

- c. Ronald D. Krist Professorship in Law

Income earned from the endowment will be used to support the Professorship.

12. U. T. El Paso: Approval to Accept Gift from Mr. and Mrs. R. Paul (Patricia Daw) Yetter, Houston, Texas, and to Establish the Judith K. Solis Memorial Scholarship.--The Asset Management Committee recommended and the Board accepted a \$20,000 gift from Mr. and Mrs. R. Paul (Patricia Daw) Yetter, Houston, Texas, to establish the Judith K. Solis Memorial Scholarship at The University of Texas at El Paso.

Income earned from the endowment will be used to support a renewable scholarship for a freshman or upperclassman.

13. U. T. Permian Basin: Authorization to Accept Gift and Pledge from Texas Bank, Odessa, Texas, and Challenge Funds from Houston Endowment Inc., Houston, Texas, and to Establish the (a) Texas Bank Endowed Presidential Scholarship and (b) Texas Bank Endowed Scholarship.-- A \$25,000 gift and a \$25,000 pledge, payable by June 30, 1995, from Texas Bank, Odessa, Texas, and \$25,000 in matching challenge funds from Houston Endowment Inc., Houston, Texas, for a total of \$75,000 were accepted to establish two endowments at The University of Texas of the Permian Basin as follows:
- a. Of the total, \$20,000 of the gift and pledge and \$10,000 of the challenge funds for a total of \$30,000 will be used to establish the Texas Bank Endowed Presidential Scholarship.
  - b. The remaining \$30,000 of the gift and pledge and \$15,000 of the challenge funds for a total of \$45,000 will be used to establish the Texas Bank Endowed Scholarship.

Income earned from each of the endowments will be used to provide scholarship support to students, at the discretion of U. T. Permian Basin.

14. U. T. Southwestern Medical Center - Dallas: Acceptance of Gift from Mrs. William W. (Jane H.) Browning, Jr., Dallas, Texas; Establishment of the Jane and Bill Browning, Jr. Chair in Medical Science; Allocation of Funds from the Private Fund Development Campaign; and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--The Board, upon recommendation of the Asset Management Committee, accepted a \$250,000 gift from Mrs. William W. (Jane H.) Browning, Jr., Dallas, Texas, and established the Jane and Bill Browning, Jr. Chair in Medical Science at The University of Texas Southwestern Medical Center at Dallas.

Further, \$250,000 will be allocated from the \$25,000,000 challenge fund established by an anonymous donor as part of the Private Fund Development Campaign and will be used to increase the endowment to a total of \$500,000.

In addition, the actual income that will be earned on the \$250,000 gift and the \$250,000 in challenge funds will be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I of the Texas Education Code, when matching funds are made available under that act.

Income earned from the endowment will be used to support the Chair.

15. U. T. Southwestern Medical Center - Dallas: Acceptance of Gift from Mr. and Mrs. J. McDonald Williams, Dallas, Texas; Establishment of the Distinguished Professorship in Drug and Alcohol Abuse Research; Allocation of Funds from the Private Fund Development Campaign; and Eligibility for Matching Funds Under the Texas Eminent Scholars Program (No Publicity).--The Asset Management Committee recommended and the Board accepted a \$125,000 gift from Mr. and Mrs. J. McDonald Williams, Dallas, Texas, and established the Distinguished Professorship in Drug and Alcohol Abuse Research at The University of Texas Southwestern Medical Center at Dallas.

Further, \$125,000 will be allocated from the \$12,500,000 challenge fund established with MSRDP funds at the U. T. Southwestern Medical Center - Dallas as part of the Private Fund Development Campaign and will be used to increase the endowment to a total of \$250,000.

In addition, the actual income that will be earned on the \$125,000 gift will be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I of the Texas Education Code, when matching funds are made available under that act.

Income earned from the endowment will be used to support the Distinguished Professorship.

It was requested that no publicity be given to this matter.

16. U. T. Southwestern Medical Center - Dallas: Acceptance of Transfer of Funds; Establishment of The Forrest C. Lattner Foundation, Inc. Fund for Research in Affective Disorders; and Allocation of Funds from the Private Fund Development Campaign.--Approval was given to accept a \$50,000 transfer of a previously reported gift and to establish The Forrest C. Lattner Foundation, Inc. Fund for Research in Affective Disorders at The University of Texas Southwestern Medical Center at Dallas.

Further, \$50,000 will be allocated from the \$12,500,000 challenge fund established with MSRDP funds at the U. T. Southwestern Medical Center - Dallas as part of the Private Fund Development Campaign and will be used to increase the endowment to a total of \$100,000.

Income earned from the endowment will be used to support research in affective disorders.

17. U. T. Southwestern Medical Center - Dallas: Acceptance of Gift from Mr. and Mrs. William S. (Mary) Montgomery, Jr., Dallas, Texas; Establishment of the Mary and William S. "Monty" Montgomery, Jr. Fund for Neurological Research; and Allocation of Funds from the Private Fund Development Campaign.--The Board, upon recommendation of the Asset Management Committee, accepted a \$25,000 gift from Mr. and Mrs. William S. (Mary) Montgomery, Jr., Dallas, Texas, and established the Mary and William S. "Monty" Montgomery, Jr. Fund for Neurological Research at The University of Texas Southwestern Medical Center at Dallas.

Further, \$25,000 will be allocated from the \$25,000,000 challenge fund established by an anonymous donor as part of the Private Fund Development Campaign and will be used to increase the endowment to a total of \$50,000.

Income earned from the endowment will be used to further research in neurological disease.

18. U. T. Southwestern Medical Center - Dallas: Acceptance of Gift and Grant from Mr. and Mrs. Robert B. (Virginia) Payne, Dallas, Texas; Establishment of the Robert B. and Virginia Payne Professorship in Oncology; Allocation of Funds from the Private Fund Development Campaign; and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--A \$10,000 gift from Mr. and Mrs. Robert B. (Virginia) Payne, Dallas, Texas, and a \$40,000 grant from Mr. and Mrs. Robert B. (Virginia) Payne given through the Robert B. and Virginia Webb Payne Fund of Communities Foundation of Texas, Inc., Dallas, Texas, for a total of \$50,000 were accepted to establish the Robert B. and Virginia Payne Professorship in Oncology at The University of Texas Southwestern Medical Center at Dallas.

Further, \$50,000 in matching funds will be allocated from the \$25,000,000 challenge fund established by an anonymous donor as part of the Private Fund Development Campaign and will be used to increase the endowment to a total of \$100,000.

In addition, the actual income that will be earned on the \$50,000 gift and the \$50,000 in challenge funds will be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I of the Texas Education Code, when matching funds are made available under that act.

Income earned from the endowment will be used to support the Professorship.

See Page 58 related to an appointment to this Professorship.

19. U. T. Southwestern Medical Center - Dallas: Authorization to Establish the Elizabeth H. Penn Professorship in Clinical Psychology.--The Board established the Elizabeth H. Penn Professorship in Clinical Psychology at The University of Texas Southwestern Medical Center at Dallas with the understanding that funding for this endowment (\$100,000) will be held and administered by the Southwestern Medical Foundation (an external foundation), Dallas, Texas.

Income earned from the endowment will be used to support the Professorship.

See Page 58 related to an appointment to this Professorship.

20. U. T. Southwestern Medical Center - Dallas: Acceptance of Gifts from Various Donors; Establishment of the A. Kenneth Pye Professorship in Cancer Research; Allocation of Funds from the Private Fund Development Campaign; and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--Upon recommendation of the Asset Management Committee, the Board accepted \$70,000 in gifts from various donors and established the A. Kenneth Pye Professorship in Cancer Research at The University of Texas Southwestern Medical Center at Dallas.

Further, \$70,000 will be allocated from the \$25,000,000 challenge fund established by an anonymous donor as part of the Private Fund Development Campaign and will be used to increase the endowment to a total of \$140,000.

In addition, the actual income that will be earned on the \$70,000 in gifts and the \$70,000 in challenge funds will be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I of the Texas Education Code, when matching funds are made available under that act.

Income earned from the endowment will be used to support the Professorship.

See Page 58 related to an appointment to this Professorship.

21. U. T. Southwestern Medical Center - Dallas: Authorization to Accept Transfer of Funds and to Establish the Harold C. Simmons Professorship in Arthritis Research.--Authorization was granted to accept a \$100,000 transfer of accumulated earnings and to establish a quasi-endowment at The University of Texas Southwestern Medical Center at Dallas to be named the Harold C. Simmons Professorship in Arthritis Research.

Income earned from the endowment will be used to support the Professorship.

See Page 58 related to an appointment to this Professorship.

22. U. T. Southwestern Medical Center - Dallas: Approval to Accept Pledge from the A. L. Chilton Foundation, Dallas, Texas, for Addition to The Distinguished Chair in Biochemistry; Redesignation of the Chair as The Sam G. Winstead and F. Andrew Bell Distinguished Chair in Biochemistry; and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--The Board, upon recommendation of the Asset Management Committee, accepted a \$500,000 pledge, payable by December 31, 1999, from the A. L. Chilton Foundation, Dallas, Texas, for addition to The Distinguished Chair in Biochemistry at The University of Texas Southwestern Medical Center at Dallas for a total endowment of \$2,600,000.

Further, The Distinguished Chair in Biochemistry was redesignated as The Sam G. Winstead and F. Andrew Bell Distinguished Chair in Biochemistry in concurrence with the request of the original donor to honor two of the Trustees of the A. L. Chilton Foundation, Dallas, Texas.

In addition, the actual income that will be earned on the \$500,000 pledge, as received, will be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I of the Texas Education Code, when matching funds are made available under that act.

23. U. T. Medical Branch - Galveston: Acceptance of Gift from an Anonymous Donor and Establishment of The James F. Arens and Ann G. Arens Endowed Fund for Health Policy and Medical Education.--Upon recommendation of the Asset Management Committee, the Board accepted a \$100,000 gift from an anonymous donor and established The James F. Arens and Ann G. Arens Endowed Fund for Health Policy and Medical Education at The University of Texas Medical Branch at Galveston.

Income earned from the endowment will be used at the discretion of the Vice President for Clinical Affairs of the U. T. Medical Branch - Galveston. In the event that position is vacant or eliminated, said income is to be used at the discretion of the President or the President's designee.

24. U. T. Medical Branch - Galveston: Acceptance of Bequests from the Estate of Margaret E. Manning, Galveston, Texas, and Establishment of the (a) Annie P. Schmiedeberg Scholarship and (b) Margaret E. and Horton F. Manning Fellowship in Geriatrics.--Authorization was given to accept bequests totalling \$125,000 from the Estate of Margaret E. Manning, Galveston, Texas, to establish the following endowments at The University of Texas Medical Branch at Galveston:

- a. Annie P. Schmiedeberg Scholarship in the U. T. Nursing School - Galveston with \$25,000

Income earned from the endowment will be used to support annual scholarship awards at the U. T. Nursing School - Galveston.

- b. Margaret E. and Horton F. Manning Fellowship in Geriatrics in the Departments of Family Medicine and Internal Medicine with \$100,000.

Income earned from the endowment will be used to support activities associated with the Fellowship.

25. U. T. Medical Branch - Galveston: Dissolution of the Paul R. Stalnaker, M.D. Fund and the Paul R. Stalnaker, M.D. Professorship in Internal Medicine; Acceptance of Transfers of Funds; Establishment of The Paul R. Stalnaker, M.D. Distinguished Professorships in Internal Medicine; and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--The Board, upon recommendation of the Asset Management Committee, dissolved the Paul R. Stalnaker, M.D. Fund (\$273,068.02) and the Paul R. Stalnaker, M.D. Professorship in Internal Medicine (\$100,000) at The University of Texas Medical Branch at Galveston and the balances of each endowment were combined for a total of \$373,068.02 to establish The Paul R. Stalnaker, M.D. Distinguished Professorships in Internal Medicine.

Further, a \$126,931.98 transfer from the Endowed Faculty Accumulation Fund was accepted for addition to The Paul R. Stalnaker, M.D. Distinguished Professorships in Internal Medicine at the U. T. Medical Branch - Galveston for a total endowment of \$500,000.

In addition, the actual income that will be earned on the \$500,000 transfer of funds will be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I of the Texas Education Code, when matching funds are made available under that act.

Income earned from the endowment will be used to support the Professorships.

26. U. T. Health Science Center - Houston: Acceptance of Transfer of Funds to Establish the Endowed Professorship in Forensic Pathology.--The Asset Management Committee recommended and the Board accepted a \$100,000 transfer of departmental funds and established a quasi-endowment in the Department of Pathology and Laboratory Medicine at The University of Texas Health Science Center at Houston to be named the Endowed Professorship in Forensic Pathology.

Income earned from the endowment will be used to support the Professorship.

See Page 60 related to an appointment to this Professorship.

27. U. T. Health Science Center - Houston: Acceptance of Gifts from Various Donors and Establishment of the G. Roger Florky Memorial Scholarship Fund.--Authorization was given to accept \$10,000 in gifts from various donors and to establish the G. Roger Florky Memorial Scholarship Fund in the U. T. Public Health School - Houston at The University of Texas Health Science Center at Houston.

Ninety percent of the income earned from the endowment will be used to support students who intend to specialize in industrial or occupational hygiene. The remaining ten percent of income earned will be reinvested in the corpus of the endowment.

28. U. T. Health Science Center - Houston: Recommendation to Accept Transfer of Funds to Establish the Edward T. Smith, M.D. Chair in Orthopaedic Surgery Fund (Withdrawn).--Committee Chairman Cruikshank reported that the item related to the proposed establishment of the Edward T. Smith, M.D. Chair in Orthopaedic Surgery Fund at The University of Texas Health Science Center at Houston was withdrawn at the request of the institution.

29. U. T. Health Science Center - Houston: Approval to Accept Gift and Pledge from The Robert A. Welch Foundation, Houston, Texas, to Establish The Welch Foundation Endowment in Chemistry and Related Sciences and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--Authorization was given to accept a \$200,000 gift and an \$800,000 pledge, payable by September 1, 1998, for a total of \$1,000,000 from The Robert A. Welch Foundation, Houston, Texas, and to establish The Welch Foundation Endowment in Chemistry and Related Sciences at the Institute of Molecular Medicine for the Prevention of Human Diseases at The University of Texas Health Science Center at Houston.

Further, the actual income that will be earned on the \$200,000 gift and the \$800,000 pledge, as received, will be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I of the Texas Education Code, when matching funds are made available under that act.

Income earned from the endowment will be used to support up to four research chemists, thus further increasing the level of basic scientific research in chemistry and related sciences.

30. U. T. M.D. Anderson Cancer Center: Authorization to Accept Bequest from the Estate of Ruth Estelle Gold, Austin, Texas.--A fifty percent interest in the residue of the Estate of Ruth Estelle Gold, Austin, Texas, in the amount of \$407,374.54, was accepted to support cancer research at The University of Texas M.D. Anderson Cancer Center.
31. U. T. M.D. Anderson Cancer Center: Acceptance of Bequest from the Estate of Irene R. Humphrey, Mount Pleasant, Arkansas.--Upon recommendation of the Asset Management Committee, the Board accepted the residue of the Estate of Irene R. Humphrey, Mount Pleasant, Arkansas, in the amount of \$428,641.88, to support cancer research at The University of Texas M.D. Anderson Cancer Center.
32. U. T. M.D. Anderson Cancer Center: Approval to Accept Remainder Interest in the Floyd L. Mayo Marital Trust, Port Arthur, Texas.--The Board, upon recommendation of the Asset Management Committee, accepted a one-third remainder interest in the Floyd L. Mayo Marital Trust, Port Arthur, Texas, in the amount of \$131,859.44, for the unrestricted use of The University of Texas M.D. Anderson Cancer Center.
33. U. T. M.D. Anderson Cancer Center: Acceptance of Gifts from Various Donors and Accumulated Income and Establishment of the R. G. Rotunno Endowment Fund for Leukemia Research.--The Asset Management Committee recommended and the Board accepted gifts of \$28,900 from various donors and \$4,100 in accumulated earnings for a total of \$33,000 and established the R. G. Rotunno Endowment Fund for Leukemia Research at The University of Texas M.D. Anderson Cancer Center.



34. U. T. M.D. Anderson Cancer Center: Authorization to Accept Bequest from the Estate of Ora Bell Russell, Collin County, Texas.--Authorization was given to accept a five percent interest in the residue of the Estate of Ora Bell Russell, Collin County, Texas, in the amount of \$14,475 for the unrestricted use of The University of Texas M.D. Anderson Cancer Center.

III. INTELLECTUAL PROPERTY MATTERS

U. T. Southwestern Medical Center - Dallas: Approval of Patent License Agreement, Coagulation Patent License Agreement, Option to License Agreement, and Sponsored Research Agreement with Peregrine Pharmaceuticals, Inc., Princeton, New Jersey.--Committee Chairman Cruikshank reported that since the Material Supporting the Agenda was prepared and distributed an intellectual property item had been posted with the Secretary of State and was before the Board on yellow paper.

Upon recommendation of the Asset Management Committee, the Board approved the Patent License Agreement, Coagulation Patent License Agreement, Option to License Agreement, and Sponsored Research Agreement between the U. T. Board of Regents, for and on behalf of The University of Texas Southwestern Medical Center at Dallas, and Peregrine Pharmaceuticals, Inc. ("Peregrine"), Princeton, New Jersey, as set forth on Pages 93 - 184.

Peregrine is a start-up company established under the laws of the state of Delaware to commercialize anti-cancer therapeutic and diagnostic products based at least in part on technologies developed by Professor Philip Thorpe, Ph.D., and Assistant Instructor Francis Burrows, Ph.D., both in the Department of Pharmacology at the U. T. Southwestern Medical Center - Dallas. The technologies relate to the targeting of therapeutic compounds to destroy the vasculature of tumors and to kill the tumor cells themselves.

The Sponsored Research Agreement will obligate Peregrine to fund further research in Dr. Thorpe's laboratory in the amount of \$10,000 per month effective immediately. Within six months, Peregrine will commit to additional funding of not less than \$600,000 over a three-year period. If Peregrine defaults on research payments, all agreements may be terminated by the U. T. Southwestern Medical Center - Dallas.

The terms and conditions of the agreements, which are consistent with the Intellectual Property Policy of The University of Texas System, were submitted as an emergency agenda item because of the need to complete certain financial arrangements prior to the end of Calendar Year 1994.

PATENT LICENSE AGREEMENT  
BETWEEN UNIVERSITY OF TEXAS SYSTEM  
AND  
PEREGRINE PHARMACEUTICALS. INC.

THIS AGREEMENT is made 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 and PEREGRINE PHARMACEUTICALS, INC. (LICENSEE), a Delaware corporation having a principal place of business located at One Palmer Square, Suite 530, Princeton, New Jersey 08542.

WITNESSETH:

Whereas BOARD and IMPERIAL CANCER RESEARCH TECHNOLOGY, LTD. (ICRT) jointly created certain PATENT RIGHTS and TECHNOLOGY RIGHTS related to LICENSED SUBJECT MATTER, which were developed at The University of Texas Southwestern Medical Center at Dallas (UT SOUTHWESTERN), located at 5323 Harry Hines Boulevard, Dallas, Texas 75235, a component institution of SYSTEM and ICRT;

Whereas ICRT has assigned the necessary rights in PATENT RIGHTS and TECHNOLOGY RIGHTS to BOARD under an Inter-Institutional Intellectual Property Management Agreement under which BOARD assumes ownership and all licensing responsibilities for LICENSED SUBJECT MATTER;

Whereas pursuant to the Inter-Institutional Intellectual Property Management Agreement, BOARD will, promptly upon execution of this Agreement by LICENSEE, obtain ICRT's assent to the ICRT ASSIGNMENT (as hereinafter defined);

Whereas BOARD desires to have **the** LICENSED SUBJECT MATTER developed and used for the benefit of LICENSEE, the INVENTORS (as hereinafter defined), BOARD, UT

SOUTHWESTERN, ICRT and the public as outlined in the Intellectual Property Policy promulgated by the BOARD; and

Whereas LICENSEE wishes to obtain a 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

This Agreement shall be effective as of the date the last party executes this Agreement, subject to approval by BOARD (EFFECTIVE DATE).

