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

Committee and Board Meetings:
February 26, 2019
Austin, Texas

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FACILITIES PLANNING AND CONSTRUCTION COMMITTEE

No items for Consent Agenda

MEETING OF THE BOARD

1. Minutes - U. T. System Board of Regents: Approval of Minutes of the regular meeting held on November 14-15, 2018; and special called meetings held on November 5, 2018 and December 20, 2018

AUDIT, COMPLIANCE, AND RISK MANAGEMENT COMMITTEE

No items for Consent Agenda

FINANCE AND PLANNING COMMITTEE

2. Other Fiscal Matters - U. T. System Board of Regents: Approval of proposed amendments to the Master Investment Management Services Agreement (IMSA) with The University of Texas/Texas A&M Investment Management Company (UTIMCO)

The Chancellor, the Executive Vice Chancellor for Business Affairs, and the Vice Chancellor and General Counsel concur in the recommendation of the University of Texas/Texas A&M Investment Management Company (UTIMCO) Board of Directors that the U. T. System Board of Regents approve amendments to the Master Investment Management Services Agreement (IMSA) effective February 27, 2019, as set forth on the following pages in congressional style and scheduled to be approved by the UTIMCO Board at the February 21, 2019 meeting.

The current IMSA was approved by the U. T. System Board of Regents and made effective on November 13, 2008. Proposed amendments to the IMSA include:

- a) removal of reference to the UTIMCO Mandate Categorization Procedure, which was eliminated effective July 26, 2018;
- b) addition of reference to Chancellor's designee as an additional source of guidance on various policy matters;
- c) amendment to require consultation with the Chancellor on draft meeting agenda only when the Chancellor is serving as Vice Chairman for Policy on the UTIMCO Board of Directors;
- d) removal of reference to distribution (spending) guidelines as UTIMCO no longer performs those functions; and
- e) amendment to allow UTIMCO's Public Information Coordinator (rather than UTIMCO's CEO) to work with the U. T. System Vice Chancellor and General Counsel on Texas Public Information Act matters.

Approved ~~November 13, 2008~~ February 27, 2019

MASTER INVESTMENT MANAGEMENT SERVICES AGREEMENT WITH UTIMCO

This Investment Management Services Agreement (this “Agreement”) by and between the Board of Regents (the “U. T. Board”) of The University of Texas System (the “U. T. System”) and The University of Texas/Texas A&M Investment Management Company (“UTIMCO”), a Texas nonprofit corporation, is effective ~~November 13, 2008~~ February 27, 2019 (the “Effective Date”), and supersedes all earlier agreements by and between the U. T. Board and UTIMCO regarding the subject matter hereof.

RECITALS

WHEREAS, the U. T. Board, pursuant to the Constitution and statutes of the State of Texas, is responsible for the investment of the Permanent University Fund, the local and institutional assets of the U. T. System and the assets of various trusts and foundations for which it serves as trustee, all of which assets are under the control and management of the U. T. Board;

WHEREAS, Section 66.08, *Texas Education Code*, as amended, authorizes the U. T. Board, subject to certain conditions, to enter into a contract with a nonprofit corporation for the corporation to invest assets under the control and management of the U. T. Board, as designated by the U. T. Board;

WHEREAS, UTIMCO has been organized under the laws of the State of Texas, including the ~~Texas Non-Profit Corporation Act, Tex. Rev. Civ. Stat. Ann. art. 1396-1.01 et seq.~~ Texas Business Organizations Code, for the express purpose of investing assets under the control and management of the U. T. Board, as designated by the U. T. Board, in accordance with the laws of the State of Texas;

WHEREAS, the U. T. Board desires to continue an Agreement with UTIMCO for UTIMCO to invest certain designated assets under the control and management of the U. T. Board;

WHEREAS, UTIMCO desires to enter into this Agreement with the U. T. Board and to invest certain designated assets under the control and management of the U. T. Board; and

WHEREAS, all conditions precedent to the execution and delivery of this Agreement have been fully satisfied and fulfilled, including, without limitations, the conditions established by Section 66.08, *Texas Education Code*, as amended.

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

Approved ~~November 13, 2008~~ February 27, 2019

AGREEMENT

Section 1. Definitions.

- (a) **Affiliate** shall mean an entity directly or indirectly controlling, controlled by, or under common control with UTIMCO, including an entity with whom UTIMCO has an express or implied agreement regarding the direct or indirect purchase of investments by each from the other.
- (b) **Cash Reserves** shall mean cash on hand plus investments, plus prepaid expenses, less accounts payable, less other liabilities.
- (c) **Claims** shall mean all claims, lawsuits, causes of action and other legal actions and proceedings of whatever nature brought against (whether by way of direct action, counter claim, cross action, or impleader) any Indemnified Party and all requests or demands for indemnification made by any third party upon any Indemnified Party, even if groundless, false or fraudulent, so long as the claim, lawsuit, cause of action, other legal action or proceeding, request or demand is alleged or determined, directly or indirectly, to arise out of, result from, relate to or be based upon, in whole or in part, the duties, activities, acts or omissions of any person arising under this Agreement.
- (d) **Custodian** or **Custodians** shall mean a commercial bank, trust company or other entity selected by UTIMCO to hold and safe-keep ~~physical~~ securities representing investment assets of any Fund and to perform the other functions listed in Section 5 hereof.
- (e) **Delegated Assets** shall mean those assets under the control and management of the U. T. Board that are invested in the Funds managed by UTIMCO hereunder; pursuant to the corresponding Investment Policies as such assets may be directed for investment by the U. T. Board or its designees from time to time pursuant to its Investment Policies or otherwise. The Delegated Assets may include, without limitation, the following funds or categories of assets:
 - (i) The Permanent University Fund established pursuant to Article VII, Section 11 of the Texas Constitution (the "Permanent University Fund" or "PUF"); provided that, for purposes of this Agreement and the delegation of investment management responsibilities hereunder, the PUF excludes the approximately 2.1 million acres of land located in 19 Texas counties, primarily in West Texas, and constituting a part of the PUF (the "PUF Lands"), as to which the U. T. Board retains complete investment management authority and responsibility;
 - (ii) Any and all funds or assets under the control and management of the U. T. Board as owner, administrator, contractual investment manager, or otherwise, including without limitation endowment funds and operating assets, other than the Permanent University Fund, the Permanent Health Fund and the U. T. Board Trust Accounts (collectively, "U. T. System Funds");

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- (iii) The assets of charitable remainder trusts, foundations and other separately invested assets for which the U. T. Board serves as trustee on behalf of itself and other co-beneficiaries (“U. T. Board Trust Accounts”);
 - (iv) The permanent assets for health-related institutions established pursuant to Chapter 63, *Texas Education Code*, for which the U. T. Board is an administrator (collectively, the “Permanent Health Fund” or “PHF”);
 - (v) U. T. System Funds or U. T. Board Trust Accounts which, by election of the U. T. Board or by requirement of the trust indenture or donative instrument, are invested separately and apart from other U. T. System Funds and the PUF (collectively, “Separately Invested Funds” or “SIFs”); and
 - (vi) Institutional assets of third-party non-profit charitable foundations or tax-exempt charitable organizations to the extent dedicated to the support of the educational purposes of the U. T. System and under the control and management of the U. T. Board by contract (collectively, “Foundation Funds”).
- (f) **Funds** shall mean the separate investments or pools of assets in which the Delegated Assets are to be invested pursuant to the corresponding Investment Policies, as specified in Schedule A hereto and in the corresponding Investment Policies, each of which may be amended by the U. T. Board from time to time as provided for herein.
- (g) **Indemnified Parties** shall mean UTIMCO and any of its officers, directors, employees and agents.
- (h) **Investment Policies** shall mean the written investment policies determined and approved by the U. T. Board relating to the Funds, and all generally applicable written investment-related policies determined and approved by the U. T. Board that govern the management of investments for some or all Funds, such as the policies regarding asset allocation, and the policies on Derivative Investment, Liquidity, and Error Correction, but excluding internal UTIMCO operational guidelines as to which approval of the U. T. Board is not required, which include the ~~UTIMCO Mandate Categorization Procedure~~, Valuation Criteria for Alternative Assets, Calculating Liquidity Procedure, Soft Dollar Policy and Procedures, Securities Lending Policy, and the Proxy Voting Policy (the Proxy Voting Policy being governed by the provisions of the individual Investment Policies related to proxy voting).
- (i) **Losses** shall mean losses, costs, damages, expenses, judgments and liabilities of whatever nature (including, but not limited to, attorneys’, accountants’ and other professionals’ fees, litigation and court costs and expenses, amounts paid in settlement, amounts paid to discharge judgments and amounts payable by an Indemnified Party to any other person under any arrangement providing for indemnification of that person) directly or indirectly resulting from, arising out of or relating to one or more Claims.

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- (j) **Surplus Cash Reserves** shall mean Cash Reserves on the last day of the fiscal year in excess of twenty-five percent (25%) of the upcoming fiscal year's operating and capital budgets approved by the U. T. Board.

Section 2. Delegation of Investment Authority; Retention of Policy Setting Authority.

(a) **General**

The U. T. Board retains ultimate fiduciary responsibility and authority for all matters related to the investment of the Delegated Assets. Pursuant to that responsibility and authority, the U. T. Board hereby appoints UTIMCO as its investment manager with complete authority to act for the Board in the investment of the Funds, subject, however, to such limitations and restrictions as are set forth in the Investment Policies. UTIMCO shall furnish the U. T. Board with continuous investment management services and shall invest and reinvest the assets of the Funds in such ways and at such times as are consistent with the Investment Policies and Section 4 hereof. UTIMCO shall be responsible for overall management of the U. T. Board's investment affairs as set forth in this Agreement and shall manage each Fund as a discretionary account.

(b) **Policy Matters**

The U. T. Board, as ultimate fiduciary for the Funds, retains policy setting authority. Unless otherwise provided in writing by the U. T. Board, UTIMCO shall look to the Chancellor or Chancellor's designee to provide primary oversight and management concerning relations with the media, legal issues that implicate policies of the U. T. Board other than the Investment Policies, public disclosure of information and intergovernmental relations. Except for the forgoing matters, the UTIMCO Board of Directors and the CEO of UTIMCO shall be responsible for making all decisions necessary to implement the Investment Policies. The CEO of UTIMCO shall confer with the Chancellor or Chancellor's designee on the above-mentioned matters where the Chancellor has primary oversight and management and on other matters that may implicate broader policies of the U. T. Board.

(c) **Meetings and Agendas**

- (i) The UTIMCO CEO shall consult with the Chairman of the UTIMCO Board and the Chancellor, ~~as when the Chancellor is serving as the~~ Vice Chairman for Policy, on the draft agenda for meetings of the UTIMCO Board at least three (3) weeks prior to each regular UTIMCO Board meeting.
- (ii) UTIMCO shall participate in an annual joint meeting of the UTIMCO Board of Directors and the U. T. Board as referenced in Art. III, § 7 of the UTIMCO Bylaws.

Section 3. Description of Investment Management Services.

During the term of this Agreement, UTIMCO shall provide the following services in conjunction with the investment of the Funds:

(a) **Investment Policies:**

UTIMCO shall review current Investment Policies for each Fund at least annually. Such review shall include ~~distribution (spending) guidelines,~~ long-term investment return

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expectations and expected risk levels, ~~Asset Class and Investment Type~~ strategic asset allocation targets and ranges, expected returns for each Asset Class and ~~Investment Type~~ and fund, designated performance benchmarks for each Asset Class ~~and Investment Type~~ and such other matters as the U. T. Board or its staff designees may request. After UTIMCO completes its assessment, it shall forward any recommended changes to U. T. System staff for review and appropriate action, following the established schedule for the submission of proposed agenda topics for meetings of the U. T. Board.

(b) **Investment Management:**

UTIMCO shall oversee the investment management process pursuant to the Investment Policies. Such oversight shall include without limitation the development of an investment outlook based on global economic and capital market forecasts, the rebalancing of allocations to each Asset Class ~~and Investment Type~~ within ranges in response to changes in the investment outlook, and the selection of a combination of portfolio managers to construct portfolios designed to generate the expected returns of each Asset Class ~~and Investment Type~~.

(c) **Investment Performance:**

UTIMCO shall monitor and report on investment performance for each of the Funds. With respect to all Funds other than the SIFs, such responsibilities shall include the calculation and evaluation of investment returns for each Asset Class ~~and Investment Type~~ and individual Fund portfolio against approved benchmarks over various periods of time, and the periodic review of performance benchmarks. With respect to all Funds, such responsibilities shall also include the reporting of investment performance of such specific Funds as may be requested by the U. T. Board, and the reporting to regulatory agencies and others regarding investments under management to the extent required by applicable law.

(d) **Operations:**

UTIMCO shall execute such operational responsibilities as the purchase and sale of investments, the settlement of all trades (to the extent such trades are not settled by the Custodian or brokers), the accounting for all transactions at the portfolio level in accordance with generally accepted accounting principles, the preparation and delivery of periodic financial reports on all Funds, and the maintenance of complete books and records (internally or through contract with the designated Custodian for the assets under management) reflecting transactions and balances of the Funds.

(e) **Maintenance of and Access to Books and Records:**

UTIMCO shall maintain the books and records for each Fund on the basis of a fiscal year ending August 31st (or such other fiscal year as the U. T. Board may establish from time to time), and shall keep full separate records of all transactions with respect to each Fund.

The books and records of the Funds and any and all records concerning UTIMCO and UTIMCO's operations shall be available during normal business hours for inspection by authorized representatives of U. T. System. UTIMCO shall provide full audit access to any and all information concerning the operations of UTIMCO, including information

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necessary to review UTIMCO expenditures for compliance ~~and reasonableness~~ with the approved budget, to auditors representing the U. T. Board and/or the State Auditor.

(f) **Reporting:**

In connection with the annual audited financial statements of UTIMCO, effective with the August 31, 2004 financial statements, UTIMCO shall provide all compliance-related information, reports and certifications, and shall cause the CEO and the chief financial officer of UTIMCO to provide such certifications, as may be specified by the U. T. Board and U. T. System compliance policies and procedures adopted or approved by the U. T. Board. UTIMCO will follow the U. T. System compliance guidelines as outlined in ~~the Action Plan to Enhance Institutional Compliance~~ Regents' Rule 20401 and UTS 119, as it may be amended from time to time, including providing the U. T. Board or its designees with quarterly compliance reports.

(g) **Disclosure of Information:**

The U. T. Board is committed to a policy of full and fair disclosure to the public. As part of that commitment with respect to private investments in the Funds, UTIMCO shall disclose to the public with respect to such private investments all information required to be disclosed pursuant to Section 552.0225 of the *Texas Government Code* regarding "Right of Access to Investment Information" ("private investment information"). UTIMCO shall make no private investment with an entity unless the U. T. Board and UTIMCO have clear and unequivocal authority to disclose to the public the private investment information, described immediately above, relating to such investment.

Before UTIMCO declines to disclose any information it has collected, assembled or maintained in its role as investment manager for the U. T. Board that is requested under the Texas Public Information Act, the CEO-Public Information Coordinator of UTIMCO shall notify the U. T. System Vice Chancellor and General Counsel and solicit his or her input to the process. UTIMCO shall disclose the information unless (i) it is confidential and excepted as provided in Section 552.143 of the *Texas Government Code* regarding "Confidentiality of Certain Investment Information," or (ii) as to any other information, the Vice Chancellor and General Counsel, after consultation with the Chancellor, approves a Public Information Act request to the Attorney General of Texas. In addition, the U. T. Board reserves the right and authority, in its sole discretion, to disclose, or direct the disclosure of, any information at any time, to the extent such disclosure would not result in a violation of applicable law or breach or result in a default under any agreement binding upon UTIMCO or the U. T. Board.

In addition to and not in lieu of the foregoing, UTIMCO will comply with the provisions of Section 12 below regarding confidentiality provisions of contracts with third parties.

(h) **Other Services:**

UTIMCO shall perform other investment management services, including without limitation:

- (i) attending meetings of the U. T. Board and making such reports as the U. T. Board may request from time to time;

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- (ii) rendering services to managers of private equity investments in which UTIMCO has decided to invest;
- (iii) attending meetings of governing bodies of companies in which assets of Funds have been invested pursuant to this Agreement;
- (iv) voting of securities (or proxies with respect thereto) held as investments of the Funds in accordance with the Investment Policies and the UTIMCO Proxy Voting Policy and any other relevant written policies or rules of the U. T. Board;
- (v) providing U. T. System institutions with annual endowment reports reflecting, among other things, changes in the investment value of such institution's endowment and distributions made to such institution to support the activities for which the endowment was established;
- (vi) providing charitable trust administration services such as portfolio management, annual tax return preparation, annual trust reporting to donors and remittance of quarterly distributions; providing annual reporting of investment transactions and balances and distributing assets to authorized beneficiaries;
- (vii) effecting distributions directly or through the Custodian to U. T. System institutions or other named beneficiaries from the Funds;
- (viii) supporting and maintaining online information systems for endowment funds;
- (ix) providing training and education to members of the UTIMCO Board of Directors as may be determined in consultation with U. T. System staff to assure that all duties required of directors under the Texas ~~Non-Profit Corporation Act~~ Business Organizations Code and that matters related to legal and fiduciary responsibilities of the directors, including current regulations for determining reasonable compensation, are outlined and discussed fully;
- (x) maintaining a log of (1) all agreements or transactions between UTIMCO or a "UTIMCO entity" and a "Director entity" or an "Employee entity", and (2) all investments in the private investments of a business entity in which a "Director" or "Employee" then owns a private investment, or is then co-investing, in the same business entity, provided that all quoted terms above shall have the meanings assigned to them in UTIMCO's Code of Ethics, which annually shall be reviewed by the UTIMCO Board of Directors and reported to the U. T. Board;
- (xi) reporting to the U. T. Board annually on compliance with the UTIMCO Code of Ethics and any recommended changes to the UTIMCO Code of Ethics following review by the UTIMCO Board of Directors; and
- (xii) any other services necessary to provide investment management of the Funds.

Section 4. Investment Manager as Fiduciary.

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UTIMCO acknowledges that it acts as a fiduciary in its management of the investments of the Funds pursuant to the Investment Policies and applicable law. The U. T. Board recognizes that all individual investment transactions involve a variety of significant potential risks, including, without limitation, market risk, liquidity risk, credit risk, cash flow risk, operational risk and counterparty risk, although taken as a whole these transactions are also expected to manage risk. The U. T. Board agrees that (i) UTIMCO will not be liable for any losses incurred in the Funds as a result of investments made pursuant to the Investment Policies and applicable law, and (ii) UTIMCO will not be liable for actions of co-fiduciaries. The U. T. Board also acknowledges that UTIMCO shall not be liable for, and, to the fullest extent authorized by the Constitution and laws of the State of Texas, agrees to hold UTIMCO harmless from the consequences of, any action taken or omitted to be taken by the U. T. System or any of its employees or agents prior to March 1, 1996.

Section 5. Custody of Assets.

UTIMCO shall select one or more Custodians, each of which shall be approved by the U. T. Board, which shall also enter into or approve each agreement with the Custodian(s).

UTIMCO shall use the Custodian(s) for safekeeping, settlement of security purchases, sales, collection of income and other duties, as may be more fully described in the relevant agreement(s) between the Custodian(s) and the U. T. Board or UTIMCO (as agent of the U. T. Board). In addition, UTIMCO may from time to time use a brokerage firm to settle security sales on behalf of the U. T. Board and may invest in a regulated mutual fund, externally managed commingled funds, or other investments in which assets are held outside of the bank custody relationship. Any physical certificates not held in safekeeping with a Custodian shall be held in safekeeping at a local bank as designated by UTIMCO.

Section 6. Use of Unaffiliated Investment Managers.

UTIMCO shall be entitled to use unaffiliated investment advisors to invest all or part of the Funds and to perform other duties, subject to any restrictions in the relevant Investment Policies.

Section 7. Investment Management Fees; Direct Expenses.

