

Meeting No. 915

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

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May 13-14, 1998

Odessa, Texas

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OF
THE UNIVERSITY OF TEXAS SYSTEM
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MEETING NO. 915

WEDNESDAY, MAY 13, 1998.--The members of the Board of Regents of The University of Texas System convened at 1:30 p.m. on Wednesday, May 13, 1998, in Alamo 2 of the Radisson Hotel and Conference Center in Odessa, Texas, with the following in attendance:

ATTENDANCE.--

Present

Chairman Evans, presiding
Vice-Chairman Loeffler
Vice-Chairman Clements
Regent Hicks
Regent Lebermann
Regent Oxford
Regent Riter
Regent Sanchez
Regent Smiley

Absent

Executive Secretary Dilly

Chancellor Cunningham
Executive Vice Chancellor Mullins
Executive Vice Chancellor Burck
Acting Vice Chancellor Frederick

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

RECESS TO EXECUTIVE SESSION.--At 1:33 p.m., Chairman Evans announced that the Board would recess to convene in Executive Session pursuant to Texas Government Code, Chapter 551, Sections 551.071 and 551.072 to consider those matters listed on the Executive Session agenda.

RECONVENE.--At 3:30 p.m., the Board reconvened in open session to consider action on the items that were discussed in Executive Session.

EXECUTIVE SESSION OF THE BOARD OF REGENTS

Chairman Evans reported that the Board had met in Executive Session to discuss matters in accordance with Texas Government Code, Chapter 551, Sections 551.071 and 551.072. In response to Chairman Evans' inquiry regarding the wishes of the Board, the following actions were taken:

1. U. T. Medical Branch - Galveston: Settlement of Medical Liability Litigation - Susan Goss and John De La Fuenté.--Regent Oxford moved that the Chancellor and the Office of General Counsel be authorized to settle on behalf of The University of Texas Medical Branch at Galveston the medical liability litigation brought by Susan Goss and John De La Fuenté in accordance with the proposal presented in Executive Session.

Regent Lebermann seconded the motion which carried without objection.

2. U. T. Board of Regents: Authorization for the General Counsel to Request Approval by the Texas Attorney General to Have Vinson & Elkins Represent the U. T. Board of Regents in the Appeal of the Hopwood Lawsuit and Authorization for Such Other Counsel as Approved by the Chairman of the Board and the Attorney General to Join in Assisting with the Appeal.--Chairman Evans reported that since the distribution of the Material Supporting the Agenda an additional item was posted with the Secretary of State related to consultation with attorneys regarding a possible appeal of the Hopwood case on behalf of The University of Texas at Austin.

Mr. Evans publicly thanked both Attorney General Dan Morales and former Chief Justice of the Supreme Court John Hill for consulting with the Board in Executive Session and for helping the Board understand the options related to the Hopwood appeal.

In response to Chairman Evans' request for suggested action on behalf of the Board, Vice-Chairman Loeffler put forth the following motions:

Whereas, In governing, setting policy, and operating The University of Texas System there is a strong institutional interest in clarity and uniformity of constitutional standards; and

Whereas, If the Hopwood injunction is not challenged, all institutions in the State of Texas are at a competitive disadvantage in the recruitment of students; and

Whereas, A decision by the United States Supreme Court would bring uniformity and finality to the important issue and would permit Texas colleges and universities to compete on a level playing field.

I move that the General Counsel be authorized to request approval by the Texas Attorney General to have Vinson & Elkins represent The University of Texas System Board of Regents and all other defendants in:

- a. Making appropriate response to points of appeal asserted by the plaintiffs in the Hopwood lawsuit
- b. Putting forth appropriate cross point(s) to appeal the injunction issued in the March 20, 1998, judgment in the Hopwood lawsuit against The University of Texas at Austin and any other cross point(s) to protect the interest of the U. T. System.

I further move that such other counsel as approved by the Chairman of the Board and the Attorney General be authorized to join in assisting with the appeal on behalf of U. T. Austin.

Regent Lebermann seconded the motions which prevailed by unanimous vote.

3. U. T. Dallas: Approval to Sell Approximately 43.4 Acres of Land West of Waterview Parkway and North of Frankford Road, Richardson, Collin County, Texas, to DNS Electronics Manufacturing Corporation and Authorization for the Executive Vice Chancellor for Business Affairs or the Executive Director of Real Estate to Execute All Documents Related Thereto.--Upon motion of Vice-Chairman Clements, seconded by Regent Hicks, the Board:
 - a. Authorized The University of Texas System Real Estate Office to sell on behalf of The University of Texas at Dallas approximately 43.4 acres of land west of Waterview Parkway and north of Frankford Road in Richardson, Collin County, Texas, to DNS Electronics Manufacturing Corporation in accordance with the parameters outlined in Executive Session
 - b. Authorized the Executive Vice Chancellor for Business Affairs or the Executive Director of Real Estate to take all steps, including execution of all documents, required to complete the transaction following approval by the Office of General Counsel.

4. U. T. Southwestern Medical Center - Dallas: Authorization to Purchase 5.7325 Acres of Land Located at 1969 Record Crossing Road in Dallas, Dallas County, Texas, and Approval for the Executive Vice Chancellor for Business Affairs or the Executive Director of Real Estate to Execute All Documents Related Thereto.--Upon motion of Regent Hicks, seconded by Regent Riter, the Board:
 - a. Authorized The University of Texas System Real Estate Office to purchase on behalf of The University of Texas Southwestern Medical Center at Dallas a 5.7325 acre tract of land located at 1969 Record Crossing Road in Dallas, Dallas County, Texas, according to the parameters outlined in Executive Session
 - b. Authorized the Executive Vice Chancellor for Business Affairs or the Executive Director of Real Estate to take all steps,

including execution of all documents, required to complete the transaction following approval by the Office of General Counsel.

5. U. T. Dallas: Approval to Sell Approximately 4.0 Acres of Land Located at the Northwest Corner of Waterview Parkway and Synergy Park Boulevard in Dallas, Collin County, Texas, to Kodiak Investment Group, L.C.; Authorization to Grant an Option to Purchase an Adjacent 8.83 Acre Tract of Land; and Authorization for the Executive Vice Chancellor for Business Affairs or the Executive Director of Real Estate to Execute All Documents Related Thereto.--Chairman Evans reported that since the distribution of the Material Supporting the Agenda an additional item was posted with the Secretary of State related to the proposed sale of real estate on behalf of The University of Texas at Dallas.

On behalf of U. T. Dallas, Regent Riter moved that:

- a. The University of Texas System Real Estate Office be authorized to complete negotiations to sell approximately 4.0 acres of land located at the northwest corner of Waterview Parkway and Synergy Park Boulevard in Dallas, Collin County, Texas, to Kodiak Investment Group, L.C., and to grant an option to purchase an adjacent 8.83 acres of land in accordance with the parameters outlined in Executive Session
- b. The Executive Vice Chancellor for Business Affairs or the Executive Director of Real Estate be authorized to take all steps, including execution of all documents, required to complete the transaction following approval by the Office of General Counsel.

Regent Smiley seconded the motion which prevailed without objection.

MEETING WITH REPRESENTATIVES OF THE UNIVERSITY OF TEXAS SYSTEM FACULTY ADVISORY COUNCIL (DEFERRED).--Chairman Evans reported that, because of the length of the Executive Session, the annual meeting with The University of Texas System Faculty Advisory Council was deferred until the August 1998 meeting of the Board.

RECESS.--At 3:40 p.m., the Board recessed and convened in a briefing session as permitted by law. Chairman Evans announced that the Board would reconvene in open session at 8:45 a.m. on Thursday, May 14, 1998, in the Devonian Room of the Mesa Building at The University of Texas of the Permian Basin.

THURSDAY, MAY 14, 1998.--The members of the Board of Regents of The University of Texas System reconvened in regular session at 8:45 a.m. on Thursday, May 14, 1998, in the Devonian Room of the Mesa Building at The University of Texas of the Permian Basin in Odessa, Texas, with the following in attendance:

ATTENDANCE.--

<u>Present</u>	<u>Absent</u>
Chairman Evans, presiding	*Regent Hicks
Vice-Chairman Loeffler	
Vice-Chairman Clements	
Regent Lebermann	
Regent Oxford	
Regent Riter	
Regent Sanchez	
Regent Smiley	

Executive Secretary Dilly

Chancellor Cunningham
Executive Vice Chancellor Mullins
Executive Vice Chancellor Burck
Acting Vice Chancellor Frederick

Chairman Evans announced a quorum present and reconvened the meeting of the Board.

INTRODUCTION OF DR. RODNEY H. MABRY, PRESIDENT-ELECT OF U. T. TYLER.--Chairman Evans introduced Dr. Rodney H. Mabry, President-Elect of The University of Texas at Tyler, who will become President of that institution effective July 1, 1998, and welcomed him to The University of Texas System.

WELCOME BY DR. CHARLES A. SORBER, PRESIDENT OF THE UNIVERSITY OF TEXAS OF THE PERMIAN BASIN.--Chairman Evans stated that the Board was pleased to be meeting at The University of Texas of the Permian Basin and was especially delighted to have had the opportunity to meet with many of this component's friends and supporters at last evening's (May 13) very nice social event.

*Regent Hicks was excused because of a previous commitment.

On behalf of the Board, Chairman Evans expressed appreciation to the Permian Basin community for its ongoing and generous support of this institution. He then called on Dr. Charles A. Sorber, President of U. T. Permian Basin, for any welcoming remarks on behalf of the host institution.

On behalf of the faculty, staff, and students of the institution, President Sorber welcomed the members of the Board and other guests to Odessa.

U. T. BOARD OF REGENTS: APPROVAL OF MINUTES OF REGULAR MEETING HELD ON FEBRUARY 11-12, 1998, AND SPECIAL MEETING HELD ON MARCH 6, 1998.--Upon motion of Vice-Chairman Clements, seconded by Regent Riter, the Minutes of the regular meeting of the Board of Regents of The University of Texas System held on February 11-12, 1998, in Austin, Texas, were approved as distributed by the Executive Secretary. The official copy of these Minutes is recorded in the Permanent Minutes, Volume XLV, Pages 688 - 1504.

Upon motion of Regent Lebermann, seconded by Vice-Chairman Loeffler, the Minutes of the special meeting of the Board of Regents of The University of Texas System held on March 6, 1998, in Austin, Texas, were approved as distributed by the Executive Secretary. The official copy of these Minutes is recorded in the Permanent Minutes, Volume XLV, Pages 1505 - 1507.

SPECIAL ITEMS

1. U. T. Board of Regents - Regents' Rules and Regulations, Part One: Amendments to Chapter II, Section 13, Subsections 13.1 and 13.2 (Chief Administrative Officers of Component Institutions) and Chapter V, Section 1 (Graduate Education in The University of Texas System).--To conform the provisions of the Regents' Rules and Regulations related to the reporting structure for The University of Texas System chief administrative officers with regard to U. T. System Administration and oversight for graduate education to comply with organizational changes approved by the U. T. Board of Regents at the August 14, 1997 meeting, the Regents' Rules and Regulations, Part One, Chapter II, Section 13, Subsections 13.1 and 13.2, regarding chief administrative officers of component institutions, and Chapter V, Section 1, regarding graduate education in the U. T. System, were amended as set forth below:

CHAPTER II

ADMINISTRATION

. . .

Sec. 13. Chief Administrative Officers of Component Institutions.

13.1 The Board selects the chief administrative officer of each component institution.

13.11 When there is a vacancy or it is known that there is to be a vacancy in the office of a chief administrative officer of a component institution having faculty and students and the Board does not have candidate(s) from recent searches at other component institutions, from within the U. T. System, and/or of national prominence from outside the U. T. System to advance for consideration, an Advisory Committee shall be established to recommend candidates to the Board. The Executive Vice Chancellor for Health Affairs or the Vice Chancellor for Academic Affairs shall be chairman of the Advisory Committee. In

circumstances where this Executive Vice Chancellor or Vice Chancellor may be a candidate for the office, the chairman of the Advisory Committee shall be the Chancellor or the Chancellor's designee. In addition to the chairman, committee membership is as follows:

. . . .

- 13.2 Each chief administrative officer of every health-related institution reports to and is responsible to the Executive Vice Chancellor for Health Affairs and serves without fixed term, subject to the pleasure of the Executive Vice Chancellor for Health Affairs and approval by the Chancellor and the Board. The chief administrative officer has access to the Chancellor and is expected to consult with the Executive Vice Chancellor for Health Affairs and the Chancellor on significant issues on an as needed basis.

Each chief administrative officer of every general academic institution reports to and is responsible to the Chancellor, and serves without fixed term, subject to the pleasure of the Chancellor and approval by the Board. The chief administrative officer is expected to consult with the Chancellor on significant issues on an as needed basis.

. . . .

CHAPTER V

GRADUATE EDUCATION IN THE UNIVERSITY OF TEXAS SYSTEM

- Sec. 1. The various component institutions of the System authorized to offer graduate degrees shall provide and maintain an appropriate faculty and administrative organization for such graduate degrees. The chief administrative officer of each academic component institution of the System shall be responsible to the Chancellor, and through him or

her, to the Board for policies and administration of the graduate programs. The chief administrative officer of each health component institution of the System shall be responsible through the Executive Vice Chancellor for Health Affairs to the Chancellor, and through him or her, to the Board for policies and administration of the graduate programs.

"Graduate programs," as the term is used in these Rules, does not include the programs that lead to the M.D., D.D.S., M.P.H., Dr. P.H., J.D., LL.M., and M.C.J. degrees, or others that may be excluded upon recommendation by the chief administrative officer of the component institution and concurrence by the Chancellor.

. . . .

2. U. T. Board of Regents - Regents' Rules and Regulations, Part One: Approval of Amendments to Chapter IV, Section 3 (Faculty Advisory Council) and Chapter VI, Section 1, Subsection 1.6 (Student Advisory Group).--The Board amended the Regents' Rules and Regulations, Part One, Chapter IV, Section 3, regarding the Faculty Advisory Council, and Chapter VI, Section 1, Subsection 1.6, regarding the Student Advisory Group, to read as set forth below:

CHAPTER IV

FACULTY ORGANIZATION

. . . .

- Sec. 3. Faculty Advisory Council.--At the discretion of the Chairman of the Board of Regents and the Chancellor, a faculty advisory council representing component institutions in the U. T. System may be formed to facilitate the flow of ideas and information between and among the Board of Regents, the System Administration, and the component institutions. The Chairman and Chancellor will promulgate guidelines for the selection of faculty advisory council representatives. Representatives of the faculty advisory council may from time to time address the Board at meetings of the Board and may recommend

action to the Board through the Chancellor. At least once each year, a meeting will be arranged between the faculty advisory council executive committee and the Board.

. . . .

CHAPTER VI

STUDENT SERVICES AND ACTIVITIES INCLUDING FACILITIES USE

Sec. 1. General Provisions.

. . . .

- 1.6 Student Advisory Council.--At the discretion of the Chairman of the Board of Regents and the Chancellor, a student advisory council representing component institutions in the U. T. System may be formed to facilitate the flow of ideas and information between and among the Board of Regents, the System Administration, and the component institutions. The Chairman and Chancellor will promulgate guidelines for the selection of student advisory council representatives. Representatives of the student advisory council may from time to time address the Board at meetings of the Board and may recommend action to the Board through the Chancellor. At least once each year, a meeting will be arranged between the student advisory council executive committee and the Board.

. . . .

The amendments to the Regents' Rules and Regulations, Part One, Chapter IV, Section 3, provide for an annual meeting between the Faculty Advisory Council executive committee and the U. T. Board of Regents in lieu of the requirement for an annual report.

The amendments to Part One, Chapter VI, Section 1, Subsection 1.6, reflect a change in name from Student Advisory Group to Student Advisory Council to better reflect the work and purpose of the organization. The new name will be effective beginning with the 1998-1999 academic year.

This amendment also provides for an annual meeting of the Student Advisory Council with the Board.

Chairman Evans noted that he had received a letter from Mr. Luke Keller, a graduate student at The University of Texas at Austin and Chairman of the Student Advisory Group, expressing appreciation to the Board for the name change related to the Student Advisory Group.

3. U. T. System: Report of Summary of Gift Acceptance and Related Administrative Actions Conforming to Board Policy for December 1, 1997 Through February 28, 1998.--Vice Chancellor for Development and External Relations Perry reviewed the Summary of Gift Acceptance and Related Administrative Actions Conforming to Board Policy for The University of Texas System for the period December 1, 1997 through February 28, 1998, as set forth on Pages 14 - 18.

Vice Chancellor Perry reported that during this period 131 items conforming to Board policy were approved including the acceptance of \$48,367,779 in gifts. Other matching contributions from previously accepted Board-held matching funds totaled \$1,075,000 and transfers of endowment funds totaled \$173,626.

Mrs. Perry noted that this report includes only those funds which relate to endowments, estates, and other such funds which are managed by the U. T. System Office of Development and External Relations.

ACCEPTANCE OF GIFTS HELD BY BOARD

# ALL ITEMS	COMPONENT INSTITUTION	ASSET TYPES							MATCHING FUNDS	TOTAL VALUE
		CASH	SECURITIES	REAL ESTATE	PLEDGES	OTHER	TRANSFERS			
6	U. T. Arlington	\$ 91,000	\$	\$	\$ 40,000	\$	\$	\$	\$ 131,000	
53	U. T. Austin	\$ 2,806,331	\$ 329,162	\$ 73,000	\$ 1,394,905	\$	\$ 689,182	\$	\$ 5,118,954 *	
11	U. T. El Paso	\$ 591,209	\$ 211,987	\$	\$	\$	\$ 27,063	\$	\$ 830,260	
1	U. T. Pan America,	\$	\$	\$	\$	\$ -	\$	\$	\$	
4	U. T. Permian Basin	\$ 65,000	\$	\$	\$ 25,000	\$	\$	\$	\$ 90,000	
4	U. T. San Antonio	\$ 25,726	\$ 10,908	\$	\$	\$	\$ 4,274	\$	\$ 40,908	
12	U. T. SWMC-Dallas	\$ 2,260,071	\$ 21,321,845	\$	\$ 5,828,168	\$	\$	\$ 1,075,000	\$ 29,410,083 •	
4	U. T. M.B.-Galveston	\$ 65,150	\$	\$	\$ 5,000	\$	\$ 110,000	\$	\$ 180,150	
12	UTHSC-Houston	\$ 2,066,650	\$ 10,104	\$	\$ 2,233,350	\$	\$ 10,000	\$	\$ 4,320,104	
1	UTHSC-San Antonio	\$ 500,000	\$	\$	\$	\$	\$	\$	\$ 500,000	
14	UTMDACC	\$ 5,069,115	\$ 140,205	\$	\$ 1,531,000	\$	\$ 600,000	\$	\$ 7,340,320	
5	UTHC-Tyler	\$ 316,154	\$	\$	\$ 60,000	\$	\$ 29,846	\$	\$ 406,000	
131	TOTAL	\$ 13,856,407	\$ 22,024,210	\$ 73,000	\$ 11,117,422	\$	\$ 1,470,365	\$ 1,075,000	\$ 48,367,779 •	

* Not included in total: U. T. Austin • \$173,626 of transfers of endowment funds; and
 U. T. SWMC-Dallas • \$1,075,000 of Board-held matching funds.

NOTE: Compiled by Office of Development and External Relations

CLASSIFICATION OF GIFTS AND OTHER ACTIONS

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<u>COMPONENT INSTITUTION</u>	<u>ENDOWMENTS</u>	<u>CHARITABLE REMAINDER TRUSTS</u>	<u>POOLED INCOME FUND</u>	<u>REMAINDER INTERESTS</u>	<u>HELD IN TRUST BY OTHERS</u>	<u>CURRENT PURPOSE</u>	<u>OTHER</u>
U. T. Arlington	6	...	...	...	...	...
U. T. Austin	50	2	...	...	4	...	...
U. T. El Paso	10	1	...	...	...	...	...
U. T. Pan American	1	...	...	...	...	...	...
U. T. Permian Basin	4	...	...	...	...	...	...
U. T. San Antonio	4	...	...	...	...	...	...
U. T. SWMC-Dallas	9	...	...	...	4	...	...
U. T. M.B.-Galveston	7	...	...	...	1	...	...
UTHSC-Houston	6	...	...	...	6	...	...
UTHSC-San Antonio	1	...	...	...	...	...
UTMDACC	4	...	1	...	2	7	...
UTHC-Tyler							
TOTAL	107	3	1	0	17	7	0

PURPOSES OF GIFTS HELD BY BOARD AND OTHERS

<u>COMPONENT INSTITUTION</u>	<u>ENDOWMENT</u>								<u>CURRENT PURPOSE</u>	<u>OTHER PURPOSE</u>
	<u>DIST. CHAIR</u>	<u>CHAIR</u>	<u>DIST. PROF'SHIP</u>	<u>PROF'SHIP</u>	<u>FACULTY FELLOWSHIP</u>	<u>GRADUATE FELLOWSHIP</u>	<u>SCHOLARSHIP</u>	<u>OTHER</u>		
U. T. Arlington	---	---	---	---		1	4	1		
U. T. Austin	---	---	---	3	---	4	23	17	---	1
U. T. El Paso	---	1	---	---	---	---	7	2	---	1
U. T. Pan American	---	---	---	---	---	---	---	---	---	---
U. T. Permian Basin	---	---	---	---	---	---	3	---	---	---
U. T. San Antonio	---	---	---	---	---	---	4	---	---	---
U. T. SWMC-Dallas	2	---	---	2	---	---	2	5	---	---
U. T. M.B.-Galveston	---	---	---	1	---	---	3	1	---	---
UTHSC-Houston	---	2	1	4	1	---	1	3	---	---
UTHSC-San Antonio	---	1	---	---	---	---	---	---	---	---
"TMDACC	---	---	---	---	1	---	1	2	9	1
UTHC-Tyler	---	---	2	---	---	---	---	3	---	---
TOTAL	2	4	3	10	2	5	48	34	9	3

Total purposes may not equal the total number of items because some items pertain to multiple purposes.

OTHER ADMINISTRATIVE ACTIONS

<u>COMPONENT INSTITUTION</u>	<u>ESTABLISH ENDOWMENT</u>	<u>REDESIGNATE ENDOWMENT LEVEL</u>	<u>OTHER REDESIGNATION</u>	<u>DISSOLVE ENDOWMENT</u>	<u>APPROVE/ALLOCATE MATCHING</u>	<u>ACCEPT TRUSTEESHIP</u>	<u>OTHER</u>
U. T. Arlington	6	---	---	---	---	---	---
U. T. Austin	46	1	4	---	---	1	---
U. T. El Paso	10	---	---	---	---	1	---
U. T. Pm American	---	---	---	1	---	---	---
U. T. Permian Basin	3	---	1	---	---	---	---
U. T. San Antonio	4	---	---	---	---	---	---
U. T. SWMC-Dallas	11	1	1	---	5	---	---
U. T. M.B.-Galveston	5	1	1	---	---	---	1
UTHSC-Houston	11	1	---	---	2	---	---
UTHSC-San Antonio	1	---	---	---	1	---	---
UTMDACC	4	---	---	---	---	---	---
UTHC-Tyler	3	1	---	---	2	---	---
TOTAL	104	5	7	1	10	2	1

COMPARATIVE SUMMARY OF GIFTS ACCEPTED VIA THE OFFICIAL ADMINISTRATIVE PROCESS

COMPONENT <u>INSTITUTION</u>	FY 1997 <u>FULL YEAR</u>	FISCAL YEAR 1998			<u>FULL YEAR</u>
		<u>9/1/97 - 11/30/97</u>	<u>12/1/97 - 2/28/98</u>	<u>3/1/98 - 5/31/98</u>	
U. T. System	\$ ---	\$ ---	\$ ---		
U. T. Arlington	\$ 467,160	\$ 1,035,334	\$ 131,000		
U. T. Austin	\$ 12,596,223	\$ 3,958,202	\$ 5,118,954		
U. T. Brownsville	\$ 25,000	\$ 10,000	\$ ---		
U. T. Dallas	\$ 67,313	\$ 250,000	\$ ---		
U. T. El Paso	\$ 2,713,341	\$ 2,701,633	\$ 830,260		
U. T. Pan American	\$ 643,151	\$ ---	\$ ---		
U. T. Permian Basin	\$ 641,000	\$ 112,770	\$ 90,000		
U. T. San Antonio	\$ 380,500	\$ 86,593	\$ 40,908		
U. T. Tyler	\$ 65,000	\$ 40,000	\$ ---		
U. T. SWMC-Dallas	\$ 12,392,401	\$ 559,286	\$ 29,410,083		
U. T. M.B.-Galveston	\$ 8,403,150	\$ 2,260,581	\$ 180,150		
UTHSC-Houston	\$ 4,584,653	\$ 810,000	\$ 4,320,104		
UTHSC-San Antonio	\$ 2,489,807	\$ 1,000,000	\$ 500,000		
UTMDACC	\$ 1,977,697	\$ 1,497,744	\$ 7,340,320		
U. T. HC-Tyler	\$ 140,910	\$ ---	\$ 406,000		
U. T. Austin/UTMDACC	\$ 28,048	\$ ---	\$ ---		
TOTAL	\$ 47,615,354	\$ 14,322,143	\$ 48,367,779		

MATTERS RELATED TO THE UNIVERSITY OF TEXAS
INVESTMENT MANAGEMENT COMPANY (UTIMCO)

1. U. T. System: Report on Investments for the Fiscal Quarter Ended February 28, 1998.--On behalf of The University of Texas Investment Management Company (UTIMCO) and in the absence of Chairman Hicks, Regent Loeffler, a member of the UTIMCO Board, summarized the Report on Investments for The University of Texas System for the fiscal quarter ending February 28, 1998, for the Permanent University Fund, Long Term Fund, Short/Intermediate Term Fund, and Separately Invested Assets.

Report by Regent Loeffler on Behalf of UTIMCO

Mr. Chairman and members of the Board, I am pleased to summarize on behalf of UTIMCO the investments for The University of Texas System for the fiscal quarter ending February 28, 1998.

Item a on Page 22 presents the summary report for Permanent University Fund (PUF) Investments. The PUF began the quarter with a market value of \$6.615 billion. During the quarter, contributions of mineral income from PUF Lands equaled \$20.2 million, unchanged versus receipts for the second quarter of the preceding fiscal year. In addition, total investment return was \$405.2 million of which \$64.1 million was income return and \$341.1 million was price return. Accrued income distributed to the Available University Fund (AUF) was \$64.1 million. PUF market value ended the quarter at \$6.976 billion.

Quarter-end asset allocation was virtually unchanged from the preceding fiscal quarter end; 64% broadly defined equities and 36% fixed income versus an unconstrained neutral allocation of 80% equities and 20% fixed income. Within equities, period-end allocation to equities was 46% U. S. large and mid cap stocks, 6% U. S. small cap stocks, 6% non-U. S. equities and 6% alternative equities.

PUF income distributions to the AUF of \$64.1 million increased by a nominal rate of 0.5% versus the second quarter of the prior fiscal year and decreased 0.9% on an inflation adjusted basis. The nominal increase in income was attributable to a \$2.8 million increase in dividend and other income which offset a \$2.5 million decrease in interest income. The reinvestment spread on maturing and redeemed bonds deteriorated further to a negative 3.2% as bonds ran off at an average yield of 9.32% and were replaced by bonds yielding 6.12%.

Accrued income of \$127.2 million for the first half of this fiscal year was under budget of \$128 million and first half 1997 actual of \$128.9 million by \$800,000 and \$1.7 million, respectively.

Total investment return for the quarter was 6.1% and 23.0% for the last 12 months. Fixed income as an asset class continued to perform relatively poorly versus equities with the Salomon Broad Bond Index generating a total return of 2.3% for the quarter. The Fund's fixed income portfolio at 2.6% for the quarter outperformed this index. Equities, as an asset class, continued to generate higher relative returns with the S&P 500 Index and Russell 3000 Index posting quarterly returns of 10.3% and 9.9%, respectively. The PUF's equity portfolios (including non-U. S. portfolios) produced a 9.2% return. Finally, alternative equities produced a -0.7% return for the quarter.

Item b on Page 23 reports summary activity for the Long Term Fund (LTF). During the quarter, net contributions totaled \$20.2 million. Investment return was \$166.6 million, of which \$20.8 million was paid to the 4,626 endowment and other accounts underlying the LTF at quarter-end. Total payout increased by 5.6% over the previous February 1997 quarter reflecting both the increase in the number of Fund units outstanding and the increase in payout to \$0.18 per unit. The Fund's market value closed the quarter at \$2.361 billion, up \$165 million from the prior quarter. The LTF's value per unit also increased, ending the quarter at \$5.09 versus \$4.78 on November 30, 1997.

Asset allocation at quarter-end was 24% fixed income and 76% broadly defined equities. Within equities, U. S. small cap and non-U. S. equities were roughly neutral weighted at 11% and 13%, respectively. U. S. large and mid cap equities were overweighted at 47% vs. 30% while alternative equities were underweighted at 5% versus a neutral weighting of 25%. Total investment return for the quarter was 7.5% and 24.1% for the last 12 months.

Item c on Page 24 presents quarterly activity for the Short/Intermediate Term Fund. During the quarter, the Fund received contributions of \$15.6 million. It earned \$38.4 million in total return and incurred expenses of \$200 thousand. Distributions to the U. T. System component institutions equaled \$24.5 million resulting in a quarter-end Fund value of \$1.649 billion. Total return on the Fund was 2.4% for the quarter versus the Fund's performance benchmark of 1.7%.

