

AN ORDINANCE

2007-09-06-0947

APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SAN ANTONIO, CPS ENERGY, THE TEXAS A&M UNIVERSITY SYSTEM AND VERANO LAND GROUP, LP WHICH EXPRESSES THE INTENTIONS OF THE PARTIES IN CONNECTION WITH THE ESTABLISHMENT OF A TEXAS A&M UNIVERSITY SAN ANTONIO CAMPUS:

* * * * *

WHEREAS, the Texas State Legislature has authorized the issuance of Forty Million Dollars (\$40,000,000) of Tuition Revenue Bonds for the construction of a Texas A&M University campus in San Antonio ("TAMU-SA") provided that the Texas Higher Education Coordinating Board certifies that TAMU-SA has reached an enrollment equivalent of 1,500 full-time students for one semester by January 1, 2010; and

WHEREAS, City Council has previously expressed support for the establishment of TAMU-SA by undertaking formal actions directing staff to take steps to acquire property and provide required infrastructure improvements for the campus using up to \$15 Million; and

WHEREAS, the Board of Trustees of CPS Energy have likewise expressed support for the establishment of TAMU-SA by agreeing to support the allocation of up to \$8 Million from its Community Infrastructure and Economic Development ("CIED") Fund for required utility infrastructure based upon a Positive Cost-Benefit Finding for the project, consistent with its CIED Fund Policy; and

WHEREAS, Verano Land Group, LP ("Verano") has acquired over 2,600 acres of real property in south San Antonio, in the general vicinity Loop 410 and Zarcamora Road for the development of a mixed-use integrated university community urban village to be known as Verano at City South and has offered to donate property for the campus rather than having the City fund the acquisition of property; and

WHEREAS, although multiple sites were presented by the City and evaluated by representatives of the A&M System for possible acquisition by the City, the A&M Board of Regents have selected the Verano site for the campus and pursuant to a Donation Agreement dated July 13, 2007, Verano has agreed to donate approximately 694 acres to the Texas A&M University System for the establishment and development of TAMU-SA and the Irrigation Technology Center in San Antonio, contingent upon the parties entering into a Memorandum of Understanding ("MOU") outlining the expectations of the parties prior to September 18, 2007 and final definitive agreements by August 2008; and

WHEREAS, staff of the City of San Antonio and CPS Energy, the Texas A&M University System and Verano Land Group, LP have substantially negotiated an MOU which sets out the mutual intent of the parties relating to the development of TAMU-SA and the Irrigation

VMZ
09/06/07
Item No. 24

Technology Center in San Antonio, the terms of which must now be approved by City Council;
NOW THEREFORE:

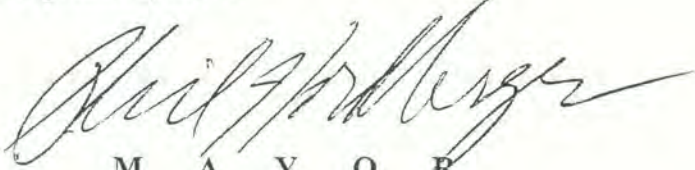
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

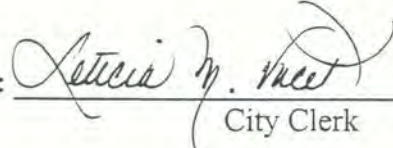
SECTION 1. City Council hereby approves a Memorandum of Understanding between the City of San Antonio, CPS Energy, the Texas A&M University System, and Verano Land Group, LP relating to the development of TAMU-SA and the Irrigation Technology Center in San Antonio, a copy of which in substantially final form is set out in Exhibit I.


SECTION 2. The City Manager or her designee, is authorized to execute the Memorandum of Understanding in its final form as recommended by the City Attorney.

SECTION 3. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

PASSED AND APPROVED this 6th day of September, 2007.


M A Y O R
PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

City Council Meeting

DATE: September 6, 2007

ORDINANCE: 2007-09-06-0947

AGENDA ITEM: 24

RESOLUTION:

NAME	ROLL CALL	MOTION	SECOND	ABSTAIN	AYE	NAY	ABSENT
Mary Alice Cisneros DISTRICT 1							
Sheila McNeil DISTRICT 2							
Roland Gutierrez DISTRICT 3							
Philip Cortez DISTRICT 4							
Lourdes Galvan DISTRICT 5							
Delicia Herrera DISTRICT 6							
Justin Rodriguez DISTRICT 7							
Diane Cibrian DISTRICT 8							
Kevin Wolff DISTRICT 9							
John Clamp DISTRICT 10							
Phil Hardberger MAYOR							

COMMENTS:

**MEMORANDUM OF
UNDERSTANDING**

EXHIBIT 1

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "**Memorandum**") is entered into as of the ___ day of September, 2007 (the "**Effective Date**") by and among THE TEXAS A&M UNIVERSITY SYSTEM, an agency of the State of Texas ("**TAMUS**"), the CITY OF SAN ANTONIO, TEXAS, a Texas political subdivision and home rule municipality (the "**City**"), CPS ENERGY, a public natural gas and electric utility owned by the City ("**CPS**"), and VERANO LAND GROUP, LP, a Texas limited partnership, or its assigns ("**Verano**"). TAMUS, the City, CPS and Verano are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, Verano has acquired over 2,600 acres of real property located in the City of San Antonio, Bexar County, Texas, as depicted on Exhibit A (the "**Land**");

WHEREAS, Verano and TAMUS have entered into that certain Donation Agreement dated July 13, 2007 (the "**Donation Agreement**") wherein Verano agreed to donate approximately 694 acres of the Land to TAMUS (the "**TAMUS Site**"), for the establishment and development of a campus for Texas A&M University-San Antonio ("**TAMU-SA**") and the establishment and development of a technology center for irrigation (the "**Irrigation Technology Center**");

WHEREAS, the remainder of the Land will be used by Verano for the development of a mixed-use integrated university community urban village (the "**Verano Site**");

WHEREAS, the TAMUS Site shall consist of three (3) parcels: (i) an entrance way of approximately 10 acres immediately adjacent to the access road on south Interstate Highway 410 (the "**Gateway Property**"), (ii) a main campus of approximately 580 acres (the "**Main Campus**"), and (iii) approximately 104 acres intended to be used for the Irrigation Technology Center (the "**Irrigation Center Property**"), as depicted along with the Verano Site on Exhibit B;

WHEREAS, pursuant to the Donation Agreement (with conveyance dates as defined therein and referred to herein), Verano has agreed to donate a portion of the Main Campus consisting of approximately fifty (50) acres as depicted on Exhibit C (the "**Initial Site**") on the Initial Conveyance Date and the remainder of the Main Campus, the Gateway Property and the Irrigation Center Property (collectively, the "**Final Site**") on the Final Conveyance Date;

WHEREAS, TAMU-SA and the Irrigation Technology Center will provide a four-year degree granting university and center for irrigation research (the "**Project**") on the south side of the City, presenting educational and research opportunities for citizens of the City, Bexar County and south-central Texas; and

WHEREAS, pursuant to Section 55.1751 of the Texas Education Code, Forty Million Dollars (\$40,000,000) of bonds pledged on tuition revenue ("**Tuition Revenue Bonds**") may be

issued for construction of educational facilities on TAMU-SA, provided that the Texas Higher Education Coordinating Board certifies that TAMU-SA has reached an enrollment equivalent of 1,500 full-time students for one semester by January 1, 2010 (the "**Financing Event**").