For services performed hereunder, UTIMCO shall be compensated in the amounts and in the manner set forth below:

(a) Annual Budget and Management Fee:

(i) Budget Approval Policy

UTIMCO shall submit to the U. T. Board its proposed annual budget for the following fiscal year (an “Annual Budget”) within the time frame specified by the U. T. Board for other annual budget submissions. The Annual Budget shall include all estimated expenses associated with the management of the Funds. The Annual Budget shall also include an annual UTIMCO management fee (an “Annual UTIMCO Management Fee”) which shall include all reasonable operating expenses associated with the general management of the Funds, including, without limitation, ~~reasonable~~ salaries, benefits and performance compensation of portfolio management and support personnel, expenses for consulting services, office space

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lease expenses, office furniture and equipment expenses, professional, legal, payroll, and other general services expenses, travel, insurance, capital expenditures, and other miscellaneous expenses incurred by UTIMCO in connection with the performance of its obligations hereunder. In addition to its Annual Budget, UTIMCO shall annually submit its capital expenditures budget approved by the UTIMCO Board of Directors to the U. T. Board for approval.

(ii) Allocation Formula

At the same time that UTIMCO submits its Annual Budget, it shall also submit to the U. T. Board an allocation formula for charging the Annual Budget to the Funds. Items proposed in the Annual Budget and the allocation formula may be approved, disapproved, or approved with modification by the U. T. Board. Any such Budget item or formula allocation that is disapproved or approved with modification may be promptly reviewed and revised by UTIMCO and resubmitted to the U. T. Board for additional consideration.

(iii) Charging of Funds for Management Fee

On or before the first day of each fiscal quarter, UTIMCO shall be entitled to charge each Fund with its allocable share (determined in accordance with the allocation formula then in effect) of one-fourth of the amount of the Annual UTIMCO Management Fee to pay UTIMCO's operating expenses for the succeeding fiscal quarter. UTIMCO may, with the approval of the U. T. Board, revise the Annual UTIMCO Management Fee and allocation formula at any time during a fiscal year. Any statements for partial quarters at the beginning or end of this Agreement shall be prorated to reflect the actual time services were rendered during such partial quarters.

(iv) Payment of Third Party Vendors

UTIMCO is hereby authorized to pay from each Fund direct expenses incurred for portfolio management, Custodian, auditing, and other services which are performed by external vendors specifically for each Fund.

(b) **Cash Reserves:**

Within 90 days after the end of each fiscal year, UTIMCO will distribute back to the Funds which generated the surplus that portion of the Surplus Cash Reserves as may be directed by the U. T. Board, in its sole discretion, from time to time. Such distribution back to the Funds shall be in the same proportion that the Funds contributed to the Cash Reserves.

(c) **UTIMCO Management Service on Outside Boards:**

Members of UTIMCO management, with the approval of the UTIMCO Board, may serve as directors of companies in which UTIMCO has directly invested Fund assets. In such event, any and all compensation paid to UTIMCO management for their services as directors shall be endorsed over to UTIMCO and considered a part of UTIMCO's fee income and reflected in the Budget. Furthermore, UTIMCO Board approval of UTIMCO management's services as directors of investee companies shall be conditioned upon the extension of UTIMCO's Directors and Officers Insurance Policy coverage to UTIMCO management's services as directors of investee companies.

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(d) Fees for Services Rendered:

Members of UTIMCO management may perform services for which UTIMCO receives a fee (“Service Fees”) from investment promoters or investee companies in consideration of the UTIMCO staff’s private investment activities and/or investment origination activities. Such Service Fees shall be considered additional fee income to UTIMCO. UTIMCO may also receive commitment fees, standby fees and other similar fees (“Capital Fees”) accruing or inuring to the capital invested on behalf of the Funds managed by UTIMCO. Such Capital Fees shall be credited to the Funds from which such investments are funded.

(e) Miscellaneous Fees:

UTIMCO management may perform specialized services for assets that are separately invested for which UTIMCO receives a fee from the Fund. These fees primarily relate to maintenance of computer programs for the SIFs. Such Miscellaneous Fees shall be considered additional fee income to UTIMCO and reflected in the Budget.

Section 8. Brokerage Commissions.

The U. T. Board acknowledges and agrees that the investment management fees provided for in Section 7 are in addition to any compensation that may be due to a broker or dealer in effecting and executing transactions on behalf of UTIMCO. UTIMCO is hereby authorized and empowered, with full discretion, to issue instructions in accordance with the Investment Policies to such unaffiliated brokerage firms as may be selected by UTIMCO for the execution of orders for the purchase, sale, exchange and general investment of the Funds; provided that UTIMCO shall not select a brokerage firm that is an Affiliate of UTIMCO or any of its officers, directors or employees. All orders for Fund transactions shall be placed in such markets and through such brokers as UTIMCO determines will offer the most favorable price, execution and commission cost of each order. The U. T. Board acknowledges and agrees that UTIMCO may, from time to time in accordance with applicable law and UTIMCO’s Soft Dollar Policy and Procedures, pay commissions to brokers that are higher than those that might be obtainable elsewhere in order to obtain from such brokers research and other services expected to enhance the long-term value of the Funds.

Section 9. Valuation of Fund Assets.

The valuation of each Fund shall be determined in accordance with the Investment Policies approved by the U. T. Board for such Fund.

Section 10. Representations and Warranties of Parties.

- (a) The U. T. Board represents and warrants that:
 - (i) The execution, delivery and performance by the U. T. Board of this Agreement have been duly authorized, and this Agreement constitutes a valid and binding agreement of the U. T. Board.
 - (ii) There is no action, suit or proceeding pending or, to the knowledge of the U. T. Board, threatened against or affecting the U. T. Board or the U. T. System, or relating to this Agreement, in any court or before or by any governmental department, agency or instrumentality which, if adversely determined, would

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materially affect the ability or authority of the U. T. Board to enter into, and perform its obligations under, this Agreement, or which in any manner questions the validity or enforceability of this Agreement.

- (iii) The U. T. Board has approved:
 - (A) the Articles of Incorporation and Bylaws of UTIMCO;
 - (B) the Investment Policies;
 - (C) the Audit and Ethics Committee of UTIMCO; and
 - (D) the Code of Ethics of UTIMCO.

- (b) UTIMCO represents and warrants that:
 - (i) The execution, delivery and performance by UTIMCO of this Agreement have been duly authorized and this Agreement constitutes a valid and binding agreement of UTIMCO.
 - (ii) There is no action, suit or proceeding pending or, to the knowledge of UTIMCO, threatened against or affecting UTIMCO, or relating to this Agreement in any court or before or by any governmental department, agency or instrumentality which, if adversely determined, would materially affect the ability or authority of UTIMCO to enter into, and to perform its obligations under, this Agreement, or which in any manner questions the validity or enforceability of this Agreement.

- (c) Investment Company Act and State Securities Act:
The parties to this Agreement acknowledge and agree that UTIMCO is not currently required to, and shall not engage in any activities that would require it to, register as an “investment company” under Title 15 *United States Code* Section 80a-8 (the Investment Company Act of 1940), as amended, and Tex. Rev. Civ. Stat. Ann. art. 581-1 *et seq.* (The Securities Act).

Section 11. Compliance with Bylaws, Policies, Regulations and Financial Disclosure Requirements.

In the performance of this Agreement, UTIMCO shall abide by, and cause its directors, officers, and employees to abide by, the following policies:

- (A) UTIMCO Code of Ethics as approved by the U. T. Board;
- (B) UTIMCO Bylaws as approved by the U. T. Board;
- (C) All UTIMCO policies;
- (D) Applicable portions of the U. T. Board’s *Regents’ Rules and Regulations*; and
- (E) All U. T. Board-approved Investment Policies, resolutions, and applicable law.

Financial advisors and service providers as defined in *Texas Government Code* Section 2263.002 shall comply with the disclosure requirements contained in *Texas Government Code* Section 2263.005, in addition to any obligations regarding disclosure of private investment information and the like as contemplated by Section 3(g) of this Agreement.

Section 12. Contracts with Third Parties.

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UTIMCO covenants and agrees that each agreement, contract, or understanding it enters into with any third party will comply with all applicable law (including without limitation *Texas Government Code* Sections 2263.002 and 2263.005 as referenced in Section 11 above), and will not contain any term or provision limiting the ability of UTIMCO, the U. T. Board, the U. T. System, or any of its institutions to comply with any provision of applicable law, including without limitation any covenant regarding non-disclosure of confidential information or similar subject matter that would purport to limit the ability of UTIMCO or the U. T. Board to comply with any provision of the Texas Public Information Act or other law regarding public disclosure; provided that any contract provision regarding non-disclosure of confidential information must be approved by the Vice Chancellor and General Counsel of the U. T. System or his/her designee.

UTIMCO further covenants and agrees that it will not enter into any contracts indemnifying or holding harmless any third party to a greater extent than the scope of the indemnification of the Indemnified Parties by the U. T. Board without the prior consent and approval of the Vice Chancellor and General Counsel of the U. T. System.

Section 13. UTIMCO's Open Meeting Policy.

Except as otherwise provided in Section 66.08, *Texas Education Code*, UTIMCO shall comply with all applicable provisions of the Texas Open Meetings Act, Chapter 551 of the *Texas Government Code*.

Section 14. Prohibition Against Service to Other Clients.

In accordance with Section 66.08, *Texas Education Code*, UTIMCO shall not engage in any business other than managing the Funds under this Agreement.

Section 15. Termination.

The U. T. Board may terminate this Agreement at any time by written notice to UTIMCO, effective immediately upon receipt of such notice by UTIMCO, subject to reasonable allowance for settlement of pending trades. UTIMCO may terminate this Agreement upon ninety (90) days' written notice to the U. T. Board. There shall be no penalty for termination; however, UTIMCO shall be entitled to all management fees, compensation, and benefits earned prior to the effective date of termination, subject to UTIMCO's Articles of Incorporation and Bylaws and applicable law.

Section 16. Amendments.

No amendment hereto shall be effective unless executed by duly authorized representatives of each party in the same manner as this Agreement.

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Section 17. Notices.

All notices or communications hereunder shall be in writing and shall not be effective until hand delivered, sent by overnight delivery, or sent by United States Certified or Registered Mail, postage prepaid, to the other party at the following addresses which may be changed by notice sent in the manner required by this paragraph:

To U. T. Board:

Board of Regents of The University of Texas System
Attn: General Counsel to the Board of Regents
~~201-210~~ West Seventh Street, ~~Suite 820~~
Austin, Texas 78701
Tel. (512) 499-4402
Fax. (512) 499-4425

To UTIMCO:

The University of Texas/~~Texas A&M~~ Investment Management Company
Attn: President, CEO and Chief Investment Officer
~~401 Congress Avenue~~ 210 West Seventh Street, Suite ~~2800-1700~~
Austin, Texas 78701
Tel. (512) 225-1600
Fax. (512) 225-~~1660~~1668

Section 18. Non-Assignability.

This Agreement is personal to the parties hereto, and no assignment of this Agreement by UTIMCO, whether by contract, merger, consolidation, or operation of law, shall be made other than with the prior written consent of the U. T. Board and in compliance with applicable law.

Section 19. No Waiver of Breach.

A waiver of a breach of any provision of this Agreement shall not constitute a waiver of any subsequent breach of that provision or a breach of any provision hereof. Failure of either party to enforce at any time or from time to time any provision of this Agreement shall not be construed as a waiver thereof.

Section 20. Indemnification.

(a) Agreements to Indemnify:

To the fullest extent authorized by the Constitution and laws of the State of Texas, the U. T. Board shall indemnify and hold harmless each of the Indemnified Parties against any and all Losses, including Losses resulting from the negligence of the Indemnified Party claiming indemnification; provided, however, the U. T. Board shall not be obligated to indemnify an Indemnified Party against Losses to the extent such Losses are caused by (i) an act or omission that involves intentional misconduct or a knowing violation of law by the Indemnified Party claiming indemnification, (ii) a transaction from which the

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Indemnified Party claiming indemnification received an improper benefit, (iii) an act or omission for which the liability of the Indemnified Party claiming indemnification is expressly provided by an applicable statute, or (iv) an act or omission constituting gross negligence by the Indemnified Party claiming indemnification; provided further that indemnification payments by the U. T. Board shall be paid from the same sources as the Annual Fee pursuant to Section 7.

(b) **Reimbursement:**

Each Indemnified Party shall reimburse the U. T. Board for payments made by the U. T. Board pursuant to this Section to the extent of any proceeds, net of all expenses of collection, actually received by it from any insurance with respect to any Loss. At the request and expense of the U. T. Board, each Indemnified Party shall have the duty to claim any such insurance proceeds and such Indemnified Party shall assign its rights to such proceeds, to the extent of such required reimbursement, to the U. T. Board.

(c) **Notice:**

In case any Claim shall be brought or, to the knowledge of any Indemnified Party, threatened against any Indemnified Party in respect of which indemnity may be sought against the U. T. Board, such Indemnified Party shall promptly notify the U. T. Board in writing; provided, however, that any failure so to notify shall not relieve the U. T. Board of its obligations under this Section.

(d) **Defense:**

The U. T. Board shall have the right to assume the investigation and defense of all Claims, including the employment of counsel and the payment of all expenses. Each Indemnified Party shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Party unless (i) the employment of such counsel has been specifically authorized by the U. T. Board, in writing, (ii) the U. T. Board has failed to assume the defense and to employ counsel following due notice, or (iii) the named parties to any such action (including any impleaded parties) include both an Indemnified Party and the U. T. Board, and such Indemnified Party shall have been advised by counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the U. T. Board (in which case, if such Indemnified Party notifies the U. T. Board in writing that it elects to employ separate counsel at the U. T. Board's expense, the U. T. Board shall not have the right to assume the defense of the action on behalf of such Indemnified Party; provided, however, that the U. T. Board shall not, in connection with any one action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegation or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for the Indemnified Parties, which firm shall be designated in writing by such Indemnified Parties).

(e) **Cooperation; Settlement:**

Each Indemnified Party shall use reasonable efforts to cooperate with the U. T. Board in the defense of any action or Claim. The U. T. Board shall not be liable for any settlement of any action or Claim without its consent but, if any such action or Claim is settled with

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the consent of the U. T. Board or there be final judgment for the plaintiff in any such action or with respect to any such Claim, the U. T. Board shall indemnify and hold harmless the Indemnified Parties from and against any Loss by reason of such settlement or judgment as provided in Subsection (a) of this Section.

(f) Survival; Right to Enforce:

The provisions of this Section shall survive the termination of this Agreement, and the obligations of the U. T. Board hereunder shall apply to Losses or Claims whether asserted prior to or after the termination of this Agreement. In the event of failure by the U. T. Board to observe the covenants, conditions and agreements contained in this Section, any Indemnified Party may take any action at law or in equity to collect amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the U. T. Board under this Section.

Section 21. Claims By and Against Managed Assets.

UTIMCO is authorized and empowered to seek, demand, collect, recover, and receive any and all sums of money, debts, dues, rights, property, effects, or demands due, payable, or belonging, or that may become due, payable, or belonging to the U. T. Board or any Fund from any person or persons as a result of any investment transaction and to execute any and all necessary or proper receipts, releases, and discharges therefor, and any other instruments as may be necessary or appropriate from time to time relating to the handling, management, control, and disposition of any investment.

The authority granted in this Section does not include the authority to institute litigation on behalf of the U. T. Board, any Fund, or any associated assets, or to settle contested claims or litigation that may result in receipt of less than full value for the claim or the payment of damages or awards. The settlement of any contested claim or litigation for less than full value requires the prior approval of the U. T. System Vice Chancellor and General Counsel and appropriate U. T. System officials, as set out in the Regents' *Rules and Regulations*.

Section 22. Communications.

UTIMCO and the U. T. System will assure that communications are clear and timely. UTIMCO will provide notice of actions taken in meetings of the UTIMCO Board and committees to members of the U. T. Board through the Office of the Board of Regents. U. T. will provide notice of actions taken by the U. T. Board related to UTIMCO issues to members of the UTIMCO Board of Directors through the CEO of UTIMCO.

Section 23. Authority to Purchase, Exchange, and Sell Securities.

UTIMCO may purchase, exchange, and sell, for and on behalf of the Permanent University Fund or the U. T. Board, any and all securities of any description whatever and from any source, including gifts and bequests, registered in the name of the U. T. Board, or in any other form of registration of such securities held for the account of the U. T. Board in whatever manner, including all fiduciary capacities and including those registered in the names of trusts or foundations managed and controlled by said U. T. Board. In addition, external investment

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managers appointed by UTIMCO may purchase, sell, or exchange securities, pursuant to written agreement with UTIMCO.

Section 24. Authority to Assign and Transfer Securities.

UTIMCO may assign and transfer any and all securities of any description whatever and from any source, including gifts and bequests, and execute any and all documents necessary to the consummation of any sale, assignment, or transfer of any securities registered in the name of the U. T. Board, or in any other form of registration of such securities held for the account of the U. T. Board in whatever manner, including all fiduciary capacities and including those registered in the names of trusts or foundations managed and controlled by said U. T. Board. In addition, Custodian banks appointed by UTIMCO may assign and transfer securities and execute any and all documents necessary to the consummation of any sale, assignment, or transfer of any security owned by the U. T. Board.

Section 25. No Third Party Beneficiaries.

UTIMCO and the U. T. Board each agree that there are no third party beneficiaries of this Agreement.

Section 26. Governing Law.

This Agreement and all matters arising under or related to it shall be governed by the Constitution and laws of the State of Texas. Venue for any action brought by any party hereto concerning the subject matter of this Investment Management Services Agreement shall be in Travis County, Texas.

BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM

Date: _____

By _____
Chairman

THE UNIVERSITY OF TEXAS/TEXAS A&M
INVESTMENT
_MANAGEMENT COMPANY

Date: _____

By _____
Chairman

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Schedule A

Funds

This Schedule A setting forth the Funds managed by UTIMCO pursuant to this Agreement as fiduciary on behalf of the U. T. Board, in which the Delegated Assets are to be invested as directed by the U. T. Board pursuant to its Investment Policies, may be amended from time to time by the U. T. Board in consultation with UTIMCO to add or remove Funds, change fund allocations, reflect revisions to the corresponding Investment Policies, or otherwise. The Funds covered under this Agreement as of the Effective Date of this Agreement, and the corresponding Investment Policies, are as follows:

- a. **Permanent University Fund**: The PUF (as defined in Section 1(e)(i)) will be separately invested in accordance with the PUF Investment Policy Statement.
- b. **Permanent Health Fund**: The PHF (as defined in Section 1(e)(iv)) will be separately invested in accordance with the PHF Investment Policy Statement.
- c. **Separately Invested Funds**: The SIFs (as defined in Section 1(e)(v)) will be separately invested in accordance with the SIF Investment Policy Statement.
- d. **Long Term Fund (“LTF”)**: The long-term pooled investment fund previously established by the U. T. Board for the collective investment of all endowment and other long-term funds of institutions of the U. T. System, with investments made in accordance with the LTF Investment Policy Statement.
- e. **General Endowment Fund (“GEF”)**: The pooled fund for the collective investment of long-term funds under the control and management of the U. T. Board. The PUF, PHF, LTF or other long-term funds may invest in the GEF as authorized by the U. T. Board in each Fund’s investment policy statement, and the GEF funds will be invested in accordance with the GEF Investment Policy Statement.
- f. **Short Term Fund (“STF”)**: Selected U. T. System Funds designated from time to time by the U. T. Board or its U. T. System staff designees will be invested in the STF, which is the money market mutual fund or funds approved by UTIMCO from time to time as an investment for U. T. System Funds, in accordance with the STF Investment Policy Statement.
- g. **Intermediate Term Fund (“ITF”)**: The ITF was established by the U. T. Board as a pooled fund for the collective investment of operating assets and other intermediate and long-term assets held by U. T. System institutions and U. T. System administration. The ITF will be invested in accordance with the ITF Investment Policy Statement.
- ~~g.h.~~ **Debt Proceeds Fund (“DPF”)**: The DPF was established in February 2011 to permit debt proceeds held by the U. T. System to earn a higher investment return, while maintaining adequate protection of principal and liquidity, until the proceeds are expended for various capital projects across the U. T. System institutions.

3. Contract (funds going out) - U. T. System: Isaacson Miller, Inc. to continue providing Executive Search services to U. T. System and U. T. institutions

Agency: Isaacson Miller, Inc.

Funds: Amendment to existing contract increasing the Fee Cap from \$900,000 to \$5,000,000

Period: Commencing on November 8, 2017 (Effective Date) and terminating on November 7, 2023

Description: Amendment of existing agreement with Isaacson Miller, Inc. to continue providing executive search services. Based on the utilization of this agreement over the last year, it is anticipated that the revised Fee Cap will cover services over the remaining five years of the agreement. This contract was competitively bid.