Item d on Page 25 presents book and market value of cash, fixed income, equity and other securities held in funds outside of internal investment pools. Total cash and equivalents, consisting primarily of component operating funds held in the Dreyfus money market fund, increased by \$178 million to \$725 million during the quarter. Asset values for the remaining asset classes were fixed income securities: \$79 million vs. \$61 million at previous quarter-end; equities: \$37 million vs. \$34 million at previous quarter-end; and other investments of \$6 million.

a. PERMANENT UNIVERSITY FUND

Summary Investment Report at February 28, 1998, --

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

	FY96-97		FY97-98		
	Full	Year	1st Qtr	2nd Qtr	Year-To-Date
Beginning Market Value	5,292.1		6,368.3	6,615.1	6,368.3
PUF Lands Receipts (2)	05.2		25.8	20.2	46.0
Investment Income (3)	263.0		63.1	64.1	127.2
Change in Undistributed Income Payable to the Available University Fund (4)					
Investment Income Distributed (4)	(26:::)		(63.1)	(64.1)	(127.2)
Realized Gains	251.0		123.3	07.6	210.9
Change in Unrealized Gains	740.0		97.7	253.5	351.2
Ending Market Value	<u>6,368.3</u>		<u>6,615.1</u>	<u>6,976.4</u>	<u>6,976.4</u>
AUF income:					
Investment Income	263.0	(5)	63.1	64.1	127.2
Surface Income	5.3		1.2	2.2	3.4
Total	<u>268.3</u>		<u>64.3</u>	<u>66.3</u>	<u>130.6</u>

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

- (1) Excludes PUF Lands mineral and surface interests with estimated June 30, 1997, values of \$550.5 million and \$151.8 million, respectively.
- (2) As of February 28, 1998: 918,706 acres under lease; 526,165 producing acres; 2,990 active leases; and 2,063 producing leases.
- (3) Investment income includes amortization of discount and premium bonds in accordance with statutory requirements.
- (4) For FY96-97, cash investment income was distributed to AUF. Effective FY97-98, accrued investment income is distributed to AUF.
- (5) Restated to present on an accrual basis for comparative purposes.

b. LONG TERM FUND

Summary Investment Report at February 28, 1998,--

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

	FY96-97	FY97-98		
	Full Year	1st Qtr	2nd Qtr	Year-To-Date
Beginning Net Assets	1,712.1	2,125.0	2,195.7	2,125.0
Wet Contributions	66.1	20.5	20.2	40.7
Investment Return	433.8	71.9	166.6	238.5
Receipt of Funds from System for UTIMCO Fee		0.5	0.5	1.0
Expenses	(4.5)	(1.4)	(1.4)	(2.8)
Distributions (Payout)	(79.1)	(20.7)	(20.8)	(41.5)
Distribution of Gain on Participant Withdrawals	13.4)	(0.1)		(0.1)
Ending Net Assets	2,125.0	2,195.7	2,360.8	2,360.8
Net Asset Value per Unit	4.672	4.782	5.094	
No. of Units (End of Period)	454,803,889	459,182,234	463,409,072	
Distribution Rate per Unit	0.175	0.0450	0.0450	

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

c. SHORT/INTERMEDIATE TERM FUND

Summary Investment Report at February 28, 1998.--

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

	<u>FY96-97</u>	<u>FY97-98</u>		
	<u>Full Year</u>	<u>1st Qtr</u>	<u>2nd Qtr</u>	<u>Year-To-Date</u>
Beginning Net Assets	1,332.1	1,631.4	1,619.7	1,631.4
Contributions (Net of Withdrawals)	274.3	(26.9)	15.6	(11.3)
Investment Return	115.4	40.4	38.4	78.8
Expenses	(0.4)	(0.1)	(0.2)	(0.3)
Distributions of Income	<u>(90.0)</u>	<u>(25.1)</u>	<u>(24.5)</u>	<u>(49.6)</u>
Ending Net Assets	1,631.4	1,619.7	1,649.0	1,649.0

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

d. SEPARATELY INVESTED ASSETS

Summary Investment Report at February 28, 1998.-

SEPARATELY INVESTED ASSETS
SUMMARY REPORT
(\$ thousands)

ASSET TYPES	FUND TYPE												TOTAL	
	CURRENT PURPOSE DESIGNATED		RESTRICTED		ENDOWMENT & SIMILAR FUNDS		ANNUITY & LIFE INCOME FUNDS		AGENCY FUNDS		OPERATING FUNDS			
	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET
Cash & Equivalents:														
Beginning value 12/1/97	8,095	8,095	3,260	3,260	15,770	15,770	2,310	2,310	-	-	516.673	516.673	546,108	546,108
Increase/(Decrease)	(2,298)	(2,298)	(271)	(271)	13,209	13,209	(1,816)	(1,816)	-	-	169,780	169,780	178,604	178,604
Ending value 2/28/98			2,989	2,989	28,979	28,979	494	494	-	-	686,453	686,453	724,712	724,712
Debt Securities:														
Beginning value 12/1/97	500	500	-	1	50.181	51,705	8,745	9,280	-	-	-	-	59,433	61,489
Increase/(Decrease)	(500)	(500)	7	5	16,278	16,816	1,693	1,776	-	-	-	-	17,471	18,093
Ending value 2/28/98	-	-	-	-	66,459	68,521	10,438	11,056	-	-	-	-	76,904	79,582
Equity Securities:														
Beginning value 12/1/97	42	2,862	201	200	16,524	25,292	468	616	-	-	-	-	21,892	34,198
Increase/(Decrease)	-	(230)	503	532	1,459	2,548	5,593	6,460	-	-	-	-	2,229	3,266
Ending value 2/28/98	42	2,632	704	732	17,983	27,840	10,061	12,676	-	-	-	-	24,121	37,464
Other:														
Beginning value 12/1/97	-	-	544	544	(432)	(432)	5,137	6,123	-	-	-	-	5,149	6,235
Increase/(Decrease)	-	-	125	125	(218)	(218)	999	493	-	-	-	-	906	400
Ending value 2/28/98	-	-	669	669	(650)	(650)	6,136	6,616	-	-	-	-	6,155	6,635

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

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2. U. T. System: Authorization to Increase the Long Term Fund (LTF) Distribution Rate Effective May 31, 1998.--
Upon recommendation of the Board of Directors of The University of Texas Investment Management Company (UTIMCO) and upon motion of Vice-Chairman Loeffler, seconded by Regent Riter, authorization was given to increase the distribution rate for The University of Texas System Long Term Fund (LTF) from \$0.18 per unit to \$0.21 per unit effective May 31, 1998.

The formula under the U. T. System Long Term Fund Investment Policy increases distributions from the LTF at the rate of inflation subject to a distribution range of 3.5% to 5.5% of the average market value of LTF assets for the trailing twelve fiscal quarters.

The 16.7% increase in the LTF distribution rate from its current rate of \$0.18 per unit to \$0.21 per unit will (a) recognize the above average rate of appreciation in the market value of LTF assets in recent years and (b) provide for an initial distribution rate of 4% of the value of endowment contributions as of February 28, 1998.

RECESS FOR COMMITTEE MEETINGS AND COMMITTEE REPORTS TO THE BOARD.--At 8:55 a.m., the Board recessed for the meetings of the Standing Committees, and Chairman Evans 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 (Page 27).--In compliance with Section 7.14 of Chapter I of Part One of the Regents' Rules and Regulations, Chairman Evans reported that there were no items referred from the Executive Committee to the Board.

REPORT AND RECOMMENDATIONS OF THE BUSINESS AFFAIRS AND AUDIT COMMITTEE (Pages 28 - 38).--Committee Chairman Riter 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. 93 (Catalog Change).--Upon recommendation of the Business Affairs and Audit Committee, the Board approved Chancellor's Docket No. 93 in the form distributed by the Executive Secretary. It is attached following Page 175 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 One: Amendments to Chapter III, Section 29 (Indebtedness to the System or the State).--In order to comply with the Texas Government Code and the Texas Property Code which exempt compensation for personal services from seizure for an individual's debt to the State of Texas, the Board amended the Regents' Rules and Regulations, Part One, Chapter III, Section 29, regarding indebtedness to The University of Texas System or the state, to read as set forth below:

Sec. 29. Indebtedness to the System or the State.-- Except as provided herein, no payment shall be made to an employee, his or her agent or assignee, who is indebted to the System, any of its component institutions, or to the state until such debt is paid. This section does not authorize the withholding of a salary or other compensation for personal services to an employee or the employee's agent or assignee.

Compensation and salary include wages, longevity pay, hazardous duty pay, and emoluments provided in lieu of wages, but do not include expense reimbursements.

3. U. T. System: Approval of Optional Retirement Program (ORP) Vendors Effective June 1, 1998.--The Business Affairs and Audit Committee recommended and the Board approved the following vendors to offer products to The University of Texas System Optional Retirement Program (ORP) participants effective June 1, 1998:

Aetna Life Insurance and Annuity Company
Hartford, Connecticut

Fidelity Investments Tax-Exempt Services Company
Boston, Massachusetts

Great-West Life and Annuity Insurance Company
Englewood, Colorado

Lincoln National Life Insurance Company
Fort Wayne, Indiana

Metropolitan Life Insurance Company
New York, New York

The Copeland Companies
East Brunswick, New Jersey

The Variable Annuity Life Insurance Company
Houston, Texas

Teachers Insurance and Annuity Association-College
Retirement Equities Fund
New York, New York

All employees appointed to a position in public higher education in Texas for twenty hours per week or more, for four and one-half months or more, must participate in the Texas Teacher Retirement System (TRS) or, if eligible, the Optional Retirement Program (ORP).

The U. T. System used the Request for Proposal (RFP) process to select a consultant to assist with the ORP vendor selection process. Watson Wyatt and Company, a nationally recognized benefits and compensation consulting firm of San Francisco, California, was

selected to prepare an RFP containing redesigned selection criteria based on industry standards and the U. T. System's experience in the active management of the ORP. Watson Wyatt and Company advised that of the fifteen companies responding to the RFP, eight companies met the established minimum criteria.

These companies will offer fixed and variable annuities and mutual fund investment options for ORP participants.

Current employees will have the option of either continuing with their current vendor or choosing from the above approved vendors.

4. U. T. System: Approval of Monthly Insurance Premiums for the Medical and Dental Plans and the Health Maintenance Organizations (HMOs) to be Effective September 1, 1998.-- Committee Chairman Riter noted that supplemental material related to the proposed monthly insurance premiums for FY 1998-99 medical and dental plans and the health maintenance organizations (HMOs) for employees of The University of Texas System was before the Board on yellow paper.

Upon recommendation of the Business Affairs and Audit Committee, the Board approved the monthly insurance premiums for the U. T. System medical and dental plans and the health maintenance organizations to be effective September 1, 1998, as set out on Pages 31 - 33.

U. T. SYSTEM SELF-FUNDED MEDICAL PLAN MONTHLY PREMIUMS FOR FY 1998-99			
	NYLCARE GALVESTON/HOUSTON DUAL OPTION	CIGNA NON- GALVESTON/HOUSTON UT SELECT PLAN*	CIGNA GALVESTON/HOUSTON UT SELECT PLAN*
Coverage Level			
Subscriber Only (Automatic Package)	\$184.29	\$172.73	N/A
Subscriber Only (Non- Automatic Package)	\$185.88	\$174.32	\$185.88
Subscriber and Spouse	\$355.39	\$348.55	\$369.46
Subscriber and Child(ren)	\$336.78	\$320.08	\$342.49
Subscriber and Family	\$506.77	\$486.85	\$520.93
*The UT Select Plan was not available in FY 1997-98.			

U. T. SYSTEM SELF-FUNDED HMO AND EPO* MONTHLY PREMIUMS FOR FY 1998-99		
	U. T. SOUTHWESTERN HEALTH PLAN HMO (DALLAS)	NYLCARE VALLEY EPO
Coverage Level		
Subscriber Only	\$171.52	\$189.38
Subscriber and Spouse	\$336.70	\$363.51
Subscriber and Child(ren)	\$310.99	\$328.07
Subscriber and Family	\$465.68	\$486.98
*EPO is an Exclusive Provider Organization.		

FULLY-INSURED HMO MONTHLY PREMIUMS FOR FY 1998-99		
	PRUDENTIAL EL PASO	PRUDENTIAL HOUSTON
Coverage Level		
Subscriber Only	\$148.60	\$181.22
Subscriber and Spouse	\$291.76	\$354.51
Subscriber and Child(ren)	\$272.27	\$320.74
Subscriber and Family	\$410.77	\$465.50

NEW FULLY-INSURED HMO MONTHLY PREMIUM RATES FOR FY 1998-99			
	PRUDENTIAL AUSTIN	HUMANA AUSTIN	PRUDENTIAL SAN ANTONIO*
Coverage Level			
Subscriber Only	\$171.44	\$147.06	\$165.57
Subscriber and Spouse	\$322.56	\$293.51	\$300.46
Subscriber and Child(ren)	\$291.10	\$278.84	\$260.55
Subscriber and Family	\$423.96	\$469.62	\$397.69
*Prescription drug benefits to be provided by U. T. self-funded prescription drug program.			

U. T. SYSTEM SELF-FUNDED MEDICAL PLAN MONTHLY PREMIUMS FOR FY 1998-99	
TEXAS UNIVERSITIES HEALTH PLAN (TUHP) DALLAS HMO WITH OUT-OF-NETWORK BENEFITS*	
Coverage Level	
Subscriber Only	\$191.75
Subscriber and Spouse	\$383.41
Subscriber and Child(ren)	\$352.09
Subscriber and Family	\$535.54
*The premium rates shown for the self-funded HMO with out-of-network benefits are based upon projected claims experience.	

DENTAL PLAN MONTHLY PREMIUM RATES FOR FY 1998-99			
	U. T. SYSTEM SELF-FUNDED DELTA DENTAL	U. T. SYSTEM SELF-FUNDED DELTA DENTAL PREVENT PLAN*	UNITED DENTAL (Dental HMO)
Coverage Level			
Subscriber Only	\$19.52	\$7.96	\$10.83
Subscriber and Spouse	\$35.22	\$13.78	\$20.16
Subscriber and Child(ren)	\$44.81	\$15.13	\$26.48
Subscriber and Family	\$55.88	\$21.41	\$31.83
*The Prevent Plan is only being offered in the Galveston and Houston area.			

MONTHLY SMOKER PREMIUM RATE
A rate of \$10.00 per month will be added to either a U. T. System self-funded medical or dental plan for employees and retirees who do not sign an affidavit stating they are nonsmokers unless the employee or retiree is covered by the automatic plan.

Milliman & Robertson, Inc., a nationally recognized actuarial firm serviced through Denver, Colorado, was selected through a Request for Proposal (RFP) process to assist the U. T. System Employee Group Insurance Program in setting premium rates for the self-funded medical and dental plans for FY 1998-99 and Towers Perrin, a nationally recognized consulting firm serviced through the Austin, Texas, office was selected as consultants for the HMO with out-of-network benefits.

Premium rates for the self-funded medical and dental plans were increased based upon past and projected claims experience and rates for the fully-insured HMOs and United Dental HMO were set by each organization. Employees and retirees who smoke and are enrolled in the U. T. self-funded medical or dental plan will be assessed a \$10 per month smoker fee.

See Item 5 below related to establishment of UT Select Plan and three HMOs.

5. U. T. System: Establishment of Self-Funded UT Select Plan and Three Health Maintenance Organizations (HMOs) and Appointment of (a) CIGNA HealthCare, Bloomfield, Connecticut, as Administrative Agent for the UT Select Plan, (b) Humana Health Plan of Texas, Inc., San Antonio, Texas, as a Fully-Insured HMO and Administrative Agent in the Austin Area, (c) Prudential HealthCare, Houston, Texas, as a Fully-Insured HMO and Administrative Agent in the Austin and San Antonio Areas, and (d) Texas Universities Health Plan (TUHP), Austin, Texas, as a Self-Funded HMO with Out-of-Network Benefits and Administrative Agent in the Dallas Area to be Effective September 1, 1998.--Committee Chairman Riter reported that supplemental material related to the recommended establishment of the self-funded UT Select Plan and three health maintenance organizations (HMOs) and the proposed appointment of administrative agents for the medical plans for The University of Texas System to be effective September 1, 1998, was before the Board on yellow paper.

The Board, upon recommendation of the Business Affairs and Audit Committee, established the self-funded UT Select Plan and three health maintenance organizations and approved the appointment of the following administrative agents to be effective September 1, 1998:

- a. CIGNA HealthCare, Bloomfield, Connecticut, for the UT Select Plan which combines the benefits of both a health maintenance organization (HMO) plan and a preferred provider organization (PPO) plan and also includes out-of-network benefits to service employees and retirees of The University of Texas System
- b. Humana Health Plan of Texas, Inc., San Antonio, Texas, as a fully-insured HMO to service employees and retirees in the Austin area
- c. Prudential HealthCare, Houston, Texas, as a fully-insured HMO to service employees and retirees in the Austin and San Antonio areas
- d. Texas Universities Health Plan (TUHP), Austin, Texas, as a self-funded HMO with out-of-network benefits to service employees and retirees in the Dallas area.

Through Request for Proposal (RFP) procedures, consultants assisted the U. T. System Employee Group Insurance Program in the review of proposals for the PPO and HMO plans and an Indemnity Plan to be called the UT Select Plan.

W. J. Alexander and Associates, a nationally recognized consulting firm, assisted in the review of the PPO contract for the UT Select Plan, which was awarded to CIGNA HealthCare, Bloomfield, Connecticut, due to the low administrative cost and extensive network available to employees and retirees in the service areas.

Towers Perrin, a nationally recognized consulting firm serviced through the Austin, Texas, office, was selected as consultants for the HMO plans and the HMO with out-of-network benefits.

After an extensive review of proposals, the fully-insured HMO contracts were awarded to Humana Health Plan of Texas, Inc., San Antonio, Texas, and Prudential HealthCare, Houston, Texas, due to the acceptable premium rates offered and the networks available to members.

The self-funded HMO with out-of-network benefits contract was awarded to Texas Universities Health Plan, Austin,

Texas, due to the extensive network available to employees and retirees in the Dallas service area.

See Page 30 for monthly premium rates for the group medical and dental plans.

6. U. T. System: Appointment of Anthem Insurance Companies, Inc., Greenwood, Indiana, as Carrier for U. T. Flexible Spending Plan Effective September 1, 1998.--Committee Chairman Riter noted that a recommendation to appoint an administrator for The University of Texas System Flexible Spending Plan to be effective September 1, 1998, was before the Board on yellow paper.

Upon recommendation of the Business Affairs and Audit Committee, the Board appointed Anthem Insurance Companies, Inc., Greenwood, Indiana, as the carrier for the U. T. System Flexible Spending Plan for employees of the U. T. System effective September 1, 1998.

This appointment, which followed an analyses of proposals by Towers Perrin, is based on Anthem's record of good customer service as provider of the current flexible spending plan, low cost, and ability to meet the needs of the U. T. System.

INFORMATIONAL REPORTS

1. U. T. System: Presentation of the March 1998 Monthly Financial Report.--Mr. R. D. Burck, Executive Vice Chancellor for Business Affairs, reviewed the March 1998 Monthly Financial Report for The University of Texas System and emphasized that in this seven-month period there were no variances from budget which did not have reasonable explanations.

A copy of [The University of Texas System Monthly Financial Report](#) as of March 1998 is on file in the Office of the Board of Regents.

2. U. T. System: Report on Deregulation of Utilities Issues.--Executive Vice Chancellor for Business Affairs Burck reported that Chancellor Cunningham had asked him to chair an ad hoc committee to examine the utility costs and efficiency of The University of Texas System component institutions and related regulatory issues. He noted that the committee, which is composed of representatives from the U. T. System Offices of

Facilities Planning and Construction, General Counsel, Governmental Relations, and component institutions, will study utility costs and infrastructure issues to prepare the U. T. System to be in a competitive position when deregulation occurs.

Mr. Burck noted that the committee is meeting with industry representatives, such as Enron, and the University of California regarding energy conservation measures. He pointed out that the Office of Facilities Planning and Construction is in the process of completing an energy consumption survey and the results of that study and additional reports on the deregulation of utilities will be shared with the Board at a later date.

Regent Sanchez, who was responsible for bringing into sharp focus utility issues, commented briefly on Enron's innovative approach to the delivery of utilities and noted that in comparing the U. T. System and University of California utility costs and use one must keep in mind that U. T. System is a producer of resources and the University of California is not.

3. U. T. System: Report on Action Plan for Institutional Compliance.--In keeping with Chairman Evans' request that an ad hoc committee to review all compliance issues within The University of Texas System be established, Executive Vice Chancellor Burck reported that the Ad Hoc Committee on Institutional Compliance met at The University of Texas Health Science Center at Houston on March 2, 1998, and that meeting featured a three-hour presentation by representatives of Deloitte & Touche LLP entitled "Corporate Compliance for Universities and Academic Medical Centers." At that meeting, the committee discussed the requisite elements of a U. T. System action plan to ensure institutional compliance and that action plan was circulated to all members of the ad hoc committee for review and comment. A copy of the U. T. System Action Plan to Ensure Institutional Compliance, as approved by the Chancellor and presented to the Business Affairs and Audit Committee on April 24, 1998, is on file in the Office of the Board of Regents.

Mr. Burck noted that the Ad Hoc Committee on Institutional Compliance will focus on an action plan to ensure compliance with all federal and state laws, the Regents' Rules and Regulations, and related agency requirements where compliance with regulations and rulings is an issue. Some of the institutional

compliance issues are federal grants and contracts, environmental health and safety, human resources, Internal Revenue Service, and the National Collegiate Athletic Association. Mr. Burck reported that compliance training sessions are being conducted throughout the U. T. System and representatives of Deloitte & Touche LLP have met with the U. T. System Executive Officers and chief administrative officers regarding System-wide compliance issues.

The committee's goal is to have a complete action plan by September 1, 1998, and Executive Vice Chancellor Burck will present a follow-up report at the August 1998 meeting.

4. U. T. System: Report on Year 2000 Information System Issues.--In reviewing the Year 2000 Challenge, which is a set of issues related to how computers have been programmed to store dates, Executive Vice Chancellor Burck reported that all institutions within The University of Texas System have Year 2000 programs in place but the quality and comprehensiveness of those programs varies.

Mr. Burck noted that the four primary areas of potential impact are:

- a. Administrative systems used to perform such activities as application processing, enrollments, financial aid, degree tracking, fee collection, etc.
- b. Physical plant facilities with embedded devices such as elevators, air conditioning systems, alarm systems, etc.
- c. Medical devices with embedded systems
- d. Department and research systems with embedded devices -- departments and researchers must ensure that the tools they rely on (equipment, software, spreadsheets, etc.) will handle date calculations properly or validity of research activities could be impacted.

In closing, Mr. Burck stated that it was his firm belief that the U. T. System has a program in place to address the Year 2000 information system issues.

REPORT AND RECOMMENDATIONS OF THE ACADEMIC AFFAIRS COMMITTEE (Pages 39 - 79).--Committee Chairman Lebermann 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. System: Authorization to Submit to the Coordinating Board Revised Role and Mission Statements and Tables of Programs for General Academic and Health Institutions.--Upon recommendation of the Academic Affairs and Health Affairs Committees, the Board authorized The University of Texas System Administration to submit to the Texas Higher Education Coordinating Board revised Role and Mission Statements and Tables of Programs which are consistent with the respective component institution's long-range strategic plan and the consolidated Tables of Programs shown on Pages 42 - 43.

Section 61.051 of the Texas Education Code requires the Texas Higher Education Coordinating Board to review periodically the Role and Mission Statements, Tables of Programs, and all degree and certificate programs offered by public institutions of higher education. In April 1994, the Coordinating Board reviewed and approved Tables of Programs for U. T. System general academic institutions. In October 1994, the Coordinating Board reviewed and approved Tables of Programs for U. T. System health institutions and Role and Mission Statements for all U. T. System institutions. The next comprehensive review and amendment to the Tables of Programs will provide the framework and planning authorization for new degree programs to be implemented during the following four years. The U. T. System Administration is authorized to negotiate with the Coordinating Board staff to expand the Tables of Programs adequately to provide for the planned addition of new degree programs.

The U. T. Board of Regents first approved Tables of Programs for U. T. System institutions in June 1984 as a part of the U. T. System strategic planning process. The Tables of Programs have guided planning in the U. T. System since that time. Subsequently, the Coordinating Board adopted more detailed tables using footnotes in

some instances to restrict degree program authority to subsets of the broad discipline categories shown in the tables. The Coordinating Board staff has indicated that they will continue to use the footnote format. Consequently, U. T. System Administration and the institutional administrations will be called upon to work with Coordinating Board staff to resolve issues associated with the footnotes.

The scope of programs recommended for each component institution is based primarily upon the size of the population served by that institution and the number of degrees which a population of that size might be expected to earn annually. If the number of degrees projected for a given level and discipline is low, the corresponding row and column in the table is left blank and the university does not seek approval to establish programs in that discipline and level. Exceptions are made at the undergraduate level for the core disciplines in the liberal arts and sciences and at any level and discipline where special circumstances lead to the conclusion that a strong program can be developed with an adequate number of students to operate efficiently.

National data on degrees awarded in the United States have been used as guidelines for the development of these tables. Within the two categories, core disciplines and professional programs, the disciplines are listed in descending order from the discipline in which the most degrees are awarded to the discipline category in which the fewest degrees are awarded. All categories used are those in a national taxonomy for classifying academic programs. As a general rule, institutions serving a larger population will have degree program authority for more categories than will smaller institutions.

The Tables of Programs summarize the major changes to be presented to the Texas Higher Education Coordinating Board. The Coordinating Board will be asked to grant degree program planning authority for the disciplines and levels coded "2". In addition, the Coordinating Board will be asked to remove some of its current restrictions in disciplines and levels coded "1". All disciplines and levels with a "1" code have been approved previously by the U. T. Board of Regents.

Minor changes to the narrative Role and Mission Statements will also be submitted. Some changes are necessary to ensure consistency with the Tables of Programs. Other changes are a result of institutional review processes. None of the changes represent a substantive change in mission.

It is anticipated that the Coordinating Board will act upon these Statements/Tables of Programs at its July 1998 meeting.

Table 1

TABLE OF PROGRAMS
 THE UNIVERSITY OF TEXAS SYSTEM
 ACADEMIC INSTITUTIONS
 March 1998

Disciplines	Bachelor							Master							Doctoral										
	A	A	B	D	E	P	S	A	A	B	D	E	P	P	S	T	A	A	B	D	E	P	P	S	T
	R	R	L	R	A	L	L	R	R	L	R	A	L	A	B	A	R	R	L	R	A	L	A	B	A
ARTS & SCIENCES																									
Social Sciences	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		
Psychology	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		
Letters	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		
Visual/Performing Arts	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Life Sciences	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Physical Sciences	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Mathematics	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Foreign Languages	1	1	1	1	1	1	1	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1			
Philosophy	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Business Mgmt. & Adm. Svcs.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Education	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Parks, Rec. & Fitness Stds.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Engineering	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Health Professions & Rel. Sci.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Communications	1	1	1	1	1	1	1	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1			
Computer & Information Sci.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Engineering-Related Tech.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Public Adm. & Services	1	1	1	1	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1			
Protective Services	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Home Economics	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Architecture & Rel. Prgms.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Marketing, Oper. & Dist.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Conservation & Re. Nat. Res.	1	1	1	1	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1			
Law & Legal Studies	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Library Science	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
INTERDISCIPLINARY																									
Liberal A&S, Gen. Studies	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Multi/interdisciplinary Stds.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			
Area, Ethn. & Cultural Stds.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			

Includes professional degree programs for J.D., Pharm

KEY - Table of Programs Authorization Status

1. Institutions have been given authority by the U. T. Board of Regents to develop degree programs in this discipline and level, although in some instances no program is currently offered.
2. Institutions are requesting U. T. Board of Regents' authority to develop degree programs in this discipline and level.

Table 2

TABLE OF PROGRAMS
 THE UNIVERSITY OF TEXAS SYSTEM
 HEALTH INSTITUTIONS
 March 1998

Disciplines	Certificate					Bachelor					Masters					Doctoral					Profession.					
	D	G	H	S	M	D	G	H	S	M	D	G	H	S	M	G	H	S	M	G	H	S	M			
	A	A	O	A	D	A	A	O	A	D	A	A	O	A	D	L	L	U	N	A	L	L	U	N	A	
Academic Disciplines																										
Conservation & Rnwable Nat. Rsrchs.														1					1							
Education						1	1				1	1														
Engineering											1															
Home Economics						1	1							1												
L A 6 Sci.Gnrl. Stds. & Humanities														1	1	1				1						
Biological Sciences/Life Sciences											1	1	1	1		1	1	1								
Public Administration & Services																			1							
Physical Sci/Sci Technologies															1					1						
Multi/Interdisciplinary Studies, Other											1	1														
Psychology											1															
Protective service.											1															
Health Prof. & Related Sciences																										
Comm. Disorders Sci. and Services														1	1											
community Health Services						1								1												
Dentistry (D.D.S., D.M.D.)																								1	1	
DntlClncl Sci/Grd Dntstry (MS, PhD)															1	1										
Dental Services						A	A							1												
Health & Administrative Services											1	1														
Health and Medical Assistants											1			1		2	1									
Hlth & Med. Diagnostic & Treat. Srv.	A					A	A	P			1			1					2							
Hlth & Med. Lab. Tchnlgs/Tchncn	B					B	B	A			1	1	1													
Hlth & Med. Lab. Tchnlgs/Tchncn																										
Medicine (M.D.)																			1					1	1	
Medical Basic Sciences											1	1	1	1		1	1	1								
Medical Clinicl Sci. (M.S., PhD.)																										
Mental Health Services																										
Nursing														1	1	1	1	1	1							
Pharmacy															1				1						1	
Public Health															1				1							
Rehabilitation/Therapeutic Services											1	1	1			1	1	1		2						
Misc Hlth Sci & Allied Hlth Srvs																										
Dental Residency Programs														1		1										
Medical Residency Programs																										
Misc Hlth Prof. & Related Sci											2	1	2						2	2						

KEY - Table of Programs Authorization Status

1. Institutions have been given authority by th. U. T. Board of Regents to develop degree programs in this discipline and level.
2. Institution. are requesting U. T. Board of Regents' ● thority to develop degree program. in this discipline and level.
 - a. Institutions are requesting U. T. Board of Regents' authority to develop pre-baccalaureate certificate programs in this discipline.
 - A. Institutions have been given authority by the U. T. Board of Regents to develop pre-baccalaureate certificate programs in this discipline.
 - B. Institutions have been given authority by th. U. T. Board of Regents to develop post-baccalaureate certificate programs in this discipline.

2. U. T. System: Report on the Strategic Planning Process and Agency Strategic Plans.--Dr. Joseph H. Stafford, Executive Associate for Planning and Academic Programs, reported on the strategic planning process and the Agency Strategic Plans of the components of The University of Texas System which are to be submitted to the Legislative Budget Board by June 15, 1998.

Dr. Stafford reported that since 1991 public universities have been required to submit biennially to the Legislative Budget Board and the Governor's Office of Budget and Planning an "Institutional/Agency Strategic Plan." Strategic plans for the current cycle, which must be signed by the Chairman of the Board, are due on June 15, 1998, and build upon biennial plans which have been prepared by the U. T. System component institutions since 1982.

Dr. Stafford noted that the foundation for all of the strategic plans is the institutions' commitment to academic programs for their various constituencies and regions and the plans place particular emphasis on the (a) growing power of information technology for improved teaching and research, (b) recruitment and retention of undergraduate students in order to increase the number of college graduates, and (c) rapidly changing health care delivery systems.

In response to Regent Oxford's inquiry as to whether the strategic plans are viable and dynamic planning and measurement tools, Chancellor Cunningham noted that in developing the current plans he had asked each chief administrative officer to submit about 10-18 key initiatives for his/her campus and in the next 9 or 10 months he would review where each is in the development of these particular initiatives.

Committee Chairman Lebermann noted that the Academic Affairs Committee will pull together some information that currently exists related to these strategic plans and that will be a "measuring stick" to assess future plans.

3. U. T. Arlington: Establishment of a Master of Science Degree in Health Care Administration and Authorization to Submit the Degree Program to the Coordinating Board for Approval (Catalog Change).--The Academic Affairs Committee recommended and the Board established a Master of Science degree in Health Care Administration at The University of Texas at Arlington and authorized submission of the proposal to the Texas Higher Education Coordinating Board for approval. The degree program is consistent with U. T. Arlington's Table of Programs as approved by the U. T. Board of Regents and with institutional plans for offering quality degree programs to meet student needs.

The Master of Science degree in Health Care Administration at U. T. Arlington is a 42 semester credit hour master's degree, which includes a nine semester credit hour internship. Of the 33 semester credit hours of regular classroom instruction, 24 will be taken in courses which are already offered by the School of Nursing, the College of Business Administration, the College of Engineering, the School of Social Work, or the School of Urban and Public Affairs. Three new courses will be created to provide an overview and integrating framework for courses in fields such as the Economics of Health and Health Care Information Systems.

It is anticipated that there will be no additional instructional costs associated with this program. One new full-time faculty member will be recruited to serve as program director and graduate student advisor for the program. Approximately half of this individual's time will be committed to program leadership, student advising, and management of the internship program. The remaining time will be devoted to instruction, either directly in this program or in the related courses offered by the affiliated colleges and schools. In addition, the cost of a half-time clerical support person will be incurred. These modest incremental costs for delivery of the program are comparable to the costs of serving a similar increment of increased enrollment in an existing program.

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

4. U. T. Austin: Approval of a License Agreement with Orasis Software, Inc., Austin, Texas, and Authorization for Dr. Benito Fernandez to Hold Equity in and Serve as a Director of Orasis Software, Inc.--Upon recommendation of the Academic Affairs Committee, the Board:
- a. Approved the License Agreement set out on Pages 48 - 61 between the U. T. Board of Regents, for and on behalf of The University of Texas at Austin, and Orasis Software, Inc., Austin, Texas
 - b. Approved the holding of equity in and service as a director of Orasis Software, Inc., by Dr. Benito Fernandez, Associate Professor in the Department of Mechanical Engineering at U. T. Austin.

Dr. Benito Fernandez, an Associate Professor of Mechanical Engineering at U. T. Austin, has developed software including (1) "Software - A Virtual Instrument for Continuous Equipment Condition Assessment and End-of-Life Prediction," as described in Invention No. 97-051 FER, (2) "(sigma)-Net: Statistica-Net - A Neural Network for Data Bounding and Confidence Measure Estimation of Static and Dynamic Systems," as described in Invention No. 97-030 FER, (3) "GEN: Genetically-Engineered Networks," as described in Invention No. 97-031 FER, and (4) "i-CAMD: Intelligent Condition Assessment of Mechatronic Devices," as described in Invention No. 97-032 FER (collectively the "Software").

The Software products that will be developed under this agreement will use technology from Texas A&M University and U. T. Austin. Texas A&M University has entered into a separate but similar license agreement with Orasis Software, Inc. (Orasis). Also, Texas A&M University and the U. T. System have entered into a Memorandum of Agreement that details the intellectual property rights and royalty sharing arrangement upon successful commercialization of the Software.