NOW, THEREFORE, for the purpose of expressing and memorializing certain terms and the mutual intent of the Parties relating to the development of TAMU-SA and the Irrigation Technology Center in San Antonio, TAMUS, the City, CPS, and Verano desire to set forth certain understandings as follows:

1. **Definitive Agreements.** The Parties intend to pursue the negotiation of possible definitive agreements for the Project and the development of the Verano Site (collectively, the "**Definitive Agreements**"). It is the intent of the Parties to execute any Definitive Agreements that may be ultimately agreed upon on or prior to the Final Conveyance Date. Acknowledging the non-binding nature of this Memorandum, as further provided in Paragraph 4, the following are general parameters and provisions which Verano, TAMUS, CPS and the City have previously discussed and which form the basis for further negotiation:

- (a) TAMUS will plan for development of the Main Campus, Gateway Property and Irrigation Center Property in phases and will take into consideration Verano's desire to integrate the northerly portion of the Main Campus with Verano's plan for the adjacent property; provided, however, TAMUS' final master plan for the Main Campus, Gateway Property, and Irrigation Center Property shall not require approval by any other party but shall be prepared in the sole discretion of TAMUS. TAMUS intends to complete a master plan not later than January 1, 2010;
- (b) In order for the Project to commence as soon as possible, to proceed in an orderly and expeditious manner and to meet applicable timetables, the City would designate a License and Permit Coordinator to act on a part-time basis for a period of five (5) years from and after the Effective Date to coordinate with and advise Verano and TAMUS with respect to the preparation and obtaining of all City permits and licenses that may from time to time be required by either of them in connection with any facet of the Project;
- (c) The Main Campus and Irrigation Center Property will be provided with access to and from Interstate Highway 410 and Zarzamora Road by the design and construction of: (i) a multi-way boulevard (including all ancillary utilities) of at least four (4) lanes from Interstate Highway 410 to and through the Main Campus to Mauermann Road ("**University Boulevard**"); and (ii) a multi-way arterial road (including all ancillary utilities) of at least four (4) lanes ("**East/West Arterial**") along the northern boundary of the Main Campus, providing access to Zarzamora Road (collectively, the "**Major Roadways**"), the Major Roadways to be constructed in accordance with a design acceptable to Verano, TAMUS and the City on right-of-way dedicated by Verano;

- (d) The City would make up to Fifteen Million Dollars (\$15,000,000) (the "City Contribution") available to support the cost of public infrastructure projects which would benefit TAMUS and which are necessary for the development of the TAMUS Site. Projects for which such funds could be applied and/or used would include, but not be limited to, (i) the design and construction of the Major Roadways, and (ii) utilities, including but not limited to, CPS transmission substations, wastewater outfall and lift stations and off-site storm water projects (but excluding projects related to water services from any unrelated water purveyor). As provided in Subparagraphs (e), (f) and (g) below, the City will condition availability of the City Contribution in portions;
- (e) In order to facilitate the timeline for construction of the Major Roadways, the City would make available up to Five Hundred Thousand Dollars (\$500,000) of the City Contribution starting in October 2007 to be applied towards the actual costs incurred in designing the Major Roadways;
- (f) Provided that a TIRZ (as defined herein) or similar economic incentive as discussed in Subparagraph (p) below has been established for Verano's proposed development, on or after the Final Conveyance Date and upon receipt of a written statement from TAMUS' Chancellor that TAMUS (i) anticipates the Financing Event to occur within one year, and (ii) approves of the location of that portion of University Boulevard from Interstate Highway 410 to the Main Campus (the "**Initial Boulevard**"), the City would make available up to Five Million Dollars (\$5,000,000) of the City Contribution to be applied towards the actual costs incurred in designing and constructing the Initial Boulevard so that it is complete and open to public travel no later than the anticipated construction start date for the TAMU-SA Main Campus;
- (g) Upon occurrence of the Financing Event, the City would make available the remainder of the City Contribution to be applied towards the actual costs incurred in designing and constructing the Major Roadways;
- (h) CPS will work with TAMUS and Verano to design utility infrastructure, including access easements, facilities and equipment, for the provision of natural gas and electric utility service to the three (3) parcels comprising the TAMUS Site by January 1, 2009, which utility services will be sufficient to support the needs of TAMU-SA and the Irrigation Technology Center;
- (i) Subject to a recommendation by the City Council, approval by the CPS Board of Trustees, and a commitment by TAMUS to execute a CIED Fund Grant Agreement stating the terms and conditions of the TAMUS use of the approved funds prior to their disbursement, including the commitment by TAMUS to become a long-term, full service customer of CPS Energy, CPS Energy will make available Community Infrastructure

and Economic Development funds (“CIED funds”) in an amount of up to Eight Million Dollars (\$8,000,000), the exact amount of which will be determined by the results of a cost-benefit analysis (pursuant to the CPS CIED Fund Policy) calculated from detailed electrical ramp up and final usage schedules from TAMUS regarding the cost of service to the site. The CIED Fund grant allocation will be used to assist in defraying the electric service infrastructure costs to TAMUS referred to in Subparagraph (h) above.