4. Contract (funds going out) - U. T. System: Korn Ferry International to continue providing Executive Search services to U. T. System and U. T. institutions

Agency: Korn Ferry International

Funds: Amendment to existing contract increasing the Fee Cap from \$900,000 to \$15,000,000

Period: Commencing on December 1, 2017 (Effective Date) and terminating on November 30, 2023

Description: Amendment of existing agreement with Korn Ferry International to continue providing executive search services. Based on the utilization of this agreement over the last year it is anticipated that the revised Fee Cap will cover services over the remaining five years of the agreement. This contract was competitively bid.

5. Contract (funds going out) - U. T. System: Russell Reynolds Associates, Inc. to continue providing Executive Search services to U. T. System and U. T. institutions

Agency: Russell Reynolds Associates, Inc.

Funds: Amendment to existing contract increasing the Fee Cap from \$900,000 to \$5,000,000

Period: Commencing on December 1, 2017 (Effective Date) and terminating on November 30, 2023

Description: Amendment of existing agreement with Russell Reynolds Associates, Inc. to continue providing executive search services. Based on the utilization of this agreement over the last year, it is anticipated that the revised Fee Cap will cover services over the remaining five years of the agreement. This contract was competitively bid.

6. Contract (funds going out) - U. T. System: Wheless Partners to continue providing Executive Search services to U. T. System and U. T. institutions

Agency: Wheless Partners

Funds: Amendment to existing contract increasing the Fee Cap from \$900,000 to \$5,000,000

Period: Commencing on December 1, 2017 (Effective Date) and terminating on November 30, 2023

Description: Amendment of existing agreement with Wheless Partners to continue providing executive search services. Based on the utilization of this agreement over the last year, it is anticipated that the revised Fee Cap will cover services over the remaining five years of the agreement. This contract was competitively bid.

7. Contract (funds going out) - U. T. System: Witt/Kieffer Inc. to continue providing Executive Search services to U. T. System and U. T. institutions

Agency: Witt/Kieffer Inc.

Funds: Amendment to existing contract increasing the Fee Cap from \$900,000 to \$5,000,000

Period: Commencing on December 1, 2017 (Effective Date) and terminating on November 30, 2023

Description: Amendment of existing agreement with Witt/Kieffer Inc. to continue providing executive search services. Based on the utilization of this agreement over the last year, it is anticipated that the revised Fee Cap will cover services over the remaining five years of the agreement. This contract was competitively bid.

8. Contract (funds going out) - U. T. System: Grant Cooper & Associates, Inc. to continue providing Executive Search services to U. T. System and U. T. institutions

Agency: Grant Cooper & Associates, Inc.

Funds: Amendment to existing contract increasing the Fee Cap from \$900,000 to \$5,000,000

Period: Commencing on December 1, 2017 (Effective Date) and terminating on November 30, 2023

Description: Amendment of existing agreement with Grant Cooper & Associates, Inc. to continue providing executive search services. Based on the utilization of this agreement over the last year, it is anticipated that the revised Fee Cap will cover services over the remaining five years of the agreement. This contract was competitively bid.

9. Contract (funds going out) - U. T. System: Sfile, LLC to perform machine learning techniques to analyze and distill for classification of disparate information and unstructured data for University Lands

Agency: Sfile, LLC

Funds: Up to \$3,000,000 over three-year term

Period: Commencing on January 14, 2019 and ending no later than January 13, 2022. U. T. System will have no options to renew the agreement.

Description: Sfile, LLC will create a system, using machine learning to analyze disparate and unstructured data sources for University Lands. This data will be leveraged to automate the life cycle of thousands of contracts, across all business functions of University Lands. Additionally, it will provide needed insight into the earnings potential of the Permanent University Fund lands. This contract was not competitively bid as the services are proprietary to Sfile, LLC.

10. Contract (funds going out) - U. T. System: Greenphire, Inc. to provide electronic payment services to U. T. Dallas, U. T. Southwestern Medical Center, U. T. Health Science Center - Houston, and U. T. Medical Branch - Galveston under an amended agreement

Agency: Greenphire, Inc.

Funds: Total contract spend by U. T. Dallas, U. T. Southwestern Medical Center, U. T. Health Science Center - Houston and U. T. Medical Branch - Galveston during the anticipated six-year duration of the amended agreement is estimated at \$338,000.

Period: The extended term of this agreement would be a period of six years, commencing December 5, 2014 and continuing through November 30, 2020.

Description: Greenphire, Inc. will provide electronic payment services for patients participating in clinical trials at U. T. Dallas, U. T. Southwestern Medical Center, U. T. Health Science Center - Houston, and U. T. Medical Branch - Galveston.

In December 2014, U. T. System contracted with Greenphire, Inc. (Greenphire) for electronic payment services at various U. T. System institutions. The contract term was scheduled to run through November 2018. U. T. System and Greenphire wish to extend the existing contract through November 2020. The contract extension has been signed but contains a provision conditioning its continued validity on Board approval. The 2014 contract was based on a competitive procurement by U. T. Dallas, and this contract extension is supported by an exclusive acquisition justification.

11. Request for Budget Change - U. T. System: Transfer \$27,460,000 in additional Excellence Funding from Available University Funds (AUF) to U. T. Austin consistent with the Permanent University Fund (PUF) distribution approved by the Board of Regents on August 10, 2018 (RBC No. 9450) -- amendment to the 2018-2019 budget

In the original U. T. System budget, Excellence Funding for U. T. Austin was based on a preliminary default FY 2019 Permanent University Fund (PUF) distribution of \$936,290,000. At the August 10, 2018 meeting, the Board of Regents approved a FY 2019 PUF distribution of \$1,014,000,000. This requested budget change to transfer \$27,460,000 from Available University Funds (AUF) simply aligns the U. T. Austin Excellence Funding with the PUF distribution amount approved by the Board of Regents on August 10, 2018.

12. Real Estate Report - U. T. System: Summary Report of Separately Invested Assets Managed by U. T. System

**THE UNIVERSITY OF TEXAS SYSTEM
SEPARATELY INVESTED ASSETS
Managed by U. T. System
Summary Report at November 30, 2018**

	FUND TYPE							
	Current Purpose Restricted		Endowment and Similar Funds		Annuity and Life Income Funds		TOTAL	
	Book	Market	Book	Market	Book	Market	Book	Market
Land and Buildings:								
Ending Value 8/31/2018	\$ 1,666,061	\$ 11,095,101	\$ 97,091,485	\$ 351,291,480	\$ 253,270	\$ 389,536	\$ 99,010,816	\$ 362,776,117
Increase or Decrease	-	(101,247)	(464,567)	(190,900)	-	-	(464,567)	(292,147)
Ending Value 11/30/2018	<u>\$ 1,666,061</u>	<u>\$ 10,993,854</u>	<u>\$ 96,626,918</u>	<u>\$ 351,100,580</u>	<u>\$ 253,270</u>	<u>\$ 389,536</u>	<u>\$ 98,546,249</u>	<u>\$ 362,483,970</u>
Other Real Estate:								
Ending Value 8/31/2018	\$ 4	\$ 4	\$ 6	\$ 6	\$ -	\$ -	\$ 10	\$ 10
Increase or Decrease	-	-	-	-	-	-	-	-
Ending Value 11/30/2018	<u>\$ 4</u>	<u>\$ 4</u>	<u>\$ 6</u>	<u>\$ 6</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 10</u>	<u>\$ 10</u>

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

Note: Surface estates are managed by the U. T. System Real Estate Office. Mineral estates are managed by U. T. System University Lands. The royalty interests received from the Estate of John A. Jackson for the John A. and Katherine G. Jackson Endowed Fund in Geosciences are managed by the U. T. Austin Geology Foundation, with the assistance of the Bureau of Economic Geology.

ACADEMIC AFFAIRS COMMITTEE

13. Other Matters - U. T. System Academic Institutions: Approval of Sexual Harassment and Sexual Misconduct Policies

Sexual misconduct policies for the following U. T. System academic institutions have been revised and are recommended by the Chancellor, the Executive Vice Chancellor for Academic Affairs, and the Vice Chancellor and General Counsel to the Board for approval, as required by federal law as referenced in Regents' *Rules and Regulations*, Rule 30105 (Sexual Harassment, Sexual Misconduct, and Consensual Relationships):

U. T. Arlington;
U. T. Dallas;
U. T. Permian Basin;
U. T. Rio Grande Valley; and
U. T. Tyler.

The Office of General Counsel recently revised its Model Policy, set forth on the following pages, to comply with recent guidance from the Office of Civil Rights. Consequently, five U. T. academic institutions revised their existing policies. The revised policies have been reviewed by the Office of General Counsel and found to be in compliance with applicable laws and regulations and are consistent with the substantive provisions of the Model Policy.

The substantive changes to the Model Policy are as follows:

- Renaming policy as "Sexual Misconduct Policy" (previously "Sexual Harassment/Sexual Misconduct Policy");
- Generally revising the policy to ensure the balancing of interests of complainants and respondents;
- Adding a statement on free speech;
- Elimination of 60-day requirement for completion of Title IX investigation thereby granting institutions discretion to complete investigations as soon as possible, depending on complexity;
- Including provisions relating to due process and privacy rights for all parties;
- Including definitions of "complainant," "respondent," "parties," "coercion," and "incapacitation";
- Clarifying the definition of "hostile work environment" to grant institutions the discretion to investigate employee claims of gender-based hostile work environment under the sexual misconduct policy (i.e., Title IX policy), non-discrimination policy, or both; and
- Revising the definition of "retaliation" to prohibit retaliatory conduct against a respondent in addition to a complainant, a witness or third party.

**The University of Texas System
Office of General Counsel Model Policy**

1. Title

Sexual Misconduct Policy

For Immediate Reporting:

**[INSERT TITLE IX OFFICE
CONTACT INFORMATION
and LINK TO WEBSITE]**

Also, please see Section 3.7
below for detailed information.

2. Policy

Sec. 1 General Policy Statement.

1.1 [Name of Institution] (the University) is committed to maintaining a learning and working environment that is free from discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in educational programs or activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act (SaVE Act). Sexual misconduct, as defined in Part 3, Definitions and Examples, will not be tolerated and will be subject to disciplinary action.

1.2 The University will promptly discipline any individuals or organizations within its control who violate this Policy. The University encourages you to promptly report violations of this Policy to the Title IX Coordinator or Deputy Coordinators (collectively "Title IX Office") or a Responsible Employee, as identified in Section 3.2 below.

1.3 Free Speech. This Policy encourages and respects the right of free speech guaranteed by the First Amendment of the Constitution and the principles of academic freedom. Constitutionally protected expression cannot be considered harassment under this policy. Each faculty member is entitled to full freedom in the classroom in discussing the subject which the teach. The right to free speech and principles of academic freedom are not absolute, however. The offensive conduct underlying some incidents might be protected speech, but it may still be in contradiction to the University's commitment to academic freedom, integrity, honesty, dignity, respect and honorable conduct (*see generally* Regents Rule 10901, *Statement of U.T. System Values and Expectations*). In these instances, constitutional rights will continue to be protected, but the University will also exercise its right to speak and engage in educational dialogue with those engaged in these types of behaviors. Further, some offensive conduct, even though it contains elements of speech, may rise to the level of the type of conduct that creates a sexually hostile environment and, thus, violates this policy.

Sec. 2 Applicability. This Policy applies to all University administrators, faculty, staff, students, and third parties within the University's control, including visitors and

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applicants for admission or employment. It applies to conduct regardless of where it occurs, including off University property, if it potentially affects the complainant's education or employment with the University or potentially affects the University community. It also applies regardless of the gender, gender identity or sexual orientation of the parties. In addition, it applies to any complaint made verbally or in writing.

Sec. 3 Filing a Complaint and Reporting Violations.

3.1 All Members of the University Community, Third Party and Anonymous Complaints. You are strongly encouraged to immediately report any incidents of sexual misconduct and other inappropriate sexual conduct to the Title IX Office.

- a. Anonymity. You may file an anonymous complaint by telephone, in writing or electronically [INSERT LINK TO WEBSITE REPORTING SYSTEM] with the Title IX Office. Your decision to remain anonymous, however, may greatly limit the University's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating the Policy.
- b. Confidentiality. Most University employees are required to report and respond to complaints of sexual misconduct and may be unable to honor a request for confidentiality. Complainants who want to discuss a complaint in strict confidence may use the resources outlined in Section 3.5 below.
- c. Timeliness of Complaint. You should report sexual misconduct as soon as you become aware of such conduct.

3.2 Responsible Employees. You may also report incidents to Responsible Employees, as defined below.

3.3 Reporting to Law Enforcement. You may also make a complaint with The University of Texas at [institution] Police Department at [insert phone] (non-emergency) or [insert phone] (emergency) or to the City of [insert] Police Department [phone] (non-emergency) or 911 (emergency) or to other local law enforcement authorities. The Title IX Office can help individuals contact these law enforcement agencies. Employees and students with protective or restraining orders relevant to a complaint are encouraged to provide a copy to the University Police Department.

3.4 Reporting to Outside Entities. You may also contact the following external agencies:

For students:

Office of Civil Rights
U.S. Department of Education
1999 Bryan Street, Suite 1620
Dallas, TX 75201-6810

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214-661-9600
214-661-9587 (fax)

Office for Civil Rights
U.S. Department of Health and Human Services
1301 Young Street, Suite 1169
Dallas, TX 75202
Phone: (800) 537-7697
FAX: (214) 767-0432

For employees:

U.S. Equal Employment Opportunity Commission
Dallas District Office
207 S. Houston Street, 3rd Floor
Dallas, TX 75202
Phone: (800) 669-4000
FAX: (214) 253-2720

Texas Workforce Commission
Civil Rights Division
101 E. 15th Street
Room 144-T
Austin, TX 78778-0001
512-463-2642

- 3.5 Confidential Support and Resources. Students may discuss an incident with a counselor in Counseling and Psychological Services, a health care provider in Health Services, the clergyperson of their choice, or an off-campus resource (i.e. rape crisis center, doctor, psychologist, etc.) without concern that the incident will be reported to the Title IX Office. Employees may also seek assistance from the Employee Assistance Program, their own personal health care provider, the clergyperson of their choice, or an off-campus rape crisis resource without concern that the incident will be reported to the Title IX Office. The University and community resources that provide such services are: [insert resources]
- 3.6 Immunity. In an effort to encourage reporting of sexual misconduct, the University will grant immunity from student disciplinary action to a person who voluntarily initiates a report of sexual misconduct or assists a complainant, if that person acts in good faith in reporting a complaint or participating in an investigation. This immunity does not extend to the person's own violations of this Policy.
- 3.7 Title IX Coordinator and Deputy Coordinators. The Title IX Coordinator and Deputy Coordinators are: [Insert Names/Contact info for Coordinators]

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Sec. 4. Parties' Rights Regarding Confidentiality. The University has great respect for the privacy of the parties in a complaint. Under federal law, however, Responsible Employees who receive a report of sexual misconduct must share that information with the Title IX Office. Those individuals may need to act to maintain campus safety and must determine whether to investigate further under Title IX, regardless of the complainant's request for confidentiality. In making determinations regarding requests for confidentiality and the disclosure of identifying information to the respondent, the Title IX Coordinator should deliberately weigh the rights and interests of the complainant, the respondent and the campus community.

In the course of the investigation, the University may share information only as necessary with people who need to know, which may include but is not limited to the investigators, witnesses, and the respondent. The University will take all reasonable steps to ensure there is no retaliation against the parties or any other participants in the investigation.

Sec. 5. Resources and Assistance.

5.1 Immediate Assistance.

[List on and off University resources for health care, police, and counseling]

A. Healthcare. If you experience any form of sexual, domestic, or dating violence, you are encouraged to seek immediate medical care. Also, preserving DNA evidence can be key to identifying the perpetrator in a sexual violence case. Victims can undergo a medical exam to preserve physical evidence with or without police involvement. If possible, this should be done immediately. If an immediate medical exam is not possible, individuals who have experienced a sexual assault may have a Sexual Assault Forensic Exam (SAFE) performed by a Sexual Assault Nurse Examiner (SANE) within 4 days of the incident. With the examinee's consent, the physical evidence collected during this medical exam can be used in a criminal investigation; however, a person may undergo a SAFE even without contacting, or intending to contact, the police. To undergo a SAFE, go directly to the emergency department of [insert hospital with SAFE capabilities] or the nearest hospital that provides SAFE services.

For more information about the SAFE, see https://www.texasattorneygeneral.gov/files/cvs/sexual_assault_examination.pdf. The cost of the forensic portion of the exam is covered by the law enforcement agency that is investigating the assault or, in cases where a report will not be made to the police, the Texas Department of Public Safety. This does not include fees related to medical treatment that are not a part of the SAFE.

B. Police Assistance. If you experienced or witnessed sexual misconduct, the University encourages you to make a report to the police. The police may, in turn, share your report with the Title IX Office.

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A police department's geographic jurisdiction depends on where the sexual misconduct occurred. Thus, if the incident occurred on the University campus, you may file a report with the [insert campus police name] by calling [number] or in person at [insert institution PD name] headquarters at [insert address], even if time has passed since the assault occurred.

[Institution PD name] can also assist with filing any protective orders. Reporting an assault to law enforcement does not mean the case will automatically go to criminal trial or to a University disciplinary hearing. If the University police are called, a uniformed officer will be sent to the scene to take a detailed statement. A police department counselor may also provide you with a ride to the hospital. You may also file a report with the University police even if the assailant was not a University student or employee. If the incident occurred in the City of [insert City name], but off campus, you may also file a report with the [City] Police Department, even if time has passed since the assault occurred. If a report is made to the police, a uniformed officer will usually be dispatched to the location to take a written report.

- C. Counseling and Other Services. If you experience sexual misconduct, you are strongly encouraged to seek counseling or medical and psychological care even if you do not plan to request a SAFE or report the assault to the police. You may be prescribed medications to prevent sexually transmitted infections and/or pregnancy even if the police are not contacted or if a SAFE is not performed. Similarly, other individuals impacted or affected by a sexual misconduct complaint are encouraged to seek counseling or psychological care.

You may receive medical care at the University Health Services (for students only), at a local emergency room, or by a private physician. You may also be provided with psychological support by the University Counseling and Psychological Services (students), Employee Assistance (employees), a referral through the Employee Assistance Program, or a care provider of your choosing.

Students desiring counseling should contact:

[insert office and contact information]

Faculty and staff should contact:

[insert office and contact information]

5.2 Interim Measures.

The University will offer reasonably available individualized services to the parties involved in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending.

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Interim measures may include but are not limited to reassignment, suspension, counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, withdrawal from or retake of a class without penalty, campus escort services, restrictions on contact between the parties, change in work or housing locations, leaves of absences, increased security and monitoring of certain areas of campus or other similar accommodations tailored to the individualized needs of the parties.

Sec. 6 The Investigation Process—What You Need to Know.

6.1 Key Officials in an Investigation.

- A. Title IX Coordinator. The Title IX Coordinator is the senior University administrator who oversees the University's compliance with Title IX. The Title IX Coordinator is responsible for overseeing the administrative response to reports of sexual misconduct and is available to discuss options, provide support, explain University policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators.

Any member of the University community may contact the Title IX Coordinator with questions.

- B. Investigators. The Title IX Coordinator will ensure that complaints are properly investigated under this Policy. The Title IX Coordinator will also ensure that investigators are properly trained at least annually to conduct investigations that occur under this Policy. The Title IX Deputy Coordinators will supervise and advise the Title IX investigators when conducting investigations and update the Title IX Coordinator as necessary.

6.2 Notification of University Offices Offering Assistance. After receiving a complaint, the Title IX Office will inform the parties of available resources and assistance. While taking into consideration requested confidentiality, the [insert student victim resource coordinator info] for students and [Employee Relations] office may serve as a liaison between the parties and the Title IX Office during the investigation.

6.3 Informal Resolution of Certain Complaints. (OPTIONAL)

Both parties may voluntarily agree to use this option instead of or before the formal resolution process but are not required to do so. Also, this option is not permitted for sexual violence cases. Anyone who believes that they have been subjected to sexual misconduct may immediately file a formal complaint as described in Section 6.4 of this Policy. Anyone interested in the informal resolution process, should contact the Title IX Coordinator. Before beginning the informal resolution process, the Title IX Coordinator must provide both parties full disclosure of the allegations and their options for formal resolution.

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At any time during the informal resolution process, the complainant may elect to discontinue to informal resolution process and file a formal complaint.