Under the License Agreement, Orasis is granted an exclusive, worldwide license and right to make, have made, use, lease, rent, sell, and distribute the Software. Orasis will pay the U. T. Board of Regents (a) a royalty fee of \$2,500 within 90 days of the effective date of the agreement, (b) an additional royalty fee of \$7,500 due one year from the effective date, and (c) three percent (3%) running royalty on net sales of licensed products to be shared equally between Texas A&M University and U. T. Austin as outlined in the Memorandum of Agreement. The License Agreement includes sublicense provisions and reimbursement of all Software expenses to date and on patent applications filed in the future.

Dr. Fernandez has requested approval to serve as a director of Orasis, and he currently holds equity in Orasis. There is no conflict of interest between Dr. Fernandez' academic and research responsibilities to U. T. Austin and his responsibilities as a director of Orasis. The activities by Orasis involve applied research and the development of prototype software products, and Dr. Fernandez' laboratory performs basic research.

LICENSE AGREEMENT

between

ORASIS SOFTWARE, INC.

and

THE UNIVERSITY OF TEXAS SYSTEM

THIS AGREEMENT (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, on behalf of THE UNIVERSITY OF TEXAS AT AUSTIN (UNIVERSITY), a component institution of SYSTEM, and ORASIS SOFTWARE, INC. (LICENSEE), a Texas corporation having a principal place of business located at 3355 Bee Caves Road #203, Austin, Texas 78746.

RECITALS

A. BOARD owns certain PATENT RIGHTS and COPYRIGHTS related to LICENSED TECHNOLOGIES which were developed at UNIVERSITY, a component institution of BOARD, and

B. BOARD desires to have LICENSED TECHNOLOGIES developed and used for the benefit of LICENSEE, the inventor, BOARD, and the public as outlined in the Intellectual Property Policy promulgated by the BOARD, and

C. UNIVERSITY and Texas A&M System have collaborated in research and the development of certain technologies related to complex systems **utilizing** neural networks and learning algorithms resulting in some invention disclosures jointly owned by both BOARD and the Texas A&M System, as well as related technologies solely invented by researchers from UNIVERSITY and by researchers **from** Texas A&M System; and

D. To facilitate and make possible **coordinated** protection and **commercialization** of these related intellectual properties, Texas A&M System and SYSTEM have entered into a Memorandum of Agreement (attached hereto as Exhibit A) **addressing** wherein SYSTEM and the Texas A&M System have agreed to divide royalties such that products developed by way of joint collaboration **between** researchers from the two Systems **agree** to one royalty, and

E. LICENSEE now desires to obtain a license to the subject technologies owned by the BOARD for the purpose of pursuing the **commercialization** of such **intellectual** property; and

NOW THEREFORE, in consideration of the mutual covenants and representations contained herein, and other good and valuable consideration, the **receipt** and sufficiency of which is hereby acknowledged the parties hereby agree as follows:

ARTICLE I - DEFINITIONS

1.1 "LICENSED TECHNOLOGIES" shall mean **the** technology, methods, algorithms, software and developments covered by PATENT or TECHNOLOGY RIGHTS or COPYRIGHTS described in the following Disclosure of Inventions:

- (i) SYSTEM's Disclosure of Invention No. 97-051 FER "Software - A Virtual Instrument for Continuous Equipment Condition Assessment and **End-of-Life Prediction**"; and
- (ii) SYSTEM's Disclosure of Invention No. 97-030 FER "(sigma)-Net: Statistica-Net - A Neural Network for Data Bounding and Confidence Measure Estimation of Static and Dynamic Systems"; and
- (ii) SYSTEM's Disclosure of Invention No. 97-031 **FER "GEN: Genetically-Engineered** Networks"; and
- (iv) SYSTEM's Disclosure of Invention No. 97-032 FER "i-CAMD: Intelligent Condition Assessment of **Mechatronic** Devices".

1.2 "PATENT RIGHTS" shall mean BOARD's rights in presently existing information or discoveries covered by patents and/or patent applications whether domestic or foreign to be filed, and all divisions, continuations, continuations-in-part, reissues, **reexaminations** or extensions thereof, and any letters patent that issue thereon, which name Benito Fernandez as either sole or joint inventor and which relate to the manufacture, use or sale of neural networks and learning algorithms.

1.3 "**TECHNOLOGY RIGHTS**" shall mean BOARD's rights in any technical information, know-how, procedure, technique, design, drawing, or data relating to neural networks and learning algorithms developed at **UNIVERSITY** prior to the **EFFECTIVE DATE** of this Agreement **which** are not covered by PATENT RIGHTS, but which are necessary for practicing the invention covered by PATENT RIGHTS.

1.4 "COPYRIGHTS" shall mean all domestic and international copyrights and registrations therefore protecting any aspect of the software and associated documentation which exists or is developed for use, development or implementation of the technology which may be described in the LICENSED TECHNOLOGIES **and/or** described or claimed in PATENT RIGHTS and TECHNOLOGY RIGHTS **which** name Benito Fernandez as author during the time he is employed by UNIVERSITY.

1.5 "FUTURE **TECHNOLOGIES**" shall mean any and all new discoveries, inventions, and/or improvements to LICENSED TECHNOLOGIES developed which name Benito **Fernandez** as author or inventor while on sabbatical **from** UNIVERSITY. Dr. Fernandez will notify UNIVERSITY, in writing, of the effective dates of his sabbatical.

1.6 "LICENSED PRODUCTS" shall mean any processes or products, including but not limited to, computer software, programs, architecture and the like, **which** are (a) SOLD, leased or sublicensed to a **third** party, or (b) used by LICENSEE in the provision of services of any kind to **third** parties, which **are** covered under any valid claim, in whole or in part, or which are within the scope of any COPYRIGHTS, in whole or in part.

1.7 “**NET SALES**” shall mean the purchase price, royalties, service fees, or license fees, rental **fees**, user **fees**, or any other sums whatsoever **collected by LICENSEE** for LICENSED PRODUCTS hereunder, less the sum of the following:

- (a) sales taxes, tariff duties and/or use taxes directly imposed with reference to particular sales;
- (b) outbound transportation prepaid or allowed;
- (c) amounts allowed or credited on returns.

Should **LICENSED PRODUCTS** be packaged or **combined** with other processes, products or software, and sold, leased or sublicensed by LICENSEE or SUBSIDIARY as a comprehensive product package, **NET SALES** shall be computed by multiplying the net sales of the total packaged product(s) by the “SYSTEM PERCENTAGE.”

It is understood that consideration **from** the SALB of beta units or contracts for test pilot studies or other **contractual** obligations that do not result in direct sales of LICENSED PRODUCTS, as well as proceeds that are considered part of a start-up funding or additional rounds of **financing**, shall not be considered **NET SALES**. It is further understood by LICENSEE that **LICENSEE** shall not provide or exchange LICENSED PRODUCTS for any type of consideration in lieu of payment of royalties as described in paragraph 3.3 of this agreement, and **LICENSEE** shall report any consideration of any kind received **from** the transfer of beta units or contracts to third parties and any and all consideration of any kind received involving start-up funding and/or additional **financing** in annual reports **as** described in paragraph **5.3(b)** hereinbelow

No deductions shall be made for commissions paid to individuals, whether they be with independent sales agencies or regularly employed by LICENSEE and on its payroll, or for the cost of collections. **LICENSED PRODUCTS** shall be considered “sold” upon payment of product invoice. Receipts **from** transactions which are not made at arm’s length shall be assigned the value they would have had in similar **commercial** sales made at arm’s length.

1.8 The “SYSTEM PERCENTAGE” shall mean the percentage of the **total** product package attributable to or consisting of **LICENSED PRODUCTS**, such **percentage** to be mutually determined in writing and agreed upon by BOARD and LICENSEE with each **product** or package developed and marketed by LICENSEE. The percentages established shall also be applicable to any deductions permitted hereinabove.

1.9 “**EFFECTIVE DATE**” shall mean the latest date this Agreement is executed by LICENSEE, UNIVERSITY, and content approved by the **Office** of General Counsel

1.10 “**FUNDING DATE**” shall mean one year **from** the **EFFECTIVE DATE** or upon securing one million dollars (\$1,000,000) in start-up funding, whichever comes **first**.

1.11 “**SUBSIDIARY**” shall mean any business entity **more** than fifty percent (50%) owned by LICENSEE, any business entity which owns more than fifty (50%) of

LICENSEE, or any business entity that is more than fifty percent (**50%**) owned by a business entity that owns more than fifty percent (**50%**) of LICENSEE.

- 1.12 “SALE” or “SOLD” shall **mean** the transfer or disposition of a LICENSED PRODUCT for value to a party other than LICENSEE or a SUBSIDIARY.

ARTICLE II - GRANT

- 2.1 Grant. Subject to the terms and conditions of this **Agreement** and the reservations outlined in paragraphs 2.2, 2.3, and 2.4 below, BOARD hereby grants to LICENSEE the exclusive, worldwide license and right to make, have made, use, lease, rent, sell, and distribute LICENSED PRODUCTS, or otherwise practice LICENSED TECHNOLOGIES, and to grant sublicenses of the same scope, to the end of the term of this Agreement. Furthermore, BOARD hereby grants to LICENSEE a one hundred twenty (120) day right of **first** refusal to negotiate for license rights to FUTURE TECHNOLOGIES.
- 2.2 Reservation. BOARD hereby reserves an irrevocable, nonexclusive, royalty-free right to LICENSED **TECHNOLOGIES** for research and educational purposes only, and not for commercial purposes, during the term of this Agreement.
- 2.3 BOARD retains the right to publish the general scientific **findings from** research related to LICENSED TECHNOLOGIES. Furthermore, BOARD hereby reserves the right to use technology comprising LICENSED TECHNOLOGIES in **any future** research and in development programs sponsored by the U.S. Government or the State of Texas, and rights required to be **granted** to the U.S. **Government** or the State of Texas.
- 2.4 **Government** Rights. Rights to LICENSED TECHNOLOGIES granted under this Agreement are subject to rights **required** to be granted to **the** Government of the United States of America pursuant to 35 U.S. Code, **200-211**.

ARTICLE III - CONSIDERATION

- 3.1 Licensee Fee. As consideration for **the** license granted herein, LICENSEE agrees to pay BOARD a nonrefundable royalty fee in the amount of ten thousand dollars (\$10,000). Two thousand five hundred (\$2,500) dollars shall be due and payable ninety (**90**) days **from** the EFFECTIVE DATE of this Agreement with **the** balance of seven **thousand** five hundred (\$7,500) dollars due and payable one year from the EFFECTIVE DATE.
- 3.2 Patent Expenses. As additional consideration for **the** license granted herein, LICENSEE **shall** fund the future prosecution of patents and/or patent applications for protection of LICENSED TECHNOLOGIES, as more fully described in **Article VI**. LICENSEE shall pay all patent expenses **directly** to the legal counsel selected **upon the** mutual consent of both parties, with copies of invoiced payments sent to **BOARD**.
- 3.3 Royalty on LICENSED PRODUCT. As additional consideration for the license granted herein, LICENSEE shall remit to BOARD and Texas A&M System a combined total royalty of **three percent** (3%) of NET SALES of LICENSED PRODUCT made by LICENSEE or any SUBSIDIARY, such royalty payment to be **distributed** to the BOARD and Texas A&M System in accordance with distribution formulas set forth in the attached **Memorandum** of Agreement, Exhibit

- A. Should a LICENSED PRODUCT be **claimed** under more **than** one of the intellectual properties which comprise **PATENT RIGHTS** or **COPYRIGHTS**, BOARD agrees and consents that only one royalty rate shall be applied against **NET SALES** for such LICENSED PRODUCT, the rate as set forth hereinabove.
- 3.4 Royalty on **COPYRIGHTS**. In the event that a subject patent application claiming features of a LICENSED PRODUCT fails to issue, and the LICENSED PRODUCT is **thereafter** subject only to the scope of copyright protection for software transferred to LICENSEE for **implementation** of the expected patent claims, then the royalty rate on **COPYRIGHTS** shall be negotiated and agreed, in writing, by both parties in good faith.
- 3.5 Minimum Annual Consideration. Should annual royalties paid to BOARD from **NET SALES** of LICENSED PRODUCT not equal or surpass the minimum annual consideration amounts set forth below, in order to maintain this exclusive license, LICENSEE shall pay to the BOARD minimum annual consideration according to the following schedule:
- Year 1 (2,000) - \$5,000
 - Year 2 (2,001) - \$10,000
 - Year 3 (2,002) - \$10,000
 - Year 4 (2,003) - \$50,000
 - Year 5 (2,004) - \$50,000
 - Year 6 (2,005) and each year that the license agreement is in effect thereafter - **\$100,000**

In the event that LICENSEE does not achieve any **NET SALES** in the calendar year, or that running royalties for **the** Calendar year do not achieve the required minimum, **LICENSEE's** royalty payment for the last quarter of the calendar year shall include payment of the balance needed to achieve the minimum annual consideration for that calendar year. In **the** event that this **Agreement** expires or is **terminated** prior to the end of a calendar year in which such minimum annual consideration is due, the minimum annual consideration shall be prorated for the year.

ARTICLE IV - SUBLICENSES

- 4.1 Sublicenses. LICENSEE may grant royalty-bearing sublicenses hereunder to persons, **firms**, or corporations for further distribution of LICENSED PRODUCTS. **The** terms and conditions of such sublicenses shall be consistent with the terms of this Agreement, further **LICENSEE** shall be responsible for its sublicensees relevant to the Agreement. LICENSEE shall pay BOARD twenty-five percent (25%) of any and all such **consideration** received or due **from** sublicensee.
- 4.2 Reporting. LICENSEE shall **notify** BOARD of the grant of a sublicense to any **third** party, and upon request shall promptly provide BOARD with **true** and accurate copies of all executed sublicenses within thirty (30) days of such request. LICENSEE shall also provide copies of such sublicensee's quarterly reports as are pertinent to calculation of SYSTEM's consideration **hereunder**.

- 4.3 Non-cash transactions. LICENSEE shall not accept anything of value from sublicensee in lieu of money payment under a sublicense of LICENSED TECHNOLOGY without the express written consent of the BOARD. Such consent shall not be unreasonably withheld.
- 4.4 Sublicense obligations. LICENSEE agrees that any sublicenses granted by it shall provide that the obligations to the BOARD of Article XI, and paragraphs 13.1, 13.2 and 13.3 of this Agreement shall be binding upon the sublicensee(s) as if it were a party to this Agreement. LICENSEE further agrees to include or attach copies of these Articles and paragraphs to any sublicense agreements.

ARTICLE V - DUE DILIGENCE

- 5.1 Commercial Development. LICENSEE agrees to use reasonable efforts to develop and commercialize LICENSED PRODUCTS. In addition to milestones described in paragraph 5.2, reasonable efforts may include ongoing and active research, development, manufacturing, marketing or licensing programs as appropriate, directed toward production and SALE of LICENSED PRODUCTS.
- 5.2 Milestones. In addition, LICENSEE shall adhere to the following milestones:
- (a) LICENSEE shall deliver to BOARD a detailed business plan which shall include at a minimum, development and commercialization plans, financial projections, biographical data and resumés of company executives, and an accounting of investors and potential investors. This information shall be subject to the confidentiality provisions of paragraph 8.4 and shall be delivered to BOARD no later than ninety (90) days from the EFFECTIVE DATE of this Agreement.
 - (b) Within sixty (60) days following the close of each calendar year, LICENSEE shall deliver to BOARD a written report as to LICENSEE's efforts and accomplishments during the preceding year in commercializing LICENSED PRODUCTS, as well as its commercialization plans for the coming year. This information shall be subject to the confidentiality provisions of paragraph 8.4
 - (c) LICENSEE shall complete development of a commercial prototype of a LICENSED PRODUCT within twenty-four (24) months following FUNDING DATE.
 - (d) LICENSEE shall record first SALE of a LICENSED PRODUCT within sixty (60) months of the FUNDING DATE.
 - (e) LICENSEE shall secure funding of not less than five hundred thousand (\$500,000) dollars within thirty (30) months of the EFFECTIVE DATE of this Agreement.
- 5.3 Failure to Accomplish Milestone or Record NET SALES. Should LICENSEE fail to achieve milestones specified in paragraph 5.2 above, or should LICENSEE fail to record NET SALES for two (2) consecutive calendar years once SALES begin (as required by paragraph 5.2(d)), the BOARD, at its sole option, may waive the requirement to achieve the milestone, may renegotiate the milestone, may revise the license to a nonexclusive license, or may terminate this Agreement in accordance with paragraph 9.3.

ARTICLE VI- PATENTS

- 6.1 U.S. Patent Applications. Upon execution of this Agreement, LICENSEE shall file one or more U.S. patent application(s) with the U.S. Patent **and** Trademark **Office** for protection of the Disclosures of Invention comprising LICENSED TECHNOLOGIES. Such application(s) to be tiled no later than (i) twelve (12) months following the Effective Date, and/or (ii) sixty (60) days prior to any bar date wherein the **opportunity** to protect PATENT RIGHTS may be lost if a patent application is not filed with the U.S. Patent and Trademark Office.
- (a) The number and scope of each application(s) shall be mutually determined by **BOARD**, LICENSEE and legal counsel, in regard to the technology described in paragraph '1.1. Such determinations shall be made as a result of **good** faith discussions between the parties to assure appropriate protection for the LICENSED TECHNOLOGIES.
 - (b) The LICENSEE shall prosecute-to-completion all U.S. patent application(s) comprising PATENT RIGHTS. "Prosecution to completion" shall **mean** diligent prosecution of the original and any continuing patent applications before the U.S. Patent and **Trademark Office** to issuance or to a final rejection. LICENSEE is not required to, but may at its discretion, pursue an appeal to the Board of Patent Appeals and Interferences, or the Federal **Circuit** Courts, or similar action in foreign countries.
 - (c) The LICENSEE **shall** maintain, at its own expense, any U.S. patents issuing from the prosecution described hereinabove.
 - (d) In the event that LICENSEE determines not to secure patent protection for any LICENSED TECHNOLOGIES, or determines to abandon any such application or issued patent, and **BOARD** determines that patent applications should be pursued or patents maintained, then **BOARD** shall have the right to tile, prosecute and/or **maintain** such patent applications and patents at its own expense. In such case, LICENSEE shall have no rights in patent applications tiled and prosecuted, and/or patents maintained at BOARD's expense.
- 6.2 Foreign Patent Applications. At its sole **discretion** and expense, LICENSEE may file, prosecute and maintain foreign patent applications and patents corresponding to the above-referenced U.S. applications in **accordance** to the following: LICENSEE shall inform BOARD, in writing, within three (3) months from the date of filing for each U.S. Patent Application as to its selection of foreign countries in which it intends to seek patent **protection** for each respective technology. LICENSEES shall do so at its own expense. LICENSEE shall diligently prosecute and maintain corresponding **foreign** patent applications and patents in countries selected by LICENSEE BOARD shall have the right to file, prosecute and maintain corresponding **foreign** patent applications at its own expense in those foreign countries not initially selected by LICENSEE, or subsequently abandoned by LICENSEE. In such case, LICENSEE shall have no rights in such patent applications tiled and prosecuted, and/or patents maintained in such foreign **countries** at BOARD's expense.
- 6.3 Information. LICENSEE shall provide **BOARD** the opportunity to provide input during the preparation of the patent application(s) and any official proceedings

thereafter, including, but not limited to (i) technical input to all applications, office actions and similar proceedings, and (ii) proposed costs and/or estimates for patent applications, office actions and other official proceedings. Furthermore., the LICENSEE shall keep BOARD promptly and fully informed of the status of patent prosecution or other proceedings. LICENSEE shall provide copies to BOARD of all patent applications filed by the LICENSEE comprising LICENSED TECHNOLOGIES, as well as all information received concerning office actions, the initiation or possible initiation of any interference, opposition, i-e-examination, reissue, revocation, nullification or any other patent office official proceeding. Choice of patent counsel shall be mutually agreed, in writing, by BOARD and LICENSEE.

- 6.4 **Financial Responsibility.** LICENSEE shall be responsible for all expenses invoiced by legal patent counsel for the prosecution and maintenance described in paragraphs 6.1 and 6.2 (with the exception of any domestic or foreign prosecution or maintenance elected at BOARD's expense). LICENSEE shall render payment for such expenses directly to me law firm with copies to BOARD.
- 6.5 **Proprietary Rights.** All patent rights and other pmpropriary tights hereunder **pertaining** to LICENSED TECHNOLOGIES am vested in and solely owned by BOARD, with the exception to the. technology described in paragraph 1.1(i) which is owned by BOARD and Texas A&M System jointly. LICENSEE shall take all reasonable action to protect such proprietary rights. All patent applications prosecuted under Section 6.1 and 6.2 shall be issued in me name of BOARD, with the exception to me technology described in paragraph 1.1(i) which is jointly owned with the Texas A&M System.
- 6.6 **Ownership Rights of Technology.** Any and all **future** inventions developed solely by employees of **UNIVERSITY** shall be **owned** solely by BOARD. Any and all future inventions developed by employees and agents of me LICENSEE shall be owned solely by the LICENSEE. Any and all **future** inventions developed jointly by employees and/or agents of BOARD and employees and/or agents of LICENSEE shall be jointly owned by the BOARD and LICENSEE.

ARTICLE VII - PAYMENTS AND REPORTS

- 7.1 **When Payments Are Due.** Payments shall be due and payable each calendar quarter. Such payments and reports shall be made to BOARD in cam of Patricia C. Ohlendorf, **The University of Texas at Austin, 201 Main Building (G1000), Austin, Texas 78711-1111** with a copy to Office of Technology Licensing and **Intellectual Property, The University of Texas At Austin, MCC Building, Suite 1.9A (R3500), 3925 West Braker Lane, Austin, TX 78759, Attention: Director,** not later than sixty (60) days after the last day of the calendar quarter in which they accrue.
- 7.2 **Royalty Reports.** With each quarterly payment, LICENSEE shall provide information sufficient to allow BOARD to **calculate** the royalty due that quarter. This information shall include, at a minimum, sales receipts, sublicensee reports, deductions **permitted under** this Agreement and royalty due. No quarterly **reports are** due until the **first** SALE of LICENSED PRODUCTS begin. After product sales begin, quarterly reports shall be **provided** even if no royalties accrued during the quarter.

- 7.3 Currency. Payments shall be in United States dollars, without deduction for taxes, assessments or fees of any kind. If any currency conversion shall be required in connection with the payment of royalties hereunder, such conversion shall be made using the exchange rate **prevailing** at the Chase **Manhattan** Bank (N.A.) on the last **business** day of the calendar quarter **reporting** period to which royalty payments **relate**.
- 1.4 Inspection of Books and Records. At its own expense, BOARD may annually inspect LICENSEE's books and records as needed to determine royalties due to BOARD. LICENSEE shall maintain such books and records for at least three (3) years following the dates of the underlying transactions. Any such inspections shall be in confidence and conducted during **ordinary** business hours, and BOARD will provide LICENSEE prior notice of two (2) weeks before making such inspections. BOARD may employ a Certified Public Accountant for this purpose.
- 1.5 Interest charges. Overdue royalty payments shall accrue interest until payment at the rate of one and one-half percent (1.5%) per month, or the highest rate permitted by law, whichever is lower. The payment of such interest shall not foreclose **SYSTEM** from exercising any **other** rights it may have as a consequence of the lateness of any payment.



- 8.1 **Confidential Information Identified.** Obligations of confidentiality cover all information which any party to this Agreement discloses to any other party, provided that the information **concerns** or arises out of this Agreement and is made in a written document marked "**Proprietary** and **Confidential.**" This information is called "**CONFIDENTIAL INFORMATION.**" However, **the** following classes of **information are specifically excluded from this definition of "CONFIDENTIAL INFORMATION":**
- (a) Information which is available to the public at the time it is disclosed;
 - (b) Information which becomes available to **the** public without a breach of this **Agreement;**
 - (c) **Information** which the recipient already possesses at the time it is disclosed;
 - (d) Information **which** is internally developed by the recipient independently of and wholly without knowledge of the **CONFIDENTIAL INFORMATION;** and
 - (e) Information which is lawfully disclosed to the recipient by a third party which makes such **disclosure** without a breach of any secrecy Agreement.
- 8.2 Secrecy. The recipient shall hold the **CONFIDENTIAL INFORMATION** in confidence and shall not disclose it nor permit it to be disclosed to any other party. The recipient shall use the **CONFIDENTIAL INPORMATION** solely for the purposes of this Agreement.
- 8.3 **Governmental Disclosure.** It is understood that the recipient of any **CONFIDENTIAL INFORMATION** shall not be **precluded from** disclosing such **CONFIDENTIAL INFORMATION** if such disclosure is made in response to a valid order of a court or other governmen tal body of the United States or any

political subdivision thereof or any opinion of the Attorney General of Texas; provided however, that the recipient **first shall** have given sufficient notice to the disclosing party to **allow** the **other** party to **seek protection** from such order. Furthermore, it is understood **and agreed** that nothing in this **Agreement** shall prevent either party from disclosing information to the United States or any State or foreign government, or to any agency or representative thereof, which is required to be disclosed by law or regulation or to satisfy any governmental **regulation** relating to the use of the LICENSED PRODUCTS. It is understood and agreed that disclosure of CONFIDENTIAL INFORMATION may be made to the U.S. Patent and Trademark Office, and to comparable foreign patent offices, for purposes of securing and prosecuting patent application(s).

- 8.4 Protective Measures. To protect the confidentiality of the CONFIDENTIAL INFORMATION, **the recipient** shall take the same **measure** which it takes to protect the **confidentiality** of its own confidential information, and shall take those measures which a prudent business person would take to protect valuable, secret, proprietary information.

ARTICLE IX - TERM AND TERMINATION

- 9.1 Expiration. This Agreement unless sooner terminated as **provided** herein, shall remain in **effect** until the expiration of the **last-to-expire** of the patent(s) under the PATENT RIGHTS, or if no patents issue, for 15 years from the **EFFECTIVE DATE** of this Agreement
- 9.2 **Termination** by LICENSEE. LICENSEE may **terminate** this Agreement by providing written notice to BOARD at least ninety (90) days before. such termination is to take effect.
- 9.3 Termination by BOARD. If LICENSEE defaults in making payments under this Agreement, or fails to satisfy due **diligence** requirements specified in Article V, or otherwise materially breaches this Agreement, BOARD may give LICENSEE written notice of such breach. LICENSEE shall have a period of ninety (90) days from receipt of such notice to cure the breach. If LICENSEE does not cure the breach to the reasonable satisfaction of BOARD within this period, BOARD may terminate this Agreement by giving written notice of its election to do so.
- 9.4 Licensee's Financial Condition. If LICENSEE: (a) ceases to carry on its business, or (b) becomes "insolvent" under chapter 7 (as such term is defined in the United States Bankruptcy Code, as may be **amended** from time to time), or (c) fails to pay its debts in the **ordinary** course of business under conditions indicating insolvency, or **(d)** voluntarily seeks, consents to or acquiesces in the benefits of any bankruptcy or similar debtor-relief laws, then BOARD may **terminate** this Agreement without prejudice to any other remedy to which BOARD may **be** entitled at law or in equity or elsewhere under this Agreement, by giving written notice of such termination to LICENSEE.
- 9.5 **Return** of Rights. Should this **Agreement** be **terminated** under either paragraphs 9.2, 9.3, or 9.4 above, any and all rights, licenses and claims **hereunder** shall be returned by LICENSEE to BOARD. All CONFIDENTIAL INFORMATION shall be promptly returned to the respective parties.
- 9.6 Swival of Sublicenses. Any sublicense granted by LICENSEE under this Agreement shall survive termination of this **Agreement**. Upon termination of this

Agreement under paragraphs 9.2, 9.3, or 9.4 above, **LICENSEE** shall assign to BOARD all of its rights in such sublicenses.

- 9.7 **Other Matters** Surviving Termination. All **accrued** obligations and claims, including royalty obligations and claims or causes of action for **breach** of this Agreement, shall survive termination of this Agreement. Obligations of **confidentiality** shall survive **termination** of this Agreement. This section 9.7 **controls** in the case of a conflict with any other section of this Agreement.

10.1 Notice of Infringement. BOARD and LICENSEE shall promptly notify the other party, in writing, of any alleged infringement of any **PATENT RIGHTS and/or COPYRIGHTS**. Within thirty (30) days after receipt of such notice, BOARD and LICENSEE shall meet and mutually agree upon a strategy for resolving the alleged infringement.

10.2 Legal Process. LICENSEE shall have the right, but no obligation, to pursue legal process to redress the alleged infringement. LICENSEE, with written approval from SYSTEM, may bring such process in the name of BOARD and subject to the **statutory** authority of the Attorney General of the State of Texas may make BOARD a party plaintiff or otherwise **appropriate** participant in such process. LICENSEE shall indemnify BOARD against any **order** for costs that may be made against BOARD in such proceedings. LICENSEE is **entitled** to bring legal action for past and present infringement and seek injunctions for future actions of infringement.

10.3 **Monetary** Recovery. Any monetary **recovery** for an **infringement** in a suit brought by LICENSEE shall be applied in the following **manner**: first, to LICENSEE's documented legal expense; second, distributed to BOARD according to the royalty payment (as **defined** in paragraphs 3.3 and/or 3.4 and in the **attached Memorandum of Agreement**), with balance of recovery to **LICENSEE**.

10.4 Cooperation. BOARD and LICENSEE shall cooperate in any legal process concerning alleged infringement of **PATENT RIGHTS**. Each party shall, to the fullest extent possible, make available its employees, records, information and the like as are relevant to the legal process.

10.5 Action by BOARD. Should LICENSEE choose not to pursue legal action to redress the alleged infringement, BOARD may do so at its own expense. Any **monetary** recovery resulting **from** such pursuit shall be applied in the following **manner**: first to SYSTEM's documented legal expenses; second, distributed as follows: **zero** (0) percent to LICENSEE, and one **hundred** (100) percent to BOARD.

ARTICLE XI - LIABILITY

11.1 Patent **Infringement Indemnification**. LICENSEE shall at all times during the term of this Agreement and thereafter, indemnify, defend and hold harmless BOARD, SYSTEM, UNIVERSITY, its regents, officers, employees, and affiliates, against any claim, proceeding, demand, liability, or expense (including legal expenses and reasonable **attorney's fees**) which relates to any causes of action brought by a third party alleging infringement of a domestic or foreign patent resulting **from** the activities of LICENSEE, its **SUBSIDIARIES** or sublicensees under this Agreement.