#### II. DEFINITIONS

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

2.1 ADDITIONAL PATENT RIGHTS shall mean BOARD's rights in information or discoveries covered by the following patents **and/or** patent applications which relate to the LICENSED FIELD, whether domestic or foreign, as well as all divisions, continuations and continuations-in-part arising from research funded in whole or in part by LICENSEE, as well as reissues, **reexaminations** or extensions thereof:

(a) U.S. Patent Application Number 071856,018, tiled March 23, 1992, which corresponds to UT Southwestern file reference **UTSD:280**, entitled "Preparation and Use of Polyanionic Polymer-Based Conjugates Targeted to Vascular Endothelial Cells", which names Philip Thorpe as Inventor;

(b) International Patent Application Number **PCT/US98/02619**, filed March 22, 1993, which corresponds to UT Southwestern file reference **UTSD:345**, entitled "Preparation and Use of Polyanionic Polymer-Based

Conjugates Targeted to Vascular Endothelial Cells”, which names **Philip Thorpe** as Inventor; and

(c) European Patent Application Number 93 907 633.7, filed October 17, 1994, which corresponds to UT Southwestern file reference UTSD: 345, entitled “Preparation and Use of Polyanionic Polymer-based Conjugates Targeted to Vascular Endothelial Cells”, which names Philip Thorpe as Inventor.

2.2 COAGULATION PATENT LICENSE AGREEMENT shall mean that certain COAGULATION PATENT LICENSE AGREEMENT dated as of even date herewith by and between LICENSEE and BOARD pursuant to which BOARD has licensed the COAGULATION PATENT RIGHTS to LICENSEE.

2.3 COAGULATION PATENT RIGHTS shall mean BOARD’s rights in information or discoveries covered by the following patent application, as well as all divisions, continuations, and continuations-in-part arising from research funded in whole or in part by LICENSEE, as well as reissues, reexaminations or extensions thereof:

(a) U.S. Patent Application Number **SN08/273,567** filed July 6, 1994, which corresponds to UT SOUTHWESTERN File Reference **UTSD:419**, entitled “Methods and Compositions for the Coagulation of Tumor Vasculature”, which names Philip Thorpe as INVENTOR.

2.4 COMMERCIAL INTRODUCTION shall mean the date of the **first** commercial SALE of a LICENSED PRODUCT by LICENSEE or any sublicensee in any country.

2.5 ICRT ASSIGNMENT shall that certain assignment to be executed by ICRT in favor of SYSTEM pursuant to which ICRT will assign its rights in PATENT RIGHTS and TECHNOLOGY RIGHTS to SYSTEM.

2.6 LICENSED FIELD shall mean targeting therapeutic and diagnostic compounds to tumor vasculature in humans.

2.1 LICENSED PRODUCT shall mean any product SOLD by LICENSEE comprising LICENSED SUBJECT MATTER pursuant to this Agreement.

2.8 LICENSED SUBJECT MATTER shall mean inventions and discoveries covered by PATENT RIGHTS or TECHNOLOGY RIGHTS within the LICENSED FIELD.

2.9 LICENSED TERRITORY shall mean the world.

2.10 NET SALES shall mean the gross revenues received by LICENSEE from the SALE of LICENSED PRODUCTS less sales and/or use taxes actually paid, import and/or export duties actually paid, outbound transportation prepaid or allowed, and amounts allowed or credited due to returns (not to exceed the original billing or invoice amount).

2.11 OPTION TO LICENSE AGREEMENT shall mean that certain OPTION TO LICENSE AGREEMENT dated as of even date herewith by and between LICENSEE and BOARD pursuant to which BOARD has granted LICENSEE the option to acquire the ADDITIONAL PATENT RIGHTS.

2.12 PATENT RIGHTS shall mean BOARD's rights in information or discoveries covered by the following patents and/or patent applications which relate to the LICENSED FIELD, whether domestic or foreign, as well as all divisions, continuations and continuations-in-part arising from research funded in whole or in part by LICENSEE, as well as reissues, **reexaminations** or extension<sup>5</sup> thereof:

(a) U.S. Patent **4,880,935**, issued November 14, 1989, entitled “Heterobifunctional Linking Agents Derived from N-Succinimido-Dithio-Alpha Methyl-Methylene-Benzoates”, which names Philip Thorpe as inventor (INVENTOR);

(b) U.S. Patent **5,338,542**, issued August 16, 1994 entitled “Disulfide Linked Immunotoxins” which names Philip Thorpe as INVENTOR;

(c) U.S. Patent Application Number **07/846,349**, filed March 5, 1992, now abandoned, which corresponds to UT SOUTHWESTERN file reference **UTSD:279**, entitled “Methods and Compositions for Targeting the Vasculature of Solid Tumors”, which names Philip Thorpe and Francis Burrows as INVENTORS;

(d) International Patent Application Number **PCT/US93/01956** (International Publication Number **WO93/17715**), tiled March 5, 1993, which corresponds to UT SOUTHWESTERN file reference **UTSD:344**, entitled “Diagnostic and/or Therapeutic Agents Targeted to Neovascular Endothelial Cells”, which names Philip Thorpe and Francis Burrows as INVENTORS;

(e) U.S. Patent Application Number **08/205,330**, filed March 2, 1994, which corresponds to UT SOUTHWESTERN file reference **UTSD:393**, entitled “Methods and Compositions for Targeting the Vasculature of Solid Tumors”, which names Philip Thorpe and Francis Burrows as INVENTORS; and

(f) European Patent Application Number 93 906 289.9, filed October 5, 1994, which corresponds to UT SOUTHWESTERN tile reference **UTSD:344**, entitled “Diagnostic and/or Therapeutic Agents Targeted to Neovascular

Endothelial Cells”, which names Philip Thorpe and Francis Barrows as INVENTORS.

Notwithstanding anything to the contrary in this Section 2.12, it is hereby acknowledged and agreed that PATENT RIGHTS for purposes of this Agreement do not include BOARD’s rights in COAGULATION PATENT RIGHTS, which are licensed to LICENSEE under the COAGULATION PATENT LICENSE AGREEMENT executed by LICENSEE and BOARD concurrently with the execution of this Agreement nor in ADDITIONAL PATENT RIGHTS, with respect to which LICENSEE has an option to license under the OPTION TO LICENSE AGREEMENT executed by LICENSEE and BOARD concurrently with the execution of this Agreement.

2.13 PHASE I TRIAL INITIATION shall mean the commencement of a Phase I Clinical Trial on a LICENSED PRODUCT.

2.14 PHASE II TRIAL COMPLETION shall mean the submission to the US Food and Drug Administration (FDA) of the final data resulting from completion of a Phase II Clinical Trial on a LICENSED PRODUCT.

2.15 SALE, SELL or SOLD shall mean the transfer or disposition of a LICENSED PRODUCT for value to a party other than LICENSEE or a SUBSIDIARY.

2.16 SUBLICENSEE GROSS REVENUES shall mean the gross revenues and other consideration received by LICENSEE from any sublicensees of LICENSEE incorporating LICENSED SUBJECT MATTER, excluding (a) payments made by any sublicensee in consideration for the issuance of equity or debt securities of LICENSEE, (b) payments made by any sublicensee to support or fund research activities to be undertaken by LICENSEE, (c) up-front payments made in consideration or recognition of prior research and development efforts undertaken by LICENSEE, and (d) payments made by any sublicensee upon the

achievement of specified milestones or benchmarks relating to the development of the LICENSED PRODUCTS sublicensed to sublicensee, other than royalty payments. Notwithstanding subpart (d) above, if the royalty rate charged by LICENSEE for sublicensing any LICENSED PRODUCT is less than four percent (4%), then the parties will mutually agree to an equitable sharing arrangement with respect to license fee, milestone, benchmark or other payments. If non-monetary consideration is so received, then a commercially reasonable monetary value will be assigned for purposes of calculating BOARD's share of SUBLICENSEE GROSS REVENUES.

2.17 SUBSIDIARY 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.

2.18 TECHNOLOGY RIGHTS shall mean BOARD's rights in any technical information, know-how, process, procedure, composition, device, method, formula, protocol, technique, software, design, drawing, data, biological and other materials relating to technologies arising from work in which Philip Thorpe participates and useful in targeting therapeutic and diagnostic compounds to tumor vasculature in humans and which are not covered by PATENT RIGHTS but which are necessary or useful for practicing any inventions at any time covered by PATENT RIGHTS.

### III. WARRANTY; SUPERIOR-RIGHTS

3.1 Except for the rights, if any, of the third parties described in Section 3.3 and Exhibit B attached hereto, BOARD represents and warrants 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 granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.

3.2 BOARD hereby represents and warrants that Section 2.12 lists the patents and patent applications in the LICENSED FIELD to which the BOARD has rights and which arise from work involving Philip Thorpe (other than patents and patent applications covered by COAGULATION PATENT RIGHTS or by ADDITIONAL PATENT RIGHTS), and that each of the patent applications listed in Section 2.12 was duly filed in the United States on the date indicated therein or was duly tiled in such foreign jurisdictions as are listed in Section 2.12 or on Exhibit A attached hereto on the dates indicated therein.

3.3 LICENSEE understands that the LICENSED SUBJECT MATTER has been developed under the funding agreements with the third parties listed on Exhibit B attached hereto and that such parties have the rights relative thereto specified in such Exhibit B. This Agreement is explicitly made subject to the rights of such parties, which are described in Exhibit B. To the extent that there is a conflict between such rights and this Agreement, such rights shall prevail.

#### IV. LICENSE

4.1 BOARD hereby grants to LICENSEE a royalty-bearing, exclusive license under PATENT RIGHTS, and a royalty-bearing exclusive license under TECHNOLOGY RIGHTS to manufacture, have manufactured, use, and/or SELL LICENSED PRODUCTS within LICENSED TERRITORY for use within LICENSED FIELD. This grant shall be **subject** to the payment by LICENSEE to BOARD of all consideration as provided in this Agreement, and shall be further subject to rights retained by BOARD and ICRT to:

(a) Publish the general scientific findings from research related to LICENSED SUBJECT MATTER; provided, that, in order to avoid possible loss of rights in

the PATENT RIGHTS, BOARD hereby agrees to submit any materials relating to a planned publication to LICENSEE at least sixty (60) days prior to the date of planned submission for publication. If, within thirty (30) days of receipt of such materials, LICENSEE notifies BOARD that it desires to file patent applications pertaining to any inventions contained in such materials, BOARD shall defer publication or other disclosure for an additional period, not to exceed ninety (90) days, sufficient to permit such desired patent applications to be filed.

(b) Use LICENSED SUBJECT MATTER for research, teaching and other educationally-related purposes at any institution within the SYSTEM.

4.2 BOARD hereby also grants to LICENSEE a first option to obtain a **royalty-**bearing exclusive license to any inventions in the LICENSED FIELD which arise from work funded by LICENSEE in which Philip Thorpe participates and which have applications in the LICENSED FIELD (collectively, "IMPROVEMENTS"). The option for any such IMPROVEMENTS shall extend for a period of ninety (90) days from the date LICENSEE receives written notice from BOARD disclosing such IMPROVEMENTS. During such ninety (90) day period, BOARD shall reasonably make available to LICENSEE any other information in its possession or control which would be useful to LICENSEE in evaluating the IMPROVEMENT, subject to such reasonable confidentiality undertakings as BOARD shall require. LICENSEE may exercise its option by informing BOARD in writing during such ninety (90) day period that it intends to commercialize the IMPROVEMENT as soon as practicable, consistent with sound and reasonable business practice and judgment. Upon exercise of LICENSEE's option, such IMPROVEMENT shall become subject to the terms and conditions of this License Agreement. In the event that LICENSEE fails to exercise its option with respect to any IMPROVEMENT as provided herein, BOARD shall have the right

to enter into license agreements concerning such IMPROVEMENT with third parties provided the terms and conditions thereof are not, in general, more favorable than those terms and conditions provided under this License Agreement, unless BOARD has offered the new terms and conditions to LICENSEE and LICENSEE has refused to accept them.

4.3 BOARD hereby also grants to LICENSEE a first option to negotiate and acquire an exclusive, worldwide, royalty-bearing license to any inventions outside the LICENSED FIELD which arise from work funded by LICENSEE. The option for any such inventions shall extend for a period of ninety (90) days from the date LICENSEE receives written notice from BOARD disclosing such invention. LICENSEE may exercise its option by informing BOARD in writing during such ninety (90) day period that it intends to commercialize the invention as soon as practicable, consistent with sound and reasonable business judgment. Upon exercise of LICENSEE's option, BOARD and LICENSEE shall enter into good faith negotiations regarding the terms and conditions of said license and further agree to negotiate license rates and other payments which are fair and reasonable to both parties. If BOARD and LICENSEE are unable to agree on the terms of a license within ninety (90) days following the exercise of LICENSEE's option, BOARD shall have the right to enter into license agreements concerning the invention with third parties; provided, however, such licensing agreements shall be on terms no less favorable to BOARD than BOARD's final offer to LICENSEE.

4.4 LICENSEE shall have the right to extend the license granted herein to any SUBSIDIARY provided that such SUBSIDIARY consents to be bound by this Agreement to the same extent as LICENSEE.

4.5 LICENSEE shall have the right to grant sublicenses in accordance with the terms and conditions of this Agreement. LICENSEE agrees to deliver to BOARD 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. If any sublicensee fails to pay any royalty payment to LICENSEE on the date provided in such sublicense, LICENSEE shall, within thirty (30) days of such scheduled payment date, take steps to require such sublicensee to cure such default. If such default is not cured by such sublicensee within an additional ninety (90) day period, LICENSEE shall terminate such sublicense. If LICENSEE fails to terminate any sublicense as provided herein, LICENSEE shall be responsible for the payment of royalties owed by such sublicensee under this Agreement whether or not paid to LICENSEE by such sublicensee. Upon termination of this Agreement, any and all existing sublicenses granted by LICENSEE shall be assigned to BOARD.

4.6 BOARD shall have the right at any time after five (5) years from the date of this Agreement, to terminate the exclusivity of the license granted herein in any national jurisdiction within LICENSED TERRITORY if LICENSEE, within ninety (90) days after written notice from BOARD as to such intended termination of exclusivity, fails to provide written evidence that it has commercialized or is actively attempting to commercialize an invention licensed hereunder within such jurisdiction. BOARD agrees to negotiate in good faith with LICENSEE for adjusting terms under such a nonexclusive arrangement. BOARD shall have the right at any time after seven (7) years from the date of this Agreement to terminate the license completely in any national jurisdiction if LICENSEE, within ninety (90) days after written notice from BOARD of such intended termination, fails to provide written evidence that it has commercialized or is actively attempting to commercialize an invention licensed hereunder within such jurisdiction. Evidence provided by LICENSEE that it has an ongoing and active research, development, manufacturing, marketing or licensing program as

appropriate, directed toward production and sale of products based on PATENT RIGHTS or TECHNOLOGY RIGHTS within such jurisdiction shall be deemed satisfactory evidence.

#### V. PAYMENTS AND REPORTS

5.1 Subject to Section 5.1(j) of this Agreement, in consideration of rights granted by BOARD to LICENSEE under this Agreement, LICENSEE agrees to pay BOARD the following:

(a) A non-refundable license issue fee of twenty five thousand dollars (\$25,000) payable to BOARD within thirty (30) days of LICENSEE's receipt of a fully-executed copy of the ICRT ASSIGNMENT from BOARD.

(b) A non-refundable license re-issue fee of seventy five thousand dollars (\$75,000) payable to BOARD within thirty (30) days of January 1, 1996.

(c) A PHASE I TRIAL INITIATION milestone payment of seventy five thousand dollars (**\$75,000**) payable within thii (30) days of the earlier of: (i) February 1, 1997, or (ii) PHASE I TRIAL INITIATION.

(d) A PHASE II TRIAL COMPLETION milestone payment of one hundred thousand dollars (**\$100,000**) payable within thirty (30) days of the earlier of: (i) February 1, 2000, or (ii) PHASE II TRIAL COMPLETION.

(e) A milestone payment for COMMERCIAL INTRODUCTION of each LICENSED PRODUCT in the amount of **three** hundred thousand dollars (\$300,000) payable to BOARD within thirty (30) days of COMMERCIAL INTRODUCTION of the LICENSED PRODUCT. All COMMERCIAL INTRODUCTION milestone payments shall be credited against royalty payments due under Paragraph 5.1 on a LICENSED PRODUCT-by-LICENSED PRODUCT basis.

(f) A running earned royalty equal to four percent (4%) of NET SALES of LICENSED PRODUCTS incorporating PATENT RIGHTS; provided, however, if a LICENSED PRODUCT incorporates technology not covered by PATENT RIGHTS, the running royalty to be paid under this Section shall be reduced to two percent (2%) of NET SALES of LICENSED PRODUCTS. In the event any LICENSED PRODUCT incorporating PATENT RIGHTS is sold as a component of a combination of active elements, NET SALES for purposes of determining royalty payments on such combination shall be calculated by multiplying NET SALES of such combination by the fraction A over **A+B**, in which "A" is the gross selling price of the LICENSED PRODUCT portion of the combination when sold separately during the accounting period in which the sale was made, and "B" is the gross selling price of the non-LICENSED PRODUCT portion of the combination sold separately during the accounting period in question. In the event that no separate sale of either such above-designated LICENSED PRODUCT or such above-designated non-LICENSED PRODUCT portion of the combination is made during the accounting period in which the sale was made, NET SALES shall be calculated by multiplying NET SALES of such combination by the fraction C over **C+D**, in which "C" is the standard fully-absorbed cost of the LICENSED PRODUCT portion of such combination, and "D" is the standard fully absorbed cost of the other component(s), such costs being arrived at using the standard accounting procedures of LICENSEE which will be in accord with generally accepted accounting practices. Notwithstanding the foregoing, under no circumstances shall the royalty provided for in this Section **5.1(f)** be reduced to less than two percent (2%) of NET SALES of LICENSED PRODUCTS incorporating PATENT RIGHTS. No royalties shall be payable to BOARD under

this Section 5.1(f) with respect to SALES for which a royalty is payable under the COAGULATION PATENT LICENSE AGREEMENT.

(g) A running earned royalty equal to one percent (1%) of NET SALES of LICENSED PRODUCTS covered by TECHNOLOGY RIGHTS only. No royalty shall be payable to BOARD under this Paragraph 5.1(g) with respect to SALES for which a royalty is payable under Paragraph 5.1(f) or under the COAGULATION PATENT LICENSE AGREEMENT.

(h) Fifty percent (50%) of the SUBLICENSEE GROSS REVENUES; provided, however, in the event that LICENSEE raises capital from any source (including, without limitation, from the issuance of common or preferred stock, debt, warrants or from licensing fees) in the aggregate amounts hereinafter set forth, such percentage shall be reduced as follows:

<u>Aggregate Capitalization</u>	<u>Percent of Sublicensee Gross Revenues</u>
\$2,000,000 - 5,000,000	35%
\$5,000,001 - 10,000,000	25%
Greater than \$10,000,000	20%

In the event that LICENSEE sublicenses LICENSED SUBJECT MATTER in combination with other product(s) for use in the LICENSED FIELD which are not LICENSED PRODUCTS (hereinafter "OTHER ITEMS"), the SUBLICENSEE GROSS REVENUES for purposes of determining payment to BOARD on the combination shall be calculated as follows:

(i) If all LICENSED PRODUCTS and OTHER ITEMS contained in the combination are available separately, SUBLICENSEE GROSS REVENUES for purposes of determining payments due BOARD will be

calculated by multiplying the SUBLICENSEE GROSS REVENUES of the combination by the fraction  $A/(A+B)$ , where A is the gross selling price of all LICENSED PRODUCTS in the combination, and B is the gross selling price for all OTHER ITEMS in the combination sold separately during the accounting period in question.

(ii) If no separate sale of either such LICENSED PRODUCTS or OTHER ITEMS is made during the accounting period in which such sale is made, SUBLICENSEE GROSS REVENUES for purposes of determining payments due BOARD shall be calculated by multiplying the SUBLICENSEE GROSS REVENUES of the combination by the fraction C over C+D, in which "C" is the standard fully-absorbed cost of the LICENSED PRODUCT portion of such combination and "D" is the standard fully-absorbed cost of the OTHER ITEMS, such costs being arrived at using the standard accounting procedures of LICENSEE which will be in accordance with generally accepted accounting practices.

Under no circumstances shall the percentage of SUBLICENSEE GROSS REVENUES provided for in this Section 5.1(h) be reduced to less than ten percent (10%).