- A. Informal Assistance. If informal assistance is appropriate, the individual will be provided assistance in informally resolving the alleged sexual harassment. Assistance may include providing the complainant with strategies for communicating with the offending party that the behavior is unwelcomed and should cease, directing a University official to inform the offending party to stop the unwelcomed conduct, or initiating mediation. However, the University may take more formal action, including disciplinary action, to ensure an environment free of sexual harassment or sexual misconduct.
- B. Timeframe. Informal resolutions of a complaint will be concluded as soon as possible.
- C. Documentation. The University will document and record informal resolutions. The Title IX Coordinator will retain the documentation.

6.4 Formal Complaint and Investigation.

Formal Complaint. To begin the investigation process, the complainant should submit a written statement setting out the details of the conduct that is the subject of the complaint, including the following:

- complainant's name and contact information;
- name of the person directly responsible for the alleged violation;
- detailed description of the conduct or event that is the basis of the alleged violation;
- date(s) and location(s) of the alleged occurrence(s);
- names of any witnesses to the alleged occurrence(s); the resolution sought; and
- any documents or information that is relevant to the complaint.

The University may initiate an investigation regardless of the manner in which a complaint is received or whether a complaint is received at all. However, the complainant is strongly encouraged to file a written complaint. If the complaint is not in writing, the investigator should prepare a statement of what they understand the complaint to be and ask the complainant to verify that statement. The University office receiving the complaint should refer the complaint to the Title IX Coordinator.

Investigation.

- A. After an investigator is assigned, the respondent will be provided notice of the complaint and be allowed a reasonable time to respond in writing.

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- B. The parties may present any information and evidence that may be relevant to the complaint, including the names of any witnesses who may provide relevant information.
- C. The investigators will interview relevant and available witnesses. Neither the complainant nor the respondent will normally attend these interviews or the gathering of evidence; however, if either one is permitted to attend, the other shall have the same right.
- D. The investigation of a complaint will be concluded as soon as possible after receipt of the complaint. The parties should be provided updates on the progress of the investigation.
- E. After the investigation is complete, a written report¹ will be issued to the Title IX Coordinator and the appropriate administrator. The report shall include factual findings and a preliminary conclusion regarding each allegation of whether a policy violation occurred (based on a “preponderance of the evidence” standard).
- F. After the written report is completed, both parties will be allowed to inspect the report or, at the University’s discretion, be provided letters summarizing the findings in the report in keeping with FERPA and Texas Education Code, Section 51.971. Each party will have 7 business days to submit written comments regarding the investigation to the Title IX Coordinator.
- G. Within 7 business days after the deadline for receipt of comments from the parties, the Title IX Coordinator (or designee) will:
- request further investigation into the complaint;
 - dismiss the complaint if it is determined that no violation of policy or inappropriate conduct occurred; or
 - find that the Policy was violated.
- H. If it is determined that the Policy was violated, the matter will be referred for disciplinary action.
- I. The parties shall be informed concurrently in writing of the decision in accordance with Section 6.5.F of this Policy.
- J. If disciplinary action or sanction(s) is warranted, it will be imposed in accordance with the applicable policies and procedures.
- 6.5 Standard of Proof. All investigations will use the preponderance of the evidence standard, as defined in Part 3, Definitions and Examples, to determine violations of this Policy.

¹ Appropriate report redactions will be made to comply with Texas Education Code, Section 51.971.

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6.6 Timelines. Best efforts will be made to complete the complaint process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

At the request of law enforcement, the University may defer its fact-gathering until after the initial stages of a criminal investigation. The University will promptly resume its fact-gathering as soon as law enforcement has completed its initial investigation, or if the fact-gathering is not completed in a reasonable time, the University will move forward.

The filing of a complaint under this Policy does not excuse the complainant from meeting time limits imposed by outside agencies. Likewise, the applicable civil or criminal statute of limitations will not affect the University's investigation of the complaint.

6.7 Due Process and Privacy Rights

- The University will strive to ensure that the steps it takes to provide due process to the respondent will not restrict or delay the protections provided by Title IX to the complainant.
- The Family Educational Rights and Privacy Act (FERPA) does not override federally protected due process rights of a respondent.

6.8 Remedies. In addition to sanctions that may be imposed pursuant to the appropriate disciplinary policy, the University will take appropriate action(s), including but not limited to those below to resolve complaints of sexual misconduct, prevent any recurrence and, as appropriate, remedy any effects:

- (a) Imposing sanctions against the respondent, including attending training, suspension, termination or expulsion;
- (b) Ensuring the parties do not share classes, working environments or extracurricular activities;
- (c) Making modifications to the on campus living arrangements of the parties;
- (d) Providing comprehensive services to the parties including medical, counseling and academic support services, such as tutoring;
- (e) Providing the parties extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;
- (f) Determining whether sexual misconduct adversely affected the complainant's university standing;
- (g) Designating an individual specifically trained in providing trauma-informed comprehensive services;
- (h) Conducting a University climate check to assess the effectiveness of sexual misconduct prevention measures;

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- (i) Providing targeted training for a group of students, including bystander intervention and sexual misconduct prevention programs;
- (j) Issuing policy statements regarding the University's intolerance of sexual misconduct.

6.9 Sanctions and Discipline. Disciplinary action will be handled under the appropriate disciplinary policy depending on the status of the respondent.

[LINK TO APPROPRIATE POLICIES]

Sec. 7. Provisions Applicable to the Investigation.

7.1 Assistance. During the investigation process, both parties may be assisted by an advisor, who may be an attorney; however, the advisor may not actively participate in a meeting or interview.

7.2 Time Limitations. Time limitations in these procedures may be modified by the Title IX Coordinator or appropriate administrator on a written showing of good cause by the parties or the University.

7.3 Concurrent Criminal or Civil Proceedings. The University will not wait for the outcome of a concurrent criminal or civil justice proceeding to take action. The University has an independent duty to investigate complaints of sexual misconduct. (Except as provided in Sec. 6.7).

7.4 Documentation. The University shall document complaints and their resolution and retain copies of all materials in accordance with state and federal records laws and University policy.

Sec 8. Dissemination of Policy and Educational Programs.

8.1 This Policy will be made available to all University administrators, faculty, staff, and students online at [insert website] and in University publications. Periodic notices will be sent to University administrators, faculty, staff and students about the University's Sexual Misconduct Policy. The notice will include information about sexual misconduct, including the complaint procedure, and about University disciplinary policies and available resources, such as support services, health, and mental health services. The notice will specify the right to file a complaint under this Policy and with law enforcement and will refer individuals to designated offices or officials for additional information.

8.2 Ongoing Sexual Misconduct Training. The University's commitment to raising awareness of the dangers of sexual misconduct includes offering ongoing education through annual training and lectures by faculty, staff, mental health professionals, and/or trained University personnel. Preventive education and training programs will be provided to University administrators, faculty, staff, and students and will include information about risk reduction, including bystander intervention **[Link to web page with training provided]**

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8.3 Training of Coordinators, Investigators, Hearing and Appellate Authorities. All Title IX Coordinators, Deputy Coordinators, investigators, and those with authority over sexual misconduct hearings and appeals shall receive training each academic year about offenses, investigatory procedures, due process, and University policies related to sexual misconduct.

8.4 Annual Reporting and Notice. The University's Title IX General Policy Statement will be made available to all students, faculty, and employees online, in required publications and in specified departments.

Sec. 9. Additional Conduct Violations.

9.1 Retaliation. Any person who retaliates against the parties or any other participants in an investigation or disciplinary process relating to a complaint, or any person who under this Policy opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from the University. If any participant in an investigation believes they have been subject to retaliation, they should immediately report the alleged retaliatory conduct to the Title IX Office. [INSERT CITE TO RETALIATION POLICY]

9.2 False Complaints. Any person who knowingly files a false complaint under this Policy is subject to disciplinary action up to and including dismissal or separation from the University. A finding that a respondent is not responsible for the sexual misconduct alleged does not imply a report was false.

9.3 Interference with an Investigation. Any person who interferes with an ongoing investigation conducted under this Policy is subject to disciplinary action up to and including dismissal or separation from the University. Interference with an ongoing investigation may include, but is not limited to:

- (a) Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- (b) Removing, destroying, or altering documentation relevant to the investigation; or
- (c) Providing false or misleading information to the investigator, or encouraging others to do so.

9.4 No Effect on Pending Personnel or Academic Actions Unrelated to the Complaint. The filing of a complaint under this Policy will not stop or delay any action unrelated to the complaint, including: (1) any evaluation or disciplinary action relating to a complainant who is not performing up to acceptable standards or who has violated University rules or policies; (2) any evaluation or grading of students participating in a class, or the ability of a student to add/drop a class, change academic programs, or receive financial reimbursement for a class; or (3) any job-related functions of a University employee. Nothing in this section shall limit the University's ability to take interim action.

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Sec. 10 Documentation. The University shall confidentially maintain information related to complaints under this Policy, as required by law.

3. Definitions and Examples²

Complainant – The student, employee or third party who presents as the victim of any prohibited conduct under this Policy, regardless of whether that person makes the report or seeks action under this Policy.

Coercion – The use of pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including psychological or emotional pressure, physical or emotional threats, intimidation, manipulation, or blackmail that causes the person to engage in unwelcome sexual activity. A person's words or conduct are sufficient to constitute coercion if they eliminate a reasonable person's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include but are not limited to threatening to "out" someone based on sexual orientation, gender identity, or gender expression; threatening to harm oneself if the other party does not engage in the sexual activity; and threatening to expose someone's prior sexual activity to another person.

Consent – A voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity. Consent to one act does not imply consent to another. Past consent does not imply future consent. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent.

Consent is not effective if it results from: (a) the use of physical force, (b) a threat of physical force, (c) intimidation, (d) coercion, (e) incapacitation or (f) any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual activity.

A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be a voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.

The definition of consent for the crime of sexual assault in Texas can be found in Section 22.011(b) of the Texas Penal Code.³

² The definitions provided in the main body of the text are the definitions adopted by the University. When applicable, we have included the state law definition. In any criminal action brought by law enforcement, the state law definition will apply.

³ Texas Penal Code, Section 22.011(b) states that a sexual assault is without consent if: (1) the actor compels the other person to submit or participate by the use of physical force or violence; (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat; (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of

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Dating Violence⁴ – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

The existence of such a relationship shall be determined by the victim with consideration of the following factors:

- a) The length of the relationship;
- b) The type of relationship; and
- c) The frequency of interaction between the persons involved in the relationship

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. It does not include acts covered under the definition of domestic violence.

Domestic (Family) Violence⁵ – includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Texas,

resisting it; (5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring; (6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge; (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat.

⁴ Dating Violence is defined by the Texas Family Code, Section 71.0021 as:

- (a) an act, other than a defensive measure to protect oneself, by an actor that:
 - (1) is committed against a victim:
 - (A) with whom the actor has or has had a dating relationship; or
 - (B) because of the victim's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and
 - (2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual assault.
- (b) For purposes of this title, "dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:
 - (1) the length of the relationship;
 - (2) the nature of the relationship; and
 - (3) the frequency and type of interaction between the persons involved in the relationship.
- (c) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship" under Subsection (b).

Texas Penal Code, Section 22.01 provides the criminal penalties associated with Dating Violence.

⁵ Family Violence is defined by the Texas Family Code Section 71.004 as:

- (1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;
- (2) abuse, as that term is defined by Sections [261.001](#)(1)(C), (E), and (G), by a member of a family or household toward a child of the family or household; or
- (3) dating violence, as that term is defined by Section [71.0021](#).

Texas Penal Code Section 22.01 provides the criminal penalties associated with Domestic (Family) Violence.

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or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Texas.

Hostile Environment – exists when sexual harassment (which is a form of sex-based harassment) is sufficiently severe or pervasive to deny or limit the individual's ability to participate in or benefit from the University's programs or activities or an employee's terms and conditions of employment.⁶ A hostile environment can be created by anyone involved in a University's program or activity (e.g., administrators, faculty members, employees, students, and University visitors).

In determining whether sex-based harassment has created a hostile environment, the University considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not adequate, that the conduct was unwelcome to the individual who was harassed. To conclude that conduct created or contributed to a hostile environment, the University must also find that a reasonable person in the individual's position would have perceived the conduct as undesirable or offensive.

To ultimately determine whether a hostile environment exists for an individual or individuals, the University considers a variety of factors related to the severity, persistence, or pervasiveness of the sex-based harassment, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of the persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and (5) the degree to which the conduct affected an individual's education or employment.

The more severe the sex-based harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of sexual assault may be sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if the sex-based harassment is not particularly severe.

Incapacitation – Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if they demonstrate that they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

The University offers the following guidance on consent and assessing incapacitation:

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently,

⁶ Depending on the facts of a particular case, the University may investigate claims of hostile work environment under this Policy, the University's gender discrimination policy, or both. See Department of Education, Office for Civil Rights, January 2001 Revised Sexual Harassment Guidance, page 2.

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and determining whether an individual is incapacitated requires an individualized determination.

In evaluating consent in cases of alleged incapacitation, the University asks two questions:

- (1) Did the person initiating sexual activity know that the other party was incapacitated? and if not,
- (2) Should a sober, reasonable person in the same situation have known that the other party was incapacitated?

If the answer to either of these questions is “YES,” consent was absent and the conduct is likely a violation of this Policy.

One need not be a medical expert in assessing incapacitation. One should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may show signs of incapacitation differently, some signs include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, incontinence or emotional volatility. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” “Do you know whom you are with?”

An individual’s level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism. It is especially important, therefore, that anyone engaging in sexual activity is aware of both their own and the other person’s level of intoxication and capacity to give consent.

The use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. If there is any doubt as to the level or extent of one’s own or the other individual’s intoxication or incapacitation, the safest course of action is to forgo or cease any sexual contact.

Being impaired by alcohol or other drugs is no defense to any violation of this Policy.

Intimidation – Unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

Other Inappropriate Sexual Conduct – Includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual that does not rise to the level of sexual harassment but is unprofessional, inappropriate for the workplace or classroom and is not protected speech. It also includes consensual sexual conduct that is unprofessional and inappropriate for the workplace or classroom. Depending on the facts of a complaint, the conduct may not violate this Policy but may violate other university policies including but not limited to standards of conduct or professionalism policies.

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Parties -- The term “parties” refers to the “complainant” and the “respondent” in a Title IX complaint.

Preponderance of the Evidence – The greater weight of the credible evidence. Preponderance of the evidence is the standard for determining allegations of sexual misconduct under this Policy. This standard is satisfied if the action is deemed more likely to have occurred than not.

Respondent -- The student, employee, or third party who has been accused of violating this policy.

Responsible Employee – A University employee who has the duty to report incidents of sexual misconduct to the Title IX Office or an employee whom an individual could reasonably have this authority. Responsible employees include all administrators, faculty, supervisory staff, resident life directors and advisors, and graduate teaching assistants, except any employee with confidentiality obligations as defined in Section 3.5. Incidents of sexual misconduct may also be reported to Responsible Employees.

Retaliation – Any adverse action threatened or taken against someone *because* the individual has filed, supported, provided information in connection with a complaint of sexual misconduct or engaged in other legally protected activities. Retaliation includes, but is not limited to, intimidation, threats or harassment against any complainant, respondent, witness or third party.

Sexual Assault⁷ – An offense that meets the definition of rape, fondling, incest, or statutory rape:

- a) *Rape*: the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- b) *Fondling*: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- c) *Incest*: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d) *Statutory Rape*: Sexual intercourse with a person who is under the statutory age of consent.

Sexual Exploitation – Conduct where an individual takes non-consensual or abusive sexual advantage of another for their own benefit, or to benefit anyone other than the one

⁷ Sexual Assault is defined by Texas Penal Code, Section 22.011 as intentionally or knowingly:

- a) Causing the penetration of the anus or sexual organ of another person by any means, without that person's consent; or
- b) Causing the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
- c) Causing the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor.

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being exploited. Examples of sexual exploitation include, but are not limited to, engaging in voyeurism; forwarding of pornographic or other sexually inappropriate material by email, text, or other channels to non-consenting students/groups; the intentional removal of a condom or other contraceptive barrier during sexual activity without the consent of a sexual partner; and any activity that goes beyond the boundaries of consent, such as recording of sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted disease (STD) to another.

Sexual Harassment – Unwelcome conduct of a sexual nature including but not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when:

- a) Submission to such conduct is made either explicitly or implicitly a term or condition of a person's student status, employment, or participation in University activities; or
- b) Such conduct is sufficiently severe or pervasive that it creates a hostile environment, as defined in this Policy.

Sexual harassment is a form of sex discrimination that includes:

- a) Sexual violence, sexual assault, stalking, domestic violence and dating violence as defined herein.
- b) Physical conduct, depending on the totality of the circumstances present, including frequency and severity, including but not limited to:
 - i. unwelcome intentional touching; or
 - ii. deliberate physical interference with or restriction of movement.
- c) Verbal conduct not necessary to an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea, including oral, written, or symbolic expression, including but not limited to:
 - i. explicit or implicit propositions to engage in sexual activity;
 - ii. gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
 - iii. gratuitous remarks about sexual activities or speculation about sexual experiences;
 - iv. persistent, unwanted sexual or romantic attention;
 - v. subtle or overt pressure for sexual favors;
 - vi. exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or
 - vii. deliberate, repeated humiliation or intimidation based upon sex.

Sexual Misconduct – A broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature. The term includes, but is not limited to, sexual assault, sexual exploitation, sexual intimidation, sexual harassment, domestic violence, dating violence, and stalking. The term also includes “other inappropriate sexual conduct,” as defined above. Sexual misconduct can be committed by any person, including strangers or acquaintances.

Sexual Violence – Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. The term includes, but is not limited to, rape, sexual

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assault, sexual battery, sexual coercion, sexual abuse, indecency with a child, and/or aggravated sexual assault.

Stalking⁸ – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress. For the purposes of this definition--

- a) *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- b) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.
- c) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

4. Relevant Federal and State Statutes, and Standards

[Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688 and its implementing regulations, 34 C.F.R. Part 106](#)

[Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e–2000e-17 and its implementing regulations 29 C.F.R. §1604 11.](#)

[Clery Act, 20 U.S.C 1092\(f\) and its implementing regulations 34 C.F.R. Part 668](#)

[FERPA Regulations, 34 C.F.R. Part 99](#)

5. Other Relevant Policies, Procedures, and Forms

⁸ Stalking as defined by Texas Penal Code, Section 42.072 is when an individual on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:

- a) is considered harassment, or that the actor knows or reasonably should know the other person will regard as threatening:
 - i. bodily injury or death for the other person;
 - ii. bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or
 - iii. that an offense will be committed against the other person's property;
- b) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and
- c) would cause a reasonable person to:
 - i. fear bodily injury or death for himself or herself;
 - ii. fear bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship;
 - iii. fear that an offense will be committed against the person's property; or
 - iv. feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.

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[insert reference to]:

[Regents' Rules and Regulations, Rule 30105, Sexual Harassment, Sexual Misconduct, and Consensual Relationships](#)

[University of Texas System Administration Systemwide Policy \(UTS 184\), Consensual Relationships](#)

University's Sex Discrimination Policy

[Regents' Rules and Regulations, Rule 31008, Termination of a Faculty Member](#)

Staff Discipline policy

Student Discipline policy

6. System Administration Office(s) Responsible for Policy

Office of General Counsel

7. Dates Approved or Amended

[insert new date]

April 6, 2015

February 21, 2012

8. Contact Information

Questions or comments about this Policy should be directed to:

- ogc_intake@utsystem.edu

14. Contract (funds going out) - U. T. Arlington: Frontier Waterproofing, Inc. to provide job order contracting services for waterproofing of campus facilities

Agency: Frontier Waterproofing, Inc.

Funds: This contract has the potential to exceed \$1,000,000 over a five-year period

Period: October 22, 2018 through October 21, 2019, with option to renew for four additional one-year terms

Description: Frontier Waterproofing Contracting Services, Inc. will provide job order contracting services for masonry restoration, brick repairs and installation, and facilities waterproofing. This contract was competitively bid.

15. Contract (funds going out) - U. T. Arlington: Rightpoint Consulting, L.L.C. to deliver a new web experience for the institution's website on the Sitecore Experience Platform

Agency: Rightpoint Consulting, L.L.C.

Funds: \$1,471,800 (plus reasonable and actual travel and lodging expenses)

Period: July 1, 2018 through September 30, 2019

Description: Rightpoint Consulting, L.L.C. will deliver a new web experience for the institution's website on the Sitecore Experience Platform, including all pages that share the global navigation of the current homepage. This contract was competitively bid.