- 11.2 Product Liability and **Indemnification**. LICENSEE shall at all times during the terms of this **Agreement** and **thereafter, indemnify**, defend and hold harmless BOARD, SYSTEM, **UNIVERSITY**, its **regents**, officers, employees, and **affiliates**, against any claim, proceeding, demand, liability, or expenses (including legal expenses and reasonable attorney's fees) which relates to injury or death to persons or damage to property, or against any other claim, proceeding, demand, expense and liability of any kind whatsoever resulting from the production, manufacture, sale, use, lease, consumption or advertisement of LICENSED PRODUCTS or arising from any obligation or activities of LICENSEE, its SUBSIDIARIES, or sublicensees under this Agreement.
- 11.3 Representation. BOARD represents that it owns or has obtained rights to the LICENSED TECHNOLOGIES, and that it has the full right and power to grant the license set forth in paragraph 2.1. and that there are no outstanding agreements, assignments, or encumbrances inconsistent with the provisions of **this Agreement** **BOARD MAKES NO OTHER REPRESENTATIONS AND EXTENDS NO OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR DOES BOARD ASSUME ANY OBLIGATIONS WITH RESPECT TO INFRINGEMENT OF LICENSED TECHNOLOGY OR OTHER RIGHTS OF THIRD PARTIES DUE TO LICENSEE'S ACTIYITIES UNDER THIS AGREEMENT.**

ARTICLE XII - NOTICES

- 12.1 Notices. Notices or other communications required by this Agreement shall be sufficiently made or given if mailed by **Certified** First Class United States mail, postage prepaid, or by **commercial** carrier (e.g., Federal Express, Airborne, etc.), when such carrier maintains receipt of record of delivery, addressed to the address stated below, or to the last address **specified** in writing by the intended recipient

(a) **If to BOARD:**

Board of Regents
The University of Texas System
201 West 7th Street
Austin, TX 78701
ATTENTION: Office of General Counsel
FAX: (512) 499-4523
PHONE: (5 12) 499-4462

with a copy to:

Office of Technology Licensing and Intellectual **Property**
The **University** of Texas at Austin
MCC Building, Suite **1.9A (R3500)**
3925 West **Braker** Lane
Austin, Texas 78759
ATTENTION: Director
FAX: (512) 475-6894
PHONE: (512) 471-2995

(b) If to LICENSEE:

George E. Todd, VP of Finance
Orasis Software, Inc.
3355 Bee Caves Road, Suite 203
Austin, Texas 78746

ARTICLE XIII - MISCELLANEOUS PROVISIONS

- 13.1 Export Controls. It is understood that BOARD and LICENSEE are subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes **and** other commodities, and that its obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may **require** a license from the cognizant agency of the United States Government and/or written assurances by LICENSEE that LICENSEE shall not **export** data or commodities to certain foreign countries without prior approval of such agency. BOARD does not represent that a license shall not be required nor does it represent that, if required, a license shall be issued.
- 13.2 Non-Use of Names. LICENSEE shall not use the names of BOARD, SYSTEM, or UNIVERSITY, or of any of its employees or components, or any adaptation thereof, in any advertising, promotional or sales literature without the prior written consent obtained **from** BOARD in each case, except that LICENSEE may state that it is licensed by BOARD to one or more of the patents and/or applications comprising the PATENT RIGHTS and COPYRIGHTS.
- 13.3 Trademarks. LICENSEE **shall** have the right to **select**, own and use its own trademark(s) on the LICENSED TECHNOLOGIES. However, nothing herein shall be construed as granting to LICENSEE any license or other right under any trade **name**, trademark, or service mark owned or licensed by BOARD. Conversely, BOARD **shall** have no rights to **trade** names, trademarks, or service marks owned by LICENSEE.
- 13.4 Funding. It is understood that royalty and other payments due BOARD as specified in Article **III** are just returns to BOARD in consideration of the grant made herein to LICENSEE, and shall not **be** construed in any manner to be funding for additional research or consulting.
- 13.5 Principal Investigator. LICENSEE acknowledges and agrees that any officers, directors, or employees of LICENSEE, or of any company in which rights to the PATENT RIGHTS have been or shall be acquired from or **through** LICENSEE, who are also recorded by BOARD as inventors of such PATENT RIGHTS, and who are employed by SYSTEM, shall be **required** to obtain the prior, written approval of BOARD to hold such concurrent positions.
- 13.6 Assignment of this Agreement The Agreement may not be assigned or transferred without the prior written consent of **both** parties. Upon merger or acquisition of LICENSEE, all provisions of this Agreement shall be transferred to the new entity with the written consent of BOARD.
- 13.7 Patent Marking. LICENSEE agrees to mark **permanently** and legibly all LICENSED PRODUCTS and documentation manufactured or SOLD under this Agreement with such patent notice as may be permitted or required under **Title** 35, United States Code.

- 13.8 Force Majeure. Each party shall be excused from any breach of this Agreement which is proximately caused by government regulation, war, strike, act of God, or other similar **circumstance** normally deemed outside the control of well-managed businesses.
- 13.9 Execution and **Modification**. This Agreement will become binding only when signed by both parties. It may be modified or amended only by a **writing** and signed by the parties.
- 13.10 Entire Agreement. This **Agreement** contains the entire understanding of the parties with respect to the LICENSED TECHNOLOGIES and supersedes all other written and oral **agreements** between the parties **with** respect to the LICENSED TECHNOLOGIES.
- 13.11 Governing Law. This Agreement shall be construed under the Constitution and laws of the State of Texas.
- 13.12 Headings. Headings appear solely for convenience of reference. Such headings are not part of **this** Agreement and shall not be used to construe this Agreement.
- 13.13 Provisions. If any provision or provisions of this **Agreement** shall be 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.

IN WITNESS WHEREOF, the parties have caused this **Agreement** to become effective as of the date last executed below by a signatory to this Agreement

ORASIS SOFTWARE, INC.

BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM

George E. Todd
Vice President of Finance
Date:_____

Ray Farabee
Vice **Chancellor** and General Counsel
Date:_____

APPROVED AS TO CONTENT:

Patricia C. Ohlendorf
Counsel to the President
Vice Provost
The University of Texas at Austin
Date:_____

APPROVED AS **TO FORM:**

Beth Lynn Maxwell
Office of General Counsel
Date:_____

5. U. T. El Paso: Approval of a Patent License Agreement with Layton BioScience, Atherton, California, and Authorization for the U. T. Board of Regents to Acquire Equity Therein and for Dr. Donald E. Moss to Acquire Equity in and Serve as a Member of the Scientific Advisory Board of Layton BioScience.--The Board, upon recommendation of the Academic Affairs Committee:
- a. Approved the Patent License Agreement set out on Pages 64 - 73 between the U. T. Board of Regents, for and on behalf of The University of Texas at El Paso, and Layton BioScience, Atherton, California
 - b. Authorized the acquisition of equity in Layton BioScience by the U. T. Board of Regents and approved the acquisition of equity in and service as a member of Layton BioScience's Scientific Advisory Board by Dr. Donald E. Moss, Professor of Psychology at U. T. El Paso.

Dr. Donald E. Moss has created inventions related to sulfonyl fluorides for the treatment of dementia, including: "Sulfonyl Fluorides For The Treatment of Alzheimer's Disease," as described in Invention No. UTEP:001GA (here-after the "Invention").

Under the Patent License Agreement, Layton BioScience (Layton) is granted a royalty-bearing, exclusive, worldwide license to manufacture, have manufactured, use, and sell the Inventions. In consideration for this license, Layton will: (a) issue the U. T. Board of Regents ten thousand (10,000) fully paid, nonassessable shares of its Series D Preferred Stock, \$8.00 per share market value, which shares of stock shall equal approximately 0.27% of all shares of its stock outstanding after Series D is completed; (b) pay a running royalty of five percent (5%) of net sales for licensed products unless a competitor receives United States Federal Drug Administration or equivalent governmental approval in another country or other countries to sell a product containing a sulfonyl fluoride as an active compound for human therapeutic use in treating dementia at which time the running royalty shall be reduced to two and one-half percent (2.5%) of net sales for licensed products in the country or countries in which such governmental approval has been

obtained for said other sulfonyl fluoride; and (c) pay one-half of royalties received by Layton from any sublicensee not to exceed five percent (5%) of such sublicensee's net sales. Additionally, Layton will pay all patent prosecution and maintenance costs, including foreign filings in such countries in which its license remains exclusive.

Dr. Moss has requested approval to serve on Layton's Scientific Advisory Board and may acquire stock options for up to 10,000 shares over a four-year period. U. T. El Paso has determined that no conflict of interest exists between Dr. Moss' academic and research responsibilities to U. T. El Paso and his responsibilities as a scientific advisor to Layton because the activities of Layton involve applied research and Dr. Moss' laboratory performs basic research. Further, Dr. Moss' Scientific Advisory Board activities will be done in a manner that does not interfere with his research and teaching duties.

PATENT LICENSE AGREEMENT

THIS 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, and LAYTON BIOSCIENCE, a DELAWARE corporation having a principal place of business located at 105 Reservoir Road, **Atherton**, CA 94027 (“Licensee”).

RECITALS

A. Board owns certain Patent Rights and Technology Rights related to Licensed Subject Matter, which were developed at The University of Texas at El Paso (“University”), a component institution of System.

B. Board desires to have the Licensed Subject Matter developed and used for the benefit of Licensee, the inventor, Board, and the public as outlined in the Intellectual Property Policy promulgated by the Board.

C. Licensee wishes to obtain a license from Board to practice Licensed Subject Matter.

D. Licensee is a privately held company which expects to go public on or before December 31, 1999.

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

1. EFFECTIVE DATE

This Agreement shall be effective as of _____, 1998 (the “Effective Date”), subject to approval by Board.

2. DEFINITIONS

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

2.1 “Licensed Field” shall mean the treatment of dementia.

2.2 “Licensed Product” shall mean any product Sold by Licensee comprising Licensed Subject Matter pursuant to this **Agreement**.

2.3 “Licensed Subject Matter” shall mean inventions and discoveries covered by Patent Rights or Technology Rights within Licensed Field.

2.4 “Licensed Territory” shall mean worldwide.

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2.5 "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).

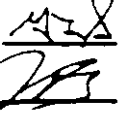
2.6 "Patent Rights" shall mean Board's rights in information or discoveries covered by patents and/or patent applications, whether domestic or foreign, and all divisions, continuations, continuations-in-part, reissues, recombinations or extensions thereof, and any letters patent that issue thereon, which name Donald E. Moss as either sole or joint inventor and which relate to the manufacture, use or sale of sulfonyl fluorides to treat dementia.

2.7 "Sale or Sold" shall mean the transfer or disposition of a Licensed Product for value to a party other than Licensee or a Subsidiary.

2.8 "Subsidiary" shall mean any business entity more than fifty percent (50%) owned by Licensee, any business entity which owns more than fifty percent (50%) of Licensee, or any business entity that is more than fifty percent (50%) owned by a business entity that owns more than fifty percent (50%) of Licensee.

2.9 "Technology Rights" shall mean Board's rights in any technical information, know-how, process, procedure, composition, device, method, formula, protocol, technique, software, design, drawing or data* relating to the therapeutic use of sulfonyl fluorides which are not covered by Patent Rights but which are necessary for practicing the invention at any time covered by Patent Rights. *insert "created by Dr. Moss at University"

change
approved:



3. WARRANTY: SUPERIOR-RIGHTS

3.1 Except for the rights, if any, of the Government of the United States, as set forth below, Board represents and warrants its belief that it is the owner of the entire right, title, and interest in and to Licensed Subject Matter, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.

3.2 Licensee understands that the Licensed Subject Matter may have been developed under a funding agreement with the Government of the United States of America and, if so, that the Government may have certain rights relative thereto. This Agreement is explicitly made subject to the Government's rights under any such agreement and any applicable law or regulation. To the extent that there is a conflict between any such agreement, applicable law or regulation and this Agreement, the terms of such Government agreement, applicable law or regulation shall prevail.

4. LICENSE

4.1 Board hereby grants to Licensee a royalty-bearing, exclusive license under Licensed Subject Matter to manufacture, have manufactured, and/or sell Licensed Products within Licensed Territory for use within Licensed Field. This grant shall be subject to the payment by

PATENT LICENSE AGREEMENT

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Licensee to Board of **all** consideration as provided in this Agreement, and shag be **further subject** to rights retained by Board to:

- a. Publish the general scientific findings from research related to Licensed Subject Matter; and
- b. Use any information contained in Licensed Subject Matter for research, teaching and other educationally-related purposes.

4.2 Licensee shag 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.

4.3 Licensee shag have the right to grant sublicenses consistent with this Agreement provided that Licensee shag be responsible for the operations of its sublicensees relevant to this Agreement as if such operations were carried out by Licensee, including the payment of royalties whether or not paid to Licensee by a sublicensee. Licensee **further** 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. Upon termination of this Agreement, any and **all** existing sublicenses granted by Licensee shag be assigned to Board.

4.4 Board shag have the right at any time **after** two (2) years **from** the date of this Agreement, to terminate the exclusivity of the license granted herein in any national political 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 shag have the right at any time **after** three (3) years **from** the date of this Agreement to terminate the **license** completely in any national political 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 Licensed Products within such jurisdiction shag be deemed satisfactory evidence.

5. PAYMENTS AND REPORTS

5.1 In consideration of rights granted by Board to Licensee. under this Agreement, Licensee agrees to pay Board the following:

- a. A running royalty equal to five percent (5%) of Net Sales for Licensed Products unless a competitor receives United States **F.D.A.** or **equivalent** governmental approval in another country or other countries to sell a product containing a **sulfonyl** fluoride **as** an active compound for human therapeutic use in treating dementia at which time the running royalty shag be reduced to two and one-half

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percent (2.5%) of Net Sales for Licensed Products in the country or countries in which such governmental approval has been obtained for said other **sulfonyl fluoride**:

- b. One half of royalties received by licensee **from** any sublicensee not to exceed five percent (5%) **of Net Sales**.

5.2 During the **Term** of this Agreement and for one (1) year thereafter, Licensee **shall** keep complete and accurate records of its and its **sublicensees'** Sales and Net Sales of Licensed Products 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 purpose of and to the extent necessary to verify any report required under this Agreement. In the event that the amounts due to Board are determined to have been underpaid, Licensee shag pay the cost of such examination, and accrued interest at the highest allowable rate.

5.3 Within thirty (30) days tier March 3 1, June 30, September 30, and December 3 1, Licensee shag deliver to Board a true and accurate report, giving such particulars of the business conducted by Licensee and its sublicensee(s), if any exist, during the preceding three (3) calendar months under this Agreement as are pertinent to an account for payments hereunder. Such report shag include at least (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 Board. **Simultaneously** with the delivery of each such report, Licensee shag pay to Board the amount, if any, due for the period of such report. **If no** payments are due, it shag be so reported.

5.4 Upon the request of Board but not more often than once per calendar year, Licensee shag 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 commercirdization plans for the upcoming year.

5.5 All amounts payable hereunder by Licensee shag be payable in United States funds without deductions for taxes, assessments, fees, or charges of any kind. Checks shag be made payable to Board of Regents, The University of Texas System.

5.6 Licensee shag reimburse Board for **all** its out-of-pocket expenses as of the Effective Date for prosecuting, enforcing and maintaining Patent Bights exclusively licensed hereunder and **shall** pay all such future expenses so long as and in such countries as its license remains **exclusive**.

6. COMMON STOCK: **EQUITY OWNERSHIP**

6.1 In consideration of the rights granted to Licensee by Board in this Agreement, Licensee agrees that upon execution of this Agreement it **shall** issue Board Ten Thousand (10,000) **fully** paid, non-assessable shares of its Series D Preferred stock, 88.00 per share market value, which shares of stock shag equal approximately 0.27 percent (0.27 **%**) of all shares of its stock outstanding (as of September 30, 1997, there were **1,777,248** shares of common stock and

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1,858,700 shares of preferred stock outstanding). The parties intend that the Board **will** own 0.27% of **all** shares of Licensee's stock outstanding **after** Series D is completed.

6.2 Board shag have "Board Observer Bights" which includes the right to have an observer attend **all** Board meetings with no voting rights.

6.3 In addition, Licensee hereby grants Board a two (2) year option, exercisable in its sole discretion, to purchase up to an additional ten thousand (10,000) shares of its Preferred Series D stock at a **fixed** purchase price of eight dollars (\$8.00) per share upon the same general terms and conditions as then applicable to the other purchasers of such stock. Board shah have the option to purchase **all** of the shares, or a lesser amount, by providing sixty (60) days written notice to Licensee, which notice shag specify the number of shares which Board desires to purchase and the date of purchase.

7. MILESTONES

7.1 Licensee shag pay to BOARD the following non-refundable amounts in either cash or equivalent amount of Layton common stock or equivalent (with the consent of the Board) such payment shag be mutually agreed upon by the parties:

- a. Two hundred **fifty** thousand dollars (\$250,000) upon F.D.A. approval to market a product containing a sulfonyl fluoride for therapeutic use in humans in the United States of America;
- b. Two hundred **fifty** thousand dollars (\$250,000) upon governmental approval to market a product containing a sulfonyl fluoride for therapeutic use in humans in Japan; and
- c. Two hundred **fifty** thousand dollars (0250,000) upon governmental approval to market a product containing a sulfonyl **fluoride** for therapeutic use in humans in the first major European country (e.g., Germany, France, Italy, or United Kingdom).

7.2 Valuation of Layton common stock or its equivaient shag be determined as follows:

- a. Licensee and BOARD shag each provide the other with notice of their proposed value for the asset(s) in question;
- b. Licensee and **BOARD** shag each select an independent appraiser acceptable to the other party (which acceptance shag not be unreasonably withheld);
- c. The two appraisers **whall** jointly **select** a third **appraiser**;
- d. The third appraiser shag determine which of the proposed values is closest to the actual fair market **value** for the asset(s) in question (as of the applicable valuation date); and
- e. Such closest value **shall** thereafter be deemed to be the fair market value of the asset(s) in question (as of the applicable valuation date) for all purposes under this Agreement.

8. TERM AND TERMINATION

8.1 The term of this Agreement **shall** extend **from** the Effective Date to the **full** end of the term or terms for which Patent Rights have not expired or, if only Technology Rights are licensed and no Patent Rights are applicable, for a term of fifteen (15) years.

8.2 This Agreement **will** earlier terminate:

- a. automatically **if Licensee** shall become bankrupt or insolvent and/or **if the** business of Licensee shall be placed in the hands of a receiver, assignee, or trustee, whether by voluntary act of Licensee or otherwise;
- b. upon ninety (90) days written notice **if Licensee** shall breach or default on any obligation under this License Agreement; provided, however, Licensee may avoid such termination if before the end of such period Licensee notifies Board that such breach has been cured and states the **manner** of such cure.
- c. under the provisions of Paragraph 4.4 if invoked.

8.3 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 Products and parts **therefor** that it may have on hand at the date of termination, provided that it pays earned royalties thereon as provided in this Agreement.

8.4 Upon and effective as of the date of termination of this Agreement pursuant to Paragraph 4.4 above, Licensee grants to Board a non-exclusive license with the right to sublicense others with respect to improvements made by Licensee in the Licensed Subject Matter.

8.5 Board's right to sublicense others hereunder shall be solely for purposes of permitting others to develop and commercialize the entire technology package.

9. INFRINGEMENT BY **THIRD** PARTIES

9.1 Licensee shall have the obligation of enforcing at its expense any patent exclusively licensed hereunder against **infringement** by third parties and shall be entitled to retain recovery from such enforcement. Licensee shall pay Board a royalty on any monetary recovery to the extent that such monetary recovery by Licensee is held to be damages or a reasonable royalty in lieu thereof. In the **event** that Licensee does not **file** suit against a **substantial infringer** of such patents within six (6) months of knowledge thereof, then Board shall have the right to enforce any patent licensed hereunder on behalf of **itself** and Licensee (Board retaining **all** recoveries **from** such enforcement) and/or reduce the license granted hereunder to non-exclusive.

9.2 In any suit or dispute involving an **infringer**, the parties shall cooperate **fully**, and upon the request and at the expense of the party bringing suit, the other party shall make available

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to the party bringing suit at reasonable times and under appropriate conditions all relevant personnel, records, papers, information, samples, specimens, and the like which are in its possession.

10. ASSIGNMENT

This Agreement may not be assigned by Licensee without the prior written consent of Board.

11. 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.

12. INDEMNIFICATION

Licensee shall hold harmless and indemnify Board, System, University, its Regents, officers, employees and agents **from** and against any 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, its Subsidiaries or their officers, employees, agents or representatives.

13. USE OF **BOARD AND COMPONENT'S NAME**

Licensee shall not use the name of University, System or Board without **express** written consent.

14. CONFIDENTIAL INFORMATION

14.1 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 a third party having the right to disclose it, (d) was already known by the recipient party

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at the time of disclosure, (e) was independently developed by the recipient or (f) is required by law or regulation to be disclosed.

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

15. PATENTS AND INVENTIONS

15.1 If after consultation with Licensee it is agreed by Board and Licensee that a patent application should be tiled for Licensed Subject Matter, Board will prepare and **file** appropriate patent applications, and Licensee will pay the cost of searching, preparing, Sling, prosecuting and maintaining same. **If Licensee notifies** Board that it does not intend to pay the cost of an application, or **if Licensee** does not respond or make an effort to agree with Board on the disposition of rights in the subject invention, then Board may **file** such application at its own expense and Licensee shall have no rights to such invention. Board shall provide Licensee with a copy of any patent application for which Licensee has paid the cost of Sling, as well as copies of any documents received or filed during prosecution thereof

16. GENERAL

16.1 This Agreement constitutes the entire and only agreement between the parties for Licensed Subject Matter and all other prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.

16.2 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 7th Street**
Austin Texas 78701
ATTENTION: Office of General Counsel
FAX: (5 12) 499-4523
PHONE: (5 12) **499-4462**

or in the case of Licensee to:

Layton Bioscience, Inc.
105 Reservoir Road
Atherton, California 94027
ATTENTION: **Mr.** Gary Snable, President & CEO
FAX: (650) 854-4776
PHONE: (650) 854-6614

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

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

16.4 This Agreement shall be construed and enforced in accordance with the laws of the United States of America and of the State of Texas.

16.5 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.

16.6 Headings included herein are for convenience only and shall not be used to construe this Agreement.

16.7 **If any** provision **of this** Agreement shall be found by a court to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

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PATENT LICENSE AGREEMENT


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

ATTEST:

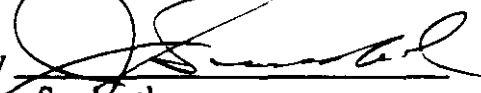
LAYTON BIOSCIENCE

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

By 
Gary I. Snable
President & CEO

By _____
Ray Farabee
Vice Chancellor and General Counsel

APPROVED AS TO CONTENT:

By 
Juan Sandoval
Vice President for Finance and
Administration

APPROVED AS TO FORM:

By _____
BethLynn Maxwell, Esq.
office of General counsel

6. U. T. Board of Regents: Presentation of Certificates and Resolution of Appreciation to Dr. George F. Hamm, President of The University of Texas at Tyler.--Committee Chairman Lebermann noted that this would be the last time that Dr. George F. Hamm, President of The University of Texas at Tyler, would be representing that institution before the Board of Regents and called on Chancellor Cunningham who presented the following certificate of appreciation on behalf of the chief administrative officers of The University of Texas System academic institutions:

CERTIFICATE OF APPRECIATION

The University of Texas System

Presented to

George F. Hamm

In Recognition of His Outstanding Leadership
and Dedication to

The University of Texas at Tyler

as

President

1981 - 1998

(signed by Chancellor Cunningham, Acting Vice Chancellor Frederick, and chief administrative officers of the academic institutions)

Mr. Lebermann then recognized Regent Riter who presented the following Resolution and Certificate of Appreciation in recognition of President Hamm's 17 years of devoted service to The University of Texas System:

RESOLUTION OF APPRECIATION

WHEREAS, Dr. George F. Hamm has served as President of The University of Texas at Tyler with distinction, honor, and vision for seventeen years;

WHEREAS, Dr. Hamm has been engaged in higher education administration and teaching since 1962, including a distinguished career in student services administration at Arizona State University prior to coming to The University of Texas at Tyler;

WHEREAS, Dr. Hamm has developed and championed a strong international studies and student exchange program at The University of Texas at Tyler, including his personal leadership and service to Sister Cities International and the Eisenhower International Golf Classic;

WHEREAS, Dr. Hamm has provided leadership for numerous other accomplishments at the University, including the recent authorization for development of lower division programs, establishment of the School of Engineering, creation of the Distinguished Lecture Series, completion of the R. Don Cowan Fine and Performing Arts Center, and construction of the first student housing complex on campus;

WHEREAS, Dr. Hamm has demonstrated his commitment to extending academic programs of the University to cities throughout East Texas and has devoted substantial energy toward creation of facilities in Longview and Palestine;

WHEREAS, Dr. Hamm has been instrumental in building and greatly expanding private, external support for the University, including funds for student scholarships;

WHEREAS, Dr. Hamm has, during his tenure at the University, served the Tyler community and the East Texas area in numerous and distinctive capacities;

WHEREAS, Dr. Hamm has announced his retirement as President of The University of Texas at Tyler effective June 30, 1998; and

WHEREAS, Dr. Hamm has been ably assisted and supported in his responsibilities and activities by his wife, Janie.

NOW, THEREFORE BE IT RESOLVED, That the Board of Regents of The University of Texas System expresses its deep appreciation to George and Janie Hamm for their excellent service and immeasurable devotion to The University of Texas at Tyler and The University of Texas System; and be it

RESOLVED, That the Board of Regents recognizes the outstanding accomplishments of Dr. Hamm and applauds the significant positive impact he has had on students and colleagues at U. T. Tyler and on education; and be it further

RESOLVED, That the original of this Resolution be presented to Dr. and Mrs. George F. Hamm as a token of esteem and gratitude of the Board of Regents of The University of Texas System and that a copy be incorporated in the Minutes of this meeting as a testament to their invaluable service.

Adopted by unanimous vote this 14th day of May 1998.

CERTIFICATE OF APPRECIATION

The Board of Regents

Expresses to

GEORGE F. HAMM, Ph.D.

Its Sincere Appreciation for His

Distinguished Service

to

The University of Texas System

as

President

and

Professor of Psychology

at

The University of Texas at Tyler

1981 - 1998

Adopted by unanimous vote this 14th day of May 1998

(signed by all members of the Board)

Following a standing ovation, President Hamm graciously accepted this accolade and expressed his sincere appreciation to the Board of Regents for the opportunity to serve the U. T. System. He noted that the U. T. System has made great strides over the years and this had been possible largely because the Board of Regents and System Administration left the academic and research initiative to the institutions and had supported those campus plans with dedication and resources. Dr. Hamm stated that he would continue to watch the steady progress of the U. T. System and would anticipate the same impressive record to be maintained.

In closing, Regent Riter expressed the special appreciation of the Tyler and East Texas communities for Dr. Hamm's leadership and dedication to many of the cultural, business, and social welfare aspects of life in that region.

7. U. T. System: Report on Reading Initiatives and Programs.--Committee Chairman Lebermann called on Chancellor Cunningham for an update on reading initiatives and programs within The University of Texas System.

Dr. Cunningham reported that at the February 1998 meeting the Board heard presentations by key individuals from three U. T. System components (The University of Texas at Austin, The University of Texas at Dallas, and The University of Texas Health Science Center at Houston) on reading related research and activities and adopted a resolution in support of the U. T. System's reading initiatives and the Governor's Reading Initiative.

Dr. Cunningham noted that, following the February 1998 meeting of the Board, a videoconference was held on March 25 with the nine general academic institutions and four of the health-related institutions which included presentations from the Governor's Office, Texas Education Agency, and State Board of Educator Certification.

Chancellor Cunningham noted that he has asked the Offices of Academic Affairs and Governmental Relations to initiate a process to develop a proposed model for the training of teachers in reading based on the latest research and appropriate technology and which is aligned with the Texas Essential Knowledge and Skills (TEKS). The proposed model will include guidelines and benchmarks for ongoing evaluation of reading educator programs in the U. T. System. Representatives of U. T. System general academic institutions and selected reading experts from U. T. health components, the State, and the nation will be included in the development and evaluation of the model.

The initial step will be to assemble an ad hoc steering committee that will plan a workshop for all U. T. faculty involved in reading related teacher preparation programs with the first meeting of this steering committee scheduled for May 19, 1998.

The second step of the process will be to convene a System-wide workshop in September 1998, which will involve all reading related faculty from the academic institutions, to review and finalize the proposed model for training teachers in reading and plan for implementation steps for the model.

In closing, Dr. Cunningham noted that periodic reports on the reading initiatives will be made to the Board and U. T. System Administration will continue to communicate with the Texas Education Agency, the State Board for Educator Certification, and the Governor's Office regarding reading activities.

In response to Chairman Evans' request that a status report on the proposed model for the training of teachers be presented at the August 1998 meeting, Chancellor Cunningham noted that he will present another report on this matter in August which will outline the benchmarks of each institution related to the reading initiatives.

REPORT AND RECOMMENDATIONS OF THE HEALTH AFFAIRS COMMITTEE (Pages 80 - 135).--Committee Chairman Loeffler 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, U. T. Medical Branch - Galveston, U. T. Health Science Center - Houston, U. T. Health Science Center - San Antonio, U. T. M.D. Anderson Cancer Center, and U. T. Health Center - Tyler: Rescission of the Standard Format for Bylaws of the Medical Service, Research and Development Plan/Physician Referral Service (MSRDP/PRS) and Adoption of a New Standard Format for Bylaws of the Medical Service, Research and Development Plan/Physician Referral Service to be Effective September 1, 1998.-- Upon recommendation of the Health Affairs Committee, the Board rescinded the standard format for Bylaws of the Medical Service, Research and Development Plan/Physician Referral Service (MSRDP/PRS) for The University of Texas Southwestern Medical Center at Dallas, The University of Texas Medical Branch at Galveston, The University of Texas Health Science Center at Houston, The University of Texas Health Science Center at San Antonio, The University of Texas M.D. Anderson Cancer Center, and The University of Texas Health Center at Tyler and adopted a new standard format for Bylaws of the Medical Service, Research and Development Plan/Physician Referral Service as set out on Pages 82 - 96 to be effective September 1, 1998.

In 1969, The University of Texas System mandated the establishment of physician faculty practice plans, known as MSRDP/PRS, for the billing, collection, and use of fees generated by University physicians. The U. T. Board of Regents approved a standard format for Bylaws of the MSRDP/PRS in June 1984 which described the membership and organization of the Plans, established the Institutional Trust Fund for collection and use of physician fees, designated items of income which must be turned into the Plan, and delineated fringe benefits and other payments which may be made from MSRDP/PRS funds.

Since 1984, the impact of the Plans on each institution's operations, the growth and complexity of the Plans, and the dramatic change in the methodology of and requirements for reimbursement of professional services have made some aspects of the previously approved standard format for Bylaws redundant or obsolete.

It was noted that the chief administrative officers of the U. T. System health institutions will submit to the Office of Health Affairs revised Bylaws for their component Plans. Upon approval by the Executive Vice Chancellor for Health Affairs and the Chancellor that the Bylaws are in compliance with the standard format, the institutional MSRDP/PRS Bylaws will become effective September 1, 1998.

BYLAWS OF
THE UNIVERSITY OF TEXAS
(INSTITUTION)
AT _____
MEDICAL SERVICE, RESEARCH AND DEVELOPMENT PLAN/
PHYSICIAN REFERRAL SERVICE

- - - - -

ARTICLE I
PURPOSE

The purpose of the Medical Service, Research and Development Plan/Physician Referral Service (the "Plan") is to manage and hold in trust the professional income of faculty members of the Plan at the medical school of The University of Texas _____ (Institution). The Plan will contribute to and safeguard the continued growth in excellence of the (Institution). The Plan creates an Institutional Trust Fund. The purposes and operation of the fund are described in these Bylaws.

ARTICLE II
DEFINITIONS

2.10 TOTAL COMPENSATION

2.11 For purposes of the Plan, "Total Compensation" shall be defined as that total remuneration comprised of salary and other compensation paid to faculty members by the Institution. Total Compensation shall not be construed to include fringe benefits.

2.20 SALARY

2.21 For purposes of this Plan, "Salary" shall be defined as that part of Total Compensation set forth as "Total Salary" in the annual operating budget of the Institution, and amendments thereto as approved by the Board of Regents of The University of Texas System upon recommendation of the Administration.

2.22 Each Member's Salary shall be determined annually, upon recommendation of his or her Department Chairman (and the Dean of Medicine, Senior Clinical Administrator, or Chief Academic Officer) with approval of the Chief Administrative Officer of the (Institution) and the Executive Vice Chancellor for Health Affairs in accordance with The University of Texas System Budget Rules and Procedures.

2.30 OTHER COMPENSATION

- 2.31 For purposes of this Plan, "Other Compensation" shall be defined as that part of Total Compensation set forth as an addition to Total Salary in the annual operating budget of the Institution, and amendments thereto, as approved by the Board of Regents of The University of Texas System upon recommendation of the Administration.
- 2.32 Each Member's "Other Compensation" shall be determined annually, upon recommendation of his or her Department Chairman (and the Dean of Medicine, Senior Clinical Administrator, or Chief Academic Officer) with approval of the Chief Administrative Officer of the (Institution) and Executive Vice Chancellor for Health Affairs in accordance with The University of Texas System Budget Rules and Procedures.

2.40 MEMBERSHIP

- 2.41 Member means faculty members of The University of Texas (Institution) as defined herein. Membership in the Plan is required of each full-time faculty member in a clinical department who generates income from medical professional activities as set out in Section 4.30, except as authorized by the U.T. Board of Regents.
- 2.42 A full-time faculty member in a pre-clinical department who generates income from medical professional activities must be a Member of the Plan.
- 2.43 Part-time faculty members may become Members upon recommendation of the Department Chairman and approval of (the Dean of Medicine, Senior Clinical Administrator, or Chief Academic Officer) and the Chief Administrative Officer of the (Institution).
- 2.44 All Members shall be entitled to vote upon all business brought before the Membership of the Plan and be eligible for any election or appointment to any committee of the Plan.
- 2.45 A Member leaving the faculty terminates Membership in the Plan without recourse.