(i) The parties hereto agree that if economic or political conditions change sufficiently so as to affect the continued applicability of the assumptions made in negotiating the dates of the milestone payments agreed to in this Section 5.1, they will negotiate in good faith a reasonable extension of the dates of such milestone payments in accordance with such changed economic or political conditions.

(j) Notwithstanding anything to the contrary in this Agreement, it is hereby acknowledged and agreed by the parties hereto that (i) the amounts payable by LICENSEE



pursuant to Sections **5.1(a)** through **(d)** of this Agreement are one-time license fees payable by LICENSEE only with respect to the **first** LICENSED PRODUCT of LICENSEE and (ii) no amounts shall be paid by LICENSEE pursuant to such Sections to the extent that such payments have been made by LICENSEE under the COAGULATION PATENT LICENSE AGREEMENT.

5.2 During the term of this Agreement and for one (1) year thereafter, LICENSEE shall keep complete and accurate records of its SALES and NET SALES of LICENSED PRODUCTS and all SUBLICENSEE GROSS REVENUES received by LICENSEE under the license granted in this Agreement in sufficient detail to enable the royalties payable hereunder to be determined. LICENSEE shall permit BOARD or its representatives, at BOARD's expense, to periodically examine its books, ledgers, and records during regular business hours for the purposes of and to the extent necessary to verify any report required under this Agreement. If any such inspection reveals that the aggregate of royalties paid during any four (4) consecutive calendar quarters was less than the amount that should have been paid under this Agreement, LICENSEE shall remit to BOARD the amount of such deficiency; provided, that, if such deficiency is more than **five** percent (5%) of the amount that should have been paid, LICENSEE shall remit to BOARD, in addition to the amount of such deficiency, the reasonable expenses of the inspection conducted by BOARD. If LICENSEE or BOARD disputes any deficiency or expenses provided in this Section 5.2, the dispute shall be referred to an independent accountant selected by mutual agreement of BOARD and LICENSEE, whose decision will be binding and final on the parties hereto. If a decision is entered against LICENSEE by such independent accountant for the amount of such deficiency or expenses, LICENSEE agrees to remit to BOARD, in addition to any other

amounts provided for in this Section 5.2, accrued interest on such deficiency through the date of such decision at the highest allowable rate.

5.3 Within thirty (30) days after March 31, June 30, September 30, and December 31 of each year, LICENSEE shall deliver to BOARD a true and accurate report which shall describe (a) the quantities of LICENSED SUBJECT MATTER that it has produced; (b) the total SALES; (c) the calculation of royalties thereon; and (d) the total royalties so computed and due. Simultaneously with the delivery of each such report, LICENSEE shall pay to BOARD the amount, if any, due for the period covered by such report. If no payments are due, it shall be so reported.

5.4 Upon the request of BOARD but not more often than once per calendar year, LICENSEE shall deliver to BOARD a written report as to LICENSEE's efforts and accomplishments during the preceding year in commercializing LICENSED SUBJECT MATTER in various parts of the LICENSED TERRITORY and its commercialization **plans** for the upcoming year.

5.5 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 UT SOUTHWESTERN and sent to:

U.T. Southwestern Medical Center  
Office of Legal Affairs & Technology Transfer  
5323 Harry Hines Boulevard  
Dallas, Texas 752354008  
Attn: Ray Wheatley

## VI. SPONSORED RESEARCH

6.1 LICENSEE will sponsor and financially support research, clinical activities or other mutually agreeable programs at UT SOUTHWESTERN in accordance with the terms

and subject to the conditions of the Sponsored Research Agreement executed by LICENSEE and UT SOUTHWESTERN concurrently with the execution of this Agreement.

## VII. TERM AND TERMINATION

7.1 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, then, on a per-product basis, (i) with respect to LICENSED PRODUCTS which have an FDA-approved therapeutic indication for humans, for a term of seven (7) years from the date of COMMERCIAL INTRODUCTION of any such product and (ii) with respect to LICENSED PRODUCTS which have an FDA-approved diagnostic indication for humans, for a term of seven (7) years from the date of COMMERCIAL INTRODUCTION of such product.

7.2 This Agreement will earlier terminate:

(a) upon thirty (30) days written notice if LICENSEE shall default in its obligation to make payments, if any are due, in accordance with Section V or Section XIV hereunder or Section 3 of the Sponsored Research Agreement; provided, however, LICENSEE may avoid such termination if before the end of such notice period LICENSEE cures its default; or

(b) automatically if LICENSEE shall become bankrupt or insolvent and/or if the business of LICENSEE shall be placed in the hands of a receiver, assignee, or trustee, whether by voluntary act or LICENSEE or otherwise;

(c) upon ninety (90) days written notice if LICENSEE shall breach or default on any obligation under this License Agreement or the Sponsored Research Agreement; provided, however, LICENSEE may avoid such termination if before the end of such period

LICENSEE notifies BOARD that such breach has been cured, states the manner of such cure and in fact the breach has been cured.

(d) Under the provisions of Paragraph 4.4 if invoked.

7.3 Upon termination of this Agreement for any cause, nothing herein shall be construed to release either party of any obligation matured prior to the effective date of such termination. LICENSEE may, after the effective date of such termination, sell all LICENSED PRODUCT and parts **therefor** that it may have on hand at the date of termination, provided that it pays running royalty earned thereon as provided in this Agreement.

#### VIII. INFRINGEMENT BY THIRD PARTIES

8.1 Each party shall inform the other promptly in writing of any alleged infringement of the PATENT RIGHTS by a third party, including all details then available. LICENSEE shall have the right, but shall not be obligated, to prosecute at its own expense any such infringements, and BOARD agrees that LICENSEE may join BOARD as a plaintiff at the expense of LICENSEE. In any infringement action commenced or defended solely by LICENSEE, all expenses and all recovery for infringement shall be those of LICENSEE. In any such action by LICENSEE, BOARD shall be entitled to receive an amount equal to the applicable royalties on any recovery of profits and damages that is in excess of LICENSEE's reasonable costs and expenses. No settlement, consent judgment or other voluntary final disposition of the suit may be entered into without BOARD's consent, which consent shall not be unreasonably withheld, delayed or conditioned.

If LICENSEE has not commenced legal action or been successful in obtaining cessation of the infringement within ninety (90) days of written notification from BOARD of such infringement, or if LICENSEE elects not to continue prosecuting any legal action

against an infringer, **BOARD** shall have the right, but shall not be obligated, to **prosecute at** its own expense any such infringement. **BOARD** may join **LICENSEE** as a plaintiff in any such infringement suit at **BOARD's** expense. No settlement, consent judgment or other voluntary final disposition of the suit may be entered into without **LICENSEE's** consent, which consent shall not be unreasonably withheld, delayed or conditioned.

In the event that **LICENSEE** and/or **BOARD** do not file suit against, conclude settlement negotiations with, or grant a license to a substantial infringer of **PATENT RIGHTS** within one (1) year of knowledge thereof, then the parties will consult with one another in an effort to determine whether a reasonably prudent licensee would institute litigation, conclude settlement negotiations, and/or grant a license within the one (1) year time period described above in order to enforce the patent in question in light of all relevant business and economic factors (including, but not limited to, the projected cost of such litigation, the likelihood of success on the merits, the probable amount of any damage award, the prospects for satisfaction of any judgment against the alleged infringer, the possibility of counterclaims against **LICENSEE** and **BOARD**, the diversion of **LICENSEE's** human and economic resources, the impact of any possible adverse outcome on **LICENSEE**, and the effect any publicity might have on the respective reputations and goodwill of the parties). If after such consultation, the parties have not reached agreement and **LICENSEE** does not forthwith file suit against, enter into settlement negotiations with or grant a license to the substantial infringer, then **BOARD** shall have the right to enforce any **PATENT RIGHT**, licensed hereunder on behalf of itself and **LICENSEE** (**BOARD** retaining all recoveries from such enforcement), and **BOARD** shall have the right to reduce the license granted hereunder to nonexclusive in the national jurisdiction in which suit is brought.

In any infringement suit that either party brings to enforce the PATENT RIGHTS, the other party shall at the request and expense of the party bringing the suit, cooperate in all reasonable respects, including, to the extent possible, obtaining the testimony of its employees and agents and making available physical evidence in the possession of that party.

#### IX. ASSIGNMENT

This Agreement shall not be assignable or otherwise transferrable by LICENSEE without the prior written consent of BOARD, which consent shall not be unreasonably withheld, except that LICENSEE may assign or otherwise transfer its rights under this Agreement to the following parties without obtaining BOARD's consent: (i) a successor to LICENSEE's business, or a successor to that portion of LICENSEE's business that pertains to the subject matter of the PATENT RIGHTS or any TECHNOLOGY RIGHTS, and (ii) any entities controlled by, controlling, or under common control with LICENSEE.

#### X. PATENT MARKING

LICENSEE agrees to mark permanently and legibly all products and documentation manufactured or sold by it under this Agreement with such patent notice as may be permitted or required under Title 35, United States Code.

#### XI. INDEMNIFICATION

LICENSEE shall hold harmless and indemnify BOARD, INVENTORS, SYSTEM, UT SOUTHWESTERN, ICRT, and their respective Regents, officers, employees and agents (each, an "INDEMNITEE") from and against any liability, loss or damage they may suffer as a result of claims, demands, or causes of action whatsoever, including without limitation those 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; provided, however, that

LICENSEE shall not be required to indemnify or hold harmless any INDEMNITEE, from any losses or claims attributable to any infringement or alleged infringement of patents, technology, trade secrets, or confidential or proprietary know-how or information of third parties by the PATENT RIGHTS or the TECHNOLOGY RIGHTS. Except as otherwise provided in this Agreement, the obligations of LICENSEE under this Section shall apply in full force whether or not the claims and any losses resulted or are alleged to have resulted in whole or in part from the acts or omissions of any INDEMNITEE; provided, however, that the foregoing indemnity shall not apply to any claims or losses arising out of any act or omission constituting gross negligence, willful malfeasance, misconduct or bad faith of any INDEMNITEE.

## XII. USE OF NAME

LICENSEE shall not use the name of UT SOUTHWESTERN, INVENTORS, SYSTEM, BOARD, ICRT or their respective Regents in any advertising, promotional or sales literature, or in any other form of publicity without prior written consent obtained from each such party in each case. The foregoing notwithstanding, LICENSEE shall have the right to identify such parties and to disclose the terms of this Agreement in any prospectus, offering memorandum or other document or filing required by applicable securities laws or other applicable law or regulation, provided that LICENSEE shall have given each such affected party at least ten (10) business days prior written notice of the proposed text of any such identification or disclosure for the purpose of giving each such affected party the opportunity to comment on and suggest amendments to such proposed text.

## XIII. CONFIDENTIAL INFORMATION

13.1 BOARD 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 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.

13.2 Each party's obligation of confidence hereunder shall be fulfilled by using the at least same degree of care with the other party's confidential information 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.

#### XIV. PATENT AND INVENTIONS

UT SOUTHWESTERN shall be responsible for the preparation, filing, prosecution and maintenance of all patent applications and patents included in PATENT RIGHTS. LICENSEE shall reimburse UT SOUTHWESTERN for all reasonable attorneys' fees (i) incurred by UT SOUTHWESTERN subsequent to the EFFECTIVE DATE, or (ii) incurred by UT SOUTHWESTERN prior to the EFFECTIVE DATE and for which invoices have been submitted to LICENSEE in connection with the preparation, filing and maintenance of all patent applications and patents included in PATENT RIGHTS; provided that patent counsel selected by UT SOUTHWESTERN is reasonably acceptable to LICENSEE. Subsequent to the EFFECTIVE DATE, UT SOUTHWESTERN shall consult with LICENSEE as to **the** preparation, filing, prosecution and maintenance of all such patent



applications and patents in accordance with the procedures set forth on Exhibit C hereto and incorporated herein by reference, and shall furnish to LICENSEE copies of documents relevant to such preparation, filing, prosecution or maintenance, including without limitation invoices providing detailed descriptions of all costs and expenses incurred by UT SOUTHWESTERN's patent counsel in connection therewith, sufficiently prior to **filing** such documents or making any payment due thereunder to allow for review and comment by LICENSEE. If, at any time, LICENSEE shall elect not to pay the expenses of any patent application or patent included in PATENT RIGHTS, LICENSEE shall so notify UT SOUTHWESTERN within thirty (30) days of such consultation and shall thereby surrender its rights under such patent application or patent; provided, however, that LICENSEE shall remain obligated to reimburse UT SOUTHWESTERN for any costs incurred with respect to such patent application or patents prior to said election.

#### XV. GENERAL

15.1 This Agreement, the COAGULATION PATENT LICENSE AGREEMENT, the OPTION TO LICENSE AGREEMENT, the Sponsored Research Agreement and the Exhibits attached hereto and thereto constitute 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 License Agreement shall be given by prepaid, first class, certified mail, return receipt requested, addressed in the case of BOARD to:

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

with copies to:

UT SOUTHWESTERN  
Peter H. Fitzgerald, Ph.D.  
Executive Vice President  
for Business Affairs  
5323 Harry Hines Boulevard  
Dallas, TX 75235-9013

and

UT SOUTHWESTERN  
Katherine L. Chapman, J.D.  
Associate Vice President for  
Legal Affairs & Technology Transfer  
5323 Harry Hines Boulevard  
Dallas, Texas 75235-9008

or in the case of LICENSEE to:

PEREGRINE PHARMACEUTICALS, INC.  
One Palmer Square, Suite 530  
Princeton, New Jersey 08542  
ATTENTION: Jennifer H. Lobo

with copies to:

PALMER & DODGE  
One Beacon Street  
Boston, Massachusetts 02108  
ATTENTION: Michael Lytton, Esq.

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

15.3 LICENSEE shall comply with all applicable federal, state and local laws, regulations, and ordinances in connection with its activities pursuant to this Agreement.

15.4 This License 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 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 no 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.

BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM

PEREGRINE PHARMACEUTICALS,  
INC.

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

By: \_\_\_\_\_  
Jennifer H. Lobo  
President

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

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Dudley R. Dobie, Jr., J.D.  
Office of General Counsel

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

APPROVED AS TO CONTENT:

UT SOUTHWESTERN

By: \_\_\_\_\_  
Peter H. Fitzgerald, Ph.D.  
Executive Vice President  
For Business Affairs

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

Foreign Jurisdictions in which Patent  
Applications Have Been Filed

Canada (File Reference **UTSD:344**)

Europe (File Reference **UTSD:344**)

Description of Third Party Funding Agreements

ICRT:

The BOARD and ICRT hold certain individual and joint rights in the LICENSED SUBJECT MATTER. Upon execution of the ICRT ASSIGNMENT, BOARD represents and warrants that all rights of ICRT in the LICENSED SUBJECT MATTER (which are exclusive under PATENT RIGHTS and non-exclusive under TECHNOLOGY RIGHTS) will be assigned to BOARD.

Dallas Biomedical, Inc.:

Dallas Biomedical, Inc. ("DBI") previously licensed a portion of the rights under the LICENSED SUBJECT MATTER from BOARD pursuant to one or more license agreements, which rights have been assigned back to BOARD by DBI. BOARD represents and warrants that no rights are retained by DBI in the LICENSED SUBJECT MATTER as a result of such license agreements.

Pardee Foundation:

This funding arrangement involved an unencumbered gift of funds to SYSTEM by the Pardee Foundation ("PARDEE"). BOARD has reviewed all documentation supplied to it by PARDEE and, based upon such review (i) hereby represents and warrants that PARDEE has no rights in the LICENSED SUBJECT MATTER and (ii) to the best knowledge of BOARD, such documentation contains the entire agreement between PARDEE and BOARD with respect to this funding arrangement.

Anonymous Donor:

This funding arrangement involved an unencumbered gift of funds to SYSTEM by an anonymous donor (the "DONOR"). BOARD has reviewed all documentation supplied to it by the DONOR and, based upon such review (i) hereby represents and warrants that the DONOR has no rights in the LICENSED SUBJECT MATTER and (ii) to the best knowledge of BOARD, such documentation contains the entire agreement between the DONOR and BOARD with respect to this funding arrangement.

Government Funding Arrangements:

BOARD may in the future enter into funding arrangements with the National Institute of Health and the American Cancer Society. BOARD will use its best efforts to ensure that no rights are retained by such parties in the LICENSED SUBJECT MATTER as a result of any such funding arrangements other than customary governmental rights.

Procedures for Maintenance of Patent Protection

THE UNIVERSITY OF TEXAS  
SOUTHWESTERN MEDICAL CENTER  
AT DALLAS

November 28, 1994

Writer's Direct Line:  
(214) 648-3290

Jennifer H. Lobo  
President  
Peregrine Pharmaceuticals, Inc.  
One Palmer Square, Suite 530  
Princeton, NJ 08542

Dear Ms. Lobo:

Upon receipt of the fully executed license **agreements**, option agreement and sponsored research agreement from UT System, I will make the following **instructions** to Arnold, White and Durkee:


- (1) All communications between the Office of Legal Affairs and Technology Transfer at UT Southwestern, the Board of Regents and Arnold, White and Durkee regarding new disclosures, patent **applications** and patents covered by the proposed agreements with Peregrine **will** be copied to Peregrine and to Pennie & Edmonds (1155 Avenue of the Americas, New York, NY 10036, Attn: Laura Coruzzi, Esq.) concurrently with copies provided to the applicable party. This will include, but not be limited to, all status reports, any and all filing deadline notices, declarations, patent applications and responses to office actions. Arnold, White and Durkee will consult with Pennie & Edmonds in all substantive matters relating to the patents and patent applications included in the proposed agreements with Peregrine.
- (2) **UT** Southwestern will assist Peregrine regarding requests for estimates regarding (i) patent related expenses associated with future patent filings contemplated by Board and Peregrine, or (ii) patent related expenses relating to the ongoing prosecution of existing applications. Estimates will be delivered to Peregrine according to the notice request detailed in section (1) above and sufficiently prior to the commencement of work on such matters in order to permit Peregrine to review and comment upon such estimates and to determine whether such work **should** be undertaken. Peregrine may request a review of estimates provided by patent counsel **selected** by the Board of Regents. *IS* Peregrine determines that the estimates provided by Board's patent counsel are unreasonably high, Board agrees to discuss the situation in good faith with Peregrine.

Office of the Vice President for Legal Affairs and Technology Transfer  
5323 Harry Hines Blvd. / Dallas, Texas 75235-9008 / (214) 648-2389 FAX (214) 648-8805



It is our goal to cooperate fully with Peregrine's information needs regarding the patents and patent applications. We recognize the importance of not jeopardizing the value of any Board-owned intellectual property of interest to Peregrine.

Sincerely,

  
Ray Wheatley, M.S.  
Licensing Associate

COAGULATION PATENT LICENSE AGREEMENT  
BETWEEN UNIVERSITY OF TEXAS SYSTEM  
AND  
PEREGRINE PHARMACEUTICALS, INC.

THIS AGREEMENT is made 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 and PEREGRINE PHARMACEUTICALS, INC. (LICENSEE), a Delaware corporation having a principal place of business located at One Palmer Square, Suite 530, Princeton, New Jersey 08542.

WITNESSETH:

Whereas BOARD and SCRIPPS RESEARCH INSTITUTE (SCRIPPS) jointly created certain COAGULATION PATENT RIGHTS and COAGULATION TECHNOLOGY RIGHTS related to LICENSED SUBJECT MATTER, which were developed at The University of Texas Southwestern Medical Center at Dallas (UT SOUTHWESTERN), located at 5323 Harry Hines Boulevard, Dallas, Texas 75235, a component institution of SYSTEM;

Whereas BOARD desires to have the LICENSED SUBJECT MATTER developed and used for the benefit of LICENSEE, the INVENTORS (as hereinafter defined), BOARD, UT SOUTHWESTERN and the public as outlined in the Intellectual Property Policy promulgated by the BOARD; and

Whereas LICENSEE wishes to obtain a 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

This Agreement shall be effective as of the date the last party executes this Agreement, subject to approval by BOARD (EFFECTIVE DATE).