16. Request for Budget Change - U. T. Arlington: New Hires with Tenure -- amendment to the 2018-2019 budget

The following Requests for Budget Change (RBC) have been administratively approved by the Executive Vice Chancellor for Academic Affairs and are recommended for approval by the U. T. System Board of Regents:

Description	Effective Date	% Time	Full-time Salary		RBC #
			No. Mos.	Rate \$	
College of Engineering					
Civil Engineering					
Associate Director and Professor					
Maria Konsta-Gdoutos (T)	2/1-5/31	100	09	145,000	10570
Materials Science and Engineering					
Director and Professor					
Surendra Shah (T)	1/16-5/31	100	09	296,000	10572
College of Nursing and Health Innovation					
Nursing					
Executive Director and Professor					
Florence Haseltine (T)	1/11-8/31	100	12	265,000	10569
Nursing					
Dean and Professor					
Elizabeth Merwin (T)	2/1-8/31	100	12	400,000	10571

17. Lease - U. T. Arlington: Authorization to amend and extend the lease of approximately 2,937 rentable square feet of space located at 9390 Research Boulevard, Austin, Travis County, Texas, from Eurus Estates II, Ltd., for higher education use, including offices and laboratories

Description: Third Amendment to Lease for approximately 2,937 rentable square feet of space located at 9390 Research Boulevard, Austin, Travis County, Texas, located in the Kaleido II Building as Suite 300, for higher education use, including offices and laboratories

Lessor: Eurus Estates II, Ltd., a Texas limited partnership

Term: Sixty-month extension term commencing on February 1, 2019, and continuing through January 31, 2024

Lease Cost: Annual base rent is \$57,271 (\$19.50 per square foot), escalating by 3% annually for a total rent amount of \$1,431,707 over the term of the lease, as extended.

Tenant Improvements: Lessor performed tenant improvements initially and will make additional tenant improvements for this lease extension, at lessor's cost.

18. Purchase - U. T. Arlington: Authorization to purchase a leasehold interest in, and to renovate a 366-unit student apartment complex on approximately 13.558 acres of campus land, located at 700 W. Mitchell Street, Arlington, Tarrant County, Texas, from Arlington Residence Partnership I, LTD., for student housing; and resolution regarding parity debt

Description: Purchase of a leasehold interest in a 366-unit student apartment complex on approximately 13.558 acres of campus land located at 700 W. Mitchell Street, Arlington, Tarrant County, Texas and authorization for the Executive Director of Real Estate to execute all documents, instruments, and other agreements and to take all further actions deemed necessary or advisable to purchase the leasehold interest. The improvements and land are owned by the U. T. System Board of Regents; the lessee owns the furnishings and equipment and leasehold interest. The leasehold interest expires in 2030. This property is on the institution's main campus and is used for student housing. The apartments are currently occupied in excess of 95%. In addition to the purchase price, U. T. Arlington estimates that it may spend approximately \$8,000,000 to \$10,000,000 over a 24-month period for property renewal.

Seller: Arlington Residence Partnership I, LTD., a Texas limited partnership

Purchase Price: Not to exceed fair market value as determined by an independent appraisal performed by BBG, Inc.; appraisal confidential pursuant to *Texas Education Code* Section 51.951

Source of Funds: Revenue Financing System bonds repaid out of rental income. The project's debt service coverage ratio is expected to be at least 1.4 times and to average 1.5 times during the period from Fiscal Year 2019 through Fiscal Year 2024. In approving this item, the Board will be making the findings required under Section 5 of the Amended and Restated Master Resolution establishing the Revenue Financing System relating to the issuance of parity debt on behalf of U. T. Arlington in an aggregate amount not to exceed fair market value as established by independent appraisal plus renewal costs, and this action satisfies the official intent requirements set forth in Section 1.150-2 of the *Code of Federal Regulations*.

19. Contract (funds coming in) - U. T. Austin: Pediatric Congenital Heart Disease and Congenital Heart Surgery Program Support Agreement by and among Seton Family of Hospitals, Dell Children's Medical Group, and The University of Texas at Austin

Agency: Seton Family of Hospitals and Dell Children's Medical Group

Funds: U. T. Austin will be paid a maximum of approximately \$12,500,000 annually (with full staffing of Program personnel)

Period: Initial term beginning May 1, 2018 through April 30, 2023, with unlimited renewal periods of one year each, unless terminated earlier

Description: This Program Support Agreement outlines the terms (i) of a regional comprehensive pediatric and congenital clinical heart disease and congenital heart surgery program, and (ii) to integrate pediatric and congenital heart disease services with adult services to be created by U. T. Austin Dell Medical School and Seton (the Program). Among other terms, the Program will include coverage and services to be furnished by Dr. Charles Fraser and to-be-hired Program personnel for pediatric congenital heart disease and congenital heart surgery services at Dell Children's Medical Center, emergency congenital heart disease services at the Dell Children's emergency room, Seton's Texas Center for Pediatric and Congenital Heart Disease, and an outpatient pediatric congenital heart disease provider-based clinic. The Program personnel will also provide coverage and services at Dell Seton Medical Center for adult patients with pediatric congenital heart disease needs.

20. Contract (funds going out) - U. T. Austin: Stantec Consulting Services, Inc. to provide professional engineering/architectural services to campus facilities

Agency: Stantec Consulting Services, Inc.

Funds: Expected to exceed \$2,500,000 over the maximum six-year contract period

Period: August 1, 2017 through July 31, 2019 (one-year contract with option to renew for up to five additional one-year periods, four renewal options remaining). The contract is being brought forward for Board approval as it is nearing the \$2,500,000 delegation threshold.

Description: Stantec Consulting Services, Inc. to perform professional engineering/architectural services with projects varying in size and scope. Separate service agreements will be executed for individual projects. Services were competitively procured.

21. Foreign Contract (funds going out) - U. T. Austin: Addendum to Service Agreement with Casa de las Américas in Cuba for faculty led summer program

Agency: Casa de las Américas

Funds: \$38,285

Period: February 28, 2019 through June 29, 2019

Description: Under the second addendum, Casa de las Américas, an institution established by the Cuban Ministry of Culture, will provide visa, housing, and travel assistance to U. T. Austin faculty and students studying in Havana, Cuba. The summer program runs from June 2, 2019 through June 28, 2019.

22. Request for Budget Change - U. T. Austin: New Hire with Tenure -- amendment to the 2017-2018 budget

The following Request for Budget Change (RBC) has been administratively approved by the Executive Vice Chancellor for Academic Affairs and is recommended for approval by the U. T. System Board of Regents:

Description	Effective Date	% Time	Full-time Salary		RBC #
			No. Mos.	Rate \$	
Dell Medical School					
Department of Population Health					
Associate Professor					
Phillip W. Schnarrs (T)	7/9-8/31	100	12	120,000	10555

23. Request for Budget Change - U. T. Austin: New Hires with Tenure -- amendment to the 2018-2019 budget

The following Requests for Budget Change (RBC) have been administratively approved by the Executive Vice Chancellor for Academic Affairs and are recommended for approval by the U. T. System Board of Regents:

Description	Effective Date	% Time	Full-time Salary		RBC #
			No. Mos.	Rate \$	
Jackson School of Geosciences					
Department of Geological Sciences					
Professor					
Claudio Faccenna (T)	1/16-5/31	100	9	240,000	10556
College of Liberal Arts					
Department of Economics					
Associate Professor					
Tom Vogl (T)	9/1-5/31	100	9	245,000	10557
Department of English					
Associate Professor					
Alison Kafer (T)	1/16-5/31	100	9	135,000	10558
College of Pharmacy					
Professor					
Sharon DeMorrow (T)	1/1-5/31	100	9	170,000	10566

- 24. Request for Budget Change - **U. T. Austin**: Transfer \$9,700,000 from Research Infusion to Project Management and Construction Services (PMCS) – Campus Main (CAM) Engineering Moves to relocate Aerospace Engineering (RBC No. 10543) -- amendment to the 2018-2019 budget

- 25. Request for Budget Change - **U. T. Austin**: Transfer \$5,500,000 from Provost (PROV) – Provost Enhancement to Resource Management (RSCM) – Peter T. Flawn Academic Center (FAC) – UT Career Center to fund new UT Career Center (RBC No. 10544) -- amendment to the 2018-2019 budget

- 26. Request for Budget Change - **U. T. Austin**: Transfer \$24,000,000 from Reserve for Academic Enhancement Initiatives to Project Management and Construction Services (PMCS) – Repairs and Renovations (R&R) – Safety & Code and Repairs and Renovations (R&R) – Program to repair and renovate buildings (RBC No. 10559) -- amendment to the 2018-2019 budget

The following Request for Budget Change has been administratively approved by the Executive Vice Chancellor for Academic Affairs and is recommended for approval by the U. T. System Board of Regents:

Description	\$ Amount	RBC #
Reserve for Academic Enhancement Initiatives – Allotment, Unallocated and Reserve		
Amount of Transfer:	24,000,000	10559
From: Reserve for Academic Enhancement Initiatives – Designated Funds, Allocation for Budget Adjustment	24,000,000	
To: Project Management and Construction Services (PMCS) – Repairs and Renovations (R&R) – Safety & Code – Plant Funds, Allocated for Budget	6,000,000	
PMCS – R&R – Program – Plant Funds, Allocated for Budget	18,000,000	

- 27. Request for Budget Change - **U. T. Austin**: Transfer \$5,000,000 from Reserve for Academic Enhancement Initiatives to Project Management and Construction Services (PMCS) – Chemical and Petroleum Engineering Building (CPE) Mold Remediation to repair and replace the HVAC make-up air unit, leaking coils, aging controls, and mold growth (RBC No. 10560) -- amendment to the 2018-2019 budget

28. Employment Agreement - U. T. Austin: Approval of amendment to terms of Employment Agreement for Vice President and Athletics Director Christopher M. Del Conte

The following Amendment No. 1 to the Employment Agreement for the Vice President and Athletics Director has been approved by the Executive Vice Chancellor for Academic Affairs and is recommended for approval by the U. T. System Board of Regents. If the Amendment is approved, total compensation for the contract period for Christopher M. Del Conte will be in excess of \$1 million. Such employment under the Agreement, as amended by Amendment No. 1, is subject to the Constitution and Bylaws of the National Collegiate Athletic Association, the Big 12 Conference, any intercollegiate athletic conference of which The University of Texas at Austin is a member, the Regents' *Rules and Regulations*, and the policies of The University of Texas at Austin (Regents' *Rules and Regulations*, Rule 10501, Section 2.212, Athletic Employment Agreements; and Rule 20204, Section 3, Board Approval). Any violation of the provisions of such constitution, bylaws, rules, regulations, or policies shall be grounds for suspension without pay and/or dismissal.

Item: Amendment to terms of Employment Agreement for Vice President and Athletics Director Christopher M. Del Conte

From: **Guaranteed compensation:**
 Annual Salary:
 FY 2018: \$1,310,000 (prorated)
 FY 2019: \$1,340,000
 FY 2020: \$1,380,000
 FY 2021: \$1,420,000
 FY 2022: \$1,470,000
 FY 2023: \$1,520,000
 FY 2024: \$1,570,000

To: **Guaranteed compensation:**
 Annual Salary:
 FY 2019: \$1,540,000 (prorated)
 FY 2020: \$1,580,000
 FY 2021: \$1,620,000
 FY 2022: \$1,670,000
 FY 2023: \$1,720,000
 FY 2024: \$1,770,000

Guaranteed
 Compensation
 Percent Change: 11%

Nonguaranteed
 Compensation
 Change: 0%

Description: Amendment No. 1 to the Agreement for employment of Vice President and Athletics Director Christopher M. Del Conte increases the base salary by \$200,000, beginning on March 1, 2019, and through the duration of the contract period. Additionally, the amendment corrects a typographical error contained in the original agreement regarding the timing of a one-time special payment. The amendment also incorporates compliance language required by the National Collegiate Athletic Association for all contracts executed after August 8, 2018.

Source of Funds: Intercollegiate Athletics

Period: March 1, 2019 through August 31, 2024

29. Lease - U. T. Austin: Authorization to lease approximately 15,212 rentable square feet of space located at 28 W. 44th Street, New York City, New York, from APF 28W44 Owner LP, for future programmed mission use, including use by the McCombs School of Business, Moody College of Communication, and College of Liberal Arts

Description: Lease of approximately 15,212 rentable square feet of space located at 28 W. 44th Street, New York City, New York, for future programmed expansion as classrooms and offices, including use by the McCombs School of Business, Moody College of Communication, and College of Liberal Arts.

Lessor: APF 28W44 Owner LP, a Delaware limited partnership

Term: Seven years and five months, with one renewal option of five years at fair market value

Lease Cost: Initial annual base rent is \$57 gross per rentable square foot for 3.5 years and will escalate to \$61 gross per rentable square foot through the expiration of the term, with a 2.25% annual escalation in lieu of pro rata Operating Expense payments. Base Rent plus escalation costs for the lease term will total \$6,438,814. Tenant will pay its proportionate share of increases in Real Estate Taxes above a 2019 Base Year, currently estimated at \$381,362 over the term of the lease. Tenant will also be subject to a municipal Commercial Rent Tax of 3.9%, which will cost tenant an estimated \$281,920 over the term of the lease. Electricity to the space will be sub metered and tenant will be responsible for electric costs plus 6%.

The landlord has also proposed 10 months of rent abatement and a tenant improvement allowance of \$80 per rentable square foot totaling \$1,216,960. Tenant will be responsible for any build out costs that exceed the allowance, which are currently estimated at \$10 per square foot for build out costs, in an amount of \$152,120. The cumulative lease value of Tenant's Base Rent, Escalations, and Tenant Improvement participation equals an estimated \$7,254,216.

30. Purchase - U. T. Austin: Authorization to exercise option to purchase property located at 2002 Whitis Avenue, Austin, Travis County, Texas, from the Estate of Ellen F. Byrum, for future programmed campus expansion

Description: Authorize the purchase of property located at 2002 Whitis Avenue, Austin, Travis County, Texas, for future programmed campus expansion. The property is located adjacent to the institution's main campus, within its master plan expansion zone and is currently a parking lot leased by the institution. Authorize the Executive Director of Real Estate to execute all documents, instruments, and other agreements deemed necessary or advisable to purchase the property.

Seller: Ellen F. Byrum Trust

Total Area: Approximately 0.2009 of an acre

Purchase Price: \$2,680,000 increased by a Consumer Price Index adjustment from January 1, 2019, until the date of the Condition Precedent under the terms of the Trust, namely, notice of Ellen F. Byrum's death. The institution will purchase the property only if an independent appraisal confirms that the purchase price does not exceed fair market value at the time the purchase option is exercised.

31. Contract (funds coming in and going out) - U. T. Dallas: Compass Group USA, Inc., by and through its Chartwells Division, to provide operation and management of food services at campus facilities

Agency: Compass Group USA, Inc.

Funds: Estimated \$33,320,000 in revenue royalties, donations and capital investments over a 10-year period (U. T. Dallas will make payments to Chartwells Division for requested catering services from time to time)

Period: January 1, 2019 through December 31, 2023, with one option to renew for a five-year period ending December 31, 2028

Description: Compass Group USA, Inc., by and through its Chartwells Division, will provide operation and management of food services at U. T. Dallas campus facilities. These services will include meal plans, cash retail food services, and catering options. This award is the result of competitive solicitation and recommendation by an evaluation committee with representatives from student government as well as university staff. Pursuant to *Texas Education Code* Section 51.945, students were provided an opportunity to comment prior to determination that this food services provider should be selected by the institution.

32. Contract (funds going out) - U. T. Dallas: Prism Electric, Inc. to provide electrical maintenance services as requested by the Department of Facilities Management on an as-needed basis for low, medium, and high voltage requirements

Agency: Prism Electric, Inc.

Funds: Estimated \$4,000,000 for two-year period, which includes one one-year renewal option

Period: Initially, November 1, 2018 through October 31, 2019, with one option to renew for one year

Description: U. T. Dallas to piggyback two existing U. T. Southwestern Medical Center (UTSW) contracts with Prism at established hourly rates for U. T. Dallas to obtain Prism's performance of electrical maintenance services on the U. T. Dallas campus on an as-needed basis for low, medium, and high voltage requirements. UTSW procured its contracts with Prism through the use of a competitively solicited Request for Qualification (RFQ).

33. Lease - U. T. El Paso: Authorization to extend a lease of approximately 2,254 square feet of space located in the University Towers Medical Center building at 1900 N. Oregon Street, El Paso, El Paso County, Texas, to Ampler Burgers, LLC, for retail/restaurant use

Description: Extend lease of approximately 2,254 square feet of space located at 1900 N. Oregon Street, El Paso, El Paso County, Texas for retail/restaurant use. U. T. El Paso currently leases the space to Ampler Burgers, LLC and it is being utilized as a Burger King restaurant. The space is within the University Towers Medical Center building that was acquired by the Board of Regents in 2013 for future campus expansion. The building is occupied by third party tenants and by the institution. The original lease was in place at the time the University Towers Medical Center building was acquired. The parties recently extended the lease.

Lessee: Ampler Burgers, LLC, a Nebraska limited liability company

Term: The original lease commenced on June 4, 1996. The extended lease term is for a period of 10 years, which commenced on April 1, 2018, and continues through March 31, 2028, with four additional options to renew, each for a period of five years.

Lease Value: The average annual base rent is \$24.84 per square foot, plus an additional percentage rent estimated to be \$11.54 per square foot for a total approximate amount of \$820,171 over the initial extended 10-year term. Annual operating expenses being paid by the lessee are estimated to be \$9.53 per square foot or \$214,913 for a total of \$1,035,084 for the initial 10-year extension. Base rents for the first and second five-year options will be \$27.33 per square foot with an increase to \$30.06 per square foot thereafter for the third and fourth five-year options.

Tenant Improvements: Lessee has expended approximately \$150,000 for interior renovations.

Total Value: The base rent, estimated percentage rent, and estimated annual operating expense value for the initial 10-year extension, along with the four options to renew, totals approximately \$ 3,278,852.

34. Approval of Dual Position of Honor, Trust, or Profit - U. T. El Paso: Appointment by Governor Abbott of Aaron Velasco, Professor, Department of Geological Sciences, as a member of the TexNet Technical Advisory Committee

The following item has been approved by the Executive Vice Chancellor for Academic Affairs in accordance with Regents' *Rules and Regulations*, Rule 30103.

It has been determined that the holding of this office or position is of benefit to the State of Texas and The University of Texas at El Paso, and there is no conflict between holding this position and the appointment with the University.

The Board is also asked to find that holding this position is of benefit to the State of Texas and the University, and that there is no conflict between the position and the University.

Name: Aaron Velasco

Title: Professor, Geological Sciences

Position: Member, TexNet Technical Advisory Committee

Period: October 1, 2018, for a term at the pleasure of the Governor

Compensation: None

Description: Dr. Velasco has been appointed by Governor Greg Abbott to the TexNet Technical Advisory Committee.

The mission of the TexNet Technical Advisory Committee is to increase the knowledge related to earthquakes occurring within the State, and to improve the safety of the citizens, environment, infrastructure, and economy of the State of Texas.

35. Contract (funds going out) - U. T. Permian Basin: Agreement for ABM Texas General Services, Inc. to provide custodial services on campus

Agency: ABM Texas General Services, Inc.

Funds: 1,115,423

Period: September 1, 2018 through August 31, 2019, with option to renew for four additional one-year terms

Description: ABM Texas General Services, Inc. to provide custodial services on campus. The contract was competitively bid.

36. Contract (funds coming in) - U. T. Rio Grande Valley: Approval of Second Amendment to Annual Operating Agreement with Doctors Hospital at Renaissance, Ltd.

Agency: Doctors Hospital at Renaissance, Ltd. (DHR)

Funds: Monthly payments of \$1,595,602 from January 1, 2019 through March 31, 2019, unless revised by agreement of the parties, \$4,796,806 total amount subject to reconciliation

Period: January 1, 2019 through March 31, 2019

Description: The Calendar Year 2019 Amendment to Annual Operating Agreement to the Affiliation Agreement between Doctors Hospital at Renaissance, Ltd. and U. T. Rio Grande Valley documents the payment for services flowing between the parties in connection with graduate and undergraduate medical education programs, and describes the commitment of the parties related to educational, clinical, structural, financial, and administrative needs of the graduate and undergraduate medical education programs and other collaboration efforts as contemplated in the related Affiliation Agreement between the parties. This three-month agreement allows time for the parties to finalize the Annual Budget for the period January 1, 2019, through December 31, 2019, and to agree on a revised Annual Operating Agreement.