- (j) The rates for natural gas and electricity to TAMUS will be comparable to the best rates offered to other similar users.
- (k) Verano and TAMUS will negotiate and enter into agreements, as necessary, with the San Antonio Water System and/or BexarMet Water District to provide water and wastewater utility service to the property line of the Main Campus, Irrigation Center Property, and Gateway Property at locations acceptable to TAMUS and Verano;
- (l) The Major Roadways, water and wastewater utilities will be constructed or installed at no cost to TAMUS. Gas and electric utility extensions to the TAMUS Site will be constructed and installed in accordance with (h) and (i) above.
- (m) TAMUS will pursue funding for the Project, which will include issuance of the Tuition Revenue Bonds not later than January 1, 2010;
- (n) TAMUS will work toward a goal of achieving the following enrollment:

Date	Full-time Student Enrollment at TAMUS-SA
September 1, 2012	2,500
September 1, 2017	5,000
September 1, 2022	7,500
September 1, 2027	10,000

- (o) Verano will plan for the construction of a mixed-use development on the Verano Site in substantial accordance with a conceptual plan to be agreed upon by Verano and the City and attached to the appropriate Definitive Agreement. Verano will design its proposed development of the Verano Site in accordance with “SmartCode” based planning, or any derivative or variant thereof, as adopted into the City’s Unified Development Code and agreed to by the City; and

- (p) The City and Verano would work to identify and evaluate economic development incentives for which Verano's proposed development of the Verano Site may be eligible, including, but not limited to, the creation of a tax increment reinvestment zone ("TIRZ"), an agreement pursuant to Chapter 380 of the Texas Local Government Code, or similar incentive vehicle. Any incentive arrangement between the City and Verano would provide that no incentive funds will be released to Verano until the balance of incentive funds are greater than \$5,500,000. The first \$5,500,000 of incentive funds would be held in escrow to reimburse the City for the portions of the City Contribution advanced prior to the occurrence of the Financing Event in the event that (i) prior to the occurrence of the Financing Event, TAMUS announces it will no longer pursue TAMU-SA or (ii) the TAMUS Site reverts to Verano pursuant to the Donation Agreement. Should the Financing Event occur prior to the occurrence of either (i) or (ii) above, then all incentive funds would be available to Verano pursuant to the terms of the applicable incentive agreement and the City would not be reimbursed from incentive funds for the City Contribution. Prior to the City entering into any Definitive Agreements concerning incentives, Verano would be obligated to provide evidence to the City that Verano has the financial wherewithal to perform its obligations under such Definitive Agreements.

2. ***Responsibilities of Parties.*** Each Party would be responsible for conducting, at such Party's own expense, all inspections, reports, analyses, interviews and studies that such Party, or its accountants, advisors or counsel deems advisable or necessary in connection with the Project. Each Party would pay all of its own expenses incurred in connection with the transactions contemplated herein.

3. ***Exchange of Information.*** The Parties acknowledge that in the course of discussions concerning Definitive Agreements, they each may acquire information that is proprietary to or confidential to another Party. Any information delivered by one Party to any of the other Parties in connection with the Project and deemed to be confidential by the delivering Party shall be clearly noted on the page(s) where such confidential information is contained; however, the City, CPS and TAMUS cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, or other open records laws. Subject to, and except for, (i) disclosure under the Texas Public Information Act or other open records laws, and/or (ii) use in pursuing, providing and/or approving, any Definitive Agreement pertaining to the Project, each Party will hold any information delivered to it by another and deemed confidential by the other in confidence and not copy, reproduce, sell, assign, license, market, transfer or otherwise disclose such information to third parties or use such information for any purposes whatsoever, without the express written permission of the delivering Party. The Parties will use reasonable efforts to assist each other in identifying and preventing any unauthorized use or disclosure of any such confidential information; provided neither City, CPS nor TAMUS shall be obligated to initiate any legal proceeding to protect same.

4. ***Non-Binding Effect.*** This Memorandum is entered into solely for the purpose of providing a non-binding framework for negotiation of potential Definitive Agreements. This Memorandum is not, nor is it intended to be, an exhaustive or complete discussion of either the terms and conditions set forth herein or of any prospective agreements pertaining to the Project. The execution and delivery hereof by Verano, TAMUS, CPS, or the City, or any negotiations concerning this Memorandum or any possible agreements, shall not, and does not, create any contractual rights or obligations in favor of any Party vis-à-vis the others, nor shall the submission or acceptance of this Memorandum constitute any offer by any Party to enter into any transaction with the others, or any of them, or bind any Party to pursue a transaction with the others concerning the Project. No Party hereto shall have any obligations to the other Parties concerning the Project or any other matter until such time the Definitive Agreements are fully negotiated, drafted, executed and delivered by and among them.

5. ***Termination of Discussions.*** Any Party may, at any time prior to the execution and delivery of the Definitive Agreements, abandon discussions concerning the Project or any part thereof, without liability. If the City and/or CPS opts to terminate such discussions prior to the Initial Conveyance Date, Verano and/or TAMUS shall have the option to rescind the Donation Agreement. If the City and/or CPS opts to terminate such discussion after the Initial Conveyance Date or not enter into the Definitive Agreements by the Final Conveyance Date, then Verano and/or TAMUS shall have the option to rescind the unexecuted portion of the Donation Agreement. Notwithstanding the non-binding effect of the rest of this Memorandum, the provisions of this Paragraph 5 shall be binding upon TAMUS and Verano, their successors and assigns.

6. ***Notice.*** For purposes of this Memorandum, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed registered or certified mail, postage prepaid, to the addresses set forth below:

To City at: City of San Antonio
 P.O. Box 839966
 San Antonio, Texas 78283-3966
 Attn: Leticia Vacek, City Clerk

with a copy to: City of San Antonio
 P. O. Box 839966
 San Antonio, Texas 78283-3966
 Attn: JeLynne Lablanc Burley, Deputy City Manager

 City of San Antonio
 P. O. Box 839966
 San Antonio, Texas 78283-3966
 Attn: Michael D. Bernard, City Attorney

To CPS at: CPS Energy
145 Navarro
San Antonio, Texas 78205
P.O. Box 1771
San Antonio, Texas 78296-1771
Attn: General Counsel

To TAMUS at: Michael D. McKinney, MD
Chancellor
A&M System Building, Suite 2043
200 Technology Way
College Station, Texas 77845

with a copy to: Jay Kimbrough
Deputy Chancellor
A&M System Building, Suite 2079
200 Technology Way
College Station, Texas 77845

To Verano at: Ralph Lampman
Triple L Management
3157 N. Rainbow, Suite 305
Las Vegas, Nevada 89108

with a copy to: Jane H. Macon
Fulbright & Jaworski L.L.P.
300 Convent Street, Suite 2200
San Antonio, Texas 78205

7. **Counterparts.** This Memorandum may be executed in several counterparts, each of which shall be deemed an original, all of which taken together shall constitute one single Memorandum among the Parties.

8. **No Waiver.** Nothing in this Memorandum shall be construed as a waiver by any Party of any right, privilege or immunity available to it under the laws of the State of Texas.

[*Signatures of Parties on next page*]

This Memorandum is executed to effective as of the Effective Date.