## II. DEFINITIONS

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

2.1 **ADDITIONAL PATENT BIGHTS** shall mean BOARD's rights in information or discoveries covered by the following patents and/or patent applications which relate to the **LICENSED FIELD**, whether domestic or foreign, as well as all divisions, continuations and continuations-in-part arising from research funded in whole or in part by LICENSEE, as well as reissues, reexaminations or extensions thereof:

(a) U.S. Patent Application Number **07/856,018**, filed March 23, 1992, which corresponds to UT Southwestern file reference **UTSD:280**, entitled "Preparation and Use of Polyanionic Polymer-Based Conjugates Targeted to Vascular Endothelial Cells", which names Philip Thorpe as Inventor;

(b) International Patent Application Number **PCT/US98/02619**, filed March 22, 1993, which corresponds to UT Southwestern file reference **UTSD:345**, entitled "Preparation and Use of Polyanionic Polymer-Based Conjugates Targeted to Vascular Endothelial Cells", which names Philip Thorpe as Inventor; and

(c) European Patent Application Number 93 907 633.7, filed October 17, 1994, which corresponds to UT Southwestern file reference **UTSD: 345**, entitled "Preparation and Use of Polyanionic Polymer-based Conjugates Targeted to Vascular Endothelial Cells", which names Philip Thorpe as Inventor.

2.2 COAGULATION PATENT RIGHTS shall mean BOARD's rights in information or discoveries covered by the following patent application, as well as all divisions, continuations, and continuations-in-part arising from research funded in whole or in part by LICENSEE, as well as reissues, reexaminations or extensions thereof:

(a) U.S. Patent Application Number **SN08/273,567** filed July 6, 1994, which corresponds to UT SOUTHWESTERN File Reference **UTSD:419**, entitled "Methods and Compositions for the Coagulation of Tumor Vasculature", which names Philip Thorpe as INVENTOR.

Notwithstanding anything to the contrary in this Section 2.2, it is hereby acknowledged and agreed that COAGULATION PATENT RIGHTS for purposes of this Agreement do not include BOARD's rights in PATENT RIGHTS, which are licensed to LICENSEE under the PATENT LICENSE AGREEMENT executed by LICENSEE and BOARD concurrently with the execution of this Agreement.

2.3 COAGULATION TECHNOLOGY RIGHTS shall mean BOARD's rights in any technical information, know-how, process, procedure, composition, or device, method, formula, protocol, technique, software, design, drawing, data, biological and other materials relating to technologies arising from work in which Philip Thorpe participates and useful in targeting therapeutic and diagnostic compounds to tumor **vasculature** in humans and which are not covered by COAGULATION PATENT RIGHTS but which are necessary or useful for practicing any inventions at any time covered by COAGULATION PATENT RIGHTS.

2.4 COMMERCIAL INTRODUCTION shall mean the date of the first commercial SALE of a LICENSED PRODUCT by LICENSEE or any sublicensee in any country.

2.5 LICENSED FIELD shall mean targeting therapeutic and diagnostic compounds to tumor vasculature in humans.

2.6 LICENSED PRODUCT shall mean any product SOLD by LICENSEE comprising LICENSED SUBJECT MATTER pursuant to this Agreement.

2.7 LICENSED SUBJECT MATTER shall mean inventions and discoveries covered by COAGULATION PATENT RIGHTS or COAGULATION TECHNOLOGY RIGHTS within the LICENSED FIELD.

2.8 LICENSED TERRITORY shall mean the world.

2.9 NET SALES shall mean the gross revenues received by LICENSEE from the SALE of LICENSED PRODUCTS less sales and/or use taxes actually paid, import and/or export duties actually paid, outbound transportation prepaid or allowed, and amounts allowed or credited due to returns (not to exceed the original billing or invoice amount).

2.10 OPTION TO LICENSE AGREEMENT shall mean that certain OPTION TO LICENSE AGREEMENT dated as of even date herewith by and between LICENSEE and BOARD pursuant to which BOARD has granted LICENSEE the option to acquire the ADDITIONAL PATENT RIGHTS.

2.11 PATENT LICENSE AGREEMENT shall mean that certain PATENT LICENSE AGREEMENT dated as of even date herewith by and between LICENSEE and BOARD pursuant to which BOARD has licensed the PATENT RIGHTS to LICENSEE.

2.12 PATENT RIGHTS shall mean BOARD's rights in information or discoveries covered by the following patents and/or patent applications which relate to the LICENSED FIELD, whether domestic or foreign, as well as all divisions, continuations and continuations-in-part arising from research funded in whole or in part by LICENSEE, as well as reissues, reexaminations or extensions thereof:

(a) U.S. Patent **4,880,935**, issued November 14, 1989, entitled “Heterobifunctional Linking Agents Derived from N-Succinimido-Dithio-Alpha Methyl-Methylene-Benzoates”, which names Philip Thorpe as inventor (INVENTOR);

(b) U.S. Patent **5,338,542**, issued August 16, 1994 entitled “Disulfide Linked Immunotoxins” which names Philip Thorpe as INVENTOR;

(c) U.S. Patent Application Number **07/846,349**, tiled March 5, 1992, now abandoned, which corresponds to UT SOUTHWESTERN file reference **UTSD:279**, entitled “Methods and Compositions for Targeting the Vasculature of Solid Tumors”, which names Philip Thorpe and Francis Burrows as INVENTORS;

(d) International Patent Application Number **PCT/US93/01956** (International Publication Number **WO93/17715**), tiled March 5, 1993, which corresponds to UT SOUTHWESTERN **file** reference **UTSD:344**, entitled “Diagnostic and/or Therapeutic Agents Targeted to Neovascular Endothelial Cells”, which names Philip Thorpe and Francis Burrows as INVENTORS;

(e) U.S. Patent Application Number **08/205,330**, filed March 2, 1994, which corresponds to UT SOUTHWESTERN **file** reference **UTSD:393**, entitled “Methods and Compositions for Targeting the Vasculature of Solid Tumors”, which names Philip Thorpe and Francis Burrows as INVENTORS; and

(f) European Patent Application Number 93 906 289.9, filed October 5, 1994, which corresponds to UT SOUTHWESTERN file reference **UTSD:344**, entitled “Diagnostic and/or Therapeutic Agents Targeted to Neovascular

Endothelial Cells”, which names Philip Thorpe and Francis Barrows as INVENTORS.

2.13 PHASE I TRIAL INITIATION shall mean the commencement of a Phase I Clinical Trial on a LICENSED PRODUCT.

2.14 PHASE II TRIAL COMPLETION shall mean the submission to the US Food and Drug Administration (FDA) of the final data resulting from completion of a Phase II Clinical Trial on a LICENSED PRODUCT.

2.15 SALE, SELL or SOLD shall mean the transfer or disposition of a LICENSED PRODUCT for value to a party other than LICENSEE or a SUBSIDIARY.

2.16 SUBLICENSEE GROSS REVENUES shall mean the gross revenues and other consideration received by LICENSEE from any sublicensees of LICENSEE incorporating LICENSED SUBJECT MATTER, excluding (a) payments made by any sublicensee in consideration for the issuance of equity or debt securities of LICENSEE, (b) payments made by any sublicensee to support or fund research activities to be undertaken by LICENSEE, (c) up-front payments made in consideration or recognition of prior research and development efforts undertaken by LICENSEE, and (d) payments made by any sublicensee upon the achievement of specified milestones or benchmarks relating to the development of the LICENSED PRODUCTS sublicensed to sublicensee, other than royalty payments. Notwithstanding subpart (d) above, if the royalty rate charged by LICENSEE for sublicensing any LICENSED PRODUCT is less than four percent (4%). then the parties will mutually agree to an equitable sharing arrangement with respect to license fee, milestone, benchmark or other payments. If non-monetary consideration is so received, then a commercially reasonable monetary value will be assigned for purposes of calculating BOARD’s share of SUBLICENSEE GROSS REVENUES.

2.17 SUBSIDIARY 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.

### III. WARRANTY; SUPERIOR-RIGHTS

3.1 BOARD represents and warrants that it is the owner of 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 granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.

3.2 BOARD hereby represents and warrants that Section 2.2 lists the patents and patent applications in the LICENSED FIELD to which the BOARD has rights and which arise from work involving Philip Thorpe (other than patents and patent applications covered by PATENT RIGHTS or by ADDITIONAL PATENT RIGHTS), and that the patent application set forth in Section 2.2 was duly filed in the United States on the date indicated therein.

### IV. LICENSE

4.1 BOARD hereby grants to LICENSEE a royalty-bearing, exclusive license under COAGULATION PATENT RIGHTS, and a royalty-bearing exclusive license under COAGULATION TECHNOLOGY RIGHTS to manufacture, have manufactured, use, and/or SELL LICENSED PRODUCTS within LICENSED TERRITORY for use within LICENSED FIELD. This grant shall be subject to the payment by LICENSEE to BOARD of all consideration as provided in this Agreement, and shall be further subject to rights retained by BOARD to:



(a) Publish the general scientific findings from research related to LICENSED SUBJECT MATTER; provided, that, in order to avoid possible loss of rights in the COAGULATION PATENT RIGHTS, BOARD hereby agrees to submit any materials relating to a planned publication to LICENSEE at least sixty (60) days prior to the date of planned submission for publication. If, within thirty (30) days of receipt of such materials, LICENSEE notifies BOARD that it desires to file patent applications pertaining to any inventions contained in such materials, BOARD shall defer publication or **other** disclosure for an additional period, not to exceed ninety (90) days, sufficient to permit such desired patent applications to be filed.

(b) Use LICENSED SUBJECT MATTER for research, teaching and other educationally-related purposes at any institution within the SYSTEM.

4.2 BOARD hereby also grants to LICENSEE a **first** option to obtain a **royalty-**bearing exclusive license to any inventions in the LICENSED FIELD which arise from work **funded** by LICENSEE in which Philip Thorpe participates and which have applications in the LICENSED FIELD (collectively, "IMPROVEMENTS"). The option for any such IMPROVEMENTS shall extend for a period of ninety (90) days from the date LICENSEE receives written notice from BOARD disclosing such IMPROVEMENTS. During such ninety (90) day period, BOARD shall reasonably make available to LICENSEE any other information in its possession or control which would be useful to LICENSEE in evaluating **the** IMPROVEMENT, subject to such reasonable confidentiality undertakings as BOARD shall require. LICENSEE may exercise its option by informing BOARD in writing during such ninety (90) day period that it intends to commercialize the IMPROVEMENT as soon as practicable, consistent with sound and reasonable business practice and judgment. Upon exercise of LICENSEE's option, such IMPROVEMENT shall become subject to the terms

and conditions of this License Agreement. In the event that LICENSEE fails to exercise its option with respect to any IMPROVEMENT as provided herein, BOARD shall have the right to enter into license agreements concerning such IMPROVEMENT with third parties provided the terms and conditions thereof are not, in general, more favorable than those terms and conditions provided under this License Agreement, unless BOARD has offered the new terms and conditions to LICENSEE and LICENSEE has refused to accept them.

4.3 BOARD hereby also grants to LICENSEE a first option to negotiate and acquire an exclusive, worldwide, royalty-bearing license to any inventions outside the LICENSED FIELD which arise from work funded by LICENSEE. The option for any such inventions shall extend for a period of ninety (90) days from the date LICENSEE receives written notice from BOARD disclosing such invention. LICENSEE may exercise its option by informing BOARD in writing during such ninety (90) day period that it intends to commercialize the invention as soon as practicable, consistent with sound and reasonable business judgment. Upon exercise of LICENSEE's option, BOARD and LICENSEE shall enter into good faith negotiations regarding the terms and conditions of said license and further agree to negotiate license rates and other payments which are fair and reasonable to both parties. If BOARD and LICENSEE are unable to agree on the terms of a license within ninety (90) days following the exercise of LICENSEE's option, BOARD shall have the right to enter into license agreements concerning the invention with third parties; provided, however, such licensing agreements shall be on terms no less favorable to BOARD than BOARD's final offer to LICENSEE.

4.4 LICENSEE shall have the right to extend the license granted herein to any SUBSIDIARY provided that such SUBSIDIARY consents to be bound by this Agreement to the same extent as LICENSEE.

4.5 LICENSEE shall have the right to grant sublicenses in accordance with the terms and conditions of this Agreement. LICENSEE agrees to deliver to BOARD 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. If any sublicensee fails to pay any royalty payment to LICENSEE on the date provided in such sublicense, LICENSEE shall, within thirty (30) days of such scheduled payment date, take steps to require such sublicensee to cure such default. If such default is not cured by such sublicensee within an additional ninety (90) day period, LICENSEE shall terminate such sublicense. If LICENSEE fails to terminate any sublicense as provided herein, LICENSEE shall be responsible for the payment of royalties owed by such sublicensee under this Agreement whether or not paid to LICENSEE by such sublicensee. Upon termination of this Agreement, any and all existing sublicenses granted by LICENSEE shall be assigned to BOARD.

4.6 BOARD shall have the right at any time after five (5) years from the date of this Agreement, to terminate the exclusivity of the license granted herein in any national jurisdiction within LICENSED TERRITORY if LICENSEE, **within** ninety (90) days after written notice from BOARD as to such intended termination of exclusivity, fails to provide written evidence that it has commercialized or is actively attempting to commercialize an invention licensed hereunder within such jurisdiction. BOARD agrees to negotiate in good faith with LICENSEE for adjusting terms under such a non-exclusive arrangement. BOARD shall have the right at any time after seven (7) years from the date of this Agreement to terminate the license completely in any national jurisdiction if LICENSEE, within ninety (90) days after written notice from BOARD of such intended termination, fails to provide written evidence that it has commercialized or is actively attempting to commercialize an invention

licensed hereunder within such jurisdiction. Evidence provided by LICENSEE that it has an ongoing and active research, development, manufacturing, marketing or licensing program as appropriate, directed toward production and sale of products based on COAGULATION PATENT RIGHTS or COAGULATION TECHNOLOGY RIGHTS within such jurisdiction shall be deemed satisfactory evidence.

#### V. PAYMENTS AND REPORTS

5.1 Subject to Section 5.1(h) of this Agreement, in consideration of rights granted by BOARD to LICENSEE under this Agreement, LICENSEE agrees to pay BOARD the following:

(a) A PHASE I TRIAL INITIATION milestone payment of seventy five thousand dollars (\$75,000) payable within thirty (30) days of the earlier of: (i) February 1, 1997, or (ii) PHASE I TRIAL INITIATION.

(b) A PHASE II TRIAL COMPLETION milestone payment of one hundred thousand dollars (\$100,000) payable within thirty (30) days of the earlier of: (i) February 1, 2000, or (ii) PHASE II TRIAL COMPLETION.

(c) A milestone payment for COMMERCIAL INTRODUCTION of each LICENSED PRODUCT in the amount of three hundred thousand dollars (\$300,000) payable to BOARD within thirty (30) days of COMMERCIAL INTRODUCTION of the LICENSED PRODUCT. All COMMERCIAL INTRODUCTION milestone payments shall be credited against royalty payments due under Paragraph 5.1 on a LICENSED PRODUCT-by-LICENSED PRODUCT basis.

(d) A running earned royalty equal to four percent (4%) of NET SALES of LICENSED PRODUCTS incorporating COAGULATION PATENT RIGHTS; provided, however, if a LICENSED PRODUCT incorporates technology not covered

by COAGULATION PATENT RIGHTS, the running royalty to be paid under this Section shall be reduced to two percent (2%) of NET SALES of LICENSED PRODUCTS. In the event any LICENSED PRODUCT incorporating COAGULATION PATENT RIGHTS is sold as a component of a combination of active elements, NET SALES for purposes of determining royalty payments on such combination shall be calculated by multiplying NET SALES of such combination by the fraction  $A$  over  $A+B$ , in which "A" is the gross selling price of the LICENSED PRODUCT portion of the combination when sold separately during the accounting period in which the sale was made, and "B" is the gross selling price of the non-LICENSED PRODUCT portion of the combination sold separately during the accounting period in question. In the event that no separate sale of either such above-designated LICENSED PRODUCT or such above-designated non-LICENSED PRODUCT portion of the combination is made during the accounting period in which the sale was made, NET SALES shall be calculated by multiplying NET SALES of such combination by the fraction  $C$  over  $C+D$ , in which "C" is the standard fully-absorbed cost of the LICENSED PRODUCT portion of such combination, and "D" is the standard fully absorbed cost of the other component(s), such costs being arrived at using the standard accounting procedures of LICENSEE which will be in accord with generally accepted accounting practices. Notwithstanding the foregoing, under no circumstances shall the royalty provided for in this Section 5.1(f) be reduced to less than two percent (2%) of NET SALES of LICENSED PRODUCTS incorporating COAGULATION PATENT RIGHTS. No royalties shall be payable to BOARD under this Section 5.1(d) with respect to SALES for which a royalty is payable under the PATENT LICENSE AGREEMENT.

(e) A running earned royalty equal to one percent (1%) of NET SALES of LICENSED PRODUCTS covered by COAGULATION TECHNOLOGY RIGHTS only. No royalty shall be payable to BOARD under this Paragraph 5.1(e) with respect to SALES for which a royalty is payable under Paragraph 5. I(d) or under the PATENT LICENSE AGREEMENT.

(f) Fifty percent (50%) of the SUBLICENSEE GROSS REVENUES; provided, however, in the event that LICENSEE raises capital from any source (including, without limitation, from the issuance of common or preferred stock, debt, warrants or from licensing fees) in the aggregate amounts hereinafter set forth, such percentage shall be reduced as follows:

<u>Aggregate</u> Canitalization	Percent of <u>Sublicensee Gross Revenues</u>
\$2,000,000 - 5,000,000	35%
\$5,000,001 - 10,000,000	25%
Greater than \$10,000,000	20%

In the event that LICENSEE sublicenses LICENSED SUBJECT MATTER in combination with other product(s) for use in the LICENSED FIELD which are not LICENSED PRODUCTS (hereinafter "OTHER ITEMS"), the SUBLICENSEE GROSS REVENUES for purposes of determining payment to BOARD on the combination shall be calculated as follows:

(i) If all LICENSED PRODUCTS and OTHER ITEMS contained in the combination are available separately, SUBLICENSEE GROSS REVENUES for purposes of determining payments due BOARD will be calculated by multiplying the SUBLICENSEE GROSS REVENUES of the combination by the fraction  $A/(A+B)$ , where A is the gross selling price of all

LICENSED PRODUCTS in the combination, and B is the gross selling price for all OTHER ITEMS in the combination sold separately during the accounting period in question.

(ii) If no separate sale of either such LICENSED PRODUCTS or OTHER ITEMS is made during the accounting period in which such sale is made, SUBLICENSEE GROSS REVENUES for purposes of determining payments due BOARD shall be calculated by multiplying the SUBLICENSEE GROSS REVENUES of the combination by the fraction C over **C+D**, in which "**C**" is the standard fully-absorbed cost of the LICENSED PRODUCT portion of such combination and "**D**" is the standard fully-absorbed cost of the OTHER ITEMS, such costs being arrived at **using** the standard accounting procedures of LICENSEE which will be in accordance with generally accepted accounting practices.

Under no circumstances shall the percentage of SUBLICENSEE GROSS REVENUES provided for in this Section **5.1(f)** be reduced to less than ten percent (10%).

(g) The parties hereto agree that if economic or political conditions change sufficiently so as to affect the continued applicability of the assumptions made in negotiating the dates of the milestone payments agreed to in this Section 5.1, they will negotiate in good faith a reasonable extension of the dates of such milestone payments in accordance with such changed economic or political conditions.

(h) Notwithstanding anything to the contrary in this Agreement, it is hereby acknowledged and agreed by the parties hereto that (i) the amounts payable by LICENSEE pursuant to Sections **5.1(a)** and **(b)** of this Agreement are one-time license fees payable by LICENSEE only with respect to the first LICENSED PRODUCT of LICENSEE and (ii) no

amounts shall be paid by LICENSEE pursuant to such Sections to the extent that such payments have been made by LICENSEE under the PATENT LICENSE AGREEMENT.

5.2 During the term of this Agreement and for one (1) year thereafter, LICENSEE shall keep complete and accurate records of its SALES and NET SALES of LICENSED PRODUCTS and all SUBLICENSEE GROSS REVENUES received by LICENSEE under the license granted in this Agreement in sufficient detail to enable the royalties payable hereunder to be determined. LICENSEE shall permit BOARD or its representatives, at BOARD's expense, to periodically examine its books, ledgers, and records during regular business hours for the purposes of and to the extent necessary to verify any report required under this Agreement. If any such inspection reveals that the aggregate of royalties paid during any four (4) consecutive calendar quarters was less than the amount that should have been paid under this Agreement, LICENSEE shall remit to BOARD the amount of such deficiency; provided, that, if such deficiency is more than five percent (5%) of the amount that should have been paid, LICENSEE shall remit to BOARD, in addition to the amount of such deficiency, the reasonable expenses of the inspection conducted by BOARD. If LICENSEE or BOARD disputes any deficiency or expenses provided in this Section 5.2, the dispute shall be referred to an independent accountant selected by mutual agreement of BOARD and LICENSEE, whose decision will be binding and final on the parties hereto. If a decision is entered against LICENSEE by such independent accountant for the amount of such deficiency or expenses, LICENSEE agrees to remit to BOARD, in addition to any other amounts provided for in this Section 5.2, accrued interest on such deficiency through the date of such decision at the highest allowable rate.