37. Request for Budget Change - U. T. Rio Grande Valley: New Hire with Tenure -- amendment to the 2018-2019 budget

The following Request for Budget Change (RBC) has been administratively approved by the Executive Vice Chancellor for Academic Affairs and is recommended for approval by the U. T. System Board of Regents:

Description	Effective Date	% Time	Full-time Salary		RBC #
			No. Mos.	Rate \$	
College of Liberal Arts					
Department of Psychological Science					
Associate Professor					
Cecilia Montiel-Nava (T)	1/03-5/31	100	9	77,000	10655

38. Purchase - U. T. Rio Grande Valley: Authorization to purchase approximately 9.15 acres of undeveloped land located at 621 North Jackson Road, Edinburg, Hidalgo County, Texas, from Villa Kapital, LLC, for future programmed campus expansion, including academic and academic support uses

Description: Purchase approximately 9.15 acres of undeveloped land located at 621 North Jackson Road, Edinburg, Hidalgo County, Texas, and authorization for the Executive Director of Real Estate to execute all documents, instruments, and other agreements, and to take all further actions deemed necessary or advisable to purchase the property. The 9.15-acre tract is included in U. T. Rio Grande Valley's Board-approved Long-Range Plan for campus acquisition and is located along the western boundary of the Edinburg campus. The property will be used for future programmed campus expansion, including academic and academic support uses.

Seller: Villa Kapital, LLC, a Texas Limited Liability Company

Purchase Price: Not to exceed fair market value as determined by an independent appraisal performed by Aguirre and Patterson, Inc.; appraisal confidential pursuant to *Texas Education Code* Section 51.951

39. Gift - U. T. Rio Grande Valley: Authorization to accept a gift of approximately 30.54 acres of vacant land located near the northeast corner of Camelot Drive and Hale Street in, Harlingen, Cameron County, Texas, from the City of Harlingen, for future programmed campus expansion, and to lease space in a to-be-built building to the Harlingen Consolidated Independent School District and finding of public purpose

Description:

Gift of approximately 30.54 acres of vacant land located near the northeast corner of Camelot Drive and Hale Street, Harlingen, Cameron County, Texas; and authorization for the Executive Director of Real Estate to execute all documents, instruments, and other agreements, and to take all further actions deemed necessary or advisable to acquire the property and to lease space in a to-be-built building on the property to the Harlingen Consolidated Independent School District (ISD).

The gift requires that the land be used for university mission-related purposes for 35 years. To that end, the property will be used by U. T. Rio Grande Valley, in concert with the Harlingen Consolidated ISD, as a dual-enrollment and higher education campus. U. T. Rio Grande Valley plans to build Phase I improvements on the property consisting of approximately 35,000 to 40,000 square feet of classroom space and teaching labs for university and high school classes. U. T. Rio Grande Valley will offer baccalaureate, masters, and early college courses with a proposed emphasis on education, engineering, and computer science.

U. T. Rio Grande Valley and the Harlingen Consolidated ISD will each fund one-half of the Phase I construction, which is estimated to cost approximately \$12,000,000 to \$14,000,000. U. T. Rio Grande Valley must begin construction of the initial building within 36 months after the date of the gift conveyance, or the property will revert back to the City of Harlingen. However, the City of Harlingen will reserve the right to extend the 36-month time period.

U. T. Rio Grande Valley will lease space in the Phase I building to the Harlingen Consolidated ISD for approximately 35 years. The Harlingen Consolidated ISD will prepay the base rental in an amount equal to one-half of the Phase I construction cost, estimated to be approximately \$7,000,000. In addition, the Harlingen Consolidated ISD will pay its pro rata share of operating expenses.

Gift of Land:

Property: 30.54 acres of unimproved land near the northeast corner of Camelot Drive and Hale Street in, Harlingen, Texas

Donor: City of Harlingen, Texas

Estimated Gift Value: \$1,318,720 (0.99¢ per square foot per the 2018 Cameron County Central Appraisal District market valuation)

Gift Requirements: The land must be used for university mission-related purposes for 35 years. U. T. Rio Grande Valley must begin construction of the initial building within 36 months after the date of the gift conveyance; otherwise the property will revert back to the City of Harlingen. However, the City of Harlingen will reserve the right to extend the 36-month time period.

Lease or License of
Phase I Improvements:

Tenant: Harlingen Consolidated Independent School District

Lease Term: 35 years

Premise: Use of approximately one-half of the improvements. The use of certain rooms or facilities may be limited to certain times.

Lease Income: The prepaid base rental amount will equal one-half of the Phase I construction cost, estimated to be approximately \$7,000,000. In addition, the Harlingen Consolidated Independent School District will pay its pro rata share of operating expenses. The prepaid base rental amount may constitute a below market rate. There is an appraisal pending.

Public Purpose: The prepaid base rental amount described above may constitute a below market rate. The Attorney General of the State of Texas, in Opinion No. MW-373 (1981) has advised that, for the use of space in university facilities with no or nominal cash rental payments to comply with the Texas Constitution, three requirements must be met: (1) the use of the property must serve a public purpose appropriate to the function of the university; (2) adequate consideration must be received by the university; and (3) the university must maintain controls over the user's activities to ensure that the public purpose is achieved.

Accordingly, to the extent the pre-paid rent is below market, the Board of Regents is also asked to find that (1) the lease or license of the shared use to-be-built building to the Harlingen Consolidated ISD for a prepaid base rental payment, as described above, serves a public purpose appropriate to the function of U. T. Rio Grande Valley, including uses that enlarge the institution's student base or that lead to the award of college credits to students in the Rio Grande Valley; (2) pursuant to the lease agreement, the consideration received by U. T. Rio Grande Valley is adequate,; and (3) U. T. Rio Grande Valley will have sufficient safeguards in place to ensure the public purpose will continue to be met on an ongoing basis, including lease provisions limiting use by the Harlingen Consolidated ISD only to programs that offer dual credit or that otherwise tie into higher education.

40. Contract (funds going out) - U. T. San Antonio: Basic IDIQ, Inc. to provide job order contracting services for minor construction projects

Agency: Basic IDIQ, Inc.

Funds: Possible fees of up to \$8,000,000 for the entire term, including all renewal terms. Total fees may increase or decrease depending on volume of construction projects. Each job order issued under the contract with Basic IDIQ, Inc. will be independently evaluated and executed.

Period: Initial two-year term beginning September 1, 2018, with three additional two-year renewal options, with each renewal option being at U. T. San Antonio's discretion.

Description: The agreement secures job order contracting services to support U. T. San Antonio's minor construction and renovation projects. The agreement resulted from a competitive Request for Proposal (RFP) intended to select multiple contractors. The four highest-ranked proposals were selected under the RFP, and Basic IDIQ, Inc. was one of these four proposers.

41. Contract (funds going out) - U. T. San Antonio: The Pounds Group LLC, dba Sullivan Contracting Services to provide job order contracting services for minor construction projects

Agency: The Pounds Group LLC, dba Sullivan Contracting Services (Sullivan)

Funds: Possible fees of up to \$8,000,000 for the entire term, including all renewal terms. Total fees may increase or decrease depending on volume of construction projects. Each job order issued under the contract with Sullivan will be independently evaluated and executed.

Period: Initial two-year term beginning September 1, 2018, with three additional two-year renewal options, with each renewal option being at U. T. San Antonio's discretion

Description: The agreement secures job order contracting services to support U. T. San Antonio's minor construction and renovation projects. The Agreement resulted from a competitive Request for Proposal (RFP) intended to select multiple contractors. The four highest-ranked proposals were selected under the RFP, and Sullivan was one of these four proposers.

42. Contract (funds going out) - U. T. San Antonio: The Sabinal Group, LLC to provide job order contracting services for minor construction projects

Agency: The Sabinal Group, LLC

Funds: Possible fees of up to \$8,000,000 for the entire term, including all renewal terms. Total fees may increase or decrease depending on volume of construction projects. Each job order issued under the contract with Sabinal Group, LLC will be independently evaluated and executed

Period: Initial two-year term beginning September 1, 2018, with three additional two-year renewal options, with each renewal option being at U. T. San Antonio's discretion

Description: The agreement secures job order contracting services to support U. T. San Antonio's minor construction and renovation projects. The agreement resulted from competitive Request for Proposal (RFP) intended to select multiple contractors. The four highest-ranked proposals were selected under the RFP, and The Sabinal Group, LLC was one of these four proposers.

43. Contract (funds going out) - U. T. San Antonio: Lee Construction and Maintenance Co., dba LMC Corporation, to provide job order contracting services for minor construction and renovation projects

Agency: Lee Construction and Maintenance Co., dba LMC Corporation (LMC Corp.)

Funds: Possible fees of up to \$8,000,000 for the entire term, including all renewal terms. Total fees may increase or decrease depending on volume of construction projects. Each job order issued under the contract with LCM Corp. will be independently evaluated and executed.

Period: Initial two-year term beginning September 1, 2018, with three additional two-year renewal options, with each renewal option being at U. T. San Antonio's discretion.

Description: The agreement secures job order contracting services to support U. T. San Antonio's minor construction and renovation projects. The agreement resulted from a competitive Request for Proposal (RFP) intended to select multiple contractors. The four highest-ranked proposals were selected under the RFP, and LMC Corp. was one of these four proposers.

44. Contract (funds going out) - U. T. San Antonio: ABM Texas General Services, Inc. to perform custodial, landscape, and grounds maintenance services on campus

Agency: ABM Texas General Services, Inc.

Funds: Estimated \$41,000,000 for the entire possible term, including all renewal terms.

Period: Initial 24-month term beginning January 1, 2019, with four additional 24-month renewal options, with each renewal option being at U. T. San Antonio's discretion.

Description: AGM Texas General Services will perform custodial, landscape, and grounds maintenance services on UTSA premises. Services were competitively procured.

45. Request for Budget Change - U. T. San Antonio: New Hires with Tenure -- amendment to the 2018-2019 budget

The following Requests for Budget Change (RBC) have been administratively approved by the Executive Vice Chancellor for Academic Affairs and are recommended for approval by the U. T. System Board of Regents:

Description	Effective Date	% Time	Full-time Salary		RBC #
			No. Mos.	Rate \$	
College of Science					
Department of Biology					
Professor					
Ambika Mathur (T)	2/24-5/31	100	09	208,000	10654
Department of Physics and Astronomy					
Professor					
David R. Silva (T)	3/1-5/31	100	09	208,000	10653

46. Gift - U. T. San Antonio: Authorization to accept the gift of a brushed aluminum artwork titled "Dos Mundos" for display outside the north entrance of the Durango Building at the UTSA Downtown Campus

Description: Authorization is requested to accept the gift of artwork titled "Dos Mundos" for display outside the north entrance of the Durango Building at the UTSA Downtown Campus. The sculpture is approximately eight feet wide and 14 feet tall and is made of brushed aluminum. The sculpture, commissioned by Ernest Bromley in 1998 from prominent artist/sculptor Joseph Wesner, represents the peaceful coexistence and gradual coalescence of twin cultures in our country.

The installation of artwork will include a concrete pad and landscape lights at an estimated cost to the institution of \$32,000. The expense to maintain the sculpture will be minimal, \$200 annually.

Donor: Ernest and Aimee Bromley

Value: \$85,000



UTSA Downtown Campus

Durango Building

Arturo Infante Almeida, Art Specialist 11/15/18

HEALTH AFFAIRS COMMITTEE

47. Other Matters - U. T. System Health Institutions: Approval of Sexual Harassment and Sexual Misconduct Policies

Sexual misconduct policies for the following U. T. System health institutions have been revised and are recommended by the Chancellor, the Executive Vice Chancellor for Health Affairs, and the Vice Chancellor and General Counsel to the Board for approval, as required by federal law as referenced in Regents' *Rules and Regulations*, Rule 30105 (Sexual Harassment, Sexual Misconduct, and Consensual Relationships):

U. T. M. D. Anderson Cancer Center;
U. T. Medical Branch;
U. T. Southwestern Medical Center; and
U. T. Health Science Center - Tyler.

The Office of General Counsel recently revised its Model Policy, set forth on the following pages, to comply with recent guidance from the Office of Civil Rights. Consequently, four U. T. health institutions revised their existing policies. The revised policies have been reviewed by the Office of General Counsel and found to be in compliance with applicable laws and regulations and are consistent with the substantive provisions of the Model Policy.

The substantive changes to the Model Policy are as follows:

- Renaming policy as "Sexual Misconduct Policy" (previously "Sexual Harassment/Sexual Misconduct Policy");
- Generally revising the policy to ensure the balancing of interests of complainants and respondents;
- Adding a statement on free speech;
- Elimination of 60-day requirement for completion of Title IX investigation thereby granting institutions discretion to complete investigations as soon as possible, depending on complexity;
- Including provisions relating to due process and privacy rights for all parties;
- Including definitions of "complainant," "respondent," "parties," "coercion," and "incapacitation";
- Clarifying the definition of "hostile work environment" to grant institutions the discretion to investigate employee claims of gender-based hostile work environment under the sexual misconduct policy (i.e., Title IX policy), non-discrimination policy, or both; and
- Revising the definition of "retaliation" to prohibit retaliatory conduct against a respondent in addition to a complainant, a witness or third party.

**The University of Texas System
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1. Title

Sexual Misconduct Policy

For Immediate Reporting:
[INSERT TITLE IX OFFICE CONTACT INFORMATION and LINK TO WEBSITE]
Also, please see Section 3.7 below for detailed information.

2. Policy

Sec. 1 General Policy Statement.

1.1 [Name of Institution] (the University) is committed to maintaining a learning and working environment that is free from discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in educational programs or activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act (SaVE Act). Sexual misconduct, as defined in Part 3, Definitions and Examples, will not be tolerated and will be subject to disciplinary action.

1.2 The University will promptly discipline any individuals or organizations within its control who violate this Policy. The University encourages you to promptly report violations of this Policy to the Title IX Coordinator or Deputy Coordinators (collectively "Title IX Office") or a Responsible Employee, as identified in Section 3.2 below.

1.3 Free Speech. This Policy encourages and respects the right of free speech guaranteed by the First Amendment of the Constitution and the principles of academic freedom. Constitutionally protected expression cannot be considered harassment under this policy. Each faculty member is entitled to full freedom in the classroom in discussing the subject which the teach. The right to free speech and principles of academic freedom are not absolute, however. The offensive conduct underlying some incidents might be protected speech, but it may still be in contradiction to the University's commitment to academic freedom, integrity, honesty, dignity, respect and honorable conduct (*see generally* Regents Rule 10901, *Statement of U.T. System Values and Expectations*). In these instances, constitutional rights will continue to be protected, but the University will also exercise its right to speak and engage in educational dialogue with those engaged in these types of behaviors. Further, some offensive conduct, even though it contains elements of speech, may rise to the level of the type of conduct that creates a sexually hostile environment and, thus, violates this policy.

Sec. 2 Applicability. This Policy applies to all University administrators, faculty, staff, students, and third parties within the University's control, including visitors and

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applicants for admission or employment. It applies to conduct regardless of where it occurs, including off University property, if it potentially affects the complainant's education or employment with the University or potentially affects the University community. It also applies regardless of the gender, gender identity or sexual orientation of the parties. In addition, it applies to any complaint made verbally or in writing.

Sec. 3 Filing a Complaint and Reporting Violations.

3.1 All Members of the University Community, Third Party and Anonymous Complaints. You are strongly encouraged to immediately report any incidents of sexual misconduct and other inappropriate sexual conduct to the Title IX Office.

- a. Anonymity. You may file an anonymous complaint by telephone, in writing or electronically [INSERT LINK TO WEBSITE REPORTING SYSTEM] with the Title IX Office. Your decision to remain anonymous, however, may greatly limit the University's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating the Policy.
- b. Confidentiality. Most University employees are required to report and respond to complaints of sexual misconduct and may be unable to honor a request for confidentiality. Complainants who want to discuss a complaint in strict confidence may use the resources outlined in Section 3.5 below.
- c. Timeliness of Complaint. You should report sexual misconduct as soon as you become aware of such conduct.

3.2 Responsible Employees. You may also report incidents to Responsible Employees, as defined below.

3.3 Reporting to Law Enforcement. You may also make a complaint with The University of Texas at [institution] Police Department at [insert phone] (non-emergency) or [insert phone] (emergency) or to the City of [insert] Police Department [phone] (non-emergency) or 911 (emergency) or to other local law enforcement authorities. The Title IX Office can help individuals contact these law enforcement agencies. Employees and students with protective or restraining orders relevant to a complaint are encouraged to provide a copy to the University Police Department.

3.4 Reporting to Outside Entities. You may also contact the following external agencies:

For students:

Office of Civil Rights
U.S. Department of Education
1999 Bryan Street, Suite 1620
Dallas, TX 75201-6810

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214-661-9600
214-661-9587 (fax)

Office for Civil Rights
U.S. Department of Health and Human Services
1301 Young Street, Suite 1169
Dallas, TX 75202
Phone: (800) 537-7697
FAX: (214) 767-0432

For employees:

U.S. Equal Employment Opportunity Commission
Dallas District Office
207 S. Houston Street, 3rd Floor
Dallas, TX 75202
Phone: (800) 669-4000
FAX: (214) 253-2720

Texas Workforce Commission
Civil Rights Division
101 E. 15th Street
Room 144-T
Austin, TX 78778-0001
512-463-2642

- 3.5 Confidential Support and Resources. Students may discuss an incident with a counselor in Counseling and Psychological Services, a health care provider in Health Services, the clergyperson of their choice, or an off-campus resource (i.e. rape crisis center, doctor, psychologist, etc.) without concern that the incident will be reported to the Title IX Office. Employees may also seek assistance from the Employee Assistance Program, their own personal health care provider, the clergyperson of their choice, or an off-campus rape crisis resource without concern that the incident will be reported to the Title IX Office. The University and community resources that provide such services are: [insert resources]
- 3.6 Immunity. In an effort to encourage reporting of sexual misconduct, the University will grant immunity from student disciplinary action to a person who voluntarily initiates a report of sexual misconduct or assists a complainant, if that person acts in good faith in reporting a complaint or participating in an investigation. This immunity does not extend to the person's own violations of this Policy.
- 3.7 Title IX Coordinator and Deputy Coordinators. The Title IX Coordinator and Deputy Coordinators are: [Insert Names/Contact info for Coordinators]

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Sec. 4. Parties' Rights Regarding Confidentiality. The University has great respect for the privacy of the parties in a complaint. Under federal law, however, Responsible Employees who receive a report of sexual misconduct must share that information with the Title IX Office. Those individuals may need to act to maintain campus safety and must determine whether to investigate further under Title IX, regardless of the complainant's request for confidentiality. In making determinations regarding requests for confidentiality and the disclosure of identifying information to the respondent, the Title IX Coordinator should deliberately weigh the rights and interests of the complainant, the respondent and the campus community.

In the course of the investigation, the University may share information only as necessary with people who need to know, which may include but is not limited to the investigators, witnesses, and the respondent. The University will take all reasonable steps to ensure there is no retaliation against the parties or any other participants in the investigation.

Sec. 5. Resources and Assistance.

5.1 Immediate Assistance.

[List on and off University resources for health care, police, and counseling]

A. Healthcare. If you experience any form of sexual, domestic, or dating violence, you are encouraged to seek immediate medical care. Also, preserving DNA evidence can be key to identifying the perpetrator in a sexual violence case. Victims can undergo a medical exam to preserve physical evidence with or without police involvement. If possible, this should be done immediately. If an immediate medical exam is not possible, individuals who have experienced a sexual assault may have a Sexual Assault Forensic Exam (SAFE) performed by a Sexual Assault Nurse Examiner (SANE) within 4 days of the incident. With the examinee's consent, the physical evidence collected during this medical exam can be used in a criminal investigation; however, a person may undergo a SAFE even without contacting, or intending to contact, the police. To undergo a SAFE, go directly to the emergency department of [insert hospital with SAFE capabilities] or the nearest hospital that provides SAFE services.

For more information about the SAFE, see https://www.texasattorneygeneral.gov/files/cvs/sexual_assault_examination.pdf. The cost of the forensic portion of the exam is covered by the law enforcement agency that is investigating the assault or, in cases where a report will not be made to the police, the Texas Department of Public Safety. This does not include fees related to medical treatment that are not a part of the SAFE.