2.50 EXECUTIVE DIRECTOR OF THE PLAN

- 2.51 The Executive Director of the Plan shall be the general administrative officer of the Plan.

ARTICLE III
ORGANIZATION OF PLAN

3.10 MEETINGS OF THE MEMBERSHIP

- 3.11** The Membership shall meet in general session annually at a place designated by the Chairman of the Board of Directors, Notice of the (annual, quarterly) meeting shall be distributed to each Member at least fourteen days prior to the meeting.
- 3.12** Special meetings may be called by the (Board, Chairman of the Board) or upon written petition of one-half (1/2) of the Members, subject to fourteen days notice in writing.
- 3.13** The Chairman of the Board of Directors or in his or her absence, the Vice-Chairman shall preside. The Secretary of the Board of Directors shall serve as Secretary of the Plan.
- 3.14** One-half (1/2) of the Membership shall constitute a quorum.
- 3.15** Each Member shall have one (1) vote.
- 3.16** Except where otherwise specified within these Bylaws, a simple majority shall of those present constitute a prevailing vote.
- 3.17** Minutes of each meeting shall be prepared by the Secretary, published and circulated to each Member of the Board of Directors and the Executive Vice Chancellor for Health Affairs, and shall be available to each Member upon request.
- 3.18** The rules of order for meetings shall be the current edition of ***Robert's Rules of Order***.

3.20 BOARD OF DIRECTORS

- 3.21** The Board of Directors will assume its responsibilities annually on September 1.
- 3.22** The Board of Directors shall be composed as follows:
- 3.221 Officers of the Board
- A. Chairman-Chief Administrative Officer of the (Institution);
 - B. Vice Chairman-(Dean of the Medical School or Co-Vice Chairmen, the Dean of Medicine and Senior Clinical Administrator);
 - C. Treasurer-Chief Business or Fiscal Officer of the (Institution, Medical School);
 - D. Secretary-Executive Director of the Plan, serving as **ex-officio**, non-voting member of the Board of Directors.

- 3.222 Other Directors
- A. (Senior Clinical Administrator, if not a Vice-Chairman)
 - B. (Number) Chairmen of Clinical Departments;
 - C. (Number) Members-at-large will be elected by the membership (indicate method for nomination, election, and so forth). Such members may serve no more than two consecutive one-year terms, but may be eligible to serve after an interval of one year;
 - D. (Members appointed from departments based on departmental professional income; indicate number and method for determining qualification, appointment, and so forth);
 - E. No Clinical Department shall have more than (number) voting Members of the Board of Directors.
 - F. The Chief Legal Officer of the (Institution) shall serve as an ex-officio-member, without vote.
 - G. Other persons may be appointed by the Chairman of the Board as ex-officio members without vote.

3.23 Standing Committees of the Board. The following standing Committees of the Board shall be appointed. These Committees may be appointed from the Board of Directors of a nonprofit health corporation of which the sole corporate member is the Chief Administrative Officer.

3.231 Budget and Finance Committee shall be chaired by the (Dean of Medicine, Senior Clinical Administrator or the Chief Business or Fiscal Officer) and shall consist of (the Dean of Medicine where there is a Dean, the Senior Clinical Administrator where there is one, and the Chief Financial Officer) and other members appointed by the Chairman of the Board of Directors, at least one to be a non-Chairman.

3.232 Compliance and Ethics Committee shall be chaired by the (Dean of Medicine, or if no Dean the Senior Clinical Administrator to whom Clinical Department Chairmen report; may be **Co-Chairmen**) and shall consist of members appointed by the Chairman of the Board of Directors, at least one to be a **non-Chairman**. The Compliance Officer shall report to this Committee.

3.233 Professional Affairs Committee shall be chaired by the (Dean of Medicine or Senior Clinical Administrator, who may be **co-chairmen**) and shall include members appointed by the Chairman of the Board of Directors, at least one to be a non-Chairman.

3.234 Audit Committee shall be chaired by the Chairman of the Board, and Members shall include the Officers of the Board of Directors.

3.235 Chief Residents Advisory Committee shall be chaired by the (Dean of Medicine or Senior Clinical Administrator) and shall include Chief Residents, one appointed by each Clinical Chairman.

3.24 Duties of Standing Committees shall include, but not be limited to, those set out in Appendix C.

- 3.25 Standing Committees shall meet at least quarterly or on call of the Chairman of the Committee and report deliberations, in writing, to the Board of Directors.
- 3.26 The Board of Directors may create other standing and ad hoc committees from the Directors or from the Membership to make recommendations upon specific matters when necessary. Committees may also be appointed at the request by majority vote of the Membership. Appointment to these committees shall be noted in the Minutes of the Board of Directors including any restriction on membership. The Minutes shall be kept of all committee meetings and recommendations shall be submitted to the Board in writing.
- 3.27 The Board of Directors shall report its activities, in writing, to the Membership at the annual meeting.
- 3.28 The Board shall meet at least (monthly, quarterly), on call of the Chairman of the Board, or on the written petition of (one-half, two-thirds) **(1/2, 2/3)** of the Members of the Board. Minutes shall be recorded of all meetings of the Board of Directors and a copy, including all committee reports, provided to the Executive Vice Chancellor for Health Affairs.
- 3.29 One-half **(1/2)** of the Board of Directors shall constitute a quorum.
- 3.30 A simple majority vote shall prevail except that all action taken by the Board is subject to approval by the Chairman of the Board.
- 3.31 The Executive Vice Chancellor for Health Affairs may approve **non-**substantive exceptions to the organization of the Plan as may be requested by the Chief Administrative Officer of the (institution).

3.40 BUSINESS OPERATIONS

- 3.41 An annual operating budget for all income and expenditures of the Plan shall be prepared by the Budget and Finance Committee for approval by the Board of Directors and approved in accordance with the Budget Rules and Procedures of the Board of Regents of The University of Texas System.
- 3.42 The Board of Directors shall appoint an Executive Director of the Plan who shall serve at the pleasure of the Board.
- 3.43 The Board may contract with an entity to administer the business operations of the Plan, including but not limited to, strategic development, marketing, billing for and collection of professional fees, contracting for professional services, clinic operations, credentialing, and managed care operations. Contract oversight, reporting, corporate compliance, and financial audit of the entity are the **responsibilities** of the appropriate officers or committees of the Board of Directors.

- 3.44 If the business operations and personnel responsible for the business operations of the Plan, including billing for and collection of professional fees, are the responsibility of the institution and the Plan:
- 3.441 A Business Office shall be maintained for the Plan under the direction of the Executive Director of the Plan.
 - 3.442 The Executive Director of the Plan shall be the business manager. The Executive Director shall be under the direction and supervision of the (Senior Clinical Administrator or Chief Business or Fiscal Officer) of the (Institution, medical school).
 - 3.443 Financial reports for the Plan shall be prepared by the Executive Director of the Plan and submitted to the Board of Directors at each meeting. Quarterly financial reports shall be submitted to and in a format designed by the Executive Vice Chancellor for Health Affairs.
 - 3.444 Detailed accounting records of all revenue under the Plan shall be maintained by the Executive Director of the Plan.
 - 3.445 Professional fees shall be centrally billed and collected by the business office for the Plan, in accordance with procedures developed by the Board and appropriate Business Procedure Memoranda of The University of Texas System. All collections will be deposited in the Institutional Trust Fund.
 - 3.446 All personnel in the business operations who have responsibilities for billing and collection for professional services of the Members of the Plan shall be under the control of and assigned for personnel matters to the Executive Director of the Plan,

ARTICLE IV INSTITUTIONAL TRUST FUND

4.10 COMPOSITION

- 4.11 An Institutional Trust Fund shall be established for the receipt and disbursement of Plan income.
- 4.12 The Institutional Trust Fund shall be audited in accordance with regulations of The University of Texas System. The cost of said audit shall be paid for from the Institutional Trust Fund.

4.20 SOURCES OF INCOME

- 4.21 Pursuant to the Member's contract with the Institution for participation in the **MSRDP/PRS**, each Member shall assign Professional Income as defined in Section 4.30 to the Institutional Trust Fund.
- 4.22 Income can be accepted from voluntary and part-time faculty who are not Members of the Plan, at the discretion of the individual, upon the recommendation of the Department Chairman, and approval of the Chairman of the Board of Directors.

4.30 ITEMS INCLUDED IN PROFESSIONAL INCOME

- 4.31 Professional fees generated for all patient care services rendered by full-time faculty regardless of where rendered and by all part-time faculty who are members of the Plan.
- 4.32 Fees for all court appearances, depositions, or legal consultations.
- 4.33 All other professional income with the exception of the following:
 - A. Honoraria, royalties, non-professional retainers.
 - B. Payment for editing scientific publications.
 - C. Non-medical professional consultation fees honoraria.
- 4.34 Other income not specifically described above shall be reported to the (Dean of Medicine or Senior Clinical Administrator) who shall determine whether said income will be considered professional income.

4.40 DETERMINATION OF PROFESSIONAL FEES

- 4.41 The Budget and Finance Committee will prepare a fee schedule which shall be used for billing purposes, subject to approval by the Board of Directors. Substantive changes in the fee schedule must be approved by the Board of Directors.
- 4.42 Guidelines for discounting fees will be developed by the Board of Directors. Individual Members may alter or extinguish any charge for professional services at any time prior to billing for such services, subject to rules developed by the Board of Directors, or after billing and prior to collection where the initial charge resulted from an incorrect financial classification of patient.

4.50 AUTHORIZED EXPENDITURES

- 4.51 Fringe Benefits authorized by the Board of Regents are set out in Appendix A of the Plan.
- 4.52 The fringe benefits provided to each Member shall be designated by the Chief Administrative Officer from among those authorized by the Board of Regents upon recommendation by the (Dean of Medicine, Department Chairman). Members shall not have the authority to determine which fringe benefits they shall receive.
- 4.53 Benefits provided pursuant to Sections 4.51 and 4.52 may be taxable to the individual Member and may be subject to withholding and reported pursuant to the rules and regulations of the Internal Revenue Service.
- 4.54 Professional business expenditures authorized by the Board of Regents are set out in Appendix B of the Plan.

ARTICLE V
GENERAL PROVISIONS

5.10 COMPLIANCE AND ETHICS

- 5.11 The principles of medical ethics of the American Medical Association and the principles of dental ethics of the American Dental Society are accepted as the governing code of ethics by the physician and dentist members of the Plan.
- 5.12 Should the principles of ethics described in Section 5.11 be found to be in conflict with the constitution or laws of the State of Texas or the United States of America, they shall not apply to the extent of the conflict.
- 5.13 The Board shall appoint a Compliance Officer and develop a compliance plan. The Compliance Plan shall provide a means to inform, educate, and train Members and personnel and staff employed in the Business Office and Compliance Office regarding these Bylaws, billing requirements and applicable rules and regulations. The compliance plan shall include a provision for penalties when standards are not met.
- 5.14 Compliance with provisions of federal, state and local rules and regulations is the responsibility of each Member.
- 5.15 Each Member of the Plan must acknowledge and sign an annual employment contract recognizing the requirements of applicable compliance plans and Bylaws of the Plan.

5.20 AMENDMENTS

- 5.21 These Bylaws have been developed within the standard format approved by the Board of Regents on _____ Substantive amendments may be made only upon approval of the Board of Regents. Non-substantive amendments and discretionary amendments may be approved upon written request of the Executive Vice Chancellor for Health Affairs.
- 5.22 Recommendation for substantive amendments to these Bylaws requires a two-thirds (2/3) vote of the Members at any regular meeting of the Plan or a meeting called specifically for this purpose, provided that the proposed amendment shall have been offered by written notice to the Members not less than thirty (30) days prior to the meeting at which the amendment is brought to a vote. Non-substantive amendments may be requested of the Executive Vice Chancellor for Health Affairs upon approval of the Board of Directors.
- 5.23 Notice of proposed amendments required in Section 5.22 shall include the complete text of the proposed amendments.

5.24 Amendments shall become effective upon approval of the Board of Regents or the Executive Vice Chancellor for Health affairs, as appropriate.

5.30 EMPLOYMENT CONTRACT

5.31 An employment contract prescribed by the Executive Vice Chancellor for Health Affairs of The University of Texas System shall be executed annually between each member and the Institution.

5.32 Execution of the annual employment contract by the Member is a condition for membership and participation in the Plan, notwithstanding any other provision in these Bylaws.

5.40 DISSOLUTION

5.41 The Plan may be dissolved by the Board of Regents or by applicable law. All monies residual in the Trust Fund shall be utilized to discharge obligations of the Plan with the balance to become the property of the (Institution).

APPENDIX A

MSRDP/PRS AUTHORIZED FRINGE BENEFITS

Effective September 1, 1998

<u>Authorized Benefit</u>	<u>Maximum</u>
1. Supplemental Retirement Payments	In accordance with UT. System policy. Tax sheltered SRA's only through salary reduction agreements.
2. Parking Fees	At U.T. institution(s) and teaching hospital(s). Actual expense not to exceed IRS Section 132 limitation.
3. Incentive Plan	Only Members may receive additional remuneration to motivate generation of professional fees. Must be approved by the Executive Vice Chancellor for Health Affairs and Office of General Counsel prior to implementation. Payments to Members must have prior approval of the Executive Vice Chancellor for Health Affairs. Payments under this provision shall not be eligible for additional state or MSRDP/PRS fringe benefits; however, to the extent permitted by law, deductions may be made for retirement programs.

- . No MSRDP/PRS funds may be expended for the benefit of any single individual person or member except as herein approved unless specific exception has been approved by the Board of Regents.
- . Classified plan employees may receive only the basic state-approved benefits paid from MSRDP/PRS.
- . Benefits specifically not approved include:
 - personal liability insurance
 - medical and dental insurance
 - life insurance
 - educational allowance
 - estate planning
 - tax service
 - accounting service.

- Authorized fringe benefits may not exceed thirty (30) percent of total salary,
- . This list of authorized fringe benefits and yearly limits may be periodically amended by action of the Executive Vice Chancellor for Health Affairs. Additionally, exceptions for Presidents may be made by the Board of Regents.

APPENDIX B

MSRDP/PRS AUTHORIZED PROFESSIONAL BUSINESS EXPENDITURES

Effective September 1, 1998

<u>Authorized Business Expense</u>	<u>Maximum</u>
1. Malpractice Insurance	U.T. Self-insurance rates
2. Official travel, including registration fees (see No. 17, Official Institutional Functions and Official Entertainment)	In accordance with policy and limits, established by U. T. System and institution not to exceed actual expense
3. Faculty Development Leave	In accordance with the Regents' Rules and Regulations and institutional-y
4. Uniforms or Lab Coats	Through institutional purchasing
5. Membership Dues in Professional Scientific Organizations, Faculty Clubs, Medical Center clubs, or equivalent	In accordance with institutional policy. Faculty Clubs, Medical Center clubs, or equivalent with Presidents approval
6. Texas State Clinical License Fee including Board of Medical Examiners License	Annual fee; reimbursement expenditure only
7. Medically-Related Educational Aids	In accordance with institutional policy
8. Salary, Salary Augmentation and/or Incentive Augmentation Plans	In accordance with U.T. System Policy
9. Purchase, maintenance and operation of equipment and maintenance and operation of U.T. System facilities	In accordance with institutional policy
10. Ordinary and necessary business expenses incurred by the member in earning the professional fees charged by said member, excluding entertainment (see No. 17, Official Institutional Functions and Official, Entertainment)	In accordance with institutional policy
11. Registration fees and tuition incident to attendance at meetings and courses as requested or approved by institution	In accordance with institutional policy

- | | | |
|-----|---|--|
| 12. | Consultant fees and expenses including guest speakers at official institutionally sponsored or approved meetings | In accordance with U. T. System and institutional policy |
| 13. | Expenses incident to faculty or staff recruitment (see No. 17, Official Institutional Functions and Official Entertainment) | In accordance with institutional policy |
| 14. | Establishment or endowment of programs, professorships, or chairs | In accordance with U. T. System policy |
| 15. | Support of academic programs and projects involving education, research or patient care | In accordance with institutional policy |
| 16. | Institutional participation in community, organizations or events | In accordance with institutional policy |
| 17. | Official Institutional Functions and Official Entertainment. Official entertainment is defined as business-related events or expenditures which are of documented benefit to the institution or The University of Texas System. | Prior presidential approval required for any expenditures greater than \$2,500. A quarterly report of all expenditures approved in this category shall be filed with the Executive Vice Chancellor for Health Affairs. |
- No MSRD/PRS funds may be expended for the benefit of any single individual person or member except as herein approved.
 - All requests for reimbursement must contain adequate documentation and must be signed by the person seeking reimbursement.
 - All expenditures are subject to the Rules and Regulations of the Board of Regents of The University of Texas System and applicable institutional regulations and procedures. This list of authorized expenditures may be periodically amended by action of the Executive Vice Chancellor for Health Affairs.

APPENDIX C

DUTIES OF STANDING COMMITTEES OF THE BOARD OF DIRECTORS

Effective September 1, 1998

Duties of Budget and Finance Committee:

- (a) Develop annual operating and capital budgets for the Plan for approval by the Board
- (b) Review and approve any unbudgeted expenditures greater than (\$ _____)
- (c) Review and approve all financial reports for presentation to the Board
- (d) Develop professional fee schedules for approval by the Board
- (e) Recommend to the Board any action necessary to address budgetary changes or shortfalls.

Duties of Compliance and Ethics Committee:

- (a) Develop and oversee compliance plans, including training of faculty and staff, to assure that billing and collecting comply with all local, state and federal statutes, rules and guidelines
- (b) Review compliance reports and make appropriate recommendations to the Board
- (c) Review findings of Professional Affairs and Audit Committees and make appropriate recommendations to the Board
- (d) Review Departmental guidelines for supervision of residents and documentation standards and make appropriate recommendations to the Board
- (e) Make recommendations to the Audit Committee
- (f) Develop and oversee ethics policies and compliance with these policies.

Duties of Professional Affairs Committee:

- (a) Review and recommend action to Board concerning Membership in the Plan not expressly required by the Bylaws
- (b) Develop and oversee a Professional Standards Monitoring Plan and report findings as appropriate to Compliance and Ethics Committee
- (c) Develop and oversee a plan that assures appropriate credentialing of all Members of the Plan.

Duties of Audit Committee:

- (a) Develop and oversee an annual audit plan, to include audits of any entity contracted for business operations of the Plan
- (b) Review audit objectives and reports and recommend corrective action to the Board
- (c) Assure implementation of remedial plan or corrective action
- (d) Make recommendations to the Professional Affairs and Compliance and Ethics Committees and to the Board as appropriate.

Duties of Chief Residents Advisory Committee:

- (a) Review compliance plans and ethics policies to assure that the Committee understands roles of Members of the Plan in supervising residents and in billing and collecting for the Members' services
- (b) Review Professional Standards and Credentialing requirements to assure that the Committee understands expectations of Members of the Plan
- (c) Provide liaison between resident staff and Members with the goal of establishing understanding of the Plan requirements as they relate to resident education and care of patients.

2. U. T. Health Science Center - Houston: Establishment of a Master of Science Degree in Health Informatics and Authorization to Submit the Degree Program to the Coordinating Board for Approval (Catalog Change).--Authorization was granted to establish a Master of Science degree in Health Informatics at The University of Texas Health Science Center at Houston and to submit the proposal to the Texas Higher Education Coordinating Board for review and appropriate action. In addition, the Coordinating Board will be asked to change the U. T. Health Science Center - Houston's Table of Programs to reflect authorization for the degree program which is consistent with the institution's mission and its plans for offering quality degree programs to meet student needs.

The Master of Science in Health Informatics, which is a 42 semester credit hour degree program, is to be administered by the U. T. Health Science Center - Houston's Department of Health Informatics within the U. T. Allied Health Sciences School - Houston. The master's degree program in Health Informatics is the first step in a new focus on graduate education and will provide the foundation for the development of a doctoral program in Health Informatics.

In developing the Master of Science in Health Informatics, the Department of Health Informatics has worked with representatives from Texas A&M University, Baylor College of Medicine, Rice University, the University of Houston, The University of Texas Medical Branch at Galveston, The University of Texas Health Science Center at San Antonio, and Texas Women's University to improve opportunities for students entering the Health Informatics program and to create new electives available to the other schools. Faculty and resources from these other seven institutions, who are members of the Texas Medical Center Consortia, will be integrated into the curricula so that the best faculty from each institution will teach in their specialty and students from each institution will be allowed to take courses in the Health Informatics program.

The anticipated date for implementation of the program is Fall 1998.

The Department of Health Informatics will be staffed by five full-time equivalent faculty who are doctorally prepared and have extensive teaching and research histories.

No new costs will be incurred by the U. T. Health Science Center - Houston for the program in Health Informatics. All of the funds are reallocations from closed or transferred programs.

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

3. U. T. M.D. Anderson Cancer Center: Approval of the (a) Transplant Program Clinical Support Services Agreement Between Spohn Health System (Spohn), Corpus Christi, Texas, and M.D. Anderson Cancer Center Outreach Corporation (Outreach) and (b) Sublicense Agreement Between M.D. Anderson Cancer Center Outreach Corporation and Spohn Health System.--On behalf of The University of Texas M.D. Anderson Cancer Center, the Board approved the following agreements:

- a. The Transplant Program Clinical Support Services Agreement between Spohn Health System, Corpus Christi, Texas, and M.D. Anderson Cancer Center Outreach Corporation (Outreach) as set forth on Pages 100 - 125
- b. The Sublicense Agreement between M.D. Anderson Cancer Center Outreach Corporation and Spohn Health System as set forth on Pages 126 - 135.

Spohn Health System (Spohn), a Texas nonprofit corporation, is one of the largest health care providers in the Corpus Christi, Texas, metropolis and surrounding areas. Spohn desires to establish a bone marrow transplant program in conjunction with M.D. Anderson Cancer Center Outreach Corporation (Outreach). The Transplant Program Clinical Support Services Agreement provides for an exchange of services between Outreach and Spohn which will facilitate the development of a superior bone marrow transplant program. During the term of the Agreement, Outreach will provide clinical support services including cell processing for autologous bone marrow transplantation, training of medical personnel that will be involved in transplantation, and program support and review, including providing clinical guidelines, pathways, and continuing education to the health care providers of Spohn.

Spohn will pay a fee to Outreach for these services and reimburse Outreach for reasonable out-of-pocket expenses related to the Agreement. This program will result in a net positive contribution to the U. T. M.D. Anderson Cancer Center financial margin.

The Sublicense Agreement between Outreach and Spohn provides for the use of the name "Spohn Hospital Bone Marrow Transplantation Service Affiliated with M.D. Anderson Outreach," to be used at the Spohn facility in Corpus Christi, Texas, to identify the transplant program. The Sublicense Agreement also provides for an additional sublicense of the name "Spohn Hospital Cancer Care Services Affiliated with M.D. Anderson Outreach." The second name will only be utilized in the event of an expansion of this program beyond Bone Marrow Transplant Services. In order for the second name to be used, a separate Clinical Support Services Agreement must be entered into between the parties and approved by the U. T. Board of Regents.

Both agreements provide, through the interaction of the agreements, the opportunity to monitor and enforce the quality of the services provided in conjunction with the Outreach name. Additionally, both agreements have been approved by the M.D. Anderson Cancer Center Outreach Corporation Board of Directors and are automatically terminated upon termination of the License Agreement between the U. T. Board of Regents and Outreach.

**TRANSPLANT PROGRAM
CLINICAL SUPPORT SERVICES AGREEMENT**

between

SPOHN HEALTH SYSTEM

and

M. D. ANDERSON CANCER CENTER OUTREACH CORPORATION

CLINICAL SUPPORT SERVICES AGREEMENT

This Transplant Program Clinical Support Services Agreement (the "Agreement"), effective as of the ___ day of ___ 1998 (the "Effective Date"), is by and between Spohn Health System, a Texas nonprofit corporation ("Facility") and M. D. Anderson Cancer Center Outreach Corporation, a Texas nonprofit corporation ("Outreach").

RECITALS

WHEREAS, Facility owns and operates a general acute care hospital that provides various services and that is duly licensed by the applicable licensing authority of the state of Texas;

WHEREAS, Facility operates an autologous peripheral blood progenitor transplant program (the "Program") that renders certain oncology services to patients;

WHEREAS, Outreach has the ability to deliver certain Clinical Support Services (as hereinafter **defined**) relating to the Program's services;

WHEREAS, Facility desires to engage, for its benefit and the benefit of its patients, Outreach to provide certain Clinical Support Services and Outreach desires to be so engaged, and

NOW THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, the Parties (as hereinafter **defined**) agree to the following:

1. DEFINITIONS

- 1.1. *Clinical Support Services* shall mean those clinical support services that Outreach is obligated to provide Facility pursuant to Section 2.1 of this Agreement.
- 1.2. *MDACC* shall mean The University of Texas M. D. Anderson Cancer Center.
- 1.3. *Outreach Affiliate* shall mean MDACC and M. D. Anderson Physicians Network.
- 1.4. *Outreach Name* shall mean any form of the name "M. D. Anderson Cancer Center Outreach Corporation."
- 1.5. *Party and Parties* shall mean Facility and Outreach individually or collectively, 'as applicable.
- 1.6. *Patients* shall mean the patients of Facility who receive treatment in the Program.
- 1.7. *Physicians* shall mean any physician who is permitted to provide oncology services to Patients or otherwise participate in the Program and who are listed on Exhibit 1.7 to this Agreement.

- 1.8. *Term* shall mean the initial and any renewal periods of duration of this Agreement as described in Article V of this Agreement.

2. OBLIGATIONS OF OUTREACH

- 2.1. *Clinical Support Services.* Outreach shall provide those Clinical Support Services described on Exhibit 2.1 to Facility for and in consideration of the compensation to be paid by Facility to Outreach as specified herein.
- 2.2. *Subcontractors.* Outreach may contact or subcontract with professionals or health care providers, including Outreach Affiliates, for the delivery of Clinical Support Services to Facility pursuant to this Agreement.
- 2.3. *Exclusivity.* During the Term of this Agreement, Outreach shall not enter a relationship with any facility providing autologous peripheral blood progenitor cell transplant services located in any area described in Exhibit 2.3 pursuant to which Outreach:
- (a) agrees to provide Clinical Support Services or services or items substantially similar to Clinical Support Services to such facility; or
 - (b) agrees to own, manage, operate, control, participate in the management or control of, lend its name to or maintain or continue any interest in such facility.

To the extent that any restriction contained in this Section 2.3 is held by any court of competent jurisdiction to be unenforceable or unreasonable, the Parties agree that a lesser restriction shall be enforced in its place and remaining restrictions contained herein shall be enforced independently of each other.

- 2.4 *Other Activities by Outreach and Outreach Affiliates.* MDACC has throughout its existence delivered to requesting physicians parts of Clinical Support Services. Examples are physicians who request treatment or research protocols for a certain type of cancer, continuing medical education programs, and MDACC physicians who work with collaborative investigators in the conduct of specific clinical trials. Moreover, MDACC is required by certain governmental requirements to provide access to its research and clinical efforts. Neither Outreach nor an Outreach Affiliate shall be deemed to have breached any provision of this Agreement in the conduct of such activities.

3. OBLIGATIONS OF FACILITY

- 3.1. *Covenants of Facility.* Facility covenants and warrants that at all times during the Term:

- (a) Facility shall be and remain legally organized to operate a hospital and to provide oncology services in a **manner** consistent with all state and federal laws;
 - (b) Facility shall be and remain accredited by the Joint Commission on the Accreditation of Healthcare Organizations or any successor accrediting entity thereto;
 - (c) Facility shall maintain a Medical Director of the Program who is credentialed and privileged by Facility and has successfully completed a minimum of one year fellowship training program specializing in high dose chemotherapy and stem cell administration and is a Physician;
 - (d) The Physicians listed in Exhibit 1.7 shall be the only physicians whom Facility employs, contracts with, or otherwise permits to provide high dose chemotherapy and stem cell administration within the Facility or otherwise participate in the Program. Facility shall obtain an amendment of this Agreement prior to employing, contracting with, or otherwise permitting a physician not listed in Exhibit 1.7 to provide such medical services or otherwise participate in the Program, and Facility shall obtain an amendment of this Agreement upon the cessation of relationship with a Physician listed in Exhibit 1.7. Each such amendment shall be in the same form as Exhibit 1.7;
 - (e) Each Physician shall hold a currently valid and unlimited license to practice medicine in the state of Texas;
 - (f) Each Physician must be credentialed and privileged by Facility; and
 - (g) Each Physician must be credentialed by M. D. Anderson Physicians Network and meet the following criteria: (a) be Board Certified in hematology and/or medical oncology; and (b) have (i) successfully completed a minimum one year fellowship training program specializing in high dose chemotherapy and stem cell administration, or (ii) demonstrated clinical experience judged as comparable and appropriate training by the MDACC BMT Medical Director.
- 3.2. *Continuing Conditions Precedent.* As a continuing condition precedent to the delivery of Clinical Support Services by Outreach during the Term of the Agreement, Facility agrees to comply with the obligations set forth on Exhibit 3.2.
- 3.3. *Compensation.* Facility agrees to compensate Outreach in accordance with Exhibit 3.3 for and in consideration of Clinical Support Services provided to Facility pursuant to this Agreement.
- 3.4. *Notification.* Facility shall notify Outreach in writing within three (3) days after any of the following events occurs:

- (a) the Facility's loss of license or loss of certification, accreditation, or qualification by any licensing, regulatory, or professional organization or agency with jurisdiction over Facility;
- (b) the exclusion of Facility from the Medicare or Medicaid programs;
- (c) a transfer of more than fifty percent (50%) of the ownership of Facility or a material change in management of the Facility;
- (d) Facility (i) becomes a defendant in any malpractice action involving Patients or (ii) is required to pay damages in any such action by way of final judgement or settlement;
- (e) Facility (i) becomes the subject of a disciplinary proceeding or action before a licensing agency in the state of Texas or (ii) is disciplined by a licensing agency in the state of Texas;
- (f) any cancellation or suspension of Facility's professional liability insurance;
- (g) the license to practice medicine of any Physician is suspended, revoked or terminated;
- (h) any Physician is required to pay damages in any malpractice action by way of judgment or settlement;
- (i) any Physician becomes the subject of a disciplinary proceeding or action before a licensing agency in the state of Texas; or
- (j) any cancellation of a Physician's professional liability insurance resulting in the absence of professional liability insurance for a period longer than 30 days.

3.5. *Medical Records.* With appropriate patient authorization, Outreach shall be entitled to obtain copies of Patients' medical records. Facility shall provide Outreach with all records necessary to carry out Outreach's utilization management and quality improvement programs. Such medical and other records shall be made available to Outreach at no cost other than the cost of copies requested by Outreach, not to exceed ten (10) cents per page.

3.6. *Coordination of Fundraising.* Facility shall advise Outreach of solicitations for major gifts that benefit the Program in order that Outreach may coordinate fundraising efforts between Facility and Outreach Affiliates.

3.7. *Facility Rights.* Facility agrees that it may exercise its rights under this Agreement, including but not limited to any rights under Article IV, only at the

following address: Spohn Health System, 1702 Santa Fe, Corpus Christ, Texas 78404.

4. **USE OF NAMES**

- 4.1. **Consent to Use Names.** The Parties each have a proprietary interest in their respective legal and business names. Except as permitted in the Sublicense Agreement entered between the Parties, neither Party shall use the other Party's name in any advertising, marketing, or other publicity materials without the other Party's prior written consent, which consent shall not be unreasonably qualified, withheld, or delayed.
- 4.2. **Outreach Rights to Trade Names and Service Marks.** Outreach shall be the sole and exclusive owner of its trade name and all trademarks and service marks that it utilizes to identify its business, goods, and services.
- 4.3. **Use of Outreach Name.** Except as set forth in the Sublicense Agreement entered between the Parties, Facility may not, without the written consent of Outreach, use as a trade name any name that includes any form of the Outreach Name. Any right to use any form of the Outreach Name shall automatically terminate upon the termination of this Agreement.