<p><u>TAMUS</u></p> <p>The Texas A&M University System, an agency of the State of Texas</p> <p>By: _____ Michael D. McKinney, M.D. Chancellor</p>	<p><u>VERANO</u></p> <p>Verano Land Group, LP a Texas limited partnership</p> <p>By: San Antonio Management, LLC, a Nevada limited liability company, its General Partner</p> <p>By: _____ Ralph Lampman Manager</p>
<p><u>CITY</u></p> <p>City of San Antonio</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p><u>CPS</u></p> <p>CPS Energy</p> <p>By: _____ Milton Lee President and CEO</p>
<p>Attested By: _____ City Clerk</p> <p>APPROVED AS TO FORM:</p> <p>By: _____</p> <p>Name: _____ City Attorney</p>	

EXHIBIT A

Depiction of the Land

[*See attached*]

EXHIBIT B

Depiction of the Verano Site and TAMUS Site

[*See attached*]

EXHIBIT C

Depiction of the Initial Site

[*See attached*]

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
ECONOMIC DEVELOPMENT DEPARTMENT**

TO: Jelynn LeBlanc Burley, Deputy City Manager
FROM: Robert Peche, Economic Development Department, Director
SUBJECT: Texas A&M Memorandum of Understanding
DATE: September 10, 2007

Attached for your signature is a Memorandum of Understanding (MOU) between the City of San Antonio, CPS Energy, the Texas A&M System, and the Verano Land Group, L.P., supporting the establishment of an A&M campus in San Antonio.

Terms outlined by this non-binding MOU are as follows:

- City will make available \$500K for design of Phase I of University Blvd. by October 2007
- City will make available \$5M towards the cost of designing and construction of University Blvd., contingent upon the receipt of a letter signed by A&M Chancellor stating that student population will reach 1,500 within one year and identifies the location of University Blvd.
- City will make \$9.5M available for costs incurred in designing and constructing University Blvd. and the east/west connector when student population reaches 1,500.
- City and Verano Group will work to identify and evaluate economic development incentives for the mixed-use integrated urban village Verano project.
- Separate agreements will be brought to City Council for consideration to support these actions.
- Verano Group has committed \$1M towards an \$8M Texas A&M commitment for a scholarship program to help meet the student enrollment of 1,500 required by state statute in order to finance the campus.

This MOU was presented to and approved by City Council on September 6, 2007 and authorized by Ordinance 2007-09-06-0947.

Please call me at 207-8093 if you have any questions or require additional information.



Robert Peche, Director
Economic Development

Reviewed:



Michael Bernard
City Attorney

9.19.07

Date

Attachments

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "**Memorandum**") is entered into as of the ___ day of September, 2007 (the "**Effective Date**") by and among THE TEXAS A&M UNIVERSITY SYSTEM, an agency of the State of Texas ("**TAMUS**"), the CITY OF SAN ANTONIO, TEXAS, a Texas political subdivision and home rule municipality (the "**City**"), CPS ENERGY, a public natural gas and electric utility owned by the City ("**CPS**"), and VERANO LAND GROUP, LP, a Texas limited partnership, or its assigns ("**Verano**"). TAMUS, the City, CPS and Verano are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, Verano has acquired over 2,600 acres of real property located in the City of San Antonio, Bexar County, Texas, as depicted on Exhibit A (the "**Land**");

WHEREAS, Verano and TAMUS have entered into that certain Donation Agreement dated July 13, 2007 (the "**Donation Agreement**") wherein Verano agreed to donate approximately 694 acres of the Land to TAMUS (the "**TAMUS Site**"), for the establishment and development of a campus for Texas A&M University-San Antonio ("**TAMU-SA**") and the establishment and development of a technology center for irrigation (the "**Irrigation Technology Center**");

WHEREAS, the remainder of the Land will be used by Verano for the development of a mixed-use integrated university community urban village (the "**Verano Site**");

WHEREAS, the TAMUS Site shall consist of three (3) parcels: (i) an entrance way of approximately 10 acres immediately adjacent to the access road on south Interstate Highway 410 (the "**Gateway Property**"), (ii) a main campus of approximately 580 acres (the "**Main Campus**"), and (iii) approximately 104 acres intended to be used for the Irrigation Technology Center (the "**Irrigation Center Property**"), as depicted along with the Verano Site on Exhibit B;

WHEREAS, pursuant to the Donation Agreement (with conveyance dates as defined therein and referred to herein), Verano has agreed to donate a portion of the Main Campus consisting of approximately fifty (50) acres as depicted on Exhibit C (the "**Initial Site**") on the Initial Conveyance Date and the remainder of the Main Campus, the Gateway Property and the Irrigation Center Property (collectively, the "**Final Site**") on the Final Conveyance Date;

WHEREAS, TAMU-SA and the Irrigation Technology Center will provide a four-year degree granting university and center for irrigation research (the "**Project**") on the south side of the City, presenting educational and research opportunities for citizens of the City, Bexar County and south-central Texas; and

WHEREAS, pursuant to Section 55.1751 of the Texas Education Code, Forty Million Dollars (\$40,000,000) of bonds pledged on tuition revenue ("**Tuition Revenue Bonds**") may be

issued for construction of educational facilities on TAMU-SA, provided that the Texas Higher Education Coordinating Board certifies that TAMU-SA has reached an enrollment equivalent of 1,500 full-time students for one semester by January 1, 2010 (the "**Financing Event**").

NOW, THEREFORE, for the purpose of expressing and memorializing certain terms and the mutual intent of the Parties relating to the development of TAMU-SA and the Irrigation Technology Center in San Antonio, TAMUS, the City, CPS, and Verano desire to set forth certain understandings as follows:

1. **Definitive Agreements.** The Parties intend to pursue the negotiation of possible definitive agreements for the Project and the development of the Verano Site (collectively, the "**Definitive Agreements**"). It is the intent of the Parties to execute any Definitive Agreements that may be ultimately agreed upon on or prior to the Final Conveyance Date. Acknowledging the non-binding nature of this Memorandum, as further provided in Paragraph 4, the following are general parameters and provisions which Verano, TAMUS, CPS and the City have previously discussed and which form the basis for further negotiation:

- (a) TAMUS will plan for development of the Main Campus, Gateway Property and Irrigation Center Property in phases and will take into consideration Verano's desire to integrate the northerly portion of the Main Campus with Verano's plan for the adjacent property; provided, however, TAMUS' final master plan for the Main Campus, Gateway Property, and Irrigation Center Property shall not require approval by any other party but shall be prepared in the sole discretion of TAMUS. TAMUS intends to complete a master plan not later than January 1, 2010;
- (b) In order for the Project to commence as soon as possible, to proceed in an orderly and expeditious manner and to meet applicable timetables, the City would designate a License and Permit Coordinator to act on a part-time basis for a period of five (5) years from and after the Effective Date to coordinate with and advise Verano and TAMUS with respect to the preparation and obtaining of all City permits and licenses that may from time to time be required by either of them in connection with any facet of the Project;
- (c) The Main Campus and Irrigation Center Property will be provided with access to and from Interstate Highway 410 and Zarzamora Road by the design and construction of: (i) a multi-way boulevard (including all ancillary utilities) of at least four (4) lanes from Interstate Highway 410 to and through the Main Campus to Mauermann Road ("**University Boulevard**"); and (ii) a multi-way arterial road (including all ancillary utilities) of at least four (4) lanes ("**East/West Arterial**") along the northern boundary of the Main Campus, providing access to Zarzamora Road (collectively, the "**Major Roadways**"), the Major Roadways to be constructed in accordance with a design acceptable to Verano, TAMUS and the City on right-of-way dedicated by Verano;