B. Police Assistance. If you experienced or witnessed sexual misconduct, the University encourages you to make a report to the police. The police may, in turn, share your report with the Title IX Office.

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A police department's geographic jurisdiction depends on where the sexual misconduct occurred. Thus, if the incident occurred on the University campus, you may file a report with the [insert campus police name] by calling [number] or in person at [insert institution PD name] headquarters at [insert address], even if time has passed since the assault occurred.

[Institution PD name] can also assist with filing any protective orders. Reporting an assault to law enforcement does not mean the case will automatically go to criminal trial or to a University disciplinary hearing. If the University police are called, a uniformed officer will be sent to the scene to take a detailed statement. A police department counselor may also provide you with a ride to the hospital. You may also file a report with the University police even if the assailant was not a University student or employee. If the incident occurred in the City of [insert City name], but off campus, you may also file a report with the [City] Police Department, even if time has passed since the assault occurred. If a report is made to the police, a uniformed officer will usually be dispatched to the location to take a written report.

- C. Counseling and Other Services. If you experience sexual misconduct, you are strongly encouraged to seek counseling or medical and psychological care even if you do not plan to request a SAFE or report the assault to the police. You may be prescribed medications to prevent sexually transmitted infections and/or pregnancy even if the police are not contacted or if a SAFE is not performed. Similarly, other individuals impacted or affected by a sexual misconduct complaint are encouraged to seek counseling or psychological care.

You may receive medical care at the University Health Services (for students only), at a local emergency room, or by a private physician. You may also be provided with psychological support by the University Counseling and Psychological Services (students), Employee Assistance (employees), a referral through the Employee Assistance Program, or a care provider of your choosing.

Students desiring counseling should contact:

[insert office and contact information]

Faculty and staff should contact:

[insert office and contact information]

5.2 Interim Measures.

The University will offer reasonably available individualized services to the parties involved in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending.

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Interim measures may include but are not limited to reassignment, suspension, counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, withdrawal from or retake of a class without penalty, campus escort services, restrictions on contact between the parties, change in work or housing locations, leaves of absences, increased security and monitoring of certain areas of campus or other similar accommodations tailored to the individualized needs of the parties.

Sec. 6 The Investigation Process—What You Need to Know.

6.1 Key Officials in an Investigation.

- A. Title IX Coordinator. The Title IX Coordinator is the senior University administrator who oversees the University's compliance with Title IX. The Title IX Coordinator is responsible for overseeing the administrative response to reports of sexual misconduct and is available to discuss options, provide support, explain University policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators.

Any member of the University community may contact the Title IX Coordinator with questions.

- B. Investigators. The Title IX Coordinator will ensure that complaints are properly investigated under this Policy. The Title IX Coordinator will also ensure that investigators are properly trained at least annually to conduct investigations that occur under this Policy. The Title IX Deputy Coordinators will supervise and advise the Title IX investigators when conducting investigations and update the Title IX Coordinator as necessary.

6.2 Notification of University Offices Offering Assistance. After receiving a complaint, the Title IX Office will inform the parties of available resources and assistance. While taking into consideration requested confidentiality, the [insert student victim resource coordinator info] for students and [Employee Relations] office may serve as a liaison between the parties and the Title IX Office during the investigation.

6.3 Informal Resolution of Certain Complaints. (OPTIONAL)

Both parties may voluntarily agree to use this option instead of or before the formal resolution process but are not required to do so. Also, this option is not permitted for sexual violence cases. Anyone who believes that they have been subjected to sexual misconduct may immediately file a formal complaint as described in Section 6.4 of this Policy. Anyone interested in the informal resolution process, should contact the Title IX Coordinator. Before beginning the informal resolution process, the Title IX Coordinator must provide both parties full disclosure of the allegations and their options for formal resolution.

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At any time during the informal resolution process, the complainant may elect to discontinue to informal resolution process and file a formal complaint.

- A. Informal Assistance. If informal assistance is appropriate, the individual will be provided assistance in informally resolving the alleged sexual harassment. Assistance may include providing the complainant with strategies for communicating with the offending party that the behavior is unwelcomed and should cease, directing a University official to inform the offending party to stop the unwelcomed conduct, or initiating mediation. However, the University may take more formal action, including disciplinary action, to ensure an environment free of sexual harassment or sexual misconduct.
- B. Timeframe. Informal resolutions of a complaint will be concluded as soon as possible.
- C. Documentation. The University will document and record informal resolutions. The Title IX Coordinator will retain the documentation.

6.4 Formal Complaint and Investigation.

Formal Complaint. To begin the investigation process, the complainant should submit a written statement setting out the details of the conduct that is the subject of the complaint, including the following:

- complainant's name and contact information;
- name of the person directly responsible for the alleged violation;
- detailed description of the conduct or event that is the basis of the alleged violation;
- date(s) and location(s) of the alleged occurrence(s);
- names of any witnesses to the alleged occurrence(s); the resolution sought; and
- any documents or information that is relevant to the complaint.

The University may initiate an investigation regardless of the manner in which a complaint is received or whether a complaint is received at all. However, the complainant is strongly encouraged to file a written complaint. If the complaint is not in writing, the investigator should prepare a statement of what they understand the complaint to be and ask the complainant to verify that statement. The University office receiving the complaint should refer the complaint to the Title IX Coordinator.

Investigation.

- A. After an investigator is assigned, the respondent will be provided notice of the complaint and be allowed a reasonable time to respond in writing.

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- B. The parties may present any information and evidence that may be relevant to the complaint, including the names of any witnesses who may provide relevant information.
- C. The investigators will interview relevant and available witnesses. Neither the complainant nor the respondent will normally attend these interviews or the gathering of evidence; however, if either one is permitted to attend, the other shall have the same right.
- D. The investigation of a complaint will be concluded as soon as possible after receipt of the complaint. The parties should be provided updates on the progress of the investigation.
- E. After the investigation is complete, a written report¹ will be issued to the Title IX Coordinator and the appropriate administrator. The report shall include factual findings and a preliminary conclusion regarding each allegation of whether a policy violation occurred (based on a “preponderance of the evidence” standard).
- F. After the written report is completed, both parties will be allowed to inspect the report or, at the University’s discretion, be provided letters summarizing the findings in the report in keeping with FERPA and Texas Education Code, Section 51.971. Each party will have 7 business days to submit written comments regarding the investigation to the Title IX Coordinator.
- G. Within 7 business days after the deadline for receipt of comments from the parties, the Title IX Coordinator (or designee) will:
- request further investigation into the complaint;
 - dismiss the complaint if it is determined that no violation of policy or inappropriate conduct occurred; or
 - find that the Policy was violated.
- H. If it is determined that the Policy was violated, the matter will be referred for disciplinary action.
- I. The parties shall be informed concurrently in writing of the decision in accordance with Section 6.5.F of this Policy.
- J. If disciplinary action or sanction(s) is warranted, it will be imposed in accordance with the applicable policies and procedures.
- 6.5 Standard of Proof. All investigations will use the preponderance of the evidence standard, as defined in Part 3, Definitions and Examples, to determine violations of this Policy.

¹ Appropriate report redactions will be made to comply with Texas Education Code, Section 51.971.

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6.6 Timelines. Best efforts will be made to complete the complaint process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

At the request of law enforcement, the University may defer its fact-gathering until after the initial stages of a criminal investigation. The University will promptly resume its fact-gathering as soon as law enforcement has completed its initial investigation, or if the fact-gathering is not completed in a reasonable time, the University will move forward.

The filing of a complaint under this Policy does not excuse the complainant from meeting time limits imposed by outside agencies. Likewise, the applicable civil or criminal statute of limitations will not affect the University's investigation of the complaint.

6.7 Due Process and Privacy Rights

- The University will strive to ensure that the steps it takes to provide due process to the respondent will not restrict or delay the protections provided by Title IX to the complainant.
- The Family Educational Rights and Privacy Act (FERPA) does not override federally protected due process rights of a respondent.

6.8 Remedies. In addition to sanctions that may be imposed pursuant to the appropriate disciplinary policy, the University will take appropriate action(s), including but not limited to those below to resolve complaints of sexual misconduct, prevent any recurrence and, as appropriate, remedy any effects:

- (a) Imposing sanctions against the respondent, including attending training, suspension, termination or expulsion;
- (b) Ensuring the parties do not share classes, working environments or extracurricular activities;
- (c) Making modifications to the on campus living arrangements of the parties;
- (d) Providing comprehensive services to the parties including medical, counseling and academic support services, such as tutoring;
- (e) Providing the parties extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;
- (f) Determining whether sexual misconduct adversely affected the complainant's university standing;
- (g) Designating an individual specifically trained in providing trauma-informed comprehensive services;
- (h) Conducting a University climate check to assess the effectiveness of sexual misconduct prevention measures;

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- (i) Providing targeted training for a group of students, including bystander intervention and sexual misconduct prevention programs;
- (j) Issuing policy statements regarding the University's intolerance of sexual misconduct.

6.9 Sanctions and Discipline. Disciplinary action will be handled under the appropriate disciplinary policy depending on the status of the respondent.

[LINK TO APPROPRIATE POLICIES]

Sec. 7. Provisions Applicable to the Investigation.

7.1 Assistance. During the investigation process, both parties may be assisted by an advisor, who may be an attorney; however, the advisor may not actively participate in a meeting or interview.

7.2 Time Limitations. Time limitations in these procedures may be modified by the Title IX Coordinator or appropriate administrator on a written showing of good cause by the parties or the University.

7.3 Concurrent Criminal or Civil Proceedings. The University will not wait for the outcome of a concurrent criminal or civil justice proceeding to take action. The University has an independent duty to investigate complaints of sexual misconduct. (Except as provided in Sec. 6.7).

7.4 Documentation. The University shall document complaints and their resolution and retain copies of all materials in accordance with state and federal records laws and University policy.

Sec 8. Dissemination of Policy and Educational Programs.

8.1 This Policy will be made available to all University administrators, faculty, staff, and students online at [insert website] and in University publications. Periodic notices will be sent to University administrators, faculty, staff and students about the University's Sexual Misconduct Policy. The notice will include information about sexual misconduct, including the complaint procedure, and about University disciplinary policies and available resources, such as support services, health, and mental health services. The notice will specify the right to file a complaint under this Policy and with law enforcement and will refer individuals to designated offices or officials for additional information.

8.2 Ongoing Sexual Misconduct Training. The University's commitment to raising awareness of the dangers of sexual misconduct includes offering ongoing education through annual training and lectures by faculty, staff, mental health professionals, and/or trained University personnel. Preventive education and training programs will be provided to University administrators, faculty, staff, and students and will include information about risk reduction, including bystander intervention **[Link to web page with training provided]**

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8.3 Training of Coordinators, Investigators, Hearing and Appellate Authorities. All Title IX Coordinators, Deputy Coordinators, investigators, and those with authority over sexual misconduct hearings and appeals shall receive training each academic year about offenses, investigatory procedures, due process, and University policies related to sexual misconduct.

8.4 Annual Reporting and Notice. The University's Title IX General Policy Statement will be made available to all students, faculty, and employees online, in required publications and in specified departments.

Sec. 9. Additional Conduct Violations.

9.1 Retaliation. Any person who retaliates against the parties or any other participants in an investigation or disciplinary process relating to a complaint, or any person who under this Policy opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from the University. If any participant in an investigation believes they have been subject to retaliation, they should immediately report the alleged retaliatory conduct to the Title IX Office. [INSERT CITE TO RETALIATION POLICY]

9.2 False Complaints. Any person who knowingly files a false complaint under this Policy is subject to disciplinary action up to and including dismissal or separation from the University. A finding that a respondent is not responsible for the sexual misconduct alleged does not imply a report was false.

9.3 Interference with an Investigation. Any person who interferes with an ongoing investigation conducted under this Policy is subject to disciplinary action up to and including dismissal or separation from the University. Interference with an ongoing investigation may include, but is not limited to:

- (a) Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- (b) Removing, destroying, or altering documentation relevant to the investigation; or
- (c) Providing false or misleading information to the investigator, or encouraging others to do so.

9.4 No Effect on Pending Personnel or Academic Actions Unrelated to the Complaint. The filing of a complaint under this Policy will not stop or delay any action unrelated to the complaint, including: (1) any evaluation or disciplinary action relating to a complainant who is not performing up to acceptable standards or who has violated University rules or policies; (2) any evaluation or grading of students participating in a class, or the ability of a student to add/drop a class, change academic programs, or receive financial reimbursement for a class; or (3) any job-related functions of a University employee. Nothing in this section shall limit the University's ability to take interim action.

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Sec. 10 Documentation. The University shall confidentially maintain information related to complaints under this Policy, as required by law.

3. Definitions and Examples²

Complainant – The student, employee or third party who presents as the victim of any prohibited conduct under this Policy, regardless of whether that person makes the report or seeks action under this Policy.

Coercion – The use of pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including psychological or emotional pressure, physical or emotional threats, intimidation, manipulation, or blackmail that causes the person to engage in unwelcome sexual activity. A person's words or conduct are sufficient to constitute coercion if they eliminate a reasonable person's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include but are not limited to threatening to "out" someone based on sexual orientation, gender identity, or gender expression; threatening to harm oneself if the other party does not engage in the sexual activity; and threatening to expose someone's prior sexual activity to another person.

Consent – A voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity. Consent to one act does not imply consent to another. Past consent does not imply future consent. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent.

Consent is not effective if it results from: (a) the use of physical force, (b) a threat of physical force, (c) intimidation, (d) coercion, (e) incapacitation or (f) any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual activity.

A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be a voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.

The definition of consent for the crime of sexual assault in Texas can be found in Section 22.011(b) of the Texas Penal Code.³

² The definitions provided in the main body of the text are the definitions adopted by the University. When applicable, we have included the state law definition. In any criminal action brought by law enforcement, the state law definition will apply.

³ Texas Penal Code, Section 22.011(b) states that a sexual assault is without consent if: (1) the actor compels the other person to submit or participate by the use of physical force or violence; (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat; (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of

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Dating Violence⁴ – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

The existence of such a relationship shall be determined by the victim with consideration of the following factors:

- a) The length of the relationship;
- b) The type of relationship; and
- c) The frequency of interaction between the persons involved in the relationship

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. It does not include acts covered under the definition of domestic violence.

Domestic (Family) Violence⁵ – includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Texas,

resisting it; (5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring; (6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge; (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat.

⁴ Dating Violence is defined by the Texas Family Code, Section 71.0021 as:

- (a) an act, other than a defensive measure to protect oneself, by an actor that:
 - (1) is committed against a victim:
 - (A) with whom the actor has or has had a dating relationship; or
 - (B) because of the victim's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and
 - (2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual assault.
- (b) For purposes of this title, "dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:
 - (1) the length of the relationship;
 - (2) the nature of the relationship; and
 - (3) the frequency and type of interaction between the persons involved in the relationship.
- (c) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship" under Subsection (b).

Texas Penal Code, Section 22.01 provides the criminal penalties associated with Dating Violence.

⁵ Family Violence is defined by the Texas Family Code Section 71.004 as:

- (1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;
- (2) abuse, as that term is defined by Sections [261.001\(1\)\(C\)](#), (E), and (G), by a member of a family or household toward a child of the family or household; or
- (3) dating violence, as that term is defined by Section [71.0021](#).

Texas Penal Code Section 22.01 provides the criminal penalties associated with Domestic (Family) Violence.

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or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Texas.

Hostile Environment – exists when sexual harassment (which is a form of sex-based harassment) is sufficiently severe or pervasive to deny or limit the individual's ability to participate in or benefit from the University's programs or activities or an employee's terms and conditions of employment.⁶ A hostile environment can be created by anyone involved in a University's program or activity (e.g., administrators, faculty members, employees, students, and University visitors).

In determining whether sex-based harassment has created a hostile environment, the University considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not adequate, that the conduct was unwelcome to the individual who was harassed. To conclude that conduct created or contributed to a hostile environment, the University must also find that a reasonable person in the individual's position would have perceived the conduct as undesirable or offensive.

To ultimately determine whether a hostile environment exists for an individual or individuals, the University considers a variety of factors related to the severity, persistence, or pervasiveness of the sex-based harassment, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of the persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and (5) the degree to which the conduct affected an individual's education or employment.

The more severe the sex-based harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of sexual assault may be sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if the sex-based harassment is not particularly severe.

Incapacitation – Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if they demonstrate that they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

The University offers the following guidance on consent and assessing incapacitation:

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently,

⁶ Depending on the facts of a particular case, the University may investigate claims of hostile work environment under this Policy, the University's gender discrimination policy, or both. See Department of Education, Office for Civil Rights, January 2001 Revised Sexual Harassment Guidance, page 2.

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and determining whether an individual is incapacitated requires an individualized determination.

In evaluating consent in cases of alleged incapacitation, the University asks two questions:

- (1) Did the person initiating sexual activity know that the other party was incapacitated? and if not,
- (2) Should a sober, reasonable person in the same situation have known that the other party was incapacitated?

If the answer to either of these questions is “YES,” consent was absent and the conduct is likely a violation of this Policy.

One need not be a medical expert in assessing incapacitation. One should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may show signs of incapacitation differently, some signs include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, incontinence or emotional volatility. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” “Do you know whom you are with?”

An individual’s level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism. It is especially important, therefore, that anyone engaging in sexual activity is aware of both their own and the other person’s level of intoxication and capacity to give consent.

The use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. If there is any doubt as to the level or extent of one’s own or the other individual’s intoxication or incapacitation, the safest course of action is to forgo or cease any sexual contact.

Being impaired by alcohol or other drugs is no defense to any violation of this Policy.

Intimidation – Unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

Other Inappropriate Sexual Conduct – Includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual that does not rise to the level of sexual harassment but is unprofessional, inappropriate for the workplace or classroom and is not protected speech. It also includes consensual sexual conduct that is unprofessional and inappropriate for the workplace or classroom. Depending on the facts of a complaint, the conduct may not violate this Policy but may violate other university policies including but not limited to standards of conduct or professionalism policies.

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Parties -- The term “parties” refers to the “complainant” and the “respondent” in a Title IX complaint.

Preponderance of the Evidence – The greater weight of the credible evidence. Preponderance of the evidence is the standard for determining allegations of sexual misconduct under this Policy. This standard is satisfied if the action is deemed more likely to have occurred than not.

Respondent -- The student, employee, or third party who has been accused of violating this policy.

Responsible Employee – A University employee who has the duty to report incidents of sexual misconduct to the Title IX Office or an employee whom an individual could reasonably have this authority. Responsible employees include all administrators, faculty, supervisory staff, resident life directors and advisors, and graduate teaching assistants, except any employee with confidentiality obligations as defined in Section 3.5. Incidents of sexual misconduct may also be reported to Responsible Employees.

Retaliation – Any adverse action threatened or taken against someone *because* the individual has filed, supported, provided information in connection with a complaint of sexual misconduct or engaged in other legally protected activities. Retaliation includes, but is not limited to, intimidation, threats or harassment against any complainant, respondent, witness or third party.

Sexual Assault⁷ – An offense that meets the definition of rape, fondling, incest, or statutory rape:

- a) *Rape*: the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- b) *Fondling*: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- c) *Incest*: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d) *Statutory Rape*: Sexual intercourse with a person who is under the statutory age of consent.

Sexual Exploitation – Conduct where an individual takes non-consensual or abusive sexual advantage of another for their own benefit, or to benefit anyone other than the one

⁷ Sexual Assault is defined by Texas Penal Code, Section 22.011 as intentionally or knowingly:

- a) Causing the penetration of the anus or sexual organ of another person by any means, without that person's consent; or
- b) Causing the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
- c) Causing the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor.

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being exploited. Examples of sexual exploitation include, but are not limited to, engaging in voyeurism; forwarding of pornographic or other sexually inappropriate material by email, text, or other channels to non-consenting students/groups; the intentional removal of a condom or other contraceptive barrier during sexual activity without the consent of a sexual partner; and any activity that goes beyond the boundaries of consent, such as recording of sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted disease (STD) to another.

Sexual Harassment – Unwelcome conduct of a sexual nature including but not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when:

- a) Submission to such conduct is made either explicitly or implicitly a term or condition of a person's student status, employment, or participation in University activities; or
- b) Such conduct is sufficiently severe or pervasive that it creates a hostile environment, as defined in this Policy.