5.3 Within thirty (30) days after March 31, June 30, September 30, and December 31 of each year, LICENSEE shall deliver to BOARD a true and accurate report which shall



describe (a) the quantities of LICENSED SUBJECT MATTER that it has produced; (b) the total SALES; (c) the calculation of royalties thereon; and (d) the total royalties so computed and due. Simultaneously with the delivery of each such report, LICENSEE shall pay to BOARD the amount, if any, due for the period covered by such report. If no payments are due, it shall be so reported.

5.4 Upon the request of BOARD but not more often than once per calendar year, LICENSEE shall deliver to BOARD a written report as to LICENSEE's efforts and accomplishments during the preceding year in commercializing LICENSED SUBJECT MATTER in various parts of the LICENSED TERRITORY and its commercialization plans for the upcoming year.

5.5 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 UT SOUTHWESTERN and sent to:

U.T. Southwestern Medical Center  
Office of Legal Affairs & Technology Transfer  
5323 Harry Hines Boulevard  
Dallas, Texas 75235-9008  
Attn: Ray Wheatley

#### VI. SPONSORED RESEARCH

6.1 LICENSEE will sponsor and financially support research, clinical activities or other mutually agreeable programs at UT SOUTHWESTERN in accordance with the terms and subject to the conditions of the Sponsored Research Agreement executed by LICENSEE and UT SOUTHWESTERN concurrently with the execution of this Agreement.

#### VII. TERM AND TERMINATION

7.1 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 COAGULATION PATENT

RIGHTS have not expired and if only COAGULATION TECHNOLOGY RIGHTS are licensed and no COAGULATION PATENT RIGHTS are applicable, then, on a per-product basis, (i) with respect to LICENSED PRODUCTS which have an FDA-approved therapeutic indication for humans, for a term of **seven** (7) years from the date of COMMERCIAL INTRODUCTION of any such product and (ii) with respect to LICENSED PRODUCTS which have an FDA-approved diagnostic indication for humans, for a term of seven (7) years from the date of COMMERCIAL INTRODUCTION of such product.

7.2 This Agreement will earlier terminate:

(a) upon thii (30) days written notice if LICENSEE **shall** default in its obligation to make payments, if any are due, in accordance with Section V or Section XIV hereunder or Section 3 of the Sponsored Research Agreement; provided, however, LICENSEE may avoid such termination if before the end of such notice period LICENSEE cures its default; or

(b) automatically if LICENSEE shall become bankrupt or insolvent and/or if the business of LICENSEE shall be placed in the hands of a receiver, assignee, or trustee, whether by voluntary act or LICENSEE or otherwise;

(c) upon ninety (90) days written notice if LICENSEE shall breach or default on any obligation under this License Agreement or the Sponsored Research Agreement; provided, however, LICENSEE may avoid such termination if before the end of such period LICENSEE notifies BOARD that such breach has been cured, states the manner of such cure and in fact the breach has been cured.

(d) Under the provisions of Paragraph 4.4 if invoked.

7.3 Upon termination of this Agreement for any cause, nothing herein shall be construed to release either party of any obligation matured prior to the effective date of such termination. LICENSEE may, after the effective date of such termination, sell all

LICENSED PRODUCT and parts **therefor** that it may have on hand at the date of termination, provided that it pays running royalty earned thereon as provided in this Agreement.

#### VIII. INFRINGEMENT BY THIRD PARTIES

8.1 Each party shall inform the other promptly in writing of any alleged infringement of the COAGULATION PATENT RIGHTS by a third party, including all details then available. LICENSEE shall have the right, but shall not be obligated, to prosecute at its own expense any such infringements, and BOARD agrees that LICENSEE may join BOARD as a plaintiff at the expense of LICENSEE. In any infringement action commenced or defended solely by LICENSEE, all expenses and all recovery for infringement shall be those of LICENSEE. In any such action by LICENSEE, BOARD shall be entitled to receive an amount equal to the applicable royalties on any recovery of profits and damages that is in excess of LICENSEE's reasonable costs and expenses. No settlement, consent judgment or other voluntary **final** disposition of the suit may be entered into without BOARD's consent, which consent shall not be unreasonably withheld, delayed or conditioned.

If LICENSEE has not commenced legal action or been successful in obtaining cessation of the infringement within ninety (90) days of written notification from BOARD of such infringement, or if LICENSEE elects not to continue prosecuting any legal action against an infringer, BOARD shall have the right, but shall not be obligated, to prosecute at its own expense any such infringement. BOARD may join LICENSEE as a plaintiff in any such infringement suit at BOARD's expense. No settlement, consent judgment or other voluntary final disposition of the suit may be entered into without LICENSEE's consent, which consent shall not be unreasonably withheld, delayed or conditioned.

In the event that LICENSEE and/or BOARD do not **file** suit against, conclude settlement negotiations with, or grant a license to a substantial infringer of COAGULATION PATENT BIGHTS within one (1) year of knowledge thereof, then the parties will consult with one another in an effort to determine whether a reasonably prudent licensee would institute litigation, conclude settlement negotiations, and/or grant a license within the one (1) year time period described above in order to enforce the patent in question in light of all relevant business and economic factors (including, but not limited to, the projected cost of such litigation, the likelihood of success on the merits, the probable amount of any damage award, the prospects for satisfaction of any judgment against the alleged infringer, the possibility of counterclaims against LICENSEE and **BOARD**, the diversion of LICENSEE's human and economic resources, the impact of any possible adverse outcome on LICENSEE, and the effect any publicity might have on the respective reputations and goodwill of the parties). If after such consultation, the parties have not reached agreement and LICENSEE does not forthwith file suit against, enter into settlement negotiations with or grant a license to the substantial infringer, then **BOARD** shall have the right to enforce any PATENT BIGHT, licensed hereunder on behalf of itself and LICENSEE (**BOARD** retaining all recoveries from such enforcement), and **BOARD** shall have the right to reduce the license granted hereunder to nonexclusive in the national jurisdiction in which suit is brought.

In any infringement suit that either party brings to enforce the COAGULATION PATENT BIGHTS, the other party shall at the request and expense of the party bringing the suit, cooperate in all reasonable respects, including, to the extent possible, obtaining the testimony of its employees and agents and making available physical evidence in the possession of that party.

## IX. ASSIGNMENT

This Agreement shall not be assignable or otherwise **transferrable** by LICENSEE without the prior written consent of BOARD, which consent shall not be unreasonably withheld, except that LICENSEE may assign or otherwise transfer its rights under this Agreement to the following parties without obtaining BOARD's consent: (i) a successor to LICENSEE's business, or a successor to that portion of LICENSEE's business that pertains to the subject matter of the COAGULATION PATENT RIGHTS or any COAGULATION TECHNOLOGY RIGHTS, and (ii) any entities controlled by, controlling, or under common control with LICENSEE.

## X. PATENT MARKING

LICENSEE agrees to mark permanently and legibly all products and documentation manufactured or sold by it under this Agreement with such patent notice as may be permitted or required under Title 35, United States Code.

## XI. INDEMNIFICATION

LICENSEE shall hold harmless and indemnify BOARD, INVENTORS, SYSTEM, UT SOUTHWESTERN, and their respective Regents, officers, employees and agents (each, an "INDEMNITEE") from and against any liability, loss or damage they may suffer as a result of claims, demands, or causes of action whatsoever, including without limitation those 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; provided, however, that LICENSEE shall not be required to indemnify or hold harmless any INDEMNITEE, from any losses or claims attributable to any infringement or alleged infringement of patents, technology, trade secrets, or confidential or proprietary know-how or information of third

parties by the COAGULATION PATENT RIGHTS or the COAGULATION TECHNOLOGY RIGHTS. Except as otherwise provided in this Agreement, the obligations of LICENSEE under this Section shall apply in full force whether or not the claims and any losses resulted or are alleged to have resulted in whole or in part from the acts or omissions of any INDEMNITEE; provided, however, that the foregoing indemnity shall not apply to any claims or losses arising out of any act or omission constituting gross negligence, willful malfeasance, misconduct or bad faith of any INDEMNITEE.

## XII. USE OF NAME

LICENSEE shall not use the name of UT SOUTHWESTERN, INVENTORS, SYSTEM, BOARD or their respective Regents in any advertising, promotional or sales literature, or in any other form of publicity without prior written consent obtained from each such party in each case. The foregoing notwithstanding, LICENSEE shall have the right to identify such parties and to disclose the terms of this Agreement in any prospectus, offering memorandum or other document or filing required by applicable securities laws or other applicable law or regulation, provided that LICENSEE shall have given each such affected party at least ten (10) business days prior written notice of the proposed text of any such identification or disclosure for the purpose of giving each such affected party the opportunity to comment on and suggest amendments to such proposed text.

## XIII. CONFIDENTIAL INFORMATION

13.1 BOARD 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 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.

13.2 Each party's obligation of confidence hereunder shall be fulfilled by using the at least same degree of care with the other party's confidential information 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.

#### XIV. PATENT AND INVENTIONS

UT SOUTHWESTERN shall be responsible for the preparation, filing, prosecution and maintenance of all patent applications and patents included in COAGULATION PATENT RIGHTS LICENSEE shall reimburse UT SOUTHWESTERN for all reasonable attorneys' fees (i) incurred by UT SOUTHWESTERN subsequent to the EFFECTIVE DATE, or (ii) incurred by UT SOUTHWESTERN prior to the EFFECTIVE DATE and for which invoices have been submitted to LICENSEE in connection with the preparation, filing and maintenance of all patent applications and patents included in COAGULATION PATENT RIGHTS; provided that patent counsel selected by UT SOUTHWESTERN is reasonably acceptable to LICENSEE. Subsequent to the EFFECTIVE DATE, UT SOUTHWESTERN shall consult with LICENSEE as to the preparation, filing, prosecution and maintenance of all such patent applications and patents in accordance with the procedures set forth on Exhibit A hereto and incorporated herein by reference, and shall furnish to LICENSEE copies of documents relevant to such preparation, filing, prosecution or

maintenance, including without limitation invoices providing detailed descriptions of all costs and expenses incurred by UT SOUTHWESTERN's patent counsel in connection therewith, sufficiently prior to filing such documents or **making** any payment due thereunder to allow for review and comment by LICENSEE. If, at any time, LICENSEE shall elect not to pay the expenses of any patent application or patent included in COAGULATION PATENT RIGHTS, LICENSEE shall so notify UT SOUTHWESTERN within thii (30) days of such consultation and shall thereby surrender its rights under such patent application or patent; provided, however, that LICENSEE shall remain obligated to reimburse UT SOUTHWESTERN for any costs incurred with respect to such patent application or patents prior to said election.

#### XV. GENERAL

15.1 This Agreement, the PATENT LICENSE AGREEMENT, the OPTION TO LICENSE AGREEMENT, the Sponsored Research Agreement and the Exhibits attached hereto and thereto constitute 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 License Agreement shall be given by prepaid, first class, certified mail, return receipt requested, addressed in the case of BOARD to:

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



with copies to:

UT SOUTHWESTERN  
Peter H. Fitzgerald, Ph.D.  
Executive Vice President  
for Business Affairs  
5323 Harry Hines Boulevard  
Dallas, TX 752359013

and

UT SOUTHWESTERN  
Katherine L. Chapman, J.D.  
Associate Vice President for  
Legal Affairs & Technology Transfer  
5323 Harry Hines Boulevard  
Dallas, Texas 75235-9008

or in the case of LICENSEE to:

PEREGRINE PHARMACEUTICALS, INC.  
One Palmer Square, Suite 530  
Princeton, New Jersey 08542  
ATTENTION: Jennifer H. Lobo

with copies to:

PALMER & DODGE  
One Beacon Street  
Boston, Massachusetts 02108  
ATTENTION: Michael Lytton, Esq.

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

15.3 LICENSEE shall comply with all applicable federal, state and local laws, regulations, and ordinances in connection with its activities pursuant to this Agreement.

15.4 This License 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 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 no 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.

BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM

PEREGRINE PHARMACEUTICALS,  
INC.

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

By: \_\_\_\_\_  
Jennifer H. Lobo  
President

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

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Dudley R. Dobie, Jr., J.D.  
Office of General Counsel

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

APPROVED AS TO CONTENT:

UT SOUTHWESTERN

By: \_\_\_\_\_  
Peter H. Fitzgerald, Ph.D.  
Executive Vice President  
For Business Affairs

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

Procedures for Maintenance of Patent Protection

THE UNIVERSITY OF TEXAS  
SOUTHWESTERN MEDICAL CENTER  
AT DALLAS

November 20, 1994

Writer's Direct Line:  
(214) 648-3290

Jennifer H. Lobo  
President  
Peregrine Pharmaceuticals, Inc.  
One Palmer square, Suite 530  
Princeton, NJ 08542

Dear Ms. Lobo:


Upon receipt of the fully executed license agreement, option agreement and sponsored research agreement from UT System, I will make the following **instructions** to Arnold, White and Durkee:

- (1) All communications between the office of Legal Affairs and Technology Transfer at UT Southwestern, the Board of **Regents** and **Arnold, White and Durkee** regarding new disclosures, patent applications and patents covered by the proposed agreements with Peregrine will be copied to Peregrine and to Pennie & Edmonds (1155 Avenue Of the Americas, New York, NY 10036, Attn: Laura Coruzzi, Esq.) concurrently with **copies** provided to the applicable party. This will include, but not be limited to, all status reports, any and all filing deadline notices, declarations, patent applications and responses to office **actions**. Arnold, White and Durkee will consult with Pennie & Edmonds in all substantive matters relating to the patents and patent applications included in the proposed agreements with Peregrine.
- (2) UT Southwestern will assist Peregrine regarding requests for estimates regarding (i) patent related expenses associated with future patent filings contemplated by Board and Peregrine, or (ii) patent related expenses relating to the ongoing prosecution of existing applications. Estimates will be delivered to Peregrine according to the notice request detailed in section (1) above and sufficiently prior to the commencement of work on such matters in order to permit Peregrine to review and comment upon **such** estimate and to determine whether **such** work **should** be undertaken. Peregrine may request a review of estimates provided by patent counsel selected by the Board of Regents. If Peregrine **determines** that the **estimates** provided by Board's patent counsel are unreasonably high, Board agrees to **discuss** the situation in good faith with Peregrine.

Office of the Vice President for Legal Affairs and Technology Transfer  
5323 Harry Hines Blvd. / Dallas, Texas 75235-9008 / (214) 648-2389 FAX (214) 648-8305

It is our goal to cooperate fully with Peregrine's information needs regarding the patents and patent applications. We recognize the importance of not jeopardizing the value of any Board-owned intellectual property of interest to **Peregrine**.

Sincerely,

  
Ray Wheatley, M/S.  
Licensing Associate

## OPTION TO LICENSE AGREEMENT

This Option to License Agreement (the "Agreement") is made 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 on behalf of the University of Texas Southwestern Medical Center ("UT Southwestern"), and Peregrine Pharmaceuticals, Inc. ("Optionee"), a Delaware corporation having a principal place of business located at One Palmer Square, Suite 530, Princeton, New Jersey 08542.

### WITNESSETH:

WHEREAS, Board and Optionee have entered into a Patent License Agreement of even date herewith (the "Patent License Agreement") pursuant to which Board has licensed to Optionee certain Patent Rights and Technology Rights and a Coagulation Patent License Agreement of even date herewith (the "Coagulation Patent License Agreement") pursuant to which Board has licensed to Optionee certain Coagulation Patent Rights and Coagulation Technology Rights; and

WHEREAS, in connection therewith, Board wishes to grant to Optionee an option to acquire certain Additional Patent Rights and Additional Technology Rights of Board not included as part of the Patent Rights, Technology Rights, Coagulation Patent Rights and Coagulation Technology Rights;

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

#### 1. OPTION PERIOD

This Agreement shall be effective as of December 1, 1994 and shall continue until May 1, 1995 (the "Option Period"), unless otherwise extended by **mutual** agreement of the parties hereto, subject to approval by the Board.

#### 2. DEFINITIONS

Capitalized terms used in this Agreement that are not **defined** herein shall have the respective meanings ascribed to such terms in the Patent License Agreement. In addition, the following terms shall have the following meanings:

2.1 "Additional Technology Rights" shall mean Board's rights in any technical information, know-how, process, procedure, composition, or device, method, formula, protocol, technique, software, design, drawing, data, biological and other materials relating to technologies arising from work in which Philip Thorpe participates and useful in targeting therapeutic and diagnostic compounds to Nmor **vasculature** in humans and which are not

covered by Additional Patent Rights but which are necessary or useful for practicing any inventions at any time covered by Additional Patent Rights.

2.2 “Additional Patent Rights” shall mean Board’s rights in information or discoveries covered by the following patent applications which relate to the Licensed Field, whether domestic or foreign, as well as all divisions, continuations and continuations-in-part arising from work funded in whole or in part by Optionee, as well as reissues, reexaminations or extensions thereof:

(a) U.S. Patent Application Number **07/856,018**, filed March 23, 1992, which corresponds to UT Southwestern tile reference **UTSD:280**, entitled “Preparation and Use of Polyanionic Polymer-Based Conjugates Targeted to Vascular Endothelial Cells”, which names Philip Thorpe as Inventor;

(b) International Patent Application Number **PCT/US98/02619**, filed March 22, 1993, which corresponds to UT Southwestern file reference **UTSD:345**, entitled “Preparation and Use of Polyanionic Polymer-Based Conjugates Targeted to Vascular Endothelial Cells”, which names Philip Thorpe as Inventor; and

(c) European Patent Application Number 93 907 633.7, filed October 17, 1994, which corresponds to UT Southwestern file reference UTSD: 345, entitled “Preparation and Use of Polyanionic Polymer-based Conjugates Targeted to Vascular Endothelial Cells”, which names Philip Thorpe as Inventor.

### **3. WARRANTIES**

3.1 Except for the rights, if any, of the third parties described in Section 3.3 and Exhibit B of the Patent License Agreement, Board represents and warrants that it is the owner of the entire right, title, and interest in and to the Additional Patent Rights and the Additional Technology Rights, and that it has the sole right to grant the Option hereunder (as defined in Section 4), and that it has not granted options or licenses hereunder to any other entity that would restrict rights granted hereunder except as stated herein or in Exhibit B of the Patent License Agreement. Board hereby represents and warrants that Section 2.2 lists all of the patent applications in the Licensed Field to which the Board has rights and which arise from work involving Philip Thorpe (other than patents and patent applications covered by Patent Rights and Coagulation Patent Rights), and that each of the patent applications listed in Section 2.2 was duly filed in the United States on the date indicated therein and was duly filed in such foreign jurisdictions as are listed on Exhibit A attached hereto on the dates indicated therein.

3.2 Licensee understands that the Additional Patent Rights have been developed under the funding agreements with the third parties listed on Exhibit B to the Patent License Agreement and that such parties have the rights relative thereto specified in such Exhibit B. This Agreement is explicitly made subject to the rights of such parties, which are described



in Exhibit B. To the extent that there is a conflict between such rights and this Agreement, such rights shall prevail.

#### **4. OPTION FOR EXCLUSIVE LICENSE**

4.1 Subject to the terms of this Agreement, Board hereby grants to Optionee an exclusive option (the "Option") to acquire an exclusive license under the Additional Patent Rights and Additional Technology Rights to manufacture, have manufactured, sell or use Licensed Products, pursuant to the terms and subject to the conditions of the Patent License Agreement.

4.2 Optionee shall exercise such Option and extension(s) as the case may be by (i) delivering written notice of such exercise to Board and UT Southwestern as set forth in this Agreement at any time before expiration of the Option Period and (ii) reimbursing UT Southwestern for all reasonable attorney's fees incurred by UT Southwestern in connection with the preparation, maintenance and tiling of all patent applications and patents included in Additional Patent Rights.