- (d) The City would make up to Fifteen Million Dollars (\$15,000,000) (the "City Contribution") available to support the cost of public infrastructure projects which would benefit TAMUS and which are necessary for the development of the TAMUS Site. Projects for which such funds could be applied and/or used would include, but not be limited to, (i) the design and construction of the Major Roadways, and (ii) utilities, including but not limited to, CPS transmission substations, wastewater outfall and lift stations and off-site storm water projects (but excluding projects related to water services from any unrelated water purveyor). As provided in Subparagraphs (e), (f) and (g) below, the City will condition availability of the City Contribution in portions;
- (e) In order to facilitate the timeline for construction of the Major Roadways, the City would make available up to Five Hundred Thousand Dollars (\$500,000) of the City Contribution starting in October 2007 to be applied towards the actual costs incurred in designing the Major Roadways;
- (f) Provided that a TIRZ (as defined herein) or similar economic incentive as discussed in Subparagraph (p) below has been established for Verano's proposed development, on or after the Final Conveyance Date and upon receipt of a written statement from TAMUS' Chancellor that TAMUS (i) anticipates the Financing Event to occur within one year, and (ii) approves of the location of that portion of University Boulevard from Interstate Highway 410 to the Main Campus (the "**Initial Boulevard**"), the City would make available up to Five Million Dollars (\$5,000,000) of the City Contribution to be applied towards the actual costs incurred in designing and constructing the Initial Boulevard so that it is complete and open to public travel no later than the anticipated construction start date for the TAMU-SA Main Campus;
- (g) Upon occurrence of the Financing Event, the City would make available the remainder of the City Contribution to be applied towards the actual costs incurred in designing and constructing the Major Roadways;
- (h) CPS will work with TAMUS and Verano to design utility infrastructure, including access easements, facilities and equipment, for the provision of natural gas and electric utility service to the three (3) parcels comprising the TAMUS Site by January 1, 2009, which utility services will be sufficient to support the needs of TAMU-SA and the Irrigation Technology Center;
- (i) Subject to a recommendation by the City Council, approval by the CPS Board of Trustees, and a commitment by TAMUS to execute a CIED Fund Grant Agreement stating the terms and conditions of the TAMUS use of the approved funds prior to their disbursement, including the commitment by TAMUS to become a long-term, full service customer of CPS Energy,

CPS Energy will make available Community Infrastructure and Economic Development funds (“CIED funds”) in an amount of up to Eight Million Dollars (\$8,000,000), the exact amount of which will be determined by the results of a cost-benefit analysis (pursuant to the CPS CIED Fund Policy) calculated from detailed electrical ramp up and final usage schedules from TAMUS regarding the cost of service to the site. The CIED Fund grant allocation will be used to assist in defraying the electric service infrastructure costs to TAMUS referred to in Subparagraph (h) above.

- (j) The rates for natural gas and electricity to TAMUS will be comparable to the best rates offered to other similar users.
- (k) Verano and TAMUS will negotiate and enter into agreements, as necessary, with the San Antonio Water System and/or BexarMet Water District to provide water and wastewater utility service to the property line of the Main Campus, Irrigation Center Property, and Gateway Property at locations acceptable to TAMUS and Verano;
- (l) The Major Roadways, water and wastewater utilities will be constructed or installed at no cost to TAMUS. Gas and electric utility extensions to the TAMUS Site will be constructed and installed in accordance with (h) and (i) above.
- (m) TAMUS will pursue funding for the Project, which will include issuance of the Tuition Revenue Bonds not later than January 1, 2010;
- (n) TAMUS will work toward a goal of achieving the following enrollment:

Date	Full-time Student Enrollment at TAMUS-SA
September 1, 2012	2,500
September 1, 2017	5,000
September 1, 2022	7,500
September 1, 2027	10,000

- (o) Verano will plan for the construction of a mixed-use development on the Verano Site in substantial accordance with a conceptual plan to be agreed upon by Verano and the City and attached to the appropriate Definitive Agreement. Verano will design its proposed development of the Verano Site in accordance with “SmartCode” based planning, or any derivative or variant thereof, as adopted into the City’s Unified Development Code and agreed to by the City; and

- (p) The City and Verano would work to identify and evaluate economic development incentives for which Verano's proposed development of the Verano Site may be eligible, including, but not limited to, the creation of a tax increment reinvestment zone ("TIRZ"), an agreement pursuant to Chapter 380 of the Texas Local Government Code, or similar incentive vehicle. Any incentive arrangement between the City and Verano would provide that no incentive funds will be released to Verano until the balance of incentive funds are greater than \$5,500,000. The first \$5,500,000 of incentive funds would be held in escrow to reimburse the City for the portions of the City Contribution advanced prior to the occurrence of the Financing Event in the event that (i) prior to the occurrence of the Financing Event, TAMUS announces it will no longer pursue TAMU-SA or (ii) the TAMUS Site reverts to Verano pursuant to the Donation Agreement. Should the Financing Event occur prior to the occurrence of either (i) or (ii) above, then all incentive funds would be available to Verano pursuant to the terms of the applicable incentive agreement and the City would not be reimbursed from incentive funds for the City Contribution. Prior to the City entering into any Definitive Agreements concerning incentives, Verano would be obligated to provide evidence to the City that Verano has the financial wherewithal to perform its obligations under such Definitive Agreements.

2. ***Responsibilities of Parties.*** Each Party would be responsible for conducting, at such Party's own expense, all inspections, reports, analyses, interviews and studies that such Party, or its accountants, advisors or counsel deems advisable or necessary in connection with the Project. Each Party would pay all of its own expenses incurred in connection with the transactions contemplated herein.