5. **TERM / TERMINATION OF THIS AGREEMENT**

- 5.1. **Term.** This Agreement shall commence on **March 1, 1998** and shall continue for an initial period of five (5) years through and including **February 28, 2003**. At the end of the initial period, and thereafter, the Agreement will renew automatically for successive periods of **two (2)** years each unless either Party notifies the other in writing of its intention not to renew at least one hundred eighty (180) days before the end of the initial period or any renewal period.
- 5.2. **Termination by Agreement.** In the event the Parties shall mutually agree in writing, this Agreement may be terminated on the date specified in such written agreement.
- 5.3. **Termination for Cause by Either Party.** Either Party may terminate this Agreement for cause upon thirty (30) days written notice from the other Party hereto. For purposes of this Agreement, "cause" shall be construed to mean a material breach of an obligation to be performed hereunder that is not cured within thirty (30) business days of receipt following notice of the breach.
- 5.4. **Bankruptcy.** Either Party may terminate this Agreement effective immediately upon written notice, if the other Party files a petition in bankruptcy, is adjudicated bankrupt, or takes advantage of the insolvency laws of any jurisdiction, makes an assignment for the benefit of creditors, is voluntarily or involuntarily dissolved, or has a receiver, trustee, or other court officer appointed with respect to its property.

- 5.5. *Termination by Outreach.* Outreach, in its sole option, may terminate this Agreement effective immediately upon written notice (a) if any of the **covenants** set forth in Section 3.1 are breached; (b) upon the occurrence of any event that would require Facility to give Outreach notice pursuant to Section 3.4, except for Sections 3.4(d)(i) and 3.4(e)(i); (c) upon the termination of the Sublicense Agreement entered between the Parties; or (d) if in any year following the **first** year of the Term of this Agreement, Facility does not perform at least ten autologous peripheral blood progenitor cell transplantations.
- 5.6. *Termination Due to Legislative or Administrative Changes.* In the event that there shall be a change in federal or state law, the Medicare or Medicaid statutes, regulations, or general instructions (or in the application thereof), the adoption of new legislation or regulations applicable to this Agreement, or the initiation of an enforcement action with respect to legislation, regulations, or instructions applicable to this Agreement, any of which affects the continuing viability or legality of this Agreement or the ability of either Party to obtain reimbursement for services provided by one Party to the other Party or to patients of the other Party, then either Party may by notice propose an amendment to conform this Agreement to existing laws. If notice of such a change or an amendment is given and if the Parties are unable within thirty (30) days thereafter to agree upon the amendment, then either Party may terminate this Agreement by thirty (30) days notice to the other, unless a sooner termination is required by law or circumstances.
- 5.7. *Termination Due to Federal Income Tax Status.* In the event that there shall be a change in the Internal Revenue Code or the Treasury Regulations promulgated thereunder, the promulgation by the Internal Revenue Service of rulings or other authorities, or a change in the Internal Revenue Service's interpretation of any of the foregoing that adversely affects the status of either Facility or Outreach as an organization described in section **501(c)(3)** of the Internal Revenue Code of 1986, as amended, or if the Internal Revenue Service takes, or proposes to take, any action that would adversely affect the ability of Outreach to qualify as, or continue its status as, an organization described in section **501(c)(3)** of the Internal Revenue Code of 1986, as amended, then either Party may by notice propose an amendment to conform this Agreement to existing laws or Internal Revenue Service positions. If notice of such a change or an amendment is given and if the Parties are unable within thirty (30) days thereafter to agree upon the amendment, then either Party may terminate this Agreement by thirty (30) days notice to the other, unless a sooner termination is required by law or circumstances.
- 5.8. *Special Action.* The Parties understand that the Clinical Support Services provided by Outreach hereunder are supplied to Outreach by MDACC, a component institution of The University of Texas System (the "System"). In the event that there is an action by MDACC or the System that would require Outreach to review, adjust, or terminate the delivery of Clinical Support Services to Facility as described in this Agreement, then Outreach may by notice to Facility propose an amendment to the Agreement to conform with such

requirement. If notice of such a proposed amendment is given, and if the Parties are unable within thirty (30) days thereafter to agree upon the amendment, then either Party may terminate this Agreement by thirty (30) days written notice to the other, unless a sooner termination is required by circumstances.

- 5.9. *Effects of Termination.* Upon termination of this Agreement as provided herein, neither Party shall have any further obligation hereunder except for (a) obligations accruing prior to the date of termination and (b) obligations, promises, or covenants contained herein that are expressly made to extend beyond the Term of this Agreement, including, without limitation, confidentiality obligations.

6. INSURANCE

- 6.1. *Facility.* Facility, at its sole cost and expense, shall procure and maintain self-insurance and/or commercial insurance coverage for general and professional liabilities in amounts necessary to adequately insure against its risks. The limits of the general and professional liability insurance shall equal at least one million dollars (\$1,000,000) per occurrence, three million dollars (**\$3,000,000**) annual aggregate, and twenty million dollar (**\$20,000,000**) excess. Within thirty (30) days after the commencement of the effective date of this Agreement and annually thereafter, Facility shall provide Outreach with a certificate evidencing such insurance coverage. Facility shall notify Outreach of any reduction, suspension, or cancellation of such insurance coverage within three (3) business days of receipt by Facility.
- 6.2. *Duty to Defend **and** Cooperate.* To the extent not covered by liability insurance carried by the Parties, each Party shall be solely responsible for its own claims, liabilities, damages, injuries, suits, demands, and expenses of all kinds (including, without limitation, attorneys fees and court costs) that may result or arise from any alleged malfeasance, neglect, misconduct, error, or omission caused, or alleged to have been caused, by such party, or by any member, partner, employee, representative, agent, or contractor of such party, in connection with the **performance** of this Agreement. In the event that a claim is made against both parties, it is the intent of both Parties to cooperate in the defense of said claim and to cause their insurers to do likewise.
- 6.3. *Physician Insurance.* Facility covenants that each Physician shall carry during the Term of this Agreement, either occurrence-based or claims-made general and professional liability insurance coverage with reputable companies to protect against any liability to Patients or the public generally. The limits of the professional liability insurance shall equal at least one million dollars (**\$1,000,000**) for each occurrence and three million dollars (**\$3,000,000**) annual aggregate. Within thirty (30) days **after** the commencement of the Effective Date of this Agreement and annually thereafter, Facility shall provide Outreach with a certificate evidencing such insurance coverage. Facility shall notify Outreach of any reduction, suspension, or cancellation of such insurance coverage of any Physician within **three** (3) business days of such reduction, suspension, or cancellation of insurance.

7. GENERAL PROVISIONS

- 7.1. *Amendment.* This Agreement or any part of it only may be amended at any time during the Term of the Agreement by the mutual consent in writing of duly authorized representatives of the Parties.
- 7.2. *Applicable Law.* The validity of this Agreement and of any of its terms and provisions, as well as the rights and duties of the Parties and any third parties hereunder, shall be interpreted and enforced pursuant to and in accordance with the laws of the state of Texas.
- 7.3. *Attorney Fees; Enforcement Costs.* If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorney's fees, court costs, and other reasonable expenses incurred in connection with maintaining or defending such action or proceeding, as the case might be, including any such attorney's fees, costs, or expenses incurred on appeal, in addition to any other relief to which such Party may be entitled.
- 7.4. *Assignment.* Neither this Agreement nor any rights, powers, or duties hereunder may be assigned by either Party without the express written consent of the other Party, and any such unauthorized assignment shall be void, except that Outreach may assign this Agreement to an Outreach Affiliate without the written consent of Facility. If any unauthorized assignment is attempted by either Party, the other Party shall have the power, at its election, to terminate this Agreement, effective immediately upon the giving of notice to the Party attempting such unauthorized assignment. This Agreement shall inure to the benefit of and shall bind the successors and permitted assignees of the Parties hereto.
- 7.5. *Confidentiality.* Both Parties, including their **affiliates**, recognize and acknowledge that, by virtue of entering this Agreement, the Parties shall have access to information that is confidential and constitutes valuable, special, and unique property of the Parties. The Parties agree that neither Party shall at any time, either during or subsequent to the Term of this Agreement, disclose to others, use, copy, or permit to be copied any secret or confidential information, pricing, or know-how of the other Party for any reason or purpose without the other Party's prior written consent. Neither Party shall disclose the terms of this Agreement, including, but not limited to, the compensation paid by Facility to Outreach, without the prior written consent of the other Party. This Section 7.5 shall survive the termination of this Agreement.
- 7.6. *Enforceability.* In the event any provision of this Agreement is rendered invalid or unenforceable by a valid Act of Congress or of any state or by any regulation duly promulgated by officers of the United States or of any state acting in accordance with law, or declared null and void by any court of competent jurisdiction, the remainder of the provisions of this Agreement shall remain in full

force and effect. In the event any part of this Agreement shall be finally determined by a court of competent jurisdiction to be non-binding on any of the Parties, it shall remain binding, and in full force and effect, with respect to the remaining Party or Parties.

- 7.7. *No Third Party Beneficiaries.* Nothing contained in this Agreement shall be construed to create in any person not a Party to this Agreement any rights, duties, or obligations.
- 7.8. *Waiver of Breach.* Waiver of breach of this Agreement shall not be deemed to be a waiver of any other breach of the same or another provision of this Agreement or any other agreement between or among any of the Parties, and shall not bar any action for subsequent breach thereof.
- 7.9. *Status of Parties.* None of the provisions of this Agreement are intended to create nor shall be deemed or construed to create any relationship between Facility and Outreach other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. Neither of the Parties, nor any of their respective officers, directors, or employees, shall be construed to be the agent, employee, or representative of the other. Neither Party is authorized to represent the other for any purpose whatsoever without the prior written consent of the other except as specifically provided herein.
- 7.10. *Force Majeure.* Neither Party shall be liable nor deemed to be in default for any delay or failure to perform under this Agreement deemed to result, directly or indirectly, **from** any cause beyond the reasonable control of either Party, including without limitation, Acts of God, civil or military authority, acts of public enemy, fires, floods, strikes, or regulatory delay or restraint.
- 7.11. *Remedies.* All rights, powers, and remedies granted to either Party by any particular term of this Agreement are in addition to, and not in limitation of, any rights, powers, or remedies that it has under any other term of this Agreement, at common law, in equity, by statute, or otherwise, and all such rights, powers, and remedies may be exercised separately or concurrently, in such order and as often as may be deemed expedient by either Party. No delay or omission by either Party to exercise any right, power, or remedy shall impair such right, power, or remedy or be construed to be a waiver of any breach or default or an acquiescence therein.
- 7.12. *Captions and Gender.* All section titles or captions contained in this Agreement are for convenience only and are not deemed part of the text of this Agreement. All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.
- 7.13. *Sale or Merger.* Each Party agrees to inform the other as soon as practicable if a change in ownership is contemplated.

- 7.14. *Power and Authority.* Each Party hereto represents and warrants as to itself that the execution, delivery, and performance of this Agreement by the Party and the consummation of the transactions contemplated herein by the Party:
- a. are within Party's corporate powers and the terms of Party's charter or articles of association, bylaws, or any amendments thereto, and have been duly and properly authorized by all appropriate corporate action;
 - b. to the best of Party's knowledge, will neither conflict with nor result in any breach or contravention of, nor permit the acceleration of the maturity of, or the creation of any lien under, any indenture, mortgage, contract, lease, agreement, instrument, or understanding to which Party is a party or by which Party is bound;
 - c. will not violate any judgment, decree, order, writ, or injunction of any court or governmental authority to which Party may be subject; and
 - d. are and will constitute the valid and legally binding obligation of Party, enforceable in accordance with the terms of this Agreement, except as enforceability may be subject to general principles of equity.
- 7.15. *Incorporation of Attachments.* All Exhibits and Attachments to this Agreement are incorporated by reference herein and are made a part of this Agreement.
- 7.16. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.
- 7.17. *Entire Agreement.* This Agreement and the Sublicense Agreement between the Parties contain the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede any and all prior agreements and understandings, whether oral or written, between the Parties hereto relating to such subject matter.
- 7.18. *Non-Exclusive Agreement.* The Parties hereto agree that Outreach shall not be precluded from entering into arrangements to provide the types of services set forth herein to other entities, persons, or organizations, except as provided in Section 2.3.
- 7.19. *Omnibus Reconciliation Act.* The following clause is included because of the possible application of Section 1861(v)(1)(I) of the Social Security Act to this Agreement and if that Section should be found inapplicable to this Agreement, then this clause shall be deemed not to be part of this Agreement and shall be null and void.

Upon the expiration of four (4) years **after** the furnishing of services under this Agreement, Outreach shall make available, upon written request of the Secretary

of the Department of Health and Human Services or the Controller General of the United States or any of their duly authorized representatives, this Agreement and such books, documents and records of Outreach as are necessary to certify the nature and extent of the costs hereunder. If Outreach carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a twelve (12) month period with a related organization, such subcontract shall contain a clause that until the expiration of four (4) years after the furnishing of services under such subcontract, the related organization will make available, upon request of the Secretary or Controller General or any of their duly authorized representatives, the subcontract and such books, documents, and records of such related organization as are necessary to verify the nature and extent of rendered contractual costs. This paragraph will survive termination of this Agreement.

- 7.20 *Patient Referrals.* The Parties agree that the benefits for the Facility hereunder do not require, are not payment for, and are not in any way contingent upon the admission, referral, or any other arrangement for the provision of any item or service offered by Outreach or any Outreach Affiliate with respect to any patients in any facility or laboratory owned, controlled, managed, or operated by Outreach or any Outreach Affiliate. All decisions concerning medical care made by Physicians shall be made in consideration of the best interest of the Patient. All services by Outreach hereunder are provided in exchange for fair and reasonable consideration.
- 7.21 *Authority and Approval.* The execution of this Agreement by The University of Texas M. D. Anderson Cancer Center, which is not party to this Agreement, is solely to evidence its review, authorization, and approval of this Agreement.
- 7.22 *Medical Practice.* Outreach and Facility acknowledge that in connection with Outreach's performance under this Agreement, Outreach is not practicing medicine and at all times during the Term of the Agreement, Facility **and/or** Physicians shall remain in complete control of medical care services and shall be solely responsible for all acts and decisions in connection therewith notwithstanding the receipt by Facility or Physicians, whether in writing or otherwise, of any recommendation or other statement regarding such care with respect to a Patient. Outreach shall at no time control or be responsible to any extent for the medical care services of the Facility or its Physicians.
- 7.23 *Solicitation of Employees.* During the Term of this Agreement and for a period of ninety (90) days after the expiration or sooner termination of this Agreement, neither Party will, directly or indirectly, without the written consent of the other Party, in any capacity solicit for employment or employ any person who has been an employee of the other Party.

8. NOTICES

Any notice, request, demand, instruction, communication, or other document required, permitted, or desired to be given hereunder shall be in writing and, except as otherwise

provided for herein, shall be deemed effectively given : (a) on receipt if delivered personally or by commercial courier service or if sent by prepaid telex, telegram, by facsimile or by other instantaneous electronic transmission device, or (b) on the third day after deposit (unless a different date is shown on the return receipt) if sent postage prepaid registered or certified United States mail, return receipt requested, as follows:

Facility: Spohn Health System
1702 Santa Fe
Corpus Christ, Texas 78404
Attn: President
Telephone: (512) 881-3173
Facsimile: (512) 887-7948

Outreach: M. D. Anderson Cancer Center Outreach Corporation
7505 South Main, Suite 500
Houston, Texas 77030
Attn: President and Chief Executive Officer
Telephone: (713) 794-5000

IN WITNESS WHEREOF, Facility and Outreach have caused this Agreement to be executed in multiple originals effective as of the date and year first written above.

SPOHN HEALTH SYSTEM

By: _____
Name: **Jake Henry, Jr.**
Title: **President and CEO**
Date Signed: _____

M. D. ANDERSON CANCER CENTER OUTREACH CORPORATION

By: _____
Name: **Hugh C. Wilfong, II**
Title: **President and Chief Executive Officer**
Date Signed: _____

FOR REVIEW AND APPROVAL ONLY

THE UNIVERSITY OF TEXAS M. D. ANDERSON CANCER CENTER

By: _____
Name: **John Mendelsohn, M.D.**
Title: **President**
Date Signed: _____

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EXHIBIT 1.7

PHYSICIANS

EXHIBIT 2.1

CLINICAL SUPPORT SERVICES

During the Term of the Agreement, Outreach shall provide the following Clinical Support Services to Facility:

1. CELL PROCESSING FOR AUTOLOGOUS BONE MARROW TRANSPLANTATION

The procedure of cell processing will require stem cells to be harvested at Facility and packaged for shipment. In order to absolutely guarantee that cells are delivered on time and in appropriate condition, it is required that stem cells be hand carried back and forth between Facility and MDACC. Delivery expenses will be borne by Facility.

MDACC will perform two routine bacteria cultures, one on receipt and one upon processing as a quality assurance measure. Immunophenotyping will be used to assess tumor contamination when applicable and to assess the stem cell content of CD34 cells (viability assessment). Additional testing will be performed by MDACC when required. The cells will be processed [**frozen**] and stored until Facility requests their return. MDACC requires one working day's notice unless an emergent situation arises. Cells will be shipped **frozen**. Facility will store and thaw appropriately until cells are re-administered.

2. TRAINING

Training for high dose chemotherapy administration and autologous (self donor) bone marrow transplantations includes pheresis collection **and** administration to be performed according to **MDACC** guidelines and pathways, quality standards, and where applicable, research protocol guidelines.

- 2.1. Initial Training. **The** following summary schedule outlines the minimum training requirements for all personnel involved in autologous bone **marrow** transplantations and high dose chemotherapy at Facility. These schedules are listed by function of the personnel at the Facility, recognizing that some functions may be combined and performed by one person.

Physician

One to three weeks training at MDACC (length to be determined by MDACC) to include:

General tour

Didactic with program head

Didactic with Pheresis Physician

Didactic with BMT Clinical Nurse Specialist and Pharm. D.

Clinic rounds in both autologous and allogeneic outpatient clinics
Rounds in pheresis collection area to include machine set up; calculation; complications; solo performance of pheresis procedures, etc.
Inpatient rounds with BMT multidisciplinary team (Attending, CNS, Pharm D, Nursing)

Inpatient Nursing

One week training at MDACC to include:

General tour

Didactic with program head

Didactic with BMT Clinical Nurse Specialist and Pharm. D.

Visiting rounds in autologous BMT outpatient clinic

Visiting rounds in pheresis collection area

Inpatient rounds with BMT multidisciplinary team (Attending, CNS, Pharm D, Nursing)

Inpatient patient care to include: pre-admission work up review; admission assessment, chemo order checking to verify dose/protocol; daily assessment of parameters and documentation; observe patient teaching of chemo and self care; discharge, etc.

Pheresis Collection/Infusion

Two weeks at MDACC to include:

General tour

Didactic with Chief of Pheresis Section

Didactic with QA Nurse, Pheresis Section

Pheresis collection

Pheresis infusion

Quality assurance / problem resolution

Pharmacy

One and ½ days at MDACC to include:

General tour

Didactic with Pharm. D. Clinical Specialist, BMT Topics: Discharge medications and counseling; insurance clearance; home care

Inpatient rounds with BMT multidisciplinary

Introduction and tour with Head, Division of Pharmacy

Didactic and tour with Practitioner, BMT Topic: Outpatient Autologous Clinic

Didactic and tour with Inpatient Pharmacy Supervisor Topics: Checking and verifying chemotherapy orders; overview of pharmacy satellite

Didactic and tour with Pharm. D., Clinical Research Specialist, BMT Topics: Protocol review; writing chemotherapy orders; preprinted orders; overview of autologous transplantation

Case Management

½ day; less depending on current skill set

Didactic on the following topics:

- Verification of benefits
- Procedure and inpatient admission authorization

- Inter-relationship between BMT team and case management
 - Inter-relationship between financial screening and case management
 - Inter-relationship between payment issues and case management
 - Definition of case management process
 - Initiation of letter of medical necessity
 - Interaction between case management and ancillary services (social services)
 - Denial process
 - Outcomes monitoring
- Ongoing case management education

Managed Care Contracting

One day at MDACC to include:

Contracting overview

'Boiler plate' Contract provisions

Negotiating case rates for care phases: evaluation; consult; harvest; pre-transplant care; transplant; follow up care; and re-transplantation

Contracting strategies

Insurer expectations and strategies

Data Management (which must be **performed** by a Research Nurse)

One week at MDACC to include:

General tour

Data collection elements and process

Patient Data Management System orientation with Office of Protocol Research

- 2.2 Continuing Training. Continuing training will be provided, as appropriate for the following classes of personnel: physician, inpatient nursing, outpatient nursing, pheresis collection and administration, pharmacy, case management, protocol data management

3. PROGRAM SUPPORT AND REVIEW

- 3.1. Guidelines and Pathways. Outreach shall make available to Facility the MDACC clinical guidelines and care pathways related to bone marrow transplant only, as such clinical guidelines and care pathways become available for distribution to Outreach affiliated facilities. The clinical guidelines provide an overview of the disease process and the approaches to medical care for the disease process based on current practice standards. The care pathways describe the expected events and interventions in an episode of care. A format for reporting adherence to and variations from care pathways shall accompany the care pathways.
- 3.2 Clinical Trials and Clinical Research Protocols. Whenever deemed appropriate through concurrent case review Outreach shall make available to Facility the opportunity to enter Patients into clinical trials for autologous peripheral blood progenitor cell transplant only.
- 3.3 Consultation and Second Opinions. MDACC BMT physicians will prospectively review all cases which may be eligible for high dose chemotherapy and peripheral

blood stem cell administration (bone marrow transplantation) and must approve the patient treatment plan.

- 3.4 **Cure Management.** MDACC BMT physicians will follow treatment progress as appropriate to ensure Program maintains established standards of care. Ongoing case review may include, but not be limited to, a weekly update of vital case information to be faxed or electronically mailed to MDACC BMT physicians. MDACC BMT physicians will acknowledge treatment progress and provide any modifications to the treatment plan within 24 hours of receipt of progress report.
- 3.5 **Continuing Education.** Outreach shall provide continuing education programs for the purpose of educating physicians and Facility health care personnel regarding the appropriateness of bone marrow transplant treatment modalities. The amount and timing of continuing education shall be determined by patient volumes. Continuing education may include monthly case review, didactic seminars, and facility review.

Clinical Support Services are designed to provide minimum guidelines for facilities and individuals in the treatment of cancer. The Clinical Support Services are not intended to include all of the procedures and practices that a facility or individual should implement if the standard of practice in the community or federal or state laws or regulations establish individual requirements. Facility and Physicians should analyze their practice and procedures to determine whether additional standards apply. Outreach disclaims any responsibility for setting maximum standards and expressly does not warrant or represent that use of Clinical Support Services is an exclusive means of complying with the standard of care in the industry or the community.

EXHIBIT 2.3

EXCLUSIVITY

1. **Nueces** (Primary Market)
2. San **Patricio** (Primary Market)
3. Aransas
4. Bee
5. Jim Wells
6. Kenedy
7. Kleberg
- a. Live Oak
9. **Refugio**

EXHIBIT 3.2

CONDITIONS OF AGREEMENT

As a continuing condition precedent to the delivery of Clinical Support Services by Outreach during the Term of this Agreement, Facility agrees as follows:

1. Facility shall and shall cause Physicians to present all treatment plans for Patients to MDACC for approval.
2. Facility shall adhere and shall cause Physicians to adhere substantially to MDACC clinical guidelines and care pathways, including applicable reporting requirements, in the treatment of patients for bone marrow transplant.
3. Facility shall make reasonable and good faith efforts and shall cause Physicians to make reasonable and good faith efforts to comply with the Diagnosis/Treatment categories attached as Exhibit **3.2A**.
4. Patients may participate in MDACC clinical trials as mutually agreed to by the Parties.
5. Facility shall conduct and shall cause Physicians to conduct quality assurance and utilization review in a **manner** consistent with MDACC standards.
6. Facility shall provide a means for integrating practice information with the MDACC combined database.
7. Facility shall adhere to the Sublicense Agreement.
8. Facility shall give Outreach and Outreach Affiliates access and shall cause Physicians to give Outreach and Outreach Affiliates access to patient records for the purpose of collection and analysis of bone marrow transplant research data.
9. Facility shall procure and maintain in good working order the equipment listed on Exhibit **3.2B**.
10. Facility shall structure and enforce its relationships with Physicians so as to condition the utilization of Clinical Support Services by Physicians on compliance with the requirements described in this Exhibit 3.2.
11. Facility shall maintain and require a nurse to Patient staffing ratio of one nurse to three Patients who are inpatients.
12. Facility shall and shall cause Physicians to enter Patient information, including demographic information, on **MDACC's** Data Management System for Stem Cell Marrow Transplants as such Data Management System is made available to Facility.

13. Facility shall limit its transplantation program to autologous peripheral blood progenitor cell transplantations.

EXHIBIT 3.2A

DIAGNOSIS/TREATMENT CATEGORIES

BMT Service Roster for Facility Program

1. Procedures **approved** for treatment at Facility:

Autologous blood stem cell transplants for the following diagnoses with no indication of tumor infiltration of the bone marrow:

Breast Cancer

Hodgkins Disease

Large Cell Lymphoma

Limited other diagnoses upon treatment plan consultation and approval by MDA BMT staff

2. Procedures not **approved** for treatment at Facility:

Allogeneic transplants

Any diagnosis that includes tumor infiltration of bone marrow

Any case diagnosis that, upon consultation with MDACC BMT staff, is rejected as an appropriate candidate for BMT procedure at Facility

EXHIBIT 3.2B

REQUIRED EQUIPMENT

COBE BCT Spectra Pheresis collection unit (approximate cost. \$45K)

Blood Irradiator

CIS/US IBL 437C Blood

Stem Cell Nitrogen Storage Bank to include:

- A. **XLC1211** with TEC 2000 Full Auto Control and battery backup, 23,400 maximum storage capacity (Part # 1075 13 5 1) (suggest two)
- B. Bone Marrow Canister System with 560 canisters for Baxter **4R9953** bags, 140 each 4 place **frame**, and 1 platform divider (Part # **ZS101**) (suggest two)
- C. Vapor Shipper Container with choice of blood bag or vial rack (Part # 10508967) (requires two)

Portable In-room HEPA Filter Unit

EXHIBIT 3.3

COMPENSATION

A. *PROGRAM FEE*

Facility shall pay Outreach an annual Program Fee of \$250,000. Such fee shall be payable each year in four (4) equal quarterly installments of \$62,500 (Sixty-Two Thousand Five Hundred and ~~no~~**100** Dollars) due, successively, on or before the **fifth** day of each quarter during the Term. **Past** due installments of the Program Fee shall bear interest at the lesser of 18% per annum or the maximum nonusurious interest rate permitted by law calculated **from** the date the payment was due. The Program Fee includes Clinical Support Services described under Sections 2 and 3 of Exhibit 2.1 and the first 10 stem cell collections per annum described in Section 1 of Exhibit 2.1

B. *STEM CELL PROCESSING FEE*

For each stem cell collection performed by Facility after the **first** ten stem cell collections per **annum**, Facility shall pay Outreach a Stem Cell Processing Fee equal to \$3,000 per collection. Facility shall be solely responsible for payment of this fee regardless of reimbursement from any Patient or third party **payor**. The Stem Cell Processing fee shall be invoiced to Facility on a monthly basis. Payment shall be due Outreach no later than thirty (30) days following invoice for such services. Payment received any later shall be an interest at the lesser of 18% per annum or the maximum nonusurious interest rate permitted by law calculated from the **first** date of the month in which the service is rendered.

C. *DELIVERY AND IMPLEMENTATION EXPENSES*

1. Facility shall reimburse Outreach for reasonable out-of-pocket expenses related to this Agreement including travel, meal and lodging expenses, incurred by Outreach or Outreach Affiliate employees incurred in delivering Clinical Support Services to Facility and Physicians and in assisting Facility and Physicians in the implementation of Clinical Support Services.
2. To the extent Outreach or an Outreach Affiliate provides services to Facility that are not described in or are in addition to the Clinical Support Services described in this Agreement, then Outreach shall be compensated for such services as mutually agreed to by the Parties.
3. The Delivery and Implementation Expenses described in this Exhibit 3.3 shall be invoiced to Facility on a monthly basis. Payment shall be due to Outreach no later than thirty (30) days following invoice for such services.

Payment received any later shall bear interest at the lesser of 18% per annum or the maximum nonusurious interest rate permitted by law calculated from the **first** date of the month in which the service is rendered.

M. D. ANDERSON CANCER CENTER OUTREACH CORPORATION
and
SPOHN HEALTH SYSTEM

SUBLICENSE AGREEMENT

This Sublicense Agreement @Agreement@) is entered into effective as of the ____ day of _____, 1998 (**hereinafter** referred to **as** the **AEffective** Date@), between **the** parties hereto, who agree **as** follows in consideration of the mutual promises contained herein:

1 . **PARTIES**

- 1.1 M. D. Anderson Cancer Center Outreach Corporation (**hereinafter** referred to as LICENSOR) has a principal place of business at 7505 South Main Suite 500, Houston, **Texas** 77030.
- 1.2 Spohn Health System (hereinafter referred to as LICENSEE) has a principal place of business at 1702 Santa Fe, Corpus Chris@ Texas 78404.
- 1.3 LICENSOR and LICENSEE are parties to this Agreement

2. **BACKGROUND**

- 2.1 By virtue of **that** certain **ALicense Agreement@** between LICENSOR and the BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM (hereinafter referred to as BOARD), LICENSOR has rights in the mark(s) identified in Attachment A hereto, and public recognition and goodwill have been acquired through the use of such mark(s).
- 2.2 LICENSEE recognizes the **goodwill** appurtenant to use of the mark(s) and desires to obtain a nonexclusive license to utilize such mark(s). LICENSOR is willing to grant such a license under the terms and conditions of this Agreement.

3 . **DEFINITIONS**

- 3.1 MARKS include trademarks and service. marks.
- 3.2 LICENSED MARK(S) mean the mark(s) **listed** in Attachment **A**, including common law rights, as well as any applications for registration or registrations which may be issued covering such mark(s), whether state or federal.
- 3.3 LICENSED SERVICES means those services specified in Attachment B hereto in connection with which any of the LICENSED MARK(S) are used.

3.4 TERM means the effective period of this Agreement, which shall commence on the EFFECTIVE DATE and which shall terminate upon the earliest termination of any of the following Agreements:

1. the Transplant **Program** Clinical Support Services Agreement between LICENSOR and LICENSEE; or
2. the License Agreement between the BOARD and LICENSOR identified in Section 2.1 above.

3.5 QUALITY means an acceptable level of quality to, in the sole judgment of, **LICENSOR.**

3.6 LICENSED TERRITORY means the area described in Attachment C.

3.7 **MARKETING** AREA means the area described in Attachment D.

4 . L I C E N S E

Subject to the terms and conditions of this Agreement, LICENSOR grants to LICENSEE the nonexclusive right and license to utilize the LICENSED **MARK(S)** during the term hereof (a) in the LICENSED TERRITORY solely in connection with the provision of LICENSED SERVICES of QUALITY to be rendered at 1702 Santa Fe, Corpus **Christi**, Texas 78404 and (b) with advertising and promotional material within the LICENSED TERRITORY and MARKETING AREA to the **extent** appropriate to the provision of services at 1702 Santa Fe, Corpus **Christi**, Texas 78404.

5. DEFAULT, TERMINATION

5.1 In the event that LICENSEE becomes insolvent, makes any assignment for the benefit of creditors, is subject to any bankruptcy or receivership **proceedings**, or fails to comply with any of its obligations under this Agreement, LICENSOR may serve on LICENSEE a written notice of default specifying the nature of the default. If the **default** is not cured within thirty (30) days **from** service of the notice of default to the satisfaction of LICENSOR this agreement shall automatically terminate upon service by LICENSOR of a formal written notice of termination.

5.2 Upon expiration or termination of this **Agreement**, **all** rights granted to LICENSEE hereunder shall cease, and LICENSEE will regain **from further** use of the LICENSED **MARK(S)**, or any mark or name reasonably deemed by LICENSOR to be similar to the LICENSED **MARK(S)**, in connection with the provision of or promotion of services. LICENSEE acknowledges that **failure** to comply with this provision **will**

result in immediate and irreparable harm **affording** injunctive and any and all other appropriate relief to the owner of the LICENSED MARK(S).

- 5.3 Upon expiration or **termination** of this Agreement, LICENSEE shall not operate its business in any manner which would **falsely** suggest to the public that this Agreement is still in force or that **any** relationship exists between LICENSEE and LICENSOR or the **owner** of the LICENSED MARK(S).