4.3 Upon exercise of the Option by Optionee as provided in Section 4.2, the Additional Patent Rights and Additional Technology Rights described herein shall become a part of, and shall in all respects be subject to, the Patent License Agreement (including, without limitation, the provisions for payment of royalties provided by such Agreement other than Sections 5.1(a), (b), (c) and (d) thereof, which shall not apply to such Additional Patent Rights and Additional Technology Rights) and the definition of Patent Rights and Technology Rights provided in the Patent License Agreement shall mean and refer to the Additional Patent Rights and the Additional Technology Rights, respectively, as herein defined.

4.4 Optionee may terminate this Agreement at any time upon giving thirty (30) days notice to Board and UT Southwestern.

#### **5. INFORMATION AND CONFIDENTIALITY**

5.1 As promptly as possible commencing upon the execution of this Agreement, UT Southwestern agrees to disclose to Optionee during the Option Period all relevant information and data relating to Additional Patent Rights and Additional Technology Rights, with a view of enabling Optionee to evaluate the potential **commercial** significance of the Additional Patent Rights and Additional Technology Rights.

5.2 The parties may wish, from time to time, in connection with this Agreement, to disclose confidential information to each other ("Confidential Information"). Each party will use reasonable efforts to prevent the disclosure of any of the other party's Confidential Information to third parties during the Option Period and for a period of three (3) years thereafter, provided such Confidential Information (i) is obtained during Option Period, (ii) is related to the Additional Patent Rights or Additional Technology Rights, and (iii) is marked

with an appropriate confidentiality legend within thirty (30) days of disclosure. The recipient party's obligation shall not apply to information that:

- (1) is already in the recipient party's possession at the time of disclosure thereof;
- (2) is or later becomes part of the public domain through no fault of the recipient party;
- (3) is received from a third party having no obligations of confidentiality to the disclosing party;
- (4) is independently developed by the recipient party; or
- (5) is required by law or regulation to be disclosed.

## 6. GENERAL PROVISIONS

6.1 From the date hereof through the expiration of the Option Period, neither UT Southwestern nor Board shall, directly or indirectly, through any officer, director, agent, representative (including, without limitation, UT Southwestern officials or faculty members and attorneys) or otherwise, (i) solicit, initiate or encourage submission of proposals or offers from any person other than Optionee relating to any acquisition or license of the Additional Patent Rights or Additional Technology Rights, or (ii) participate in any discussions or negotiations regarding, or furnish to any other person any information with respect to or otherwise cooperate in any way with, or assist or participate in, facilitate or encourage any effort or attempt by any other person to do or seek any of **the** foregoing. UT Southwestern and Board may, however, respond to requests for information regarding issued patents covered by Additional Patent Rights, including forwarding of such issued patents. UT Southwestern, Board and Optionee each agree that there shall be no public announcement, press release or other publicity with respect to the subject matter of this Option Agreement, except as may be agreed by the parties in writing or required by law. The foregoing notwithstanding, Optionee shall have the right to identify UT Southwestern and to disclose the terms of this Agreement in any prospectus, offering memorandum or other document or filing required by applicable securities laws or other applicable law or regulation provided that Optionee shall have given UT Southwestern at least ten (10) days prior written notice of the proposed text of any such identification or disclosure for the purpose of giving UT Southwestern the opportunity to comment on such proposed text.

6.2 This Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that Optionee may assign or otherwise transfer its rights under this Agreement to the following parties without obtaining Board's or UT Southwestern's consent: (i) a successor to Optionee's business or a successor to that portion of Optionee's business that pertains to the subject matter of the Additional Patent Rights or any Additional Technology Rights and (ii) any entities controlled by, controlling, or under common control with Optionee.

6.3 This Agreement constitutes the entire and only agreement between the parties relating to the Option, and all 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.

6.4 The relationship between UT Southwestern and Optionee is that of independent contractors. UT Southwestern and Optionee are not joint venturers, partners, principal and agent, master and servant, employer or employee, and have no other relationship other than independent contracting parties; UT Southwestern shall have no power to bind or obligate Optionee in any manner, other than as is expressly set forth in this Agreement. Likewise, Optionee shall have no power to bind or obligate UT Southwestern in any manner, other than as is expressly set forth in this Agreement.

6.5 If any provision of this Agreement is ultimately held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

6.6 Any delay in enforcing a party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such party's rights to the future enforcement of its rights under this Agreement, excepting only as to an express written and signed waiver as to a particular matter for a particular period of time.

6.7 Any delays in performance by any party under this Agreement shall not be considered a breach of this Agreement if and to the extent caused by occurrences beyond the reasonable control of the party affected, including, but not limited to, acts of God, embargoes, governmental restrictions, strikes or other concerted acts of workers, fire, flood, explosion, riots, wars, civil disorder, rebellion or sabotage. The party suffering such occurrence shall immediately notify the other party and any time for performance hereunder shall be extended by the actual time of delay caused by the occurrence.

6.8 Whenever there has been an assignment as permitted by this Agreement, the term "Optionee" as used in this Agreement shall also include and refer to such assignee.

6.9 Any notice required by this Agreement shall be given by personal delivery (including delivery by reputable messenger services such as Federal Express) or by prepaid, **first** class, certified mail, return receipt requested, addressed in the case of Board and UT Southwestern to:

Board of Regents  
The University of Texas System  
201 West 7th Street  
Austin, Texas 78701  
Attention: Office of General Counsel  
Fax: (512) 499-4523  
Phone: (512) 499-4462

The University of Texas  
Southwestern Medical Center at Dallas  
Peter H. Fitzgerald, Ph.D.  
Executive Vice President  
for Business Affairs  
5323 Harry Hines Boulevard  
Dallas, TX 75235-9013

The University of Texas  
Southwestern Medical Center at Dallas  
Katherine L. Chapman, J.D.  
Vice President for Legal Affairs  
and Technology Transfer  
5323 Harry Hines Blvd.  
Dallas, Texas 75235-9008  
Fax: (214) 648-8805  
Phone: (214) 648-2389

or in case of Optionee to:

Peregrine Pharmaceuticals, Inc.  
One Palmer Square, Suite 350  
Princeton, New Jersey 08542  
ATTN: Jennifer H. Lobo  
FAX: (609) 921-1509  
PHONE: (609) 683-1318

with copies to:

Palmer & Dodge  
One Beacon Street  
Boston, Massachusetts 02108  
ATTN: Michael Lytton, Esq.  
FAX: (617) 2274420  
**PHONE:(617) 573-0327**

or at such other addresses as may be given from time to time in accordance with the terms of this notice provision.

6.10 This Agreement shall be governed by, construed, and enforced in accordance with the internal laws of the State of Texas.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

PEREGRINE PHARMACEUTICALS, INC.

BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS  
SYSTEM

By: \_\_\_\_\_  
Name: Jennifer H. Lobo

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

Dated \_\_\_\_\_

Dated \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Dudley R. Dobie, Jr.  
Office of General Counsel

Dated \_\_\_\_\_

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Peter H. Fitzgerald, Ph.D  
Executive Vice President for  
Business Affairs

Dated \_\_\_\_\_

Foreign Jurisdictions in which Patent  
Applications Have Been Filed

Austria	Ireland
Belgium	Italy
Denmark	Luxemburg
Switzerland	Monaco
Liechtenstein	Netherlands
Greece	Portugal
Germany	Sweden
France	Spain
United Kingdom	

## SPONSORED RESEARCH AGREEMENT

This Sponsored Research Agreement (the "Agreement") is made by and between The University of Texas Southwestern Medical Center at Dallas ("University"), a component institution of The University of Texas System ("System"), and Peregrine Pharmaceuticals, Inc., a Delaware corporation with its principal place of business at One Palmer Square, Suite 350, Princeton, New Jersey 08542 ("Sponsor"). University and/or Sponsor may sometimes be referred to herein as "Party" or "Parties".

### R E C I T A L S

WHEREAS, Sponsor and System have entered into a Patent License Agreement of even date herewith (the "Patent License Agreement") and a Coagulation Patent License Agreement of even date herewith (the "Coagulation Patent License Agreement"; the Patent License Agreement and the Coagulation Patent License Agreement are sometimes referred to collectively herein as the "License Agreements") of the Licensed Subject Matter (as defined in Attachment B hereto); and

WHEREAS, University has research facilities which would facilitate the investigation and development of the Licensed Subject Matter; and

WHEREAS, Sponsor desires that University perform such activities and is willing to advance funds to University to sponsor such activities; and

WHEREAS, University is willing to perform such activities upon the terms and subject to the conditions contained herein.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the University and Sponsor agree as follows:

#### 1. EFFECTIVE DATE

This Agreement shall be effective as of December 1, 1994.

#### 2. RESEARCH PROGRAM

2.1 University will use its best efforts to conduct the Research Program described in Attachment A ("Research Program") and will furnish the facilities necessary to carry out the Research Program. The Research Program will be under the direction of Philip Thorpe or his successor as mutually agreed to by the Parties (the "Principal Investigator") and will be conducted by the Principal Investigator at the University, with assistance from associates and colleagues as required.

2.2 The Research Program shall be performed during the period from the Effective Date through and including December 1, 1997 (hereinafter referred to as "Term"). Sponsor shall have the option to negotiate an extension of the Term under mutually agreeable support terms. Such option shall be exercised within ninety (90) days prior to the end of the Term.

2.3 Sponsor understands that University's mission is advancement of knowledge, education and patient care, and consequently, the Research Program is designed to carry out that mission. The manner of performance of the Research Program shall be determined solely by the Principal Investigator. University does not guarantee specific results.

2.4 Sponsor understands that University may be involved in similar research through other researchers on behalf of itself and others. University shall be free to continue such research provided that it is conducted separately and by different investigators from the Research Program, and Sponsor shall not gain any rights by reason of this Agreement to such other research.

2.5 University does not guarantee that any intellectual property rights will result from the Research Program, that the scope of any intellectual property rights obtained will cover Sponsor's commercial interest, or that any such intellectual property rights will be free of dominance by other patents, including those based upon inventions made by other inventors in the System independent of the Research Program.

### 3. COMPENSATION

3.1 In consideration for the performance by University of its obligations under this Agreement, Sponsor will pay University, for its reasonable expenditures and overhead (at the rate of twenty-five percent (25 %)) in conducting the Research Program, a fee of \$600,000. This fee (hereinafter referred to as the "Aggregate Funding Payment"), which is described by the approximate categories of expenses contained in Attachment C for informational purposes only, shall be payable as follows:

- (i) Interim payments (the "Interim Payments") of \$10,000 per month shall be payable on the **first** day of each month during the period commencing on the **first** full month following the Effective Date of this Agreement until the earlier to occur of (i) six months from the Effective Date of this Agreement or (ii) the date of closing of a private placement of capital stock which results in proceeds to Sponsor of at least **\$2,000,000**.
- (ii) The balance of the Aggregate Funding Payment shall be payable in equal installments commencing within thirty (30) days of the termination of the Interim Payments provided in Section 3.1(i) and continuing thereafter on a quarterly basis, unless otherwise provided by mutual agreement of the Principal Investigator and the Designated Representative, subject to the earlier termination of this Agreement as provided in Section 11.



Notwithstanding anything to the contrary in this Section 3.1, University and Sponsor hereby agree **that the** amount and timing of the payments made as part of the Aggregate Funding Payment, as well as **the** categories of expenses set **forth** in Attachment C, may be modified from time to time by mutual agreement of the Principal Investigator and Designated Representative; provided that the amount of such Aggregate Funding Payment shall not be reduced below \$600,000.

3.2 University shall maintain all Research Program funds in a separate account and shall expend such funds for wages, supplies, equipment, travel, and other operation expenses in connection **with** the Research Program. It is understood that any funds in this separate account at the conclusion of the Research Program shall be retained by University.

3.3 University shall retain title to all equipment purchased and/or fabricated by it **with** funds provided by Sponsor under this Agreement.

#### 4. CONSULTATION AND REPORTS

4.1 Sponsor's designated representative for consultation and communications with the Principal Investigator shall be Jennifer H. Lobo or such other person as Sponsor may from time to time designate in writing to University and the Principal Investigator ("Designated Representative").

4.2 During the Term of the Agreement, Sponsor's representatives may consult informally with University's representatives regarding the Research Program, both personally and by telephone. Access to work carried on in University laboratories in the course of these investigations shall be entirely under the control of University personnel but shall be made available on a reasonable basis.

4.3 The Principal Investigator will make monthly reports to Sponsor's Designated Representative. At the conclusion of each year, the Principal Investigator shall submit to Sponsor a written report summarizing the activities undertaken and accomplishments achieved by the University under the Research Program for the preceding year. The Principal Investigator shall also submit a comprehensive final report **within** one hundred twenty (120) days of termination of **the** Agreement which shall contain, but which need not be limited to, the following information:

- a. A summary of expenses of the Research Program.
- b. A report of the activities undertaken and accomplishments achieved by the University under **the** Research Program.

#### 5. PUBLICITY

Neither Party shall make reference to the other in a press release or any other written statements in connection with work performed under this Agreement, if it is intended for use in the public media, except as required by the Texas Open Records Act or other law or regulation. The foregoing notwithstanding (i) Sponsor shall **have** the right to identify

University and to disclose the terms of this Agreement in any prospectus, offering memorandum or other document or filing required by applicable securities laws or other applicable law or regulation provided that Sponsor shall have given the University at least ten (10) days prior written notice of the proposed text of any such identification or disclosure for the purpose of giving University the opportunity to comment on such proposal text and (ii) University shall have the right to acknowledge Sponsor's support of the investigations under this Agreement in scientific or academic publications and other scientific or academic communications, without Sponsor's prior approval. In any such statements, the Parties shall describe the scope and **nature** of their participation accurately and appropriately.

## 6. PUBLICATION AND ACADEMIC RIGHTS

6.1 University and Principal Investigator shall have the right to publish or otherwise publicly disclose information gained in the course of this Agreement; provided, however, that, in order to avoid loss of patent rights as a result of premature public disclosure of patentable information, University will submit any **prepublication** materials to Sponsor for review and comment at least sixty (60) days prior to planned submission for publication. If, within thirty (30) days of receipt of such materials, Sponsor notifies University that it desires to have patent applications filed on any inventions contained in the materials, University and/or Principal Investigator shall defer publication or other disclosure for a period, not to exceed ninety (90) days, sufficient to permit such patent applications to be tiled. University shall have the final authority to determine the scope and content of any publications.

6.2 It is understood that the University investigators may discuss the research being performed under this Agreement with other investigators but shall not reveal information which is Sponsor's Confidential Information under Article 7. In the event any Joint Inventions (as defined in Attachment **B**) result, University shall grant to Sponsor the rights outlined in Attachment B to this Agreement, to the extent these are not in conflict with obligations to another party as a result of the involvement of the other investigator(s). In this latter case, University shall, in good faith, exercise reasonable efforts to enable Sponsor to obtain rights to the Joint Invention.

## 7. CONFIDENTIAL INFORMATION

7.1 The Parties may wish, from time to time, in connection with work contemplated under this Agreement, to disclose confidential information to each other ("Confidential Information"). Each Party will use reasonable efforts to prevent the disclosure of any of the other Party's Confidential Information to third parties during the Term of this Agreement and for a period of three (3) years thereafter, provided such Confidential Information (i) is obtained during the course of the Research Program, (ii) is related thereto, and (iii) is marked with an appropriate confidentiality legend within thirty (30) days of disclosure. The recipient party's obligation shall not apply to information that:

- (1) is already in the recipient party's possession at the time of disclosure thereof;
- (2) is or later becomes part of the public domain through no fault of the recipient party;

- (3) is received from a third party having no obligations of confidentiality to the disclosing party;
- (4) is independently developed by the recipient party; or
- (5) is required by law or regulation to be disclosed.

7.2 In the event that information is required to be disclosed pursuant to subsection (5), the Party required to make disclosure shall notify the other to allow that Party to assert whatever exclusions or exemptions may be available to it under such law or regulation.

## 8. PATENTS. COPYRIGHTS. AND TECHNOLOGY RIGHTS

As partial consideration for payments made by Sponsor hereunder, Sponsor and University agree to the terms concerning Inventions, patents, copyrights, and technology rights set forth in Attachment B.

## 9. LIABILITY

9.1 Sponsor agrees to indemnify and hold harmless System, University, their Regents, officers, agents and employees from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of the activities to be carried out pursuant to the obligations of this Agreement, including but not limited to the use by Sponsor of the results obtained from the activities performed by University under this Agreement; provided, however, that the following is excluded from Sponsor's obligation to indemnify and hold harmless:

- a. the negligent failure of University to substantially comply with any applicable FDA or other governmental requirements; or
- b. the negligence or willful malfeasance of any Regent, officer, agent or employee of University or System.

9.2 University shall, to the extent authorized under the Constitution and the laws of the State of Texas, hold Sponsor harmless from liability resulting from the negligent acts or omissions of University, its agents or employees pertaining to the activities to be carried out pursuant to the obligations of this Agreement; provided, however, that University shall not hold Sponsor harmless from claims arising out of the negligence of Sponsor, its officers, agents or any person or entity not subject to Institution's supervision or control.

9.3 Both Parties agree that upon receipt of a notice of claim or action arising out of the activities to be carried out pursuant to the project described in Attachment A, the Party receiving such notice will promptly notify the other Party. Each Party agrees, at its own expense, to provide attorneys to defend against any actions brought or filed against the other Party with respect to the subject of the indemnity contained herein, whether such claims or actions are rightfully brought or filed; and subject to the statutory duty of the Texas Attorney General, each Party agrees to cooperate with the other Party in the defense of such claim or action.

## 10. INDEPENDENT CONTRACTOR

For the purposes of this Agreement and all services to be provided hereunder, the Parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other Party. Neither Party shall have authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other Party, except as may be expressly provided for herein or authorized in writing.

## 11. TERM AND TERMINATION

11.1 This Agreement shall extend until the end of the Term, unless sooner terminated in accordance with the provisions of this Section.

11.2 This Agreement may be terminated (i) by the written agreement of both Parties and (ii) by Sponsor at its option upon the death of the Principal Investigator or if at any time during the Term of this Agreement, the Principal Investigator shall cease to be directly and substantially involved in the Research Program.

11.3 In the event that either Party shall be in default of its material obligations under this agreement and shall fail to remedy such default **within** sixty (60) days after receipt of written notice thereof, this Agreement shall terminate upon expiration of the sixty (60) day period.

11.4 Termination or cancellation of this Agreement shall not affect the rights and obligations of the Parties accrued prior to termination. As its sole liability upon termination, Sponsor shall pay University for all reasonable expenses incurred or committed to be expended as of the effective termination date, including salaries for appointees for the remainder of their appointment.

11.5 The provisions of Sections 4, 5, 6, 7, 9, 13.4 and Attachment B shall survive the termination or expiration of this Agreement.

## 12. ATTACHMENTS

Attachments A, B and C are incorporated herein and made a part of this Agreement for all purposes.

## 13. GENERAL

13.1 This Agreement may not be assigned by either Party without the prior written consent of the other Party; provided, however, that Sponsor may assign or otherwise transfer its rights under this Agreement to the following parties without obtaining the University's consent: (i) a successor to Sponsor's business or a successor to that portion of Sponsor's business that relates to Sponsor's business in the field of the Research Program and (ii) any entities controlled by, controlling, or under common control with Sponsor.

13.2 This Agreement, the Attachments attached hereto, and the License Agreements **constitute** the entire and only agreements between the Parties relating to the Research Program, and all 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.

13.3 Any notice required by this Agreement by Articles 8, 9 or 11 shall be in writing and shall be deemed to have been duly given (i) upon delivery if delivered by hand; (ii) four days subsequent to mailing if mailed by express, certified or registered mail, with postage prepaid, in the continental United States; (iii) two days subsequent to pick up by such courier if sent by a nationally or internationally recognized overnight courier service that regularly maintains records of items picked up and delivered; or (iv) when transmitted if sent by telecopier or electronic mail, provided that a written acknowledgment of receipt is transmitted back to the sender by the recipient, addressed in the case of University to:

The University of Texas System, O.G.C.  
201 West Seventh Street  
Austin, Texas 78701  
ATTN: **Intellectual Property Section**  
FAX: (512) 499-4523  
PHONE: (512) 499-4462  
E-MAIL: **gharper@system.utexas.edu**

The University of Texas Southwestern Medical  
Center at Dallas  
5323 Harry Hines Boulevard  
Dallas, Texas 75235-9013  
ATTN: Peter H. Fitzgerald  
Executive Vice President for Business Affairs  
FAX: (214) 688-3944  
PHONE: (214) 688-3572  
E-MAIL:

or in the case of Sponsor to:

Peregrine Pharmaceuticals, Inc.  
One Palmer Square, Suite 350  
Princeton, New Jersey 08542  
ATTN: Jennifer H. Lobo  
FAX: (609) 921-1509  
PHONE: (609) 683-1318

with copies to:

Palmer & Dodge  
One Beacon Street  
Boston, Massachusetts 02108  
ATTN: Michael Lytton, Esq.  
FAX: (617) 2274420  
**PHONE:(617) 573-0327**

or at such other addresses as may be given from time to time in accordance with **the** terms of this notice provision.