3. ***Exchange of Information.*** The Parties acknowledge that in the course of discussions concerning Definitive Agreements, they each may acquire information that is proprietary to or confidential to another Party. Any information delivered by one Party to any of the other Parties in connection with the Project and deemed to be confidential by the delivering Party shall be clearly noted on the page(s) where such confidential information is contained; however, the City, CPS and TAMUS cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, or other open records laws. Subject to, and except for, (i) disclosure under the Texas Public Information Act or other open records laws, and/or (ii) use in pursuing, providing and/or approving, any Definitive Agreement pertaining to the Project, each Party will hold any information delivered to it by another and deemed confidential by the other in confidence and not copy, reproduce, sell, assign, license, market, transfer or otherwise disclose such information to third parties or use such information for any purposes whatsoever, without the express written permission of the delivering Party. The Parties will use reasonable efforts to assist each other in identifying and preventing any unauthorized use or disclosure of any such confidential information; provided neither City, CPS nor TAMUS shall be obligated to initiate any legal proceeding to protect same.

4. **Non-Binding Effect.** This Memorandum is entered into solely for the purpose of providing a non-binding framework for negotiation of potential Definitive Agreements. This Memorandum is not, nor is it intended to be, an exhaustive or complete discussion of either the terms and conditions set forth herein or of any prospective agreements pertaining to the Project. The execution and delivery hereof by Verano, TAMUS, CPS, or the City, or any negotiations concerning this Memorandum or any possible agreements, shall not, and does not, create any contractual rights or obligations in favor of any Party vis-à-vis the others, nor shall the submission or acceptance of this Memorandum constitute any offer by any Party to enter into any transaction with the others, or any of them, or bind any Party to pursue a transaction with the others concerning the Project. No Party hereto shall have any obligations to the other Parties concerning the Project or any other matter until such time the Definitive Agreements are fully negotiated, drafted, executed and delivered by and among them.

5. **Termination of Discussions.** Any Party may, at any time prior to the execution and delivery of the Definitive Agreements, abandon discussions concerning the Project or any part thereof, without liability. If the City and/or CPS opts to terminate such discussions prior to the Initial Conveyance Date, Verano and/or TAMUS shall have the option to rescind the Donation Agreement. If the City and/or CPS opts to terminate such discussion after the Initial Conveyance Date or not enter into the Definitive Agreements by the Final Conveyance Date, then Verano and/or TAMUS shall have the option to rescind the unexecuted portion of the Donation Agreement. Notwithstanding the non-binding effect of the rest of this Memorandum, the provisions of this Paragraph 5 shall be binding upon TAMUS and Verano, their successors and assigns.

6. **Notice.** For purposes of this Memorandum, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed registered or certified mail, postage prepaid, to the addresses set forth below:

To City at: City of San Antonio
 P.O. Box 839966
 San Antonio, Texas 78283-3966
 Attn: Leticia Vacek, City Clerk

with a copy to: City of San Antonio
 P. O. Box 839966
 San Antonio, Texas 78283-3966
 Attn: JeLynne Lablanc Burley, Deputy City Manager

 City of San Antonio
 P. O. Box 839966
 San Antonio, Texas 78283-3966
 Attn: Michael D. Bernard, City Attorney

To CPS at: CPS Energy
145 Navarro
San Antonio, Texas 78205
P.O. Box 1771
San Antonio, Texas 78296-1771
Attn: General Counsel

To TAMUS at: Michael D. McKinney, MD
Chancellor
A&M System Building, Suite 2043
200 Technology Way
College Station, Texas 77845

with a copy to: Jay Kimbrough
Deputy Chancellor
A&M System Building, Suite 2079
200 Technology Way
College Station, Texas 77845

To Verano at: Ralph Lampman
Triple L Management
3157 N. Rainbow, Suite 305
Las Vegas, Nevada 89108

with a copy to: Jane H. Macon
Fulbright & Jaworski L.L.P.
300 Convent Street, Suite 2200
San Antonio, Texas 78205

7. **Counterparts.** This Memorandum may be executed in several counterparts, each of which shall be deemed an original, all of which taken together shall constitute one single Memorandum among the Parties.

8. **No Waiver.** Nothing in this Memorandum shall be construed as a waiver by any Party of any right, privilege or immunity available to it under the laws of the State of Texas.

[Signatures of Parties on next page]

This Memorandum is executed to effective as of the Effective Date.

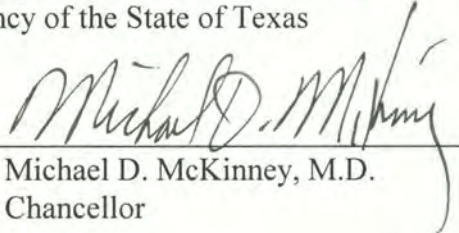
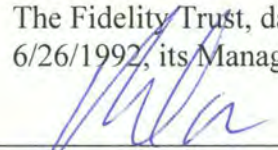
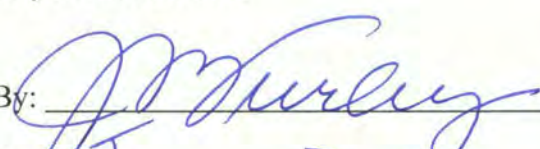

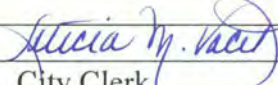

<p><u>TAMUS</u></p> <p>The Texas A&M University System, an agency of the State of Texas</p> <p>By: <u></u> Michael D. McKinney, M.D. Chancellor</p>	<p><u>VERANO</u></p> <p>Verano Land Group, LP a Texas limited partnership</p> <p>By: San Antonio Management, LLC, a Nevada limited liability company, its General Partner</p> <p>By: Triple L Management, LLC, a Nevada limited liability company, its Manager</p> <p>By: The Fidelity Trust, dated 6/26/1992, its Manager</p> <p>By: <u></u> Ralph Lampman Trustee</p>
<p><u>CITY</u></p> <p>City of San Antonio</p> <p>By: <u></u> Name: <u>SEYNNÉ BOURLEY</u> Title: <u>DEPUTY CITY MGR</u></p>	<p><u>CPS</u></p> <p>CPS Energy</p> <p>By: <u></u> Name: <u>STEVE BARLEY</u> Title: <u>ELEC. VICE PRES. STRATEGY & EXTERNAL RELATIONS</u></p>
<p>Attested By: <u></u> City Clerk</p>	
<p>APPROVED AS TO FORM:</p> <p>By: <u></u> Name: <u>MICHAEL BERNARD</u> City Attorney</p>	

EXHIBIT A

Depiction of the Land

[*See attached*]