6. GOODWILL IN LICENSED MARK(S)

LICENSEE **agrees** that the essence of this Agreement is founded on the goodwill associated with the LICENSED **MARK(S)** and the value of that goodwill in the minds of the consuming public. LICENSEE agrees that it is critical that such goodwill be protected and enhanced and, toward this end, LICENSEE shall not during the **TERM** or thereafter:

- (a) attack the title or any rights in or to the LICENSED MARK(S);
- (b) apply to register or maintain any application or registration of the LICENSED **MARK(S)** or any other mark **confusingly** similar thereto in any jurisdiction, domestic or **foreign**;
- (c) use any colorable imitation of any of the LICENSED MARK(S), or any variant form (including variant design forms, logos, colors, or **typestyles**) of the LICENSED MARK(S) not **specifically** approved by LICENSOR;
- (d) misuse the LICENSED MARK(S);
- (e) take any action that would bring the LICENSED MARK(S) into public disrepute;
- (f) use the LICENSED **MARK(S)**, or any mark or name **confusingly** similar thereto, in its corporate or trade name without approval of **LICENSOR**; or
- (g) take any action that would tend to destroy or **diminish** the goodwill in the LICENSED **MARK(S)**.

7. QUALITY CONTROL: ADVERTISING APPROVAL

- 7.1 AU LICENSED SERVICES shall be **QUALITY services**. LICENSEE acknowledges that if LICENSED SERVICES were of **inferior quality**, the substantial goodwill in LICENSED MARK(S) would be impaired. Accordingly, LICENSEE agrees that **all** LICENSED SERVICES shall be **QUALITY Services**. LICENSOR **shall** have the right to inspect each office or facility operated by the LICENSEE pursuant to the **Clinical** Support Services Agreement and monitor **services** provided by LICENSEE to assure LICENSEE' s compliance with this Section 7.1.

- 7.2 **All** advertising and promotional material bearing **the LICENSED MARK(S)** and any use of the LICENSED MARK(S) inside or outside the **MARKETING AREA** shall be subject to the approval of LICENSOR LICENSEE **shall furnish** advertising and

promotional materials and statements regarding the **use** of the **LICENSED MARK(S)** to LICENSOR **c/o** The University of Texas M. D. Anderson Cancer Center, Associate Vice President for Public Affairs, 1515 **Holcombe** Blvd., Box 229, Houston, Texas 77030, and to The University of Texas System Office of General Counsel, **Intellectual** Property Section, at 201 W. 7th Street, Austin, Texas 78701.

In addition, LICENSEE shall **furnish** to LICBNSOR one (1) copy of any advertisement of LICENSED SERVICES used by LICENSEE and a written description of the proposed use of the LICENSED MARK(S). LICBNSOR shall have one (1) month **from** receipt thereof in which to approve in writing the materials.

In the **absence** of approval, or upon earlier written rejection, the materials will be deemed as rejected. LICENSEE shall **furnish** to LICBNSOR a **further** sample of advertising or a description of the use of the LICENSED MARKS if it desires to change the advertising or use of the **LICENSED MARK(S)**. LICENSOR will have one (1) month to approve advertising. Failure to approve will be deemed **rejection**.

- 7.3 In addition to the approval set forth in Section 7.2, any use of the LICENSED MARK(S) outside of the MARKETING AREA or any use of advertising and promotional material bearing the LICENSED MARK(S) outside of the MARKETING AREA (which MARKETING AREA expressly excludes global communication/electronic mail, such as internet world wide web) shall be subject to the additional prior written approval of the Chief Executive **Officer** of LICENSOR. LICENSEE shall furnish a written description of the proposed use of the LICENSED MARK(S) outside of the MARKETING AREA to the Chief Executive Officer of LICENSOR for approval

8. MARKING

LICENSEE agrees that it will designate the LICENSED SERVICES in a manner as specified **from** time to time in writing by LICBNSOR to indicate the rights of LICENSOR in the LICENSED MARK(S), including registration **status** of the LICENSED MARK(S) and that the **services** are provided **pursuant** to license.

9. INDEMNITY/HOLD HARMLESS

LICENSEE agrees that it is wholly responsible for all services provided by it, including all LICENSED SERVICES, and that neither LICBNSOR nor the BOARD shall have any liability for any **services**, including any LICENSED **SERVICE**, provided by **LICENSEE**. LICENSEE indemnifies **and** holds harmless LICBNSOR and BOARD and the officers, employees, and

agents **thereof, from** any **claims**, demands, causes of action and damages, **including** reasonable attorney' s **fees**, caused or arising out of LICENSEE' S provision of professional services, including, without limitation, LICENSED SERVICES.

10. NOTICES

All notices or demands required to be made or permitted under this Agreement shah be in writing and shah be deemed served when deposited in the United States mail, first class postage prepaid, certified or registered mail, return receipt requested, addressed as provided in paragraph 11 of this Agreement, or to such other address as either party may from time to time designate in writing.

11. ASSIGNMENT

This Agreement may not be assigned by LICENSEE or LICENSOR without written approval BOARD.

12. STATUS OF PARTIES

This Agreement is not intended to create, and shah not be interpreted or construed as creating, a partnership, joint venture, agency, employment, master and servant, or similar relationship between BOARD, LICENSOR and LICENSEE and no representation to the contrary shah be binding upon BOARD or LICENSOR.

13. BINDING EFFECT

This Agreement shah be binding upon and inure to the **benefit** of BOARD, LICENSOR and LICENSEE and their respective successors, assigns, executors, heirs, and personal representatives.

14. LAW GOVERNING

This Agreement shah for **all** purposes be governed by and interpreted and enforced in accordance with the laws of the State of Texas. LICENSEE hereby agrees that any action arising out of this Agreement shall be litigated under the laws of the State of Texas **and** venue shah be in Harris County, Texas. LICENSEE hereby agrees to submit to the jurisdiction of the courts of the State of Texas, and that service of process by certified mail, return receipt requested, shah be sufficient to confer in **personam** jurisdiction over LICENSEE.

15. **MISCELLANEOUS**

- 15.1 The provisions of this Agreement are severable, and if any provision shall be held illegal, invalid, or **unenforceable**, such **holding** shall not **affect** the **legality**, validity, or enforceability of any other provision. Any such illegal, invalid, or unenforceable provision shall be deemed stricken **herefrom** as if it had never been contained herein, but all other provisions shall continue in **full** force and effect.
- 15.2 As used herein, the term LICENSEE shall include the plural as well as the singular, the masculine and feminine genders, and corporations, partnerships, and other business entities as well as individuals.
- 15.3 This **Agreement** contains the entire Agreement between the **parties with** respect to the subject matter hereof and supersedes any prior agreements between the parties, written or oral, with respect to such subject mater.
- 15.4 This Agreement may not be amended, **modified**, or rescinded except by a written agreement executed by LICENSOR and **LICENSEE**.
- 15.5 This Agreement may be executed in two or more **counterparts**, each of which shall **be** deemed an original and all of which together shall constitute but one and the same instrument.

EXECUTED BY LICENSOR and LICENSEE **effective** as of the day and year first above written, in duplicate copies, each of which shall be deemed an original.

LICENSOR:

LICENSEE:

M. D. ANDERSON CANCER **CENTER** ^{INC}
OUTREACH CORPORATION

SPOHN **HEALTH** SYSTEM

By: _____

By: _____

Title: _____

Title:

Date Signed: _____ Date Signed: _____

ATTACHMENT A

LICENSED MARK(S) ARE:

1. Spohn Hospital Bone **Marrow** Transplantation Service **Affiliated** with M. D. Anderson Outreach
2. Spohn Hospital Cancer Care Services **Affiliated** with M. D. Anderson Outreach*

*LICENSEE shall not use this LICENSED MARK unless and until LICENSEE and LICENSOR have executed a **Clinical** Support Services Agreement for a comprehensive oncology program in addition to the Transplant Program Clinical Support Services Agreement effective the d a y o f

ATTACHMENT B

LICENSED SERVICES ARE:

In accordance with License&s purposes and emphases on the clinical, educational and scientific aspects of cancer care, the following services may be provided by Licensee in connection with the Licensed Mark(s) listed in Attachment A:

High Dose **Chemotherapy** end Certain **Autologous** Peripheral Blood Progenitor Cell Transplantations

ATTACHMENT C

LICENSED TERRITORY IS:

Spohn Health System
1702 Santa Fe
Corpus **Christi**, Texas 78404

ATTACHMENT D

MARKETING AREA IS:

Nueces (Primary Market)

San **Patricio** (Primary Market)

Aransas

Bee

Jim Wells

Kenedy

Kleberg

Live Oak

Refugio

REPORT AND RECOMMENDATIONS OF THE FACILITIES PLANNING AND CONSTRUCTION COMMITTEE (Pages 136 - 147).--Committee Chairman Clements 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, the 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. System: Authorization for the Chancellor to Approve Inscriptions on Plaques for Permanent Buildings.--Upon recommendation of the Facilities Planning and Construction Committee, the Board authorized the Chancellor to approve inscriptions on plaques for permanent buildings within The University of Texas System which are in conformity with the content and format approved by the U. T. Board of Regents in June 1979 and as set forth below:

BUILDING NAME
19____
(Year of Contract Award)

BOARD OF REGENTS
(Date of Contract Award)

Name, Chairman
Name, Vice-Chairman
Name, Vice-Chairman
Name, Member
Name, Member
Name, Member
Name, Member
Name, Member
Name, Member

Name,
Chancellor, The University
of Texas System
Name,
President, The University
of Texas at (Component)
Name,
Project Architect

Name,
Contractor

2. U. T. Austin: Approval to Name Economics Building as the Bernard and Audre Rapoport Building (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Naming of Buildings and Other Facilities).--Pursuant to the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, relating to naming of buildings and other facilities, approval was given to redesignate the Economics Building at The University of Texas at Austin as the Bernard and Audre Rapoport Building in honor of Bernard and Audre Rapoport.

Mr. and Mrs. Rapoport have contributed in excess of \$18 million to sixteen U. T. Austin colleges, schools, and other units which have been designated for many diverse and important purposes, including eleven faculty endowments and seven student scholarships and fellowships, as well as capital building projects, academic colloquia and publications, library acquisitions, and research. In addition, Mr. Rapoport has given tirelessly of his time and energy, having served a six-year term as a member of the U. T. Board of Regents, including four years as Chairman from 1993-1997.

3. U. T. Austin - Office Building and Parking Garage No. 4A (Project No. 102-919): Redesignation of Project as Parking Garage No. 4A; Approval of Design Development Plans; Approval of Total Project Cost; Appropriation of Funds and Authorization of Expenditure; and Approval of Use of Revenue Financing System Parity Debt, Receipt of Parity Debt Certificate, and Finding of Fact with Regard to Financial Capacity.--Following a brief overview by President Faulkner, Mr. Richard M. Archer, representing the Project Architect, Overland Partners, Inc., San Antonio, Texas, presented the design development plans for the Parking Garage No. 4A project at The University of Texas at Austin to the Facilities Planning and Construction Committee.

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

- a. Redesignated the Office Building and Parking Garage No. 4A project at U. T. Austin as Parking Garage No. 4A

- b. Approved design development plans for Parking Garage No. 4A
- c. Approved a total project cost of \$9,200,000
- d. Appropriated funds and authorized expenditure of \$8,500,000 from Revenue Financing System Bond Proceeds and \$700,000 from Auxiliary Enterprise Balances for total project funding.

Following a presentation by Ms. Pam Clayton, Assistant Vice Chancellor for Finance for The University of Texas System, related to the qualifications of this project for the U. T. System Revenue Financing System and 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 August 14, 1997 (the "Master Resolution"), and upon delivery of the Certificate of an Authorized Representative as set out on Page 140, 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 U. T. Board of Regents relating to the Financing System
- c. U. T. Austin, which is a "Member" as such term is used in the Master Resolution, possesses the financial capacity to satisfy its direct obligation as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of tax-exempt Parity Debt in the amount of \$8,500,000

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

The U. T. Austin Office Building and Parking Garage No. 4A project, consisting of two parts, is included as a single project in the FY 1998-2003 Capital Improvement Program and FY 1998 and FY 1999 Capital Budget at a preliminary project cost of \$15,250,000. This two-building project, along with Parking Garage No. 4B and an additional office building, will be located in the northern half of the U. T. Austin North Quadrangle area (bound by 26th Street, University Avenue, 27th Street, and Speedway).

Facility programs and schematic design documents have been prepared for all four projects. U. T. Austin intends to proceed with the design and construction of only one of these projects, Parking Garage No. 4A, which will provide parking for approximately 700 vehicles in the northwest corner of the North Quadrangle. The second part of the Office Building and Parking Garage No. 4A project, the Office Building, will proceed with design and construction at a later date.

Approval of this item amends the FY 1998-2003 Capital Improvement Program and FY 1998 and FY 1999 Capital Budget to redesignate the Office Building and Parking Garage No. 4A project as Parking Garage No. 4A at a total project cost of \$9,200,000, with \$8,500,000 funding from Revenue Financing System Bond Proceeds and \$700,000 funding from Auxiliary Enterprise Balances.

In response to an inquiry from Regent Loeffler regarding the status of the Maxey House which is situated on the site of Parking Garage No. 4A, Vice President Ed Sharpe reported that, following a successful bid process to purchase and move the Maxey House, final negotiations were underway to complete the removal of the house prior to the start of construction.

Secretary's Note: Subsequent to the Board meeting, the Maxey House was purchased by Mr. David Rodewald and will be relocated to East 33rd and Duval Streets.

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 U. T. Board of Regents (Board) on February 14, 1991, and amended on October 8, 1993, and August 14, 1997 (the "Master Resolution"), do hereby execute this certificate for the benefit of the Board 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, and do certify that to the best of my knowledge, the Board is in compliance with all covenants contained in the Master Resolution, First Supplemental Resolution Establishing an Interim Financing Program, the Second Supplemental Resolution, the Third Supplemental Resolution, the Fourth Supplemental Resolution, the Fifth Supplemental Resolution, and the Sixth Supplemental Resolution and is not in default of any of the terms, provisions, and conditions in said Master Resolution, the First Supplemental Resolution, the Second Supplemental Resolution, the Third Supplemental Resolution, the Fourth Supplemental Resolution, the Fifth Supplemental Resolution, and the Sixth Supplemental Resolution.

EXECUTED this 9 day of April, 1998

Pamela K. Clayton
Assistant Vice Chancellor for Finance

4. U. T. Dallas - Bookstore (Project No. 302-962): Approval of Total Project Cost and Appropriation of Funds and Authorization of Expenditure.--The Facilities Planning and Construction Committee recommended and the Board:
- a. Approved a total project cost of \$1,100,000 for the Bookstore project at The University of Texas at Dallas
 - b. Appropriated funds and authorized expenditure of \$260,000 with funding from Auxiliary Enterprise Balances which, together with previously approved funding of \$840,000, completes the total project funding of \$1,100,000.

This project, which will renovate the existing Physical Instruction Building to provide approximately 14,000 gross square feet for use as a campus bookstore, will free up space in the McDermott Library and provide improved access to the bookstore. After further structural analysis during schematic design and design development, it was determined that additional funding of \$260,000 will be required to complete this project, setting the total project cost at \$1,100,000.

This renovation project is included in the FY 1998-2003 Capital Improvement Program and the FY 1998 and FY 1999 Capital Budget at a preliminary project cost of \$840,000 from Auxiliary Enterprise Balances from existing bookstore revenues. Approval of this item amends the FY 1998-2003 Capital Improvement Program and the FY 1998 and FY 1999 Capital Budget to establish the total project cost of \$1,100,000 with funding from Auxiliary Enterprise Balances.

5. U. T. El Paso: Approval to Name Administration Annex The Peter and Margaret de Wetter Center (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Naming of Buildings and Other Facilities) (No Publicity).--In recognition of substantial gifts from Peter and Margaret de Wetter to The University of Texas at El Paso, the Board named the Administration Annex, a 6,142 square foot building located next to the Administration Building, as The Peter and Margaret de Wetter Center.

For more than three decades, Peter and Margaret de Wetter have been consistent and generous donors of both time and

resources in the promotion of U. T. El Paso programs. An accomplished poet, Mrs. de Wetter contributed the entire press runs of two limited edition poetry volumes to the U. T. El Paso Library. As Chairman of the Legacy Campaign at U. T. El Paso, Mr. de Wetter has helped raise almost \$40 million for the benefit of U. T. El Paso. In addition, the de Wetters helped establish the first endowed faculty position in English with a \$500,000 gift and recently committed \$250,000 to establish an endowed library fund.

The choice of the Administration Annex to honor Peter and Margaret de Wetter is particularly appropriate because Mrs. de Wetter's father, C. D. Belding, was its original builder, and she was a member of the Zeta Tau Alpha sorority which occupied the building for many years.

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

6. U. T. Tyler - Palestine Extension Campus: Authorization of Appropriation and Expenditure of Funds and Approval of Use of Revenue Financing System Parity Debt, Receipt of Parity Debt Certificate, and Finding of Fact with Regard to Financial Capacity.--The Board, upon recommendation of the Facilities Planning and Construction Committee, authorized the appropriation and expenditure of \$500,000 from Tuition Revenue Bond Proceeds issued under the Revenue Financing System to purchase and renovate an existing building to permanently house the Palestine Extension Campus at The University of Texas at Tyler. The U. T. Tyler Nursing Extension Program currently occupies this building in Palestine, Texas, under a lease agreement.

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 August 14, 1997 (the "Master Resolution"), and upon delivery of the Certificate of an Authorized Representative as set out on Page 144, 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 U. T. Board of Regents 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 \$500,000
- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

The U. T. Tyler Palestine Extension Campus renovation project is included in the FY 1998-2003 Capital Improvement Program and the FY 1998 and FY 1999 Capital Budget at a project cost of \$500,000.

The 75th Session of the Texas Legislature authorized \$9,500,000 of tuition bonds to be issued for U. T. Tyler, and the U. T. Board of Regents identified three projects to be funded with the tuition bonds including \$500,000 for the Palestine Extension Campus. At the August 14, 1997 meeting, the U. T. Board of Regents authorized the use of \$5,000,000 of tuition bonds for the locally-managed Upgrade/Equipment/Renovate Campus Building and Infrastructure project. The remaining \$4,000,000 of tuition bonds are to be used to construct a U. T. Tyler Longview Higher Education Center, the funding for which will be authorized by the U. T. Board of Regents at a later date.

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 U. T. Board of Regents (Board) on February 14, 1991, and amended on October 8, 1993, and August 14, 1997 (the "Master Resolution"), do hereby execute this certificate for the benefit of the Board 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, and do certify that to the best of my knowledge, the Board is in compliance with all covenants contained in the Master Resolution, First Supplemental Resolution Establishing an Interim Financing Program, the Second Supplemental Resolution, the Third Supplemental Resolution, the Fourth Supplemental Resolution, the Fifth Supplemental Resolution, and the Sixth Supplemental Resolution and is not in default of any of the terms, provisions, and conditions in said Master Resolution, the First Supplemental Resolution, the Second Supplemental Resolution, the Third Supplemental Resolution, the Fourth Supplemental Resolution, the Fifth Supplemental Resolution, and the Sixth Supplemental Resolution.

EXECUTED this 9 day of April, 1998
Pamela K. Clayton
Assistant Vice Chancellor for Finance

7. U. T. M.D. Anderson Cancer Center - Jesse H. Jones Rotary House International Phase II: Amendment of the FY 1998-2003 Capital Improvement Program and the FY 1998 and FY 1999 Capital Budget to Include Project.-- Upon recommendation of the Facilities Planning and Construction Committee, the Board amended the FY 1998-2003 Capital Improvement Program and the FY 1998 and FY 1999 Capital Budget to include the Jesse H. Jones Rotary House International Phase II project at The University of Texas M.D. Anderson Cancer Center at a preliminary project cost of \$13,600,000 with funding from Revenue Financing System Bond Proceeds.

The Jesse H. Jones Rotary House International Phase II project entails constructing a twelve-floor addition to the east wing of Rotary House which will contain an additional 126 guest rooms. This addition will include rooms without kitchenettes, which will allow the Jesse H. Jones Rotary House International Phase II to introduce a lower-priced room option to complement the rooms in the current Rotary House. The design and construction of the existing Rotary House, which was completed in 1993, provided for the possibility of future expansion without the necessity of expanding infrastructure and amenities such as the restaurant, lobby, elevators, etc. Accordingly, no expansion of infrastructure facilities is required.

Approval of this item amends the FY 1998-2003 Capital Improvement Program and the FY 1998 and FY 1999 Capital Budget to include the Jesse H. Jones Rotary House International Phase II at a preliminary project cost of \$13,600,000 with funding from Revenue Financing System Bond Proceeds.

8. U. T. M.D. Anderson Cancer Center - Parking Structure and Medical-Model Fitness Center: Authorization to Amend the FY 1998-2003 Capital Improvement Program and the FY 1998 and FY 1999 Capital Budget to Include Project.--The Board, upon recommendation of the Facilities Planning and Construction Committee, amended the FY 1998-2003 Capital Improvement Program and the FY 1998 and FY 1999 Capital Budget to include the Parking Structure and Medical-Model Fitness Center at The University of Texas M.D. Anderson Cancer Center at a preliminary project cost estimated at \$16,700,000 with \$14,000,000 funding from Revenue Financing System Bond Proceeds and \$2,700,000 funding from Hospital Revenues.

Completion of the Jesse H. Jones Rotary House International Phase II project will displace 44 on-grade parking spaces and will result in a need for additional parking spaces for the additional rooms. Upon completion of the new Bertner Complex and the expected increase in the number of patient visits to U. T. M.D. Anderson Cancer Center, further additional parking will be required. In addition, proposed expansion south of Holcombe Boulevard and other components of the institution's master plan indicate a need for additional parking.

This project consists of construction of a 1,200-vehicle parking garage adjacent to the Jesse H. Jones Rotary House International and a covered air-conditioned pedestrian bridge to connect the parking garage to the Rotary House and hospital complex.

A medical-model fitness center will be located on the top floor of the parking structure. In view of (a) the expansion of patient and family accommodations at the Rotary House, (b) increasing demands for therapeutic and rehabilitative exercise by U. T. M.D. Anderson Cancer Center patients, and (c) a desire to encourage and promote good health of U. T. M.D. Anderson Cancer Center employees, a fitness center is needed. Because of sun and heat, the top floor of parking garages in Houston tend to be underutilized for parking purposes and the location of a fitness center on the top floor provides an excellent use of that space.

The combined garage and fitness center is estimated to cost \$16,700,000. Approval of financing through Revenue Financing System Bond Proceeds in the amount of \$14,000,000 for the parking facility and the expenditure of Hospital Revenues in the amount of \$2,700,000 for construction of the Medical-Model Fitness Center will be requested at design development plan approval.

Approval of this item amends the FY 1998-2003 Capital Improvement Program and the FY 1998 and FY 1999 Capital Budget to include the Parking Structure and Medical-Model Fitness Center at a preliminary project cost of \$16,700,000 with funding of \$14,000,000 from Revenue Financing System Bond Proceeds and \$2,700,000 from Hospital Revenues.

* * * * *

At the conclusion of the Facilities Planning and Construction Committee meeting, Committee Chairman Clements reported that since the last regular meeting the Chancellor had approved six (6) general construction contracts totaling \$25,467,000 which included an 8.03% participation by Historically Underutilized Businesses, 4.35% by women-owned firms and 3.68% by minority-owned firms. In addition, three (3) architect/engineer contracts totaling \$913,000 have been awarded since the last meeting and these indicate an 80.84% participation by Historically Underutilized Businesses, 0.88% by women-owned firms and 79.96% by minority-owned firms.

To conclude the Facilities Planning and Construction Committee meeting, Chairman Clements and Regent Sanchez indicated that the Committee is very interested in seeing that each component campus develops an expansion and architectural master plan -- similar to The University of Texas at Austin effort -- which would ensure consistency and conformity in campus development. Chancellor Cunningham reported that, at the next meeting of the Committee in July, he would have a report and presentation on the status of these campus master plans.

RECONVENE.--At 10:20 a.m., the Board reconvened as a committee of the whole to consider those items remaining on the agenda.

ITEM FOR THE RECORD

U. T. Board of Regents: Report on Current Process for Selection of Chief Administrative Officers in the U. T. System.--
Regent Lowell H. Lebermann, Jr., who served as the Chairman of the Advisory Committee for the Selection of the Chief Administrative Officer for The University of Texas at Austin, submitted the report set out on Pages 149 - 158 both as an outline of the successful process used to select President Larry R. Faulkner and as an evaluation of that process for the information and guidance of similar committees in the future.

On behalf of the Board, Chairman Evans expressed appreciation to Regent Lebermann for documenting this process for the benefit of future presidential search committees.

Selection of Chief Administrative Officers within The University of Texas System

Introduction/Background on Current Selection Process

This report provides an overview of the current selection process with evaluative comments and recommendations where appropriate with regard to ways in which the process might be made more **efficient** or effective and discussing possible impacts associated with these changes. There is a general understanding by the Board of Regents that the selection of leadership and direction for the several academic and health components of The University of Texas System is the single most important responsibility of the Board.

The procedure for the selection of chief administrative officers in the U. T. System is outlined in the Regents' Rules and Regulations, Part One, Chapter II, Section 13, Subsection 13.1. Under this subsection, it states:

When there is a vacancy or it is known that there is to be a vacancy in the **office** of a chief administrative officer of a component institution having faculty and students and the Board does not have candidate(s) from recent searches at other component institutions, from within the U. T. System, **and/or** of national prominence from outside the U. T. System to advance for consideration, an advisory committee shall be established to recommend candidates to the Board.

In addition, the State of Texas has a statutory disclosure requirement (see the APPENDIX) where the names of final candidates under consideration for a position, such as chief administrative **officer** of a U. T. System institution, must be publicly announced 21 days before Board appointment. The advisory committee must operate under this statute as well as the procedures outlined in the Regents' Rules.

STEP 1: Need for Search Recognized and Advisory Committee **Appointed**

- . When it has been determined that a presidential search should be conducted, an advisory committee should be appointed. As stated in the Regents' Rules, the Executive Vice Chancellor having responsibility for the operation of the institution where the vacancy has occurred or is to occur shall be chairman of the committee. In circumstances where that person may be a candidate for the **office**, the Chancellor or the Chancellor's designee shall be chairman.

Evaluative Comments:

- * *To provide consistency concerning the position of chairman of the advisory committee, the Chancellor has proposed that the Vice Chancellor for Academic Affairs serve as chairman for searches involving the selection of chief administrative officers of the academic components, and the Executive Vice Chancellor for Health Affairs continue to serve as chairman for searches related to **the** health components. In circumstances where that person may*

*be a candidate for the office or may chose not to serve as chairman for other reasons, the Chancellor or the Chancellor's **designee** shall be chairman.*

Recommendation:

- * *The Regents'&& be amended to reflect that the Vice Chancellor for Academic Affairs would serve as chairman of the advisory committee for the selection of a chief administrative officer of an academic component.*
- As stated in the Regents' **Rules**, the Chancellor serves on the committee, and the Chairman of the Board appoints two Regents, two chief administrative officers, and no more than two community/external representatives unless the campus involved has a statewide mission and other unique constituencies. In those instances, the Chairman may appoint an additional community/external representative.
- Campus representatives are selected by the component institution involved. These include three faculty members, one dean, two non-faculty employees, two students, and the president of the Ex-Students' Association (if there is no active alumni organization, the Chairman may select an alumnus or this category may be omitted if component does not have degree granting authority).
- Diversity, particularly as it relates to minority and female representation, should be considered in selecting advisory committee members. Unless there are unusual delays in faculty, staff, or student representative selection which postpone initiation of the committee process, the Chairman of the Board will make his or her appointments after the campus selections in order to maximize the prospect that the total committee composition reflects diversity.
- The total membership of the advisory committee is usually 17 or 18 individuals.

Evaluative Comments:

- * *Although the size of the committee contributes to difficulty in scheduling **meetings**, which could lengthen the process, decreasing the number who serve will not necessarily make the process more effective or cost efficient. The number and variety of constituents represented make the process more open and inclusive and provide a broader perspective and chance for a successful fit.*

Recommendation:

- * *The size of the advisory committee for the selection of chief administrative officers remains **as** outlined in the **Regents' Rules and Regulations**; Part One, Chapter **II**, Section 13.*

Evaluative Comments:

- * *On occasion, telephone conferencing has been utilized during committee meetings when unable to schedule a convenient date for the majority of the advisory committee members to meet.*

Recommendation:

- * *Encourage continued telephone conferencing and consider video conferencing as needed to increase participation and/or reduce travel expenses.*

STEP 2: Chairman Confirms Appointments and Press Release Issued

- The Chairman of the Board mails letters to members of the advisory committee confirming their appointments, and a press release is issued announcing the appointment of the committee.
- The advisory committee membership will be reported for the record at the next Board of Regents' meeting for inclusion in the Minutes of that Board meeting.

Evaluative Comments:

- * *Confirmation of advisory committee membership by receipt of a letter from the Chairman of the Board is important, and inclusion of the list of members in the Minutes of the Board provides a permanent record of this action.*

Recommendation:

- * *No change recommended in this step of the current process.*

STEP 3: Search Firm Chosen. Vacancy Publicized. and Applicants Solicited

When it has been determined that a presidential search should be conducted and an advisory committee appointed, established practices dictate that the **office** which is selected to staff the advisory committee, under the direction of the person who is appointed as chair, proceeds as follows:

- Select a search firm to assist the advisory committee through the "Request for Proposal" process required by state law.

Evaluative Comments:

- * *Hiring a professional consultant or search firm also increases the potential for identifying that "**perfect**" candidate who might otherwise never come to the attention of the advisory committee. **The** economic value may be questioned, but the firm may identify an outstanding candidate, and reasonable fees have been negotiated. When the list of finalists has been reduced, a*

responsible professional consultant should be able to conduct referencing and evaluative procedures among his/her "contacts" in the higher education community.

Recommendation:

- * *The hiring of a search firm should be incorporated into the search process unless it is determined that such assistance is not required due to special circumstances of the campus involved and the chief administrative officer vacancy to be filled.*
- Set up an account to handle all the expenses of the advisory committee associated with the search.

Evaluative Comments:

- * *The processing of expenses (including reimbursement for travel expenses and payments for costs in connection with committee meetings, campus visits, and interviews of candidates) is a complex, time-consuming, and detailed task, which must be handled properly to ensure that all state and university procedures are followed and appropriate records are maintained. **The** chair of the advisory committee or a senior administrative or executive officer currently approves all expense payments, and an experienced accounting staffperson supervises all transactions.*

Recommendation:

- * *No change in this procedure.*
- Place advertisements for the position in local, state, and national publications, as well as posting of the announcement by the **Office** of Human Resources with agencies such as the Texas Higher Education Coordinating Board, Texas Workforce Commission, Governor's Equal Employment **Office**, etc.

Evaluative Comments:

- * *Publishing notices in professional journals and posting the vacancy announcement with various agencies help to increase and broaden the scope of the candidate pool.*

Recommendation:

- * *No change in this procedure.*
- Mail letters soliciting applications/nominations to members of the national educational associations, to other administrative officials of institutions of higher education in Texas and around the United States, and to local executive officers, administrative **officials**, deans, department chairs, and directors of specific research/medical units of the

institution where the vacancy is located. Follow up such correspondence with telephone calls as appropriate.

Evaluative Comments:

- * *Large-scale mailings to leadership at other major higher education institutions and to various officials at the component institution involved, as well as telephone calls to such individuals, help to increase and broaden the scope of the candidate pool.*

Recommendation:

- * *No change in this procedure.*

As nomination letters are received, responses should be sent to nominators, and letters should be generated to proposed candidates sending copies of position description and general description of campus and asking if they have interest in the position. If a resume has not been received with the nomination, then a copy of such information should be requested, as well as any other materials the prospective candidates may wish to provide.

STEP 4: Meetings of the Advisory Committee

Organizational Meeting -- The members of the advisory committee are contacted by the chairman regarding a date for initial meeting, which should be held as soon as the committee has been established. Information should be provided on the committee's responsibilities as outlined in the Regents' **Rules** and the **21-day** statutory disclosure requirement. A representative from the search firm (if a search firm has been appointed as consultant) should attend to provide input on the search process. The need to keep confidential all information discussed should be expressed in the strongest terms possible with the understanding that the chairman of the group will be the only spokesperson for the committee. The U. T. System General Counsel should also attend the initial meeting to brief the committee regarding legal issues involved.