Notices and other communications regarding the day-to-day administration and operation of this Agreement shall be mailed (or otherwise delivered), and addressed in the case of University to:

The University of Texas Southwestern Medical  
Center at Dallas  
5323 Harry Hines Boulevard  
Dallas, Texas 75235-9013  
ATTN: Gerald Mussey  
FAX: (214) 688-8805  
PHONE: (214) 688-8748

or in the case of Sponsor to:

Peregrine Pharmaceuticals, Inc.  
One Palmer Square, Suite 350  
Princeton, New Jersey 08542  
ATTN: Jennifer H. Lobo  
FAX: (609) 921-1509  
PHONE: (609) 683-1318

with copies to:

Palmer & Dodge  
One Beacon Street  
Boston, Massachusetts 02108  
ATTN: Michael Lytton, Esq.  
FAX: (617) 2274420  
**PHONE:(617) 573-0327**

13.4 This Agreement shall be governed by, construed, and enforced in accordance **with** the internal laws of the State of Texas.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

PEREGRINE PHARMACEUTICALS, INC.

THE UNIVERSITY OF TEXAS  
SOUTHWESTERN MEDICAL CENTER  
AT DALLAS

By: \_\_\_\_\_  
Name: Jennifer H. **Lobo**  
Title: President

By: \_\_\_\_\_  
Peter H. Fitzgerald  
Executive Vice President  
for Business Affairs

Date \_\_\_\_\_

Date \_\_\_\_\_

ATTACHMENT A

DESCRIPTION OF RESEARCH PROGRAM



## **VASCULAR TARGETING AGENTS THAT HOME TO AND DESTROY OR COAGULATE TUMOR VASCULATURE**

**Philip E. Thorpe, Ph.D.  
Department of Pharmacology and  
Harold C. Simmons Comprehensive Cancer Center  
University of Texas Southwestern Medical Center  
Dallas, Texas**

### **1. Non-Technical abstract**

A major limitation of targeted antitumor agents (e.g. immunconjugates) is their inability to permeate into solid tumors and kill the malignant cells within them. We propose to overcome this limitation by developing reagents which destroy or coagulate the tumor's blood supply and kill the malignant cells indirectly by starving them of oxygen and nutrients. A mouse model will be used to compare the antitumor effects of different *effector* molecules (toxins, drugs and coagulants) linked to an antibody directed against an experimentally-induced marker (MHC Class II) present on tumor vasculature (1). Similarly, different *targeting* moieties (antibodies, growth factors, synthetic ligands) against tumor vasculature or stroma-associated markers will be linked to the optimal effector(s) and tested in rodent tumor models: targeting moieties directed against the human homologs of selected rodent markers will then be sought. Through this series of investigations of the effector and targeting moieties respectively, we plan to identify the optimal constructs to take into clinical trials.

### **2. Project Description**

We will develop vascular targeting agents which destroy or coagulate the vasculature of solid tumors, and kill the tumor cells indirectly by starving them of oxygen and nutrients. This would overcome the major limitations of antibody-based therapeutic agents directed against tumor cells themselves, namely their inability to permeate into solid tumors in

amounts sufficient to induce a marked antitumor effect and their incomplete specificity for tumor antigens.

Our first aim is to explore the feasibility of this approach in a mouse model in which the vascular endothelial cells of the tumor express an experimentally induced marker (Class II) which is absent from the vasculature of normal tissues. We will couple toxins, drugs and coagulants to anti-Class II antibodies and determine which type of effector molecule gives the best antitumor effects. The effector moieties we shall focus upon in our initial studies are ricin A-chain and truncated tissue factor.

Our second aim is to raise or acquire from third parties monoclonal antibodies and other ligands that bind to markers which are normally present on rodent tumor vasculature. Such markers include proliferation-linked determinants, determinants induced by angiogenic growth factors, cytokines and their receptors. Ligands that recognize tumor vasculature will be conjugated to a toxin, drug or coagulant (as indicated by the model experiments above) and injected into rodents bearing solid tumors. If good antitumor effects are obtained, we will proceed to the third aim.

Our third aim is to raise or acquire from third parties monoclonal antibodies and other ligands that bind to the human homologs of the rodent markers identified above. The ligands will be checked histologically for reactivity with human tumor vasculature and for lack of reactivity with the vasculature of normal human tissues. Ligands with sufficiently good specificity will be cloned (if necessary) and the genes which encode them will be linked to the gene encoding the effector moiety. The fusion proteins will then be evaluated as candidates for the therapy of human cancer.

TOTAL P. 02

### 3. Scientific Rationale

In contrast with their efficacy in lymphomas and leukemias, targeted therapeutic agents directed against tumor cell markers have shown little efficacy in the major solid cancers such as those of the breast, colon and lung (2). The main reason for this difference is that solid cancers, unlike lymphomas and leukemias, are relatively inaccessible to antibody-sized molecules: typically less than 0.001% of the injected dose of an antibody homes to each gram of tumor in human studies (3). In addition, it has proved difficult to identify carcinoma markers that are absent from life-sustaining tissues (4).

We are developing vascular targeting agents that destroy or coagulate the vasculature of solid tumors. Thousands of tumor cells are reliant on each capillary for oxygen and nutrients and so even limited damage to the tumor vasculature could produce an avalanche of tumor cell death (5). Indeed, our earlier studies strongly indicate that this is the case (6). If tumor vascular targeting is successful, it would overcome many of the limitations inherent in antibody-based therapeutics directed against tumor cells themselves. Unlike the latter approach, which requires different reagents for different tumors, vascular targeting reagents should be useful for treating many types of solid tumors. In addition, the target endothelial cells are immediately accessible to the blood circulation, and are normal cells, making the outgrowth of resistant mutants unlikely.

### 4. Project Proposal

#### A. Specific Aims

1. To explore the feasibility of tumor vascular targeting in a mouse model. We have developed a mouse model in which the vascular endothelial cells of the tumor express

an experimentally-induced marker by which they can be tracked. BALB/c nude mice are implanted with C1300 fibrosarcoma cells which have been transfected with the mouse  $\gamma$ -interferon ( $\gamma$ -IFN) gene (12). The  $\gamma$ -IFN secreted by the tumor induces mouse MHC Class II on the vascular endothelial cells of the tumor. In normal tissue, Class II is virtually absent from the vasculature. Anti-Class II antibody injected intravenously thus localizes specifically to tumor vascular endothelial cells. We will couple ricin A<sub>2</sub>-chain, truncated tissue factor and other endogenous coagulants (e.g. thrombin, factor Xa, thrombospondin A<sub>2</sub> analogs) to the monoclonal antibody, B21.2, directed against MHC Class II (I-A<sup>b</sup>) and determine the antitumor activity of the conjugates. The coupling will be accomplished by linking the effectors directly to the B21.2 antibody by means of chemical crosslinking agents, or indirectly by bridging the effector through a streptavidin-biotin linkage or a second (i.e. bispecific) antibody. Constructs will be varied in size and valency by using IgM, IgG, Fab', Fv and scFv moieties to determine the influence of such factors on efficacy. Histological examinations will be performed to identify zones of damage within the tumor, the chronology of events leading up to such damage, and the appearance thromboses (as characterized by fibrin and platelet deposition) within the vasculature.

In earlier experiments, a single injection of anti-class II-ricin A was given to mice bearing sizeable (1 cm diameter) C1300 transfectant tumors. The result was significant tumor regression. Histological examination revealed endothelial cell detachment and coagulation of the tumor blood supply as the first visible events, followed by massive tumor cell destruction. Similar effects have been obtained with anti-Class II-truncated tissue factor. Thus, we are optimistic that this novel approach of vascular targeting is feasible.

2. To raise or identify antibodies and other ligands that bind to rodent tumor vasculature. A panel of monoclonal antibodies and other ligands having potential specificity for rodent tumor vasculature will be assembled. These include various categories:

- i) antibodies to angiogenic growth factors which are secreted by tumor cells and bind to receptors on tumor endothelium e.g. anti-VEGF, anti-VEGFR.
- ii) antibodies and natural ligands to tumor endothelial cell surface molecules e.g. Tie-1, Tie-2, TGF $\beta$ ,  $\alpha\beta_2$ .
- iii) antibodies to tumor stroma and the basal lamina of neovasculature e.g. fibronectin isoforms.
- iv) antibodies to tumor markers themselves - coaguligands bound to perivascular tumor cells might initiate coagulation of tumor blood vessels, e.g. D3.

Representatives of the above list of antibodies will be conjugated to toxins or coagulants and tested for antitumor activity in rodents. The most effective strategies for vascular targeting will be identified.

3. To raise or identify antibodies or other ligands that bind to the human homologs of the mouse markers identified in Aim 2 above. If good antitumor effects are obtained with vascular targeting agents directed against rodent tumor vascular markers, we will raise antibodies against the human homologs in order to develop reagents for the treatment of human disease. The human homolog will be obtained by immunoprecipitating it with rabbit (polyclonal) antibodies directed against the mouse marker. Alternatively, we will clone the gene for the mouse marker and probe for the DNA encoding the human homolog and express it. Monoclonal antibodies will then be raised against the human homolog and will be checked histologically for specific reactivity with human tumor vasculature.

Antibodies to tumor-associated markers will be obtained from third parties and will include K81/4, MDV14, 791T/36, 26F9, CC49, D612 and other antibodies. Antibodies against stromal components will be obtained from third parties and will include TV-1 and DC-1 against human fibronectin isoforms.

Antibodies showing particular promise will be cloned and the variable regions (CDRs) and flanking regions grafted onto human framework regions to produce fully human antibodies. The genes for these will be joined to the genes for toxins or coagulants and fusion proteins expressed in microorganisms.

In many cases it will be possible to determine the antitumor activity of vascular targeting agents directed against human tumor vasculature in rodents bearing human tumor xenografts. This will be true for vascular targeting agents directed against human FGF-2 and VEGF, tumor-associated antigens and possibly also the stromal antigens. Vascular targeting agents directed against human tumor endothelial markers (e.g. TEC11 against endoglin (7)) are more problematical because these markers are not found on mouse endothelium: it may be necessary to create a human tissue bed in a mouse by grafting it with human skin and use this site for tumor growth.

Agents showing the best activity in these systems will be selected for further development as potential therapeutics.

## **References**

1. Burrows, F.B., Watanabe, Y., and Thorpe, P.E. *Cancer Res.* 52, 5954-5962, 1992.
2. Spitzer, L.E. *et al* *Cancer Res.* 47, 1717-1723, 1987.
3. Sands, H. *Antibody, Immunocojugates and Radiopharmaceuticals 1*, 213-226, 1988.
4. Dear, A.S. and Langer, E.S. In "Tumour Markers in Clinical Practice" (A.S. Dear, Ed.) Blackwell Sci. Publ. pp. 1-36, 1987.
5. Denckamp, J. *et al* *Br. J. Cancer Clin. Oncol.* 19, 271-280, 1983.
6. Burrows, F.B. and Thorpe, P.E. *FNAB*, 89, 8956-9000, 1993.
7. Burrows, F.B. *et al* *Cancer Res.* (submitted).

## ATTACHMENT B

### INVENTIONS. PATENTS AND COPYRIGHTS

1. The following terms shall have the indicated meanings when used in this Attachment:
  - a. "Agreement" shall mean that certain Sponsored Research Agreement to which this Attachment is affixed between The University of Texas Southwestern Medical Center at Dallas ("University"), and Peregrine Pharmaceuticals, Inc. ("Sponsor"), of even date herewith.
  - b. "Invention" shall mean and include the Licensed Subject Matter and any discovery, concept, or idea, whether or not patentable, made by the University and/or the Principal Investigator during the Research Program and arising directly from the performance of the Research Program or conceived and reduced to practice during the Research Program, including but not limited to processes, methods, software, tangible research products, formulas and techniques, improvements thereto, and know-how related thereto. Inventions made solely by the Principal Investigator and/or other University personnel or agents of University ("University Inventions") shall be the sole property of University. Inventions made jointly by employees or agents of University and Sponsor ("Joint Inventions") shall be jointly owned by University and Sponsor. Inventions made solely by employees or agents of Sponsor shall **be** solely owned by Sponsor.
  - c. "License Agreements" shall mean collectively that certain Patent License Agreement and that certain Coagulation Patent License Agreement of even date herewith by and between Sponsor and System.
  - d. "Licensed Field" shall have the meaning ascribed to such term in the License Agreements.
  - e. "Licensed Subject Matter" shall have the meaning ascribed to such term in the License Agreements.
  - f. Capitalized terms used in this Attachment that are not defined herein shall have the meanings ascribed to such terms in the Agreement.
2. In the event that a University Invention or a Joint Invention is made, University and Sponsor agree to give notice of such University Invention or Joint Invention to each other within sixty (60) days of the identification of such Invention. Within sixty (60) days of such notice, University and Sponsor will cooperate with each other to investigate, evaluate and determine to the mutual satisfaction of both Parties, the disposition of rights to the University Invention or Joint Invention, including whether, by whom, and where any patent applications are to be filed.



3. If, after consultation with Sponsor, University decides that a patent application or applications should be filed with respect to such University Invention or Joint Invention, University will prepare and file appropriate United States and foreign patent applications on such Inventions, through mutually agreeable patent counsel, and Sponsor will pay the cost of preparing, filing and maintenance thereof. If Sponsor notifies University that it does not intend to pay the costs of any such application, or if Sponsor fails to respond to University within thirty (30) days of such consultation, University may file such application at its own expense, and Sponsor shall have no rights to such Invention. University shall furnish to Sponsor copies of documents relevant to such preparation, filing, prosecution or maintenance sufficiently prior to filing such documents to allow for review and comment by Sponsor. Sponsor agrees to maintain any such application in confidence until it is published by University or by the relevant patent office.

4. University hereby grants Sponsor a first option to obtain a worldwide, **royalty-bearing**, exclusive license to all University Inventions and Joint Inventions within the Licensed Field not already licensed to Sponsor as Licensed Subject Matter (as well as patent applications, patents, and copyrights thereon) for commercial purposes, provided that Sponsor shall pay all costs and expenses associated with patent(s) and patent application(s) and copyright filing(s), prosecution(s), issuance(s), and maintenance with respect thereto. Such option shall extend for ninety (90) days from the date Sponsor receives written notice from University disclosing such University Invention or Joint Invention. During such ninety (90) day period, University shall make available to Sponsor any other information in its possession or control which would be useful to Sponsor in evaluating the University Invention or Joint Invention, subject to such reasonable confidentiality undertakings as University shall require. Sponsor may exercise its option by informing University in writing during such ninety (90) day period that it intends to commercialize the University Invention or Joint Invention as soon as practicable, consistent with sound and reasonable business practice and judgment. Upon exercise of Sponsor's option, such University Invention or Joint Invention shall become subject to all of the terms and conditions of the License Agreements, with the exception of Sections **5.1(a)**, (b), (c) and (d) thereof which will not apply to such University Invention or Joint Invention.

5. University hereby grants to Sponsor a first option to negotiate and acquire an exclusive, world-wide, royalty-bearing license to any University Inventions and Joint Inventions outside of the Licensed Field (as well as patent applications, patents and copyrights thereon) for commercial purposes, provided that Sponsor shall pay all costs and expenses associated with patent(s) and patent application(s) and copyright **filing(s)**, prosecution(s), issuance(s) and maintenance with respect thereto. Such option shall extend for ninety (90) days from the date Sponsor receives written notice from University disclosing such University Invention or Joint Invention. During such ninety (90) day period, University shall make available to Sponsor any other information in its possession or control which would be useful to Sponsor in evaluating the University Invention or Joint Invention, subject to such reasonable confidentiality undertakings as University shall require. Sponsor may exercise its option by informing University in writing during such ninety (90) day period that it intends to commercialize the University Invention or Joint Invention as soon as practicable, consistent with sound and reasonable business practice and judgment. Upon exercise of Sponsor's option, University and Sponsor agree to enter into good faith negotiations

regarding the terms and conditions of said license and further agree to negotiate license fee rates and other payments which are fair and reasonable to both parties.

6. In the event that the Sponsor fails to exercise the options provided herein, or if the parties are unable to agree on the terms of a license agreement within one hundred twenty (120) days from the date of exercise of the option provided in Section 5 of this Attachment B, University shall have the right to enter into license agreements concerning such University Invention or Joint Invention with third parties if the terms and conditions thereof are not, in general, less favorable to University than those terms and conditions offered to Sponsor under the License Agreements, unless University has offered such new terms and conditions to Sponsor and Sponsor has refused to accept them.

7. Subject to confidential treatment by Sponsor of University confidential information that may be disclosed thereunder, University grants Sponsor a fully paid-up, nonexclusive license under its copyrights to make a reasonable number of copies for its internal needs, and to make derivative works, from any written report prepared and delivered to Sponsor in accordance with this Agreement.

ATTACHMENT C  
ESTIMATED BUDGET

**DETAILED BUDGET FOR INITIAL BUDGET PERIOD**

FROM 2/1/95 THROUGH 9/31/96

PERSONNEL (If applicant organization only)	NAME	ROLE ON PROJECT	TYPE APP. (months)	% EFFORT ON PROJ.	EST. BASE SALARY	DOLLAR AMOUNT REQUESTED (total costs)		
						SALARY REQUESTED	FRINGE BENEFITS	TOTALS
	Philip Thorpe	Principal Investigator	12	5		5,000	1,043	6,043
	Xianming Huang	Research Fellow	12	100		25,750	7,957	33,707
	Linda Watkins	Assistant	12	100		29,790	9,103	38,893
	Georgina Costa	Assistant	12	100		22,400	6,922	29,322
	Juanita Iglesias	Assistant	12	90		7,700	3,150	10,850
<b>SUBTOTALS</b>						<b>90,640</b>	<b>28,279</b>	<b>118,919</b>

**CONSULTANT COSTS**

0

**EQUIPMENT (Amount)**

0

**UTILITIES (Amount by category)**

Animals - Purchase and Maintenance	22,381
Software/Fluoridware	1,200
Chemicals	2,400
Enzymes	2,100
Issue Culture Supplies	5,000
ACS Analysis	5,000

38,081

**TRAVEL**

for domestic meetings for the PI and Research Fellow

2,000

**PATIENT CARE COSTS**

INPATIENT  
OUTPATIENT

0  
0

**REPAIRS AND RENOVATIONS (Amount by category)**

0

**OTHER EXPENSES (Amount by category)**

photocopying, postage, office supplies and publications

1,000

**TOTAL DIRECT COSTS FOR INITIAL BUDGET PERIOD**

160,000

**INDIRECT COSTS 25%**

TOTAL

40,000

**TOTAL COSTS FOR INITIAL BUDGET PERIOD (From 7a, Page Page)**

\$ 200,000

**BUDGET FOR ENTIRE PROPOSED PROJECT PERIOD**

BUDGET CATEGORY TOTALS		INITIAL BUDGET PERIOD (from page 4)	ADDITIONAL YEARS OF SUPPORT REQUESTED			
			2nd	3rd	4th	5th
PERSONNEL: Salary and fringe benefits Applicant organization only		118,919	118,919	118,919		
CONSULTANT COSTS		0	0	0		
EQUIPMENT		0	0	0		
SUPPLIES		38,081	38,081	38,081		
TRAVEL		2,000	2,000	2,000		
PATIENT CARE COSTS	INPATIENT	0	0	0		
	OUTPATIENT	0	0	0		
ALTERATIONS AND RENOVATIONS		0	0	0		
OTHER EXPENSES		1,000	1,000	1,000		
SUBTOTAL DIRECT COSTS		160,000	160,000	160,000		
Indirect Costs 25%		40,000	40,000	40,000		
<b>TOTAL COSTS</b>		<b>200,000</b>	<b>200,000</b>	<b>200,000</b>		
<b>TOTAL COSTS FOR ENTIRE PROPOSED PROJECT PERIOD (Item 8a) -----&gt;</b>					<b>\$ 600,000</b>	

**JUSTIFICATION (Use continuation pages if necessary):**

*From Budget for Initial Period:* Describe the specific functions of the personnel, collaborators, and consultants and identify individuals with appointments that are less than full time for a specific period of the year, including VA appointments.