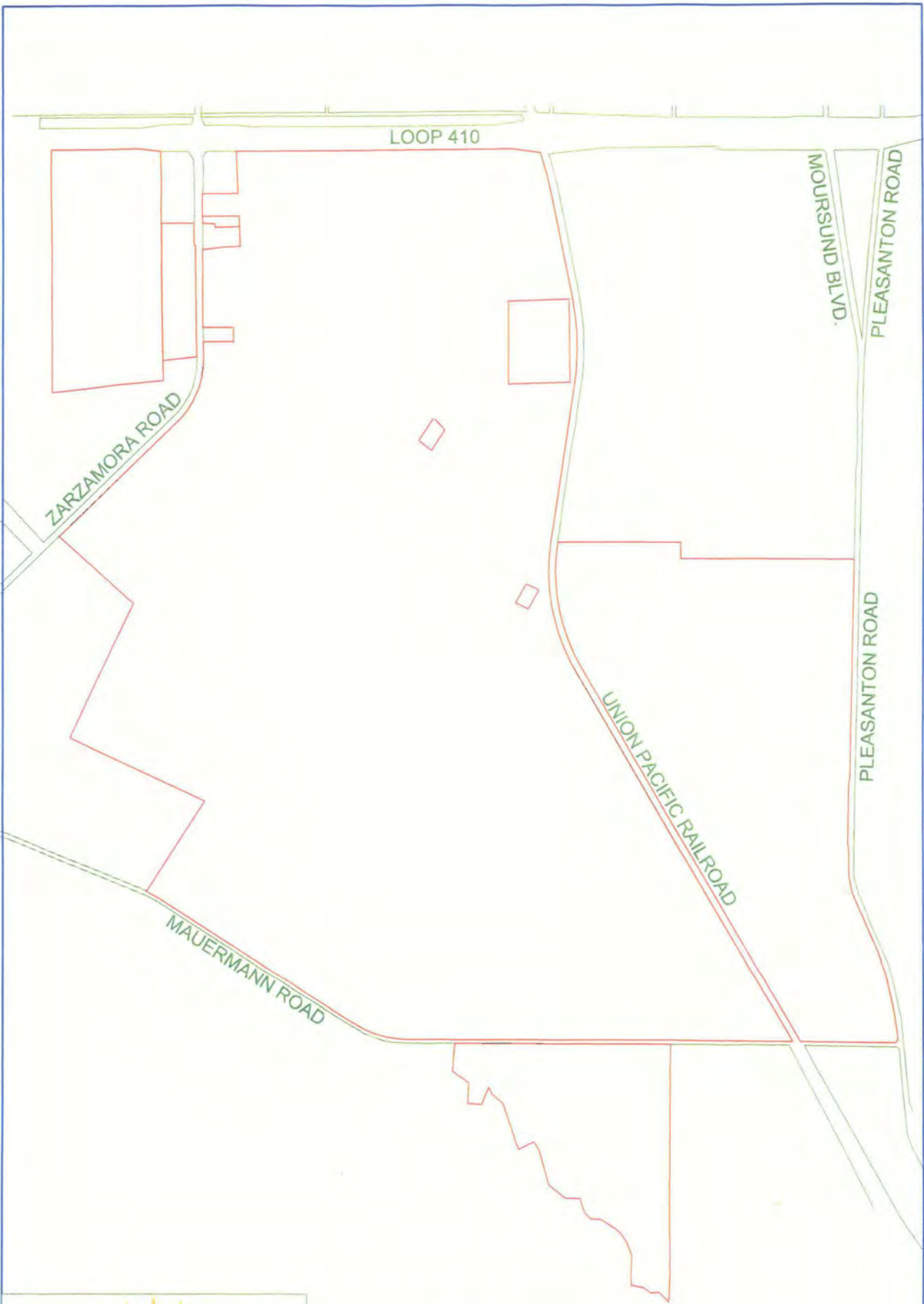


Exhibit A

EXHIBIT B

Depiction of the Verano Site and TAMUS Site

[*See attached*]

Z:\162000100\dwg\1620001A&M_Campus_FINAL.dwg Mar 30, 2007 - 8:29am Defreitas, Robert