Meetings to Review Credentials -- Other meetings are held, as necessary, to review candidates' credentials. In most instances, the chairman of the advisory committee organizes the committee into subcommittees, assigning to each subcommittee a specific group of credentials to review. These smaller group interactions allow for a more detailed and comprehensive discussion about each candidate. In the recent U. T. Austin search, each of the three subcommittees was chaired by one of the faculty representatives serving on the committee. Subcommittee recommendations are then considered by the advisory committee as a whole and decisions are made on which candidates to keep under consideration and which to reject or place in a "pending" category for further review. The search firm provides recommendations on candidates' qualifications, contacts other individuals not nominated but who might have interest in the position in order to enhance or augment the pool, and provides general assistance to the committee in reviewing credentials and other materials provided by the nominees.

- Meeting to Interview Top Candidates -- When the committee decides on a slate of individuals (usually 10 to 12 names) from the candidate pool to be interviewed, a meeting is scheduled for the advisory committee to hold two- to three-hour interviews with each candidate.

NOTE: Prior to these interviews, the top **10-12** candidates may be invited to the city where the U. T. campus is located for a confidential visit with the chairman of the advisory committee, the Chancellor, and perhaps a few other administrative officials or members of the Board of Regents. The purpose of these visits is to allow the candidates to see the city and the campus and to determine their willingness to continue their candidacies for the position. This is the first of four possible visits the final candidates might be asked to make with regard to this search process.

To maintain confidentiality, the meeting to interview the candidates is usually held in a convenient location other than the city where the U. T. institution is located. This would be the second visit requested of the final 10-12 candidates.

After these interviews, the advisory committee will vote to determine the names of finalists to forward to the Board of Regents. The Regents' Rules and Regulations require a list of not less than five or more than ten, but allows fewer names if reasons are given and the **Regental** representatives concur. In addition, the Rules state that the "candidates submitted shall have received a majority vote of the committee. The recommended list should be developed and submitted without regard to the advisory committee's assessment of the potential availability of any candidate."

The formal work of the advisory committee is generally completed at this point in the process. However, individual members of the committee might be asked to assist with the visits to the campus by the recommended finalists.

Evaluative Comments:

- * *Some university systems (e.g., Ohio State) forward the name of only one candidate to their Boards of Regents. While our Regents' Rules and Regulations are written so that the name of only one candidate could be submitted to the Board under certain conditions, forwarding only one name may not be the best policy. **In** order for the Board of Regents to retain its appointment or selection responsibility, the Board would have to be prepared to reject the single candidate if the individual is not acceptable to it. If only one candidate's name were forwarded by the advisory committee, many constituencies might feel that they did not have an opportunity to participate in the process. Therefore, this could put the Board in a difficult position and could cause unfavorable publicity.*

Recommendation:

- * *This option is not recommended.*

STEP 5: Naming of Finalists

- The chairman of the advisory committee sends the names of the finalists to the Chairman of the Board. The final candidates are advised of this action, usually by the chairman of the advisory committee, to determine if the individuals desire to continue as candidates prior to announcing their candidacies through a press release. **As** soon as a press release is issued naming the final candidates, this information becomes public knowledge. Some candidates may hesitate to continue with the search process due to the **21-day** statutory disclosure requirement.

Evaluative Comments:

- * *The state law which requires publication of names of finalists deters many highly qualified candidates, especially nationally prominent candidates or any who already hold presidential positions, from agreeing to be considered among the candidate pool. In order to change this requirement, the legislature would have to amend the statute.*

Recommendation:

- * *The Legislature be advised concerning the impact of this statute on the depth of the candidate pool.*
- Letters are sent to all applicants/nominees who have expressed interest in the position advising that finalists have been selected, and that all will be notified when the successful candidate is appointed.

Evaluative Comments:

- * *These letters are sent by the chairman of the **advisory** committee as a courtesy to the other applicants/nominees to inform them about the status of their candidacies for the presidential position. This step in the process could be eliminated as a cost-savings measure, but, since the search process does take **a great** deal of time, the sending of these letters does help those candidates who are no longer being considered for the position to concentrate their efforts on other positions for which they may have applied or to **make** other life decisions. In addition, early notification is a good public relations measure at this point in the process, **even** though this same group will be informed again at the end of the search when a final candidate is named to fill the **vacancy**.*

Recommendation:

- * *No change in this procedure.*

STEP 6: Individual Campus Visits by Each Candidate

- Individual visits to the campus by each candidate are scheduled so that the finalists may meet with members of the Board of Regents, administrative **officials**, students, staff, faculty, alumni, and community representatives. These visits should not only be used to evaluate the qualifications of the final candidates, but also be considered as an opportunity to better acquaint the candidates with the institution and what it has to offer. Candidates' spouses are also invited to participate in portions of the campus visits. This is the third visit required by the **final** candidates.

STEP 7: Preparation of Candidate Evaluations and Report on Campus Visits

- A report on the campus visits and an evaluation of the candidates are prepared for the Board of Regents. Materials provided on each candidate include the schedule for Board interviews, biographical and curriculum data, nomination letters and other related correspondence, information provided by the candidate, the schedule for the campus visit, related newspaper clippings, and evaluation summaries from various groups following the campus visits.
- During this time period, the chairman of the advisory committee, as well as the Chancellor and other selected **officials**, may be involved in contacting references and other individuals known by the candidates to secure additional background information.

Evaluative Comments:

- * *Many of the individuals involved in the search follow up with a number of references for the final candidates. These numbers, of course, could be diminished to streamline the process, but the cost in terms of information gleaned about the candidates may outweigh the efficiency savings. The professional consultant should also be active in this ongoing referencing process.*

Recommendation:

- * *No change in current procedure for contacting references.*

STEP 8: Finalists Interviewed by Board of Regents and New President Selected

- A meeting date is established and a schedule is developed for the Board to interview each finalist. These Board meetings are usually held either in Austin or in the city where the U. T. System institution is located. This is the fourth and final visit required of the candidates.

Evaluative Comments:

- * *The number of visits by each candidate could be reduced. However, this would diminish exposure to the candidate-the process would not be as thorough and the candidate profiles would not be as complete. The various constituencies would not know the*

candidates as well, and there would be less information on which to base a selection. Also, the confidential visits, which were incorporated into the process during the recent U. T. Austin presidential search, added another dimension, permitting the candidates to experience the campus and the community to further determine their interest in the position. Each of the visits helps to ensure the best fit from all perspectives.

Recommendation:

- * First visit to remain optional based on discretion of chairman of the advisory committee, but other three visits should remain apart of the search process.*
- After the interviews are completed, the Board meets in Executive Session to discuss the candidates and to make the decision on which candidate to appoint to the position.
- The Board then convenes in Open Session and announces its decision.

STEP 9: Press Release Issued and All Candidates Informed

- . A press release is issued announcing the Board's selection and the process is completed.
- . Letters are written to all applicants/nominees who expressed interest in the position, announcing the appointment and thanking them for their interest in the U. T. System.

APPENDIX:

Information from State Laws regarding the Statutory Disclosure Requirement

Excerpt **from** the Open Records Act, Subchapter B.,
Right of Access to Public Information:

**§ 552.123. Exception: Name of Applicant for Chief Executive Officer of
Institution of Higher Education**

The name of an applicant for the position of chief executive officer of an institution of higher education is excepted from the requirements of Section 552.021, except that the governing body of the institution must give public notice of the name or names of the finalists being considered for the position at least 21 days before the date of the meeting at which final action or vote is to be taken on the employment of the person.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Excerpt from the Texas Education Code:

§ 51.913. Executive Search Committees

(a) As used in this section, the term "executive search committee" shall mean a committee formed by an act of a board of regents of an institution of higher education, which has as its primary purpose the evaluation and assessment of candidates and nominees for the position of chief executive officer of a system administration, institution of higher education, or other agency of higher education as defined in Section 61.003 of this code.

(b) The board of regents shall announce the name, background, and qualifications of any individual it selects and employs by use of such a committee. Additionally, public notice of the name or names of the finalist or finalists being considered by the search committee must be made public record at least 21 days prior to the meeting at which final action or vote is to be taken on the employment of the individual.

Added by Acts 1989, 71st Leg., ch. 1252, § 1, eff. Aug. 28, 1989.

REPORT OF BOARD FOR LEASE OF UNIVERSITY LANDS

Regents Lebermann and Smiley, 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 on Tuesday, March 17, 1998, in the Regents' Meeting Room on the ninth floor of Ashbel Smith Hall in Austin, Texas, for a general business meeting at which the Board:

- a. Approved the Minutes of the Board for Lease meeting of November 19, 1997
- b. Approved tracts to be offered in, and Oil and Gas Lease forms for, Regular Oil and Gas Lease Sale No. 93 and Frontier Oil and Gas Lease Sale No. 93-A
- c. Discussed policy regarding pooled units
- d. Approved management of the oil royalty in-kind program as presented by staff
- e. Discussed revisions to the rules of the Board for Lease and approved actions necessary to repeal existing rules and publish proposed rules for comment.

The next meeting of the Board for Lease of University Lands and lease sale is scheduled for May 19, 1998, at the Center for Energy and Economic Diversification in Midland, Texas.

OTHER MATTERS

1. U. T. Austin: Appearance of Ms. Pegeen M. Kramer, President of University Staff Association. and Comments Regarding Fair Wages and Benefits for Nonteaching Staff.--Chairman Evans introduced Ms. Pegeen M. Kramer, President of the University Staff Association at The University of Texas at Austin, who had requested permission to appear before the Board regarding fair wages and benefits for university staff.

Ms. Kramer's remarks, as filed with the Office of the Board of Regents, are set forth below:

I. Introduction

Board of Regents and Honored guests, good morning. It is both an honor and great opportunity to be hers. It is also very difficult and with regret that I am present. I hope the Regents can appreciate how difficult this is for me, as the President of the University Staff Association representing approximately 12,000 non-teaching staff **memebers** at UT Austin, as a loyal and passionate member of the UT community, as a single parent of a 13 year old son, as a Student Development Specialist who advises graduate students and loves her job. The weight of this situation is enormous. I love the University of Texas at Austin and it is tragic that I am here today to talk with you about fair wages, decent benefits, and good working conditions for all of our staff at UT Austin. These basic employment issues should be a given, but they are not. There is a compensation crisis at UT Austin today. This situation must more urgently be addressed. My hope is that after my presentation today, the Chancellor and Regents will give President Faulkner the authority to place greater funds on this compensation crisis, and thereby send a message to staff and the public that **UT** cares about its **people, and** UT is taking ethical responsibility for this situation, and that UT is **committed** to sound, healthy business practices by directly and effectively solving a business crisis.

I acknowledge that this is a very difficult situation for the Chancellor and the Regents, as well. Tough and wise business decisions must be made. Staff have been waiting and the pressure is escalating. UT-Austin staff want President Faulkner to be our hero. This is an intelligent population that realizes that the Board of Regents and the Chancellor are the ultimate decision-makers. I am formally requesting that further serious consideration be given to locating additional funding resources and allocating these monies for staff salaries immediately.

II. Buck end the Wait

A lot has happened recently. The Buck Study took place in 1996. **Staff** got their hopes up about a compensation system overhaul, but **mostly about** raises. In 1997, the Buck Study lay on the **table** with no action. In **10/97**, the Austin American Statesmen released information end numbers on the Buck Study, showing the almost of all of us were paid **on average 17%** below market. UT-Austin staff were furious and felt lied to. In **10/97**, as a result of the blatant end telling nature of the **data** in the Buck Study, the University Staff Association started the Campaign for Fair Wages. We **have** met with many individuals behind the scenes, both with the administration, the legislature, end otherwise, in an attempt to locate those with the ability to help **fix** the crisis. We have scheduled a public event every month in which the media **has** attended and covered our continuing crisis. We have had famous speakers end regular staff speakers. We have held a West **Mall** rally, a **march** from the UT Tower to the State Capitol, end a benefit with Molly **Ivins** speaking. We have had fundraisers, sold **Campaign** for Fair Wage t-shirts, sold **Austin-average Pay for All UT** staff buttons, and sold UT Staff Cookbooks. We **have** organized end publicized end **made** visible our injustice. We have the **support of students** (passed a resolution in support), **faculty** (Faculty In Support of Staff-F.I.S.St. end passed a **resolutin** giving us a portion of their merit money), legislators, end **labor** leaders. We **have** obtained 6923 signatures on our petition demanding fair wages. Still, we wait for real action.

Then, the compensation Advisory Committee was formed and met from **1/22-4/30/98**, weekly. This was frustrating to staff because it should not have taken another committee to review a study, then produce a report, which led to a plan. This **committe** included only one non-management staff member. The plan does not address market pay for staff. This committee end **plan** seemed like a stall tactic, when the crisis should have been addressed by giving **wage** increases.

And now we present to the Board **of** Regents today. We **have** tried every reasonable measure possible. Staff members are upset. They feel ignored end blown off. What will it take to get a fair market based wage? We are grossly underpaid in a city in top 12 of highest **costs** of living in the country. Our rents have escalated over the last 5-8 years. The nature of our work **has** become increasingly technical end computer software driven. We ere **expectated** to learn the latest in computer technology, yet there has been and is no reward for our dedicated effort. There must be an immediate **change**.

III. Double **Standard** end the Message to Staff

A. The **Chancellor's salary**, the Vice **Chancellor's** salary coach's salaries, stadium renovations, stadium clubs, golf club memberships, exclusive restaurant memberships, free tickets end entertainment, housing allowances, car allowances.

B. **Every** effort to give market-based pay to those valued end important positions using people-private money end creativity.

c. Optional Retirement **Plan** for highly compensated **employees/TRS** for the **masses**.

D. Increases **for** some computing positions and **some** accounting/budgeting positions.

E. Paid health insurance premium used to justify that low wages workers really making more, while same **justificatin** and standard not used to reveal that higher wage employees are actually making more.

F. The message is demoralizing and **says, UT does** not value or even acknowledge it's workers.

G. Average raises for A&P Personnel over **8** years has **equalled** \$2364.86, while classified staff average raises have **equalled** \$760. This has resulted in an increase of **A&Ps** portion of the salary budget pie of 6.52 from 1990 to **1998**, effectively reducing classified staff's share by 6.52. Classified staff consist of 862 of the **workforce** yet own only 2/3 of the budget pie, while **A&Ps** consist Of 142 of the workforce, yet possess a whopping 1/3 of the salary budget. The number Of A&P employees increase 332 over **8** years, while classified staff decreased by 2.62. The average classified staff salary went from approximately \$13,300 in 1990 to \$19,500 in 1998. This, while Administrative & Professional staff average salary increased from \$31,200 in 1990 to \$56,400 in 1998. UT is supporting a widening wage gap for the haves end have nots.

IV. Equity-a new **campus** culture. Staff as valuable resource.

A. **Wages-82%** in lowest 2 quartiles. UT starts staff at minimums and does not move them through the pay ranges. Inequitable, subjective distribution of funds. System is broken. No merit raises until system fixed. **Every** effort should be made to bring people up to market average not market base

B. ORP vs. TRS

C. Staff representation on committees

D. Grievance Committee

E. Welfare Committee

F. Right to Organize

G. Wage Disparities among departments

H. Life Cycle Career/Progress Ladder

I. The flagship institution salaries are below other state agencies.

V. Proposal-UT came up with an additional \$3.3 million in funds from departments and the equipment and vacant position fund. The other \$6.2 million was already set aside in the merity pool. This is not enough. we propose:

A. Effective 3/1/98-\$200/month increases for all, but freeze salaries above \$65,000. Estimated cost=\$28,000,000

B. Beginning 9/1/98, bring lowest paid 25t of workforce to market average as represented by midpoint in the Buck Study. Estimated cost=\$2 million.

C. Then quarterly raise the next lowest 252 to the market average, until by 9/1/99, the wage system would be overhauled. Estimated cost=\$5 million in Spring 1999, \$8 million in **Summer** of 1999. and \$8 million September 1999.

Total cost=\$51 million.

VI. Recommendations

A. Establish a living wage reflective of HUD national standards and **HUD** fair market values for Austin. Travis County has already established a new **minimum** of \$7.00 per hour and will increase to \$7.50 in the Fall. UT's minimum wage should be **\$7.39/hour** based on **HUD** standards. The **\$6.73** per hour, to be established June 1, 1998 is not a living wage and should be higher.

B. No merit increases until system fixed.

C. Adopt the **Univeristy** Staff Association proposal above.

D. Allow us to negotiate with decision makers regarding pay, **benefits, and** working conditions.

E. Establish staff grievance and merit committees.

F. Make ORP optional to all.

H. Borrow the money to address the crisis

I. Reallocate more funds

J. Use quarterly interest income on the crisis

K. Utilize any and all outside and discretionary accounts

L. Establish a donor package contract **that** states that 1-101 of all donations will be placed in a staff salary fund.

M Be bold and creative.

VII. Staff will continue it's organizing and publicity efforts. Our goal is to break this story nationally. We will unionize if we must. There has been talk of walkouts and strikes, boycotts and picketing. **Lately**, staff members have been seriously considering class action suits regarding the ORP and **gender-**based wage disparities. The frustration has escalated. The wait for what staff view as rightfully theirs, is tension-building. We have been reasonable. Please correct this problem now, and allow cooler, calmer heads to prevail in solving the compensation crisis at UT. Please prevent the further lessening of productivity which will **ultimately** result in a reduction of the quality of services that staff provide to students, **faculty, and** the community.

At the conclusion of Ms. Kramer's remarks, Chairman Evans expressed appreciation for her comments and pointed out that the Board has a tremendous fiduciary responsibility to the people of the State of Texas in its governance of The University of Texas System. He noted that, while the Board is sympathetic to the salary levels of its non-teaching staff, equitable remedies affecting thousands of employees are both expensive and complicated. He emphasized that the Board is confident that President Faulkner is doing and will continue to do all he can to address this issue. Mr. Evans noted that the U. T. System should strive to offer market-competitive compensation throughout the System in order to avoid turnover rates that are harmful to an effective and efficient operation and result in increased costs for recruitment and training.

2. U. T. System: Report on the Information Technology Initiative with a Focus on the UT TeleCampus.--Chairman Evans announced that the Board had elected to feature a major programmatic report at each of the regular meetings of the Board and the featured report at today's meeting would be The University of Texas System Information Technology Initiative with a focus on the UT TeleCampus.

Since the development of the Information Technology Initiative is the responsibility of the Special Committee on Telecommunications and Minorities and Women, Chairman Evans asked Regent Smiley, Chairman of that Special Committee, to introduce the report.

Regent Smiley filed the following comments with the Board:

Comments by Regent Smiley
Regarding Information Technology Initiative

Mr. Chairman, Members of the Board: We are now at the place on the agenda where we will get a briefing on what I believe is a subject that is of vital interest to the future of The University of Texas, namely the U. T. System Information Technology Initiative. At various times during the last year or so, we have, as a Board, detected a number of common themes in our deliberations, including:

- Better learning tools to teachers and all learners

- More access to education to learners in underserved areas
- The educational needs of nontraditional students
- Improvement of educational experiences for traditional students within the U. T. System
- The need to improve the efficiency of administrative systems and student services
- Continuing education to our graduates during their working years and beyond
- The use of technology to improve health care delivery.

We're not the only ones saying these things. It's happening all around us. After the next presentation, I think most of us will conclude that we are on the right track in many areas. I personally believe that while we must never compromise the quality of education and must never turn our backs on the traditional role of universities as the primary creators of new knowledge and the sources of scholarship in all its forms, we must be bold as we face an unknown and increasingly competitive future.

We must make some very difficult decisions as we face these uncertainties, new sources of competition for educational services, and students, taxpayers, and public officials who place ever growing demands on our public institutions while they complain about the rising costs of education. At the same time, we must also respond to traditional and more familiar concerns: maintenance of our physical plants, enrollment pressures, students who are perceived to not be as well prepared as they used to be, and so forth.

During my time as Chair of the Committee on Telecommunications and Minorities and Women (along with Regents Oxford and Sanchez) I have become increasingly aware of the role that information technology can play in responding to traditional problems and the problems we

will face in the early decades of the next century. I have come to recognize that as a result of our approval of budget requests for Telecommunications and Information Technology, we have put ourselves on record as saying that these bold new ventures are not only timely but also vital to the future well-being of The University of Texas System.

In 1998 alone, we have participated in demonstrations of new technology that multiply the reach and the breadth of a faculty member. We have seen how technology can capture the image and words not only of a professor in the classroom, but the images and words of important world and national figures from both the recent and distant past. Today, in the brief time allotted, we'll get a glimpse of some of these breakthroughs. We'll see how technology can allow students to learn new material and communicate with their professors and fellow students wherever they are. We'll also hear about the first steps being taken to improve the manner in which we create, store, and disseminate information about that wonderful enterprise we call the U. T. System.

I hope that in 45 minutes or so you will all agree that we are moving purposefully and responsibly toward that unknown but exciting future that awaits us.

Following Regent Smiley's remarks, Chancellor Cunningham commented briefly on the importance of the inauguration of the new UT TeleCampus, a comprehensive, electronic conduit to the educational resources and services of all 15 component institutions of the U. T. System. Dr. Cunningham then introduced Dr. Mario J. Gonzalez, Vice Chancellor for Telecommunications and Information Technology, who presented a comprehensive report on the status, goals, and vision of the U. T. System Information Technology Initiative with a focus on the UT TeleCampus.

Dr. Gonzalez reviewed the following strategic initiatives which are underway and have the greatest impact on the U. T. System:

- Telecommunications Infrastructure
- Digital Library
- Telehealth

- Multimedia Instruction
- Smart Card
- Shared Administrative Support Systems
- Shared Student Information Systems
- Data Warehousing
- Collaborative Work Tools
- Distance Education

Vice Chancellor Gonzalez introduced Dr. Darcy Hardy, Director of the UT TeleCampus, who demonstrated via a PowerPoint presentation how the UT TeleCampus actually may be used by individuals seeking information on the U. T. System offerings via distance learning. Dr. Hardy noted that via one technological door, students will be able to access the U. T. System and register for any of the 200-plus distance learning courses now being offered by U. T. components.

Following Dr. Hardy's presentation, Dr. Gonzalez introduced the following speakers who demonstrated the use of the UT TeleCampus related to a political science course at The University of Texas at Arlington:

Dr. Michael Moore, Professor in the Department of Political Science, U. T. Arlington

Dr. Adrianna Lancaster, Assistant Director of the Center for Distance Education, U. T. Arlington.

Chancellor Cunningham called on Mr. Joseph Krier, a member of the Texas Higher Education Coordinating Board and the current Chairman of its Academic Affairs Committee, to share the Coordinating Board's view on this initiative. Mr. Krier stated that the Coordinating Board is very enthusiastic about the UT TeleCampus and commends the U. T. System leadership for its efforts. He noted that the Coordinating Board sees itself as a facilitator and a cheerleader in this area and not as a regulator and plans to use this program as a model for other institutions in the state.

Following considerable dialogue among the members of the Board and the presenters, Chairman Evans expressed appreciation to Dr. Gonzalez for the incredible progress made to date on the information technology initiative and noted that the Board looked forward to periodic progress reports in this important area of academic development.

3. U. T. Board of Regents: Presentation of Certificate of Appreciation to Mr. Arthur H. Dilly Upon His Retirement as Executive Secretary to the Board of Regents Effective May 31, 1998, and Appointment as Executive Secretary Emeritus Effective June 1, 1998.--Chairman Evans called on Vice-Chairman Loeffler, the senior Regent in point of service, who presented the following comments related to Mr. Arthur H. Dilly, Executive Secretary to the Board of Regents, who will retire from that administrative position effective May 31, 1998:

Comments by Vice-Chairman Loeffler
Regarding Mr. Arthur H. Dilly, Executive Secretary
to the Board of Regents

When Art Dilly joined The University of Texas System Administration in Health Affairs 30 years ago on September 1, 1968, Frank Erwin was Chairman of the Board of Regents, Harry Ransom was Chancellor, the System offices were in the U. T. Austin Main Building, there were only three general academic units, and the health science center concept was not in place. Today, Don Evans is Chairman, Lowell Lebermann owns and occupies Frank Erwin's home, Bill Cunningham is Chancellor, there are 15 component institutions, and the student population has grown from 75,000 to 150,000.

Art has been a direct participant and acute observer of the remarkable growth and development of the U. T. System for the past three decades, holding System Administration positions in health affairs, chancellor's office, development office, and the Office of the Board of Regents. Some have even suggested he should write a book, while others have cringed -- perhaps contemplating pleading executive privilege -- and have suggested that might not be a wise effort. And I would suggest to Art, and I'm sure my fellow

colleagues would agree, that the rewards to not write a book far exceed any offers to record the history as you know it.

Art's career divides easily into two parts. First, there were thirteen years in System Administration where he served with Chancellors Ransom, LeMaistre, and Walker. This was a period of tremendous growth in The University of Texas System. During those years, five general academic units, The University of Texas Health Center at Tyler, The University of Texas Medical School at Houston, as well as the health science center organizational concept were integrated into the U. T. System. Art was a crucial member of the System Administration management team that implemented and nurtured this major expansion of the U. T. System. Today, there is no other currently active System Administration executive officer whose tenure has included such a significant period in the history of the U. T. System.

In the summer of 1981, Chairman Jimmie Powell and immediate past Chairman Dan Williams approached Art to become Executive Secretary to the Board of Regents and the next seventeen years are history.

He has been elected Executive Secretary to the Board for eight two-year terms, has served with seven different chairmen, and has welcomed 24 new members to the Board of Regents. He has been a participant in the Board's appointment of two chancellors and 22 presidents of component institutions. Including today's meeting, it will have been his responsibility to handle the logistics, prepare the agenda, and finalize the Minutes for 134 meetings of the Board of Regents.

Art, we are all deeply grateful for your dedication, loyalty, integrity, and ability that you have brought during your tenure as Executive Secretary to the Board, and we are even more appreciative for the spirit of cooperation and coordination that you have nurtured in the relationships among the Office of the Board of Regents, the System Administration, and our component institutions. While serving as an agent of the Board, you have been careful and successful in respecting the roles and perspectives of other senior administrators

and have, in large measure, developed relationships based on mutual respect, admiration, and friendship. You have fashioned the Office of the Board of Regents into a recognized and effective administrative relationship with the System Administration. And, the Board of Regents has been extremely well served by this most effective cooperative approach.

There is no doubt Art has been the "glue" that has held together the ability of the Board of Regents to govern the U. T. System through changes of membership, elections of officers, disagreements over policy, political differences, and, well, the pursuit of just a few Regental personal agendas. Through it all you have maintained a steady course, you have developed a personal friendship and sense of trust with each and every Regent, and you have served the mission of the U. T. System with loyalty, dedication, wise counsel, and a sense of purpose, with always your word being your bond.

In recognition of Art's long and devoted service, it is with a sincere expression of thanks and with extreme admiration that I recommend to the Board that he be awarded the title of Executive Secretary Emeritus effective with the date of his retirement on May 31, 1998, and that the Minutes of this meeting record the award of this Certificate of Appreciation on behalf of the Board of Regents. Art, you are a tall Texan and a proud Longhorn to whom the U. T. System and the people of Texas will always be indebted!

CERTIFICATE OF APPRECIATION

The Board of Regents

Expresses to

ARTHUR H. DILLY, M.S.A.

Its Sincere Appreciation for His

Distinguished Service

to

The University of Texas System

as

Assistant to the Executive Vice Chancellor
for Health Affairs
1968-1971

Executive Assistant to the Chancellor
1971-1978

Executive Director for Development
1978-1981

and

Executive Secretary to the Board of Regents
1981-1998

Adopted by unanimous vote this 14th day of May 1998

(signed by all members of the Board and Assistant Secretary to
the Board)

Following this presentation, Mr. Dilly received a standing ovation and made the following comments:

Comments by Mr. Arthur H. Dilly
Executive Secretary to the Board of Regents

Thank you, Tom, for those very kind words. Now I understand why you are in such great demand to eulogize your friends and associates. One of my last official acts will be to ensure that each and every one of your kind words is recorded in the Minutes and that a certified copy is made available to Gloria and our children.

In my thirty years of attending Board meetings, I have been present at a substantial number of these going-away ceremonies. To my recollection each has proved that the goal for any remarks is to Be Brave, Be Brief and Be Gone!

With regard to bravery, a certain caution may be appropriate. First, my retirement is not effective for another two weeks and since I serve at the pleasure of the Board, an early and directed departure is not beyond the realm of possibility. Secondly, the award of the "emeritus" title, for which I am deeply grateful, is not final until the Minutes of this meeting are approved in August, so that too speaks to caution rather than bravery. As satisfying as is the "emeritus" title, I am reminded of a Neil Simon line as he was being honored at Williams College. He remarked "people with honorary awards and titles are generally looked upon with disfavor or at least distrust. After all, would you let an honorary mechanic fix your brand new Mercedes?"

The need for brevity is also emphasized since, for more than 130 meetings of the Board, I have seen that the level of Regental unrest is in direct proportion to the proximity of adjournment. We all are aware that the time is already 12:40 p.m. and, with the exception of these remarks and a few housekeeping announcements, adjournment is upon us.

In the interest of brevity -- for there is a very long list of individuals, both present and absent, whom I would like to thank for their friendship, helpfulness, and cooperation during my tenure with System Administration and the Office of the Board of Regents, I will limit my formal appreciation to only two individuals. First, my gratitude to Mickey LeMaistre who in 1968 while he was Executive Vice Chancellor for Health Affairs joined with Harry Ransom to offer a public health/hospital administrator an opportunity to be a part of an amazingly complex, talented, and fast developing health science center and health professions education system. They opened the door to a very satisfying and stimulating career and I hope I have rewarded their judgement with contributions to the growth and enhancement of The University of Texas System.

Secondly, special words of appreciation to Margaret Glover for the nearly thirty years that we have worked together both in System Administration and the Office of the Board of Regents. Margaret brings exceptional talent, dedication, and responsibility to her assignments and whatever credit may be given to me for an effective and efficient operation, I must share with Margaret. While she was originally a Bryan/College Station resident and an A&M student, we should be ever grateful that she elected to direct her loyalty and expertise toward the U. T. System.

To the current members of the Board of Regents and to those who have served on the Board during the past three decades, I offer my deep and sincere appreciation for the pleasure and privilege of joining with you on an exciting and, I believe, meaningful journey. Certainly, compared with 1968, the U. T. System is a vastly different and significantly improved educational enterprise.

There must also be a recognition that a series of Texas' governors have favored the U. T. System with a long list of appointees with exceptional diligence, dedication, vision and the ability to provide wise counsel in the governance of this complex higher education enterprise. These appointees have brought a remarkably varied background to their governance responsibilities and have demonstrated a willingness to give freely of their time and talent on behalf of the System and, indeed, all of Texas higher education.

I go back far enough to remember when there was no thought of a Republican on the Board of Regents and, unless I misread the political signs, in February of next year the Democrats will be among the missing. In truth, I believe this is a distinction without a difference. I cannot remember a Regental decision based on partisan politics -- instead Regental service has tended to blur and, indeed, obliterate partisan politics, to be replaced with non-partisan deliberations founded on the best interests of higher education and the citizens of Texas.

In their mutual desire to serve The University of Texas System, both Republican and Democratic Regents would have reason to endorse Edmund Burke's comment on the difficulties of public service -- "Those who would carry on the great public issues must be proof against the most fatiguing delays, the most mortifying disappointments, the most shocking insults and, worst of all, the presumptuous judgments of the less well informed."

But enough of public reminiscing -- Gloria and I are deeply grateful for the opportunity we have had to serve the U. T. System for the past three decades. We will cherish the good times and the marvelous friendships that have resulted from that tenure. Our very best wishes to Francie Frederick as she moves to the Board office and, if in my retirement, I may be of service to either System Administration or the Board of Regents that opportunity would be my pleasure.

Thank you, and I'm gone!

SCHEDULED MEETING.--Chairman Evans announced that the next scheduled meeting of the U. T. Board of Regents would be held on August 12-13, 1998, in Austin, Texas.

ADJOURNMENT.--There being no further business, the meeting was adjourned at 12:45 p.m.

/s/ Arthur H. Dilly
Executive Secretary

May 27, 1998