*For All Years:* Explain and justify purchase of major equipment, unusual supplies requests, patient care costs, alterations and renovations, tuition remission, and miscellaneous costs.

*From Budget for Entire Period:* Identify with an asterisk (\*) on this page and justify any significant increase or decrease in any category over the initial budget period. Describe any change in effort of personnel.

*For Competing Continuation Applications:* Justify any significant increases or decreases in any category over the current level of support.

RECONVENE.--At 3:25 p.m., the Board reconvened as a committee of the whole to consider those items remaining on the agenda.

#### ITEMS FOR THE RECORD

1. U. T. System: Report for the Record on Status of Institutional Final Narrative Reports to the Texas Higher Education Coordinating Board Under the Texas Educational Opportunity Plan for a Multicultural Texas for the Period September 1989 to August 1994.--Following is a report for the record on the status of final narrative reports by the degree-granting components of The University of Texas System and the U. T. System Administration under the Texas Educational Opportunity Plan for a Multicultural Texas: September 1989 to August 1994. The Texas Higher Education Coordinating Board adopted the second educational opportunity plan in 1989 for a five-year period from 1989 to 1994. The plan specified that final narrative reports under the plan be submitted to the Coordinating Board by October 1, 1994.

The reports have been submitted to the Coordinating Board as required. Copies of the U. T. System Administration report are available in the Office of the Executive Vice Chancellor for Business Affairs and copies of the component institutional reports are available in the Offices of the Executive Vice Chancellors for Academic Affairs and Health Affairs.

The U. T. System Administration (with respect to professional and administrative employment only), all the U. T. academic components, and the four degree-granting health components were covered by the plan. Goals of the plan were directed toward the recruitment and retention of Black and Hispanic students for undergraduate and graduate and professional programs and the recruitment of Black and Hispanic faculty and professional and administrative staff.

The final reports covered activities and developments under the plan for the 1992-1994 period. Information in the reports from all public institutions of higher education in Texas will provide the basis for a summary report by the Coordinating Board of progress made under the plan from 1989 to 1994.

2. U. T. System: Report on Deletion of Dated Policy Regarding Transfer of Personnel.--The Administration reported that the Policy Regarding Transfer of Personnel between health components as approved by The University of Texas System Administration and the Medical Affairs Committee of the U. T. Board of Regents in October 1957 had become dated by subsequent guidelines issued by the Executive Vice Chancellors for Academic Affairs and Health Affairs and should be formally deleted from the list of operative Regental policies.

It was reported for the record that this policy had been replaced with administrative guidelines to clarify communication expectations before recruitment of the faculty or Code 1000 administrative staff of other U. T. System institutions and to offer guidance on resolution of any conflicts resulting from such recruitment activity.

3. U. T. System: Report on Equity Ownership/Business Participation for the Fiscal Year 1993-94 [Regents' Rules and Regulations, Part Two, Chapter XII, Section 8 (Intellectual Property)].--As required by Section 8, Chapter XII, Part Two of the Regents' Rules and Regulations and Section 51.912(c) of the Texas Education Code, The University of Texas System Report on Equity Ownership/Business Participation for the Fiscal Year 1993-94 set out on Pages 187 - 191 lists employees of the U. T. System who hold equity interests in or are directors of business entities that have agreements with the U. T. System relating to research, development, licensing, or exploitation of intellectual property owned by the U. T. System.

This report for the Fiscal Year 1993-94 has been forwarded to Governor Richards and the Legislature as required by State law.

## U.T. SYSTEM EQUITY OWNERSHIP/BUSINESS PARTICIPATION REPORT

FISCAL YEAR 1993-94

Name and U. T. Component	Business Entity	Date and Type of Agreement	Amount and Type of Stock	Position Held
G. V. Kondraske UTARL	Human Performance Measurement, Incorporated	<b>License</b> from Board of Regents to HPM <b>8/27/87</b>	<b>50,000,000</b> shares of common stock	<b>Chief Executive Officer</b> Chairman of the Board of Directors
Edwin Edbacher UTARL	PUSH Corp.	License from <b>Board</b> of Regents to PUSH <b>8/2/93</b>	<b>550</b> shares of common stock	<b>President</b>
Khosrow <b>Behbehani</b> and <b>Fu-Chung</b> Yen UTARL	<b>Resplronics, Inc.</b>	<b>Technology</b> and Patent Transfer Agreement <b>4/1/93</b>	No <b>stock</b>	Joint Inventors
<b>B. Shirazi</b> UTARL	E-Systems	Software License and Research Agreement <b>6/1/94</b>	No Stock	Principal investigator
Joseph J. Bean-ran UTAUS	<b>DTM Corporation</b>	Patent License <b>12/3/87</b> Sponsored Research <b>1/1/93</b>	9,100 shares of <b>common</b> stock	<b>Consultant</b>
Jeffrey A. <b>Hubbell</b> UTAUS	Neoclin Corporation (formerly <b>Trancel</b> Corporation)	Patent and Technology License <b>9/1/90, 6/19/92</b> Sponsored Research <b>9/1/90, 12/4/92</b>	40,000 shares of common stock	<b>Consultant</b>
<b>Jeffrey A. Hubbell</b> UTAUS	<b>Focal, Inc. (formerly</b> <b>Pegas Pharmaceuticals,</b> <b>Inc.)</b>	Patent and Technology License <b>6/11/92</b> Sponsored Research <b>6/1/92</b>	<b>180,000</b> shares of common stock	Consultant



<b>Name and U. T. Component</b>	<b>Business Entity</b>	<b>Date and Type of Agreement</b>	<b>Amount and Type of Stock</b>	<b>Position Held</b>
G. Barrie Kitto UTAUS	Research Applications, Incorporated and Biotect Corporation	Patent License 8/10/89 Sponsored Research 8/10/89	100,000 shares of common stock	Corporate Director
G. Jack Lipovski UTAUS	Linden Technology Limited (formerly GJL & Associates Limited)	Patent and Technology License 10/7/91	41.65% of total common stock	Consultant and Chairman of the Board of Directors
Jonathan L. Sessler UTAUS	Pharmacyclics, Incorporated	Patent and Technology License 5/28/92 Sponsored Research 7/1/91	100,000 shares of common stock with option for 150,000 more	Consultant
Ervin J. Fenyves UTDAL	EPIKON, Incorporated	Patent License 8/13/92	525,000 shares of common stock	Consultant
Ron Chaney UTDAL	EPIKON, Incorporated	Patent License 8/13/94	75,000 shares of common stock	
Hilton Hammock UTDAL	EPIKON, Incorporated	Patent License 8/13/94	75,000 shares of common stock	
James M. Gallas UTSA	Photoprotective Technologies, Incorporated	Assignment of Patent and Know-How 12/17/89	54% of stock issued	Chairman of the Board of Directors
George C. Kramer UTMB	Trauma Products, Inc.	Patent License Agreement 8/1/92	1,350,000 shares of common stock	Chairman of the Scientific Board of Advisors
George C. Kramer UTMB	LifeQuest, Inc.	Research Agreement 2/1/93	Vested option to buy 96,000 shares of common stock	Consultant

<b>Name and U. T. Component</b>	<b>Business Entity</b>	<b>Date and Type of Agreement</b>	<b>Amount and Type of Stock</b>	<b>Position Held</b>
K. Lance Gould UTHSCHOU	Positron Corporation	Patent License 8/14/84	Less than 2% Equity in the form of common, options, and preferred	Member, Board of Directors
Nizar A. Mullani UTHSCHOU	Positron Corporation	Patent License 8/14/84	Less than 2% Equity in the form of common, options, and preferred	
L. Scott Rodkey UTHSCHOU	Ampholife Technologies, Incorporated	Patent License 9/1/88	8,000 shares of common stock	
Gregory R. Munday UTHSCSA	OsteoSA Corporation	Joint Venture 7/27/88 Research 10/1/88	80,000 shares of common stock	President
A. P. Shepherd UTHSCSA	Avox Systems, Incorporated	Patent License 7/1/90	100% of common stock	President
Kendall O. Smith UTHSCSA	Kendall O. Smith	Patent License 1/1/91	100% of common stock	President and Chairman of the Board
S. Brent Dove UTHSCSA	RadWorks Corporation	Patent License 7/1/92	50% of common stock	President
W. Doss McDavid UTHSCSA	RadWorks Corporation	Patent License 7/1/92	50% of common stock	Vice President, Secretary and Treasurer
Raymond A. Applegate UTHSCSA	Entoptic Percepts, Inc.	Patent License 1/1/94	50% of common stock	President
A. Khokhar UTMDACC	Argus Pharmaceuticals	Patent License 10/86, 6/88	Options for 33,000 shares of common stock	Consultant
J. Klostergaard UTMDACC	Argus Pharmaceuticals, Incorporated	Patent License 10/86, 6/88	110,909 shares of common stock	Consultant

<b>Name and U. T. Component</b>	<b>Business Entity</b>	<b>Date and Type of Agreement</b>	<b>Amount and Type of Stock</b>	<b>Position Held</b>
G. Lopez-Berestein (and as trustee) UTMDACC	Argus Pharmaceuticals	Patent License 10/86, 6/88	128,485 shares and options for 45,455 shares of common stock	Director, Consultant Chief Scientific Advisor and Chairman. Scientific Advisory Board
K Mehta UTMDACC	Argus Pharmaceuticals, Incorporated	Patent License 6/88	20,756 shares of common stock	Consultant
R. Mehta UTMDACC	Argus Pharmaceuticals, Incorporated	Patent License 6/88	20,758 shares of common stock	Consultant
R. Perez-Soler UTMDACC	Argus Pharmaceuticals, Inc.	Patent License 6/88	110,000 shares and options for 30,000 shares of common stock	Consultant
w. Priebe UTMDACC	Argus Pharmaceuticals, Inc.	Patent License 6/88	94,909 shares of common stock	Consultant
T. Slaga (and as trustee) UTMDACC	LifeScience Corporation	Patent License 8/89	140,000 shares of common stock plus 230,000 shares to be transferred back from King Resources	None
M. Hung UTMDACC	RGene Therapeutics, Inc.	Patent License 5/94	571,154 shares of common stock	Chief Scientific Advisor
G. Lopez-Berestein UTMDACC	RGene Therapeutics, Inc.	Patent License	325,000 shares of common stock	Member, Board of Directors
Peter Antich UTSMCDAL	Epikon, Inc.	Patent License 8/13/92	125,000 shares of common stock	
Jon Anderson UTSMCDAL	Epikon, Inc.	Patent License 8/13/92	50,000 shares of common stock	
Robert Parkey UTSMCDAL	Epikon, Inc.	Patent License 8/13/92	125,000 shares of common stock	

Name and U. T. Component	Business Entity	Date and Type of Agreement	Amount and Type of Stock	Position Held
John Johnson UTSMCDAL	Betagene, Inc.	Patent License and Sponsored Research 10/1/91	3,000 shares d common stock	
Chris Newgard UTSMCDAL	Betagene, Inc.	Patent License and Sponsored Research 10/1/91	15,000 shares d common stock	
Roger Unger UTSMCDAL	Betagene, Inc.	Patent License and Sponsored Research 10/1/91	15,000 shams d common stock	
J. Donald Capra UTSMCDAL	GeneScreen	Patent License 6/30/87	25,000 shares d Series A Preferred stock	
Phil Tucker UTSMCDAL	GeneScreen	Patent Lkense 6/30/87	25,000 shares d Series A Preferred stock	
Jerry W. Shay UTSMCDAL	Geron Corp.	Patent License 9/8/92	40,000 shares d common stock	
Woodring Wright UTSMCDAL	Geron Corp.	Patent License 9/8/92	40,000 shares of common stock	
Austin Lona UT SYSTEM	Ampholife Technologies, Incorporated	Exclusive License 9/1/88	8,000 shares d common stock*	Director**
Austin Long UT SYSTEM	Biotech, Inc.	Patent Lkense and Sponsored Research 8/10/89	300,000 shares d common stock*	Director**
Thomas G. Ricks UT SYSTEM	DTM Corporation	Patent License 12/3/87	200 shares of common stock*	Director**
Thomas G. Ricks UT SYSTEM	Argus Pharmaceuticals, Incorporated	Exclusive License 10/15/86	400,000 shares of common stock*	Director**
Thomas G. Ricks UT SYSTEM	LlfeCell Corporation	Exclusive License 6/6/86	650,000 shares of common stock*	Director**

\* Held by Board of Regents

\*\* At Request of Board of Regents

4. U. T. Arlington - Thermal Energy Plant Boiler (Project No. 301-784): Report on Change of Funding Source.--It was reported for the record that the \$416,986 in General Use Fee Balances appropriated to The University of Texas at Arlington - Thermal Energy Plant Boiler project at the October 1994 meeting of the U. T. Board of Regents should have been recorded as an appropriation of that amount from General Fund Balances, Account 63-500, Reserve for Renewals and Replacements.

All other fund appropriations remain as approved at the October 1994 meeting of the Board.

#### EXECUTIVE SESSION OF THE BOARD OF REGENTS

Chairman Rapoport reported that the Board had met in Executive Session in Room 316 of the Marialice Shary Shivers Administration Building at U. T. Pan American to discuss matters in accordance with Texas Government Code, Chapter 551, Sections 551.071, 551.072, and 551.074. In response to Chairman Rapoport's inquiry regarding the wishes of the Board, the following actions were taken:

1. U. T. Health Science Center - San Antonio: Settlement of Medical Liability Litigation - Everett Bourassa.--Regent Ramirez moved that the Chancellor and the Office of General Counsel be authorized to settle on behalf of The University of Texas Health Science Center at San Antonio the medical liability litigation filed by Everett Bourassa in accordance with the proposal presented in Executive Session.

Vice-Chairman Temple seconded the motion which prevailed without objection.

2. U. T. Austin - Borden-Superior Dairies Gift: Authorization for Office of Endowment Real Estate to Negotiate Reinstatement and Potential Future Amendment of Purchase Option on Two Parcels of Vacant Land Being a 1.75 Acre Tract and a .66 Acre Tract, Austin, Travis County, Texas, and Authorization for the Executive Director of Endowment Real Estate to Execute All Documents Pertaining to the Transaction.--Upon motion of Regent Smiley, seconded by Vice-Chairman Lebermann, the Board:

- a. Authorized the Office of Endowment Real Estate to negotiate on behalf of The University of Texas at Austin for the reinstatement and potential future amendment of an option to purchase a 1.75 acre tract of vacant land and a .66 acre tract of vacant land in Austin, Travis County, Texas, which were gifts from Borden-Superior Dairies, for the minimum purchase option price outlined in Executive Session
- b. Authorized the Executive Director of Endowment Real Estate to execute all documents pertaining to the transaction or any amendments following approval by the President of U. T. Austin, the Executive Vice Chancellor for Academic Affairs, and the Office of General Counsel.

3. U. T. Austin: Brackenridge Tract - Deep Eddy Site - Authorization for Office of Endowment Real Estate to Negotiate Amendments to an Existing Ground Lease and Approval for the Executive Director of Endowment Real Estate to Execute All Documents Pertaining to the Amendments.--The Board, upon motion of Regent Smiley, seconded by Vice-Chairman Temple:
  - a. Authorized the Office of Endowment Real Estate on behalf of The University of Texas at Austin to negotiate amendments to an existing ground lease for the Deep Eddy Site of the Brackenridge Tract in accordance with parameters outlined in Executive Session
  - b. Authorized the Executive Director of Endowment Real Estate to execute all documents pertaining to the amendments following approval by the President of U. T. Austin, the Executive Vice Chancellor for Academic Affairs, and the Office of General Counsel.

It was noted that no action was required with regard to potential utility construction agreements with the City of Austin referenced in the Material Supporting the Agenda.

4. U. T. Austin - The Lundell Endowment: Authorization for the Board of Regents as Trustee for The Lundell Endowment to Sell a 4.3165 Acre Tract of Land in Plano, Collin County, Texas, and for Office of Endowment Real Estate to Negotiate All Documents Pertaining to the Sale.--Upon motion of Regent Loeffler, the Board of Regents of The University of Texas System, as Trustee of The Lundell Endowment for The University of Texas at Austin, authorized the Office of Endowment Real Estate to negotiate on behalf of the Trustee and the Executive Director of Endowment Real Estate to enter into a contract to sell a 4.3165 acre tract of land in Plano, Collin County, Texas, according to the parameters outlined in Executive Session subject to future ratification of the Real Estate Contract by the Trustee.

Vice-Chairman Temple seconded the motion which carried without objection.

5. U. T. Austin: Authorization for the President or His Delegate to Conclude Negotiations for a Gift of Multimedia Works of Art by Jean Cocteau and Others and a Companion Gift of Cash for the Benefit of the Archer M. Huntington Art Gallery and the Harry Ransom Humanities Research Center and Authorization for the President to Execute All Related Documents.--Upon motion of Vice-Chairman Temple, seconded by Vice-Chairman Lebermann, the Board:
  - a. Authorized the President of The University of Texas at Austin or his delegate to conclude negotiation of the terms of acceptance of a gift of multimedia works of art by Jean Cocteau and others and a companion gift of cash for the benefit of the Archer M. Huntington Art Gallery and the

Harry Ransom Humanities Research Center at U. T. Austin substantially within the parameters outlined in Executive Session

- b. Authorized the President of U. T. Austin to execute any and all documents to evidence the terms of the negotiated agreement and to take all other actions and execute all such other documents as he may deem necessary, advisable or proper to complete the acceptance of those gifts by December 31, 1994, following review by the director of the Archer M. Huntington Art Gallery, the director of the Harry Ransom Humanities Research Center, the Executive Vice Chancellor for Academic Affairs, the Office of Estates and Trusts, and the Office of General Counsel.

#### REPORT OF BOARD FOR LEASE OF UNIVERSITY LANDS

Regents Rapoport and Lebermann, as members of the Board for Lease of University Lands, submitted the following report on behalf of that Board:

#### Report

The Board for Lease of University Lands met in Midland, Texas, on November 10, 1994, in connection with the 86th Oil and Gas Lease Sale of Permanent University Fund lands. The results of the sale will be reported at the February 1995 meeting of the U. T. Board of Regents.

Following is a report on the Oil Royalty Take In-Kind Program established July 1, 1990:

- a. The Sixth Oil Royalty Take In-Kind Sealed Bid Sale was held September 19, 1994, with an estimated total revenue enhancement of \$1,295,012 on 3,689 barrels per day. This is additional revenue which will be realized over and above royalties which would have been received as traditional cash royalties. The estimated total revenue enhancement per barrel was \$0.9618. The Take In-Kind Program now represents approximately 60% of University oil royalty production.
- b. The Fifth Oil Royalty Take In-Kind Sealed Bid Sale was held on September 20, 1993, and the preliminary tabulations indicate a total revenue of \$961,218 on 3,693 barrels per day. The total revenue enhancement per barrel was \$0.71.

Cumulative totals through August 1994 from the Oil Royalty Take In-Kind Program are 5,247,554 barrels of oil and \$3,819,715 of net revenue enhancement.

OTHER MATTERS

U. T. System: Annual Report on the Activities of the Student Advisory Group (Deferred).--Chairman Rapoport reported that the proposed report on the activities of The University of Texas System Student Advisory Group had been deferred.

SCHEDULED MEETINGS.--Chairman Rapoport announced that the next scheduled meeting of the U. T. Board of Regents would be held on February 9, 1995, at The University of Texas at Austin and reminded the Board that the remainder of the Board meeting dates for Calendar Year 1995 would be amended as a result of the Board's actions today approving quarterly meetings.

In compliance with the restructured format, it was ordered that the meetings of the U. T. Board of Regents for the Calendar Year 1995 be rescheduled as set forth below:

<u>Dates</u>	<u>Locations/Hosts</u>
February 9, 1995	U. T. Austin
May 11, 1995	U. T. Medical Branch - Galveston
August 10, 1995	U. T. San Antonio
November 9, 1995	U. T. Arlington

ADJOURNMENT.--There being no further business, the meeting was adjourned at 3:35 p.m.

/s/ Arthur H. Dilly  
Executive Secretary

December 8, 1994