Sexual harassment is a form of sex discrimination that includes:

- a) Sexual violence, sexual assault, stalking, domestic violence and dating violence as defined herein.
- b) Physical conduct, depending on the totality of the circumstances present, including frequency and severity, including but not limited to:
 - i. unwelcome intentional touching; or
 - ii. deliberate physical interference with or restriction of movement.
- c) Verbal conduct not necessary to an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea, including oral, written, or symbolic expression, including but not limited to:
 - i. explicit or implicit propositions to engage in sexual activity;
 - ii. gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
 - iii. gratuitous remarks about sexual activities or speculation about sexual experiences;
 - iv. persistent, unwanted sexual or romantic attention;
 - v. subtle or overt pressure for sexual favors;
 - vi. exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or
 - vii. deliberate, repeated humiliation or intimidation based upon sex.

Sexual Misconduct – A broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature. The term includes, but is not limited to, sexual assault, sexual exploitation, sexual intimidation, sexual harassment, domestic violence, dating violence, and stalking. The term also includes “other inappropriate sexual conduct,” as defined above. Sexual misconduct can be committed by any person, including strangers or acquaintances.

Sexual Violence – Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. The term includes, but is not limited to, rape, sexual

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assault, sexual battery, sexual coercion, sexual abuse, indecency with a child, and/or aggravated sexual assault.

Stalking⁸ – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress. For the purposes of this definition--

- a) *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- b) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.
- c) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

4. Relevant Federal and State Statutes, and Standards

[Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688 and its implementing regulations, 34 C.F.R. Part 106](#)

[Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e–2000e-17 and its implementing regulations 29 C.F.R. §1604 11.](#)

[Clery Act, 20 U.S.C 1092\(f\) and its implementing regulations 34 C.F.R. Part 668](#)

[FERPA Regulations, 34 C.F.R. Part 99](#)

5. Other Relevant Policies, Procedures, and Forms

⁸ Stalking as defined by Texas Penal Code, Section 42.072 is when an individual on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:

- a) is considered harassment, or that the actor knows or reasonably should know the other person will regard as threatening:
 - i. bodily injury or death for the other person;
 - ii. bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or
 - iii. that an offense will be committed against the other person's property;
- b) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and
- c) would cause a reasonable person to:
 - i. fear bodily injury or death for himself or herself;
 - ii. fear bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship;
 - iii. fear that an offense will be committed against the person's property; or
 - iv. feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.

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[insert reference to]:

[Regents' Rules and Regulations, Rule 30105, Sexual Harassment, Sexual Misconduct, and Consensual Relationships](#)

[University of Texas System Administration Systemwide Policy \(UTS 184\), Consensual Relationships](#)

University's Sex Discrimination Policy

[Regents' Rules and Regulations, Rule 31008, Termination of a Faculty Member](#)

Staff Discipline policy

Student Discipline policy

6. System Administration Office(s) Responsible for Policy

Office of General Counsel

7. Dates Approved or Amended

[insert new date]

April 6, 2015

February 21, 2012

8. Contact Information

Questions or comments about this Policy should be directed to:

- ogc_intake@utsystem.edu

48. Contract (funds going out) - U. T. Southwestern Medical Center: International Physician Networks, LLC, dba International Oncology Network and Oncology Supply, a division of ASD Specialty Healthcare, LLC, to provide access to discounts and rebates on oncology pharmaceutical products for patient care

Agency: International Physician Networks, LLC, dba International Oncology Network (ION) and Oncology Supply, a division of ASD Specialty Healthcare, LLC

Funds: \$200,000,000 estimated

Period: Upon execution and continuing for a period of two years

Description: U. T. Southwestern will use ION's services as a specialty group purchasing organization (GPO) to assist U. T. Southwestern in purchasing certain proprietary oncology pharmaceutical products for patient care. The agreement with Oncology Supply involves the actual supply of the products under contracts made available by ION. Both the ION and Oncology Supply agreements have been made expressly conditional on Board of Regents approval.

ION has not received accreditation under U. T. System's GPO Accreditation Program, but U. T. Southwestern's use of ION's services is essential for U. T. Southwestern to secure product discounts and rebates that will partially alleviate the anticipated loss of U. T. Southwestern's status in the 340(b) Drug Pricing Program. U. T. Southwestern's use of ION and Oncology Supply for these proprietary products has been documented in an appropriate exclusive acquisition justification. Also, ION has acknowledged that no use of ION's GPO services by other U. T. System institutions is being authorized.

The above-described arrangements potentially conflict with contractual commitments made by U. T. Southwestern to Premier Health Alliance, another GPO, which also offers supply agreements for some of the same products. Premier has agreed, however, that U. T. Southwestern may buy these products (specifically listed in a schedule) exclusively via ION.

49. Contract (funds going out) - U. T. Southwestern Medical Center: Jack Boles Parking SWM, LLC, dba Jack Boles Parking, to provide valet services on the U. T. Southwestern campus

Agency: Jack Boles Parking SWM, LLC, dba Jack Boles Parking

Funds: \$17,250,000

Period: August 24, 2018 through August 31, 2021, with the option to renew for two additional one-year terms

Description: Jack Boles Parking to provide valet services on the U. T. Southwestern campus. Services were competitively procured.

50. Contract (funds going out) - U. T. Southwestern Medical Center: Southwest Transplant Alliance to provide organ procurement

Agency: Southwest Transplant Alliance

Funds: \$36,000,000

Period: October 16, 2018 through October 15, 2021

Description: Southwest Transplant Alliance will provide organ procurement and coordination of anatomical gift donations of organs, tissues, and eyes. Under the *Texas Government Code*, Chapter 2254.003, a government entity may not select a provider of professional services on the basis of competitive bids, but instead will make the selection based on the demonstrated competence and qualifications to perform the services and for a fair and reasonable price.

51. Contract (funds going out) - U. T. Southwestern Medical Center: Amendment to agreement with TEMPEG, LLP to provide physician and other health care provider coverage services at Parkland Health and Hospital System

Agency: TEMPEG, LLP

Funds: \$17,550,000, for this fifth amendment to existing agreement

Period: January 1, 2019 through December 31, 2021

Description: TEMPEG, LLP will provide physician and other health care provider coverage services at Parkland Health and Hospital System. This procurement was not competitively bid because it is for professional services. Under the *Texas Government Code*, Chapter 2254.003, a government entity may not select a provider of professional services on the basis of competitive bids, but instead will make the selection based on the demonstrated competence and qualifications to perform the services and for a fair and reasonable price.

52. Contract (funds going out) - U. T. Medical Branch - Galveston: Priority Publications, Inc., dba BlueSpire, Inc., to provide digital marketing services

Agency: Priority Publications, Inc., dba BlueSpire, Inc.

Funds: \$3,750,000

Period: December 20, 2018 through December 19, 2021, for the initial term, with up to two, one-year renewal options

Description: Priority Publications, Inc. will provide digital marketing services. The digital marketing services will include search engine marketing, social media marketing, display and mobile display, content development, content marketing, search optimization, retargeting and any other new/emerging digital media opportunities.

53. Request for Budget Change - U. T. Medical Branch - Galveston: Transfer \$82,279,912 from Revenue and Fund Balance to expenses for Clear Lake Campus hospital and clinic (RBC No. 10517) -- amendment to the 2018-2019 budget

54. Lease - U. T. Medical Branch - Galveston: Authorization to renew and extend a lease of approximately 16,106 rentable square feet in a building located at 200 River Pointe, Conroe, Montgomery County, Texas, from Huntsville Investments, LLC, for educational, office, and clinical uses

Description: Renew and extend the lease of approximately 16,106 rentable square feet in a building located at 200 River Pointe, Conroe, Montgomery County, Texas, for educational, office, and clinical uses, including a tele-medicine program serving the Institution's Correctional Managed Care program.

Lessor: Huntsville Investments, LLC, a Texas limited liability company

Term: The lease commenced on August 1, 2013, but did not require Board authorization at that time as the lease value was within the institution's delegated authority. The current lease term ends on July 31, 2019 and this amendment will extend the term for five years from August 1, 2019, to July 31, 2024.

Lease Cost: Base rent totals approximately \$2,540,087 from commencement of the lease through the expiration of the current term and renewal term. The current rent rate starts at \$18.75 per rentable square foot annually and escalates 1.33% per year.

55. Lease - U. T. Medical Branch - Galveston: Authorization to lease and/or acquire a 20,954 square foot commercial office building situated on 8.73 acres located at 2309 West Mulberry Street and approximately 168 acres of vacant land located at the southwest corner of Sebesta Road and State Hwy 288, across Sebesta Road from the building, with both of the properties being in Angleton, Brazoria County, Texas, from Angleton Danbury Hospital District, for future programmed campus expansion, including medical and clinical uses

Description: Lease of a 20,954 square foot commercial office building on 8.73 acres and a ground lease of an approximate 168-acre parcel of vacant land located at the southwest corner of Sebesta Road and State Hwy 288, across Sebesta Road from the building, with both properties being in Angleton, Brazoria County, Texas for future programmed campus expansion, including medical and clinical uses. The properties are across Sebesta Road from one another and they have better access and visibility than the existing U. T. Medical Branch - Galveston facilities in the area. The lessor will renovate the existing building from office to clinical use prior to the institution occupying the facility. The lease of the 168-acre parcel will allow the institution to control property in the path of growth that may accommodate the likely future medical needs of the community. U. T. Medical Branch - Galveston expects to use the land for the future development of clinical facilities and related medical office uses. The lease will include a purchase option allowing the institution to acquire either property.

Lessor: Angleton Danbury Hospital District (District), a political subdivision of the State of Texas. U. T. Medical Branch - Galveston provides community medical care on behalf of the hospital district, with its assistance.

Lease Term: Both the building lease and the ground lease terms are expected to begin in 2019, with the institution occupying the building once the District completes the renovation. The initial lease term will be for a period of 20 years, with four options to renew, each for a period of five years.

- Base Rent:** Upon completion of building restoration, U. T. Medical Branch - Galveston will pay annual rent of \$1,047,700 for the first 10 years of the initial 20-year term and rent for the second half of the initial term will be \$0. Rent for each renewal option will be \$50 for the building and \$50 for the land. The District plans to issue bonds to pay for the building renovation and the rent is structured to cover the District's debt service on the bonds over 10 years. Annual Fair Market Value rent for the building and the land is estimated initially to be \$716,350 per year. Net Present Value of the base rent paid becomes less than the Net Present Value of cumulative market rent in the 15th year of the lease. Total base rent for the land and the building is estimated to be \$10,477,000 for the initial 20-year term.
- Operating Expense:** U. T. Medical Branch - Galveston will pay for building operating expenses estimated to be \$6 per square foot, increasing annually at 3%, these will not include ad valorem taxes as the Landlord is exempt. The total building expenses to be paid by U. T. Medical Branch - Galveston are estimated to be \$3,378,251 over the initial term.
- Total Value:** The building lease rental amounts including operating expenses along with the ground lease rental amounts for the initial 20-year term and the four options to renew is an estimated expenditure of approximately \$19,956,948.
- Public Purpose:** The rent during the primary term is structured to cover the District's bond debt service, resulting in a rent above Fair Market Value for the initial 10 years of the lease, with no rent during the last half of the term. To comply with the Texas Constitution, prepayment may be made by the State of Texas so long as the prepayment serves a public purpose and the State maintains sufficient controls, contractual or otherwise, to ensure that the public purpose is achieved. The proposed lease serves U. T. Medical Branch - Galveston's public purpose by providing use of a building and land at an average cost that is below market, with favorable purchase options. To ensure that this public purpose is fulfilled, the lease will contain the following provisions:
- a) The institution's tenancy may not be disturbed as long as it is not in default.
 - b) The facility will be insured, and in the event of casualty, it must be rebuilt unless otherwise authorized in writing by the institution.

- c) In the unlikely event of condemnation, sufficient proceeds must be provided to the institution such that the cumulative rent paid by the institution does not exceed fair market value, or if the property is still functional, the portion of the lease at no cost is extended sufficiently so that, in the aggregate, the institution does not pay above fair market value.
- d) The lease will contain self-help provisions in the event of lessor default, such as the institution being able to perform the obligations of lessor, and then bill the lessor or extend the lease sufficiently for U. T. Medical Branch - Galveston to recover its cost.

Lease Tenant
Improvements:

Lessor proposes to fund the interior renovation of the building at an estimated cost of \$6,120,000.

Purchase Option:

Lessee will have the option to purchase the 20,954 square foot building and related 8.73 acres and/or the 168 acres after ten years at a nominal price of \$100 for each property.

56. Lease - U. T. Medical Branch - Galveston: Authorization to extend a lease of approximately 35,323 square feet of space located at 10121 Emmett F. Lowry Expressway, Texas City, Galveston County, Texas, from UTMB Holdings, LLC for clinical and educational uses

Description: Extend lease of approximately 35,323 square feet of space located at 10121 Emmett F. Lowry Expressway, Texas City, Galveston County, Texas, for clinical and educational uses. On May 9, 2013, the Board of Regents approved the existing lease and the building was constructed by the prior owner to accommodate the growth of U. T. Medical Branch - Galveston in the area. The facility was custom built for the institution and accommodates several specialties in this high growth area. This strategic location has allowed U. T. Medical Branch - Galveston to successfully provide services to the communities of Texas City-LaMarque, Hitchcock, Santa Fe, and Dickenson and the institution would like to extend the original term of the lease.

Lessor: UTMB Holdings, LLC, a New York limited liability company

Term: The original lease term commenced on April 1, 2015, and as of November 1, 2018, there are 10 years remaining on the term. The extended lease term is for an additional five years, resulting in a 15-year remaining term. Thereafter, there are two five-year options to renew at 95% of market rent.

Lease Cost: The average annual base rent remains \$29.25 per square foot for the first five years of the extended term with a 6% increase in both year six and year 11 for a total approximate amount of \$20,150,446 over the initial extended term. The institution to pay the cost of operating expenses in excess of \$5.76 per square foot per year, estimated to total \$318,967 for the extended initial term.

Tenant Improvements: No tenant improvements are proposed with this lease extension.

Total Cost: Total base rent plus additional rent from lease commencement through the extended 15-year term and renewal options is estimated to be approximately \$33,200,912.

57. Lease - U. T. Medical Branch - Galveston: Authorization to extend lease of approximately 62,312 square feet in a building located at 20740 Gulf Freeway, Webster, Harris County, Texas, from Clear Lake Center, L. P., for office and administrative use

Description: Extend five individual leases consisting collectively of approximately 62,312 square feet of rentable space located at 20740 Gulf Freeway, Webster, Harris County, Texas, for office and administrative support space.

Lessor: Clear Lake Center, L. P., a Texas Limited Partnership

Term: The leases initially commenced between 2009 and 2012, but did not require Board authorization at that time as the lease values were within the institution delegated authority. The lease amendments will extend the term of each lease for four years from September 1, 2019 through August 31, 2023.

Lease Cost: Base rent totals approximately \$30,949,707 for all five leases combined from commencement through expiration of the current terms and renewal terms. The base rent rate for the renewal terms is \$13.00 per square foot for the entire four-year lease extensions. The leases were all extended three years ago and the landlord renovated the spaces at that time.

58. Lease - U. T. Medical Branch - Galveston: Authorization to lease an additional approximately 12,500 square feet of space and extend the term of the existing space lease at 17448 Highway 3, Webster, Harris County, Texas, from Salitex II Limited, LP, for mission uses, including clinical use

Description: Lease of an additional approximately 12,500 square feet of space and a term extension of approximately seven years and 10 months for the existing lease of 12,500 square feet of space, for a total of approximately 25,000 square feet of space located at 17448 Highway 3, Webster, Harris County, Texas, for use as a clinic.

Lessor: Salitex II Limited, LP, a Texas limited partnership

Term: The current lease of 12,500 square feet will expire on May 31, 2021. U. T. Medical Branch - Galveston would like to lease an additional 12,500 square feet of space. It is proposed that after completion of the renovation of the additional 12,500 square feet, the new lease will commence and the primary term for all of the approximately 25,000 square feet will run for 10 years with two five-year options to renew at the then fair market rental value. The commencement date for the new lease is estimated to be around April 1, 2019.

Lease Cost: The rental cost for 25,000 square feet is estimated to be \$575,000 in the first year of the initial term. The initial rental rate is \$23.00 per square foot annually and will increase by \$.50 per square foot annually. The cost of operating expenses will increase to the extent they exceed their cost during the initial lease year. The total estimated base rent expense for the ten-year term is approximately \$6,375,000. If the institution exercises all renewal options, the total base rent cost, inclusive of the primary term, is estimated to be \$14,430,360. In addition, U. T. Medical Branch - Galveston will pay the operating expenses above the base year amount. The Lessor is providing a tenant allowance of \$500,000 and U. T. Medical Branch - Galveston is responsible for the cost of the tenant improvements above the allowance, which is estimated to be approximately \$250,000. The total estimated build-out cost will be approximately \$750,000.

59. Purchase - U. T. Medical Branch - Galveston: Authorization to purchase approximately 9 acres of improved property located at 2150 Gulf Freeway South, City of League City, Galveston County, Texas, from Cars Sonrou Fin, LP, for future programmed campus expansion

Description: Purchase of approximately 9 acres of improved property located at 2150 Gulf Freeway South, City of League City, Galveston County, Texas. The 9-acre tract is located along the northwest boundary of the League City campus. The property will be used for future programmed campus expansion.

Seller: Cars Sonrou Fin, LP, a Delaware limited partnership

Purchase Price: Not to exceed fair market value as determined by an independent appraisal; appraisal confidential pursuant to *Texas Education Code* Section 51.951.

60. Contract (funds going out) - U. T. Health Science Center - Houston: IH Services, Inc. to perform housekeeping services on a multiyear basis

Agency: IH Services, Inc.

Funds: Not to exceed \$30,000,000

Period: January 14, 2019 through August 3, 2027

Description: IH Services, Inc. will provide housekeeping services on the U. T. Health Science Center - Houston campus. Services were competitively procured.

61. Request for Budget Change - U. T. Health Science Center - San Antonio: New Hires with Tenure -- amendment to the 2018-2019 budget

The following Requests for Budget Change (RBC) have been administratively approved by the Executive Vice Chancellor for Health Affairs and are recommended for approval by the U. T. System Board of Regents:

Description	Effective Date	% Time	Full-time Salary		RBC #
			No. Mos.	Rate \$	
School of Nursing					
Office of the Dean					
Associate Dean					
Timothy Raabe (T)	1/1-8/31	100	12	180,000	10553
School of Dentistry					
Office of the Dean and Periodontics					
Dean and Professor					
Peter Loomer (T)	2/1-8/31	100	12	390,000	10506
Periodontics					
Professor					
Angela Palaiologou-Gallis (T)	11/1-8/31	100	12	143,000	10550
School of Health Professions					
Occupational Therapy					
Professor					
Timothy Reistetter (T)	1/2-8/31	100	12	200,000	10551
School of Medicine					
Biochemistry and Structural Biology					
Professor					
Patrick Sung (T)	1/1-8/31	100	12	300,000	105753
Microbiology, Immunology and Molecular Genetics					
Professor					
Na Xiong (T)	12/1-8/31	100	12	228,000	10548

62. Contract (funds coming in) - U. T. M. D. Anderson Cancer Center: Dynex Technologies, Inc. to license U. T. M. D. Anderson Cancer Center technology and trademarks for in vitro diagnostic assay development for detection of certain kinds of cancer

Agency: Dynex Technologies, Inc.

Funds: Royalty payments of 6% on Dynex total net sales of licensed products in the territory; \$800,000 research funding paid quarterly over five years; and annual milestone payments of \$560,000 (paid quarterly) in years six through 10 due any year in which Dynex sells 10,000 licensed products

Period: January 1, 2019 to the later of January 1, 2029 or the expiration of Patent Rights

Description: Agreement to license U. T. M. D. Anderson Cancer Center technology and trademarks for in vitro diagnostic assay development for detection of certain kinds of cancer.

63. Request for Budget Change - U. T. M. D. Anderson Cancer Center: Tenure Appointments -- amendment to the 2018-2019 budget

The following Requests for Budget Change (RBC) have been administratively approved by the Executive Vice Chancellor for Health Affairs and are recommended for approval by the U. T. System Board of Regents:

Description	Effective Date	% Time	Full-time Salary		RBC #
			No. Mos.	Rate \$	
Medical Staff					
Radiation Oncology					
Associate Professor					
Todd Swanson (T)	9/16-8/31	100	12	452,000	9439
Professor					
Sandra Hatch (T)	9/16-8/31	100	12	593,876	9440

FACILITIES PLANNING AND CONSTRUCTION COMMITTEE

No items for Consent Agenda