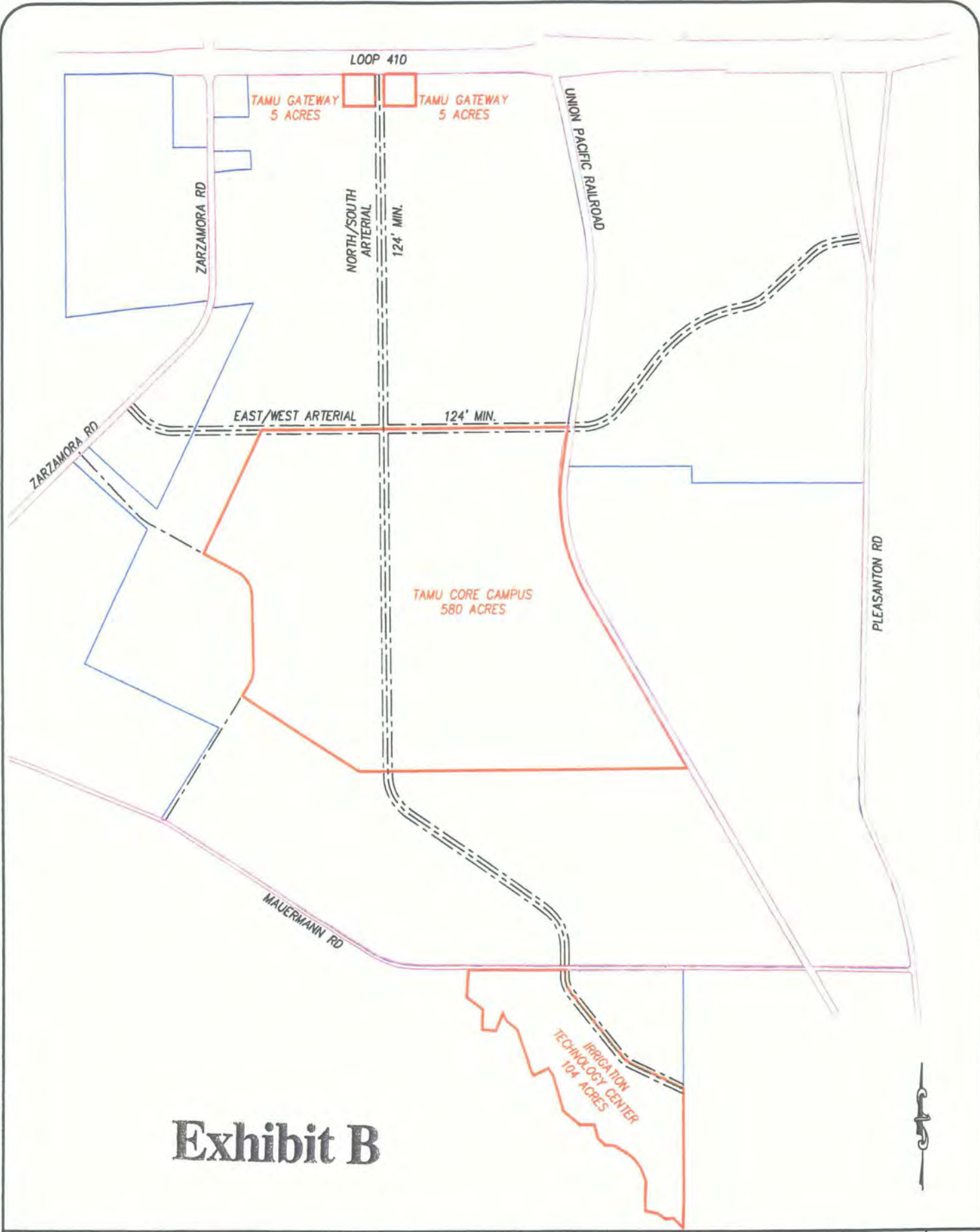


Exhibit B



FINAL BOUNDARY FOR TEXAS A&M
UNIVERSITY - SAN ANTONIO
VERANO

PATE ENGINEERS

8200 IH-10 West - Suite 440
San Antonio, Texas 78230
OFFICE: (210) 340-8481 FAX: (210) 340-3964

JOB No.
162000100

DATE: 03-30-07	DRAWN BY: AAD
DESIGNED BY: AAD	CHECKED BY: CRH

EXHIBIT C

Depiction of the Initial Site

[*See attached*]

STATE OF TEXAS

§
§
§
§
§

**AGREEMENT TO USE FUNDS
OF THE
CITY OF SAN ANTONIO**

COUNTY OF BEXAR

This AGREEMENT to Use Funds of the City of San Antonio (this "AGREEMENT") for procurement of Engineering and Design Consulting Services is entered into as of the ___ day of December 2007 (the "Effective Date") by the CITY OF SAN ANTONIO, TEXAS, a Texas political subdivision and home rule municipality (the "CITY") and VTLM TEXAS L.P., a limited partnership, or its assigns ("CONTRACTOR"). CITY and CONTRACTOR may be referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, City is a Party to that certain Memorandum of Understanding (the "MOU"), EXHIBIT A, authorized by City Ordinance 2007-09-06-0947, passed and approved by the City Council of CITY on September 6, 2007, which outlines agreed upon terms upon which VERANO LAND GROUP ("Verano") shall donate 694 acres of land located within the city limits of CITY for the establishment of a university campus by the Texas A&M University System ("TAMUS") and undertake the development of a mixed-use integrated university community urban village ("Verano at City South"); and

WHEREAS, no existing thoroughfare streets or entrance ways exist to provide ingress or egress points onto the proposed Texas A&M San Antonio campus and Verano at City South site and such thoroughfare streets are necessary to carry-out the construction of the Texas A&M SA campus and Verano at City South; and

WHEREAS, Verano has identified areas of land in the proposed Verano at City South site that may be used to construct such thoroughfare streets and CITY wishes to engage CONTRACTOR to cause to be performed engineering and design services necessary for the future construction of these thoroughfare streets in accordance with the terms and conditions of this AGREEMENT and the MOU; and

WHEREAS, the thoroughfare streets are part of CITY's Major Thoroughfare Plan and CONTRACTOR will perform a public service in providing CITY with the engineering and design of these thoroughfare streets; and

WHEREAS, the CITY's funding of this AGREEMENT for the purposes outlined below is consistent with the MOU and the use of certain Certificates of Obligations issued by CITY;
NOW THEREFORE:

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

I. DEFINITIONS

As used in this AGREEMENT, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this AGREEMENT and includes its successors and assigns.

“DESIGN ENGINEER” means a Texas licensed professional engineer under contract with CONTRACTOR to design throughfare streets on the property known as Verano at City South.

“CONTRACTOR” is defined in the preamble of this AGREEMENT and includes its successors.

“Director” is the Director of CITY’s Capital Improvement Management Services (“CIMS”) Department and/or Director of Development Services Department.

“Thoroughfare streets” means CITY streets that are on the CITY’s Major Thoroughfare Plan and are suitable for establishing points of ingress/egress to the proposed location of the Texas A&M campus and Verano at City South site.

“Project” means the engineering and design of thoroughfare streets in accordance with EXHIBIT B and this AGREEMENT on the property known as the future Texas A&M SA Campus/Verano at City South and as further described in EXHIBIT B.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this AGREEMENT, the term of this AGREEMENT shall commence on December 6, 2007 and terminate on the completion of the Project but not later than December 31, 2011.

2.2 CITY shall fund this AGREEMENT through proceeds issued from certain Certificates of Obligation. This AGREEMENT is subject to and contingent upon such funding or adequated appropriation for the Project.

III. SCOPE OF SERVICES

3.1 CONTRACTOR shall cause to be undertaken an engineering Project, as more fully described in this AGREEMENT and EXHIBIT B, attached and made a part of this AGREEMENT, on the future Texas A&M SA Campus/Verano at City South site suitable for the purpose of producing engineering and design documents in accordance with the City of San Antonio Uniform Development Code and the CITY’s design guidelines for the construction of Thoroughfare streets to the proposed location of the Texas A&M SA campus and Verano at City South site in the approximate location shown on Exhibit B.

3.2 CONTRACTOR shall, in accordance with Chapter 2254 of the Texas Government Code, contract for engineering and design services and shall ensure that such services are provided in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

3.4 All design work performed under this AGREEMENT shall be by a registered professional engineer, surveyor or geological firm licensed to practice in the State of Texas and who shall be available to CITY at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings, pre-bid meetings, and pre-construction meetings.

3.5 CONTRACTOR shall cause to be rendered all services necessary for the Project, including the completion of plans and specifications that are suitable for use in the construction of the Thoroughfare streets. Contractor shall cause the DESIGN ENGINEER to (a) provide all required and customary engineering analysis (including surveys and geotechnical), construction drawings and plans and specifications as needed for the design and engineering of the thoroughfare, (b) prepare and provide a Statement of Probable Construction Costs of the thoroughfare based on units costs, and (c) submit and obtain all required approvals of government entities necessary for the approval of the plans and specifications for the thoroughfare, with a final deliverable consisting of construction plans and specifications stamped by the appropriate engineers and approved by the City all of which is further described in the City of San Antonio Uniform Development Code and the CITY's design guidelines. The CONTRACTOR is permitted to hire a professional engineer, separate from the DESIGN ENGINEER, to oversee and review all aspects of the design.

3.6 The CONTRACTOR and DESIGN ENGINEER will advise and consult with the CITY throughout the progress of the Project.

3.7 The Project shall be performed to the satisfaction of the CITY. The determination made by CITY shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by CONTRACTOR and/or DESIGN ENGINEER, which is not satisfactory to CITY. City shall have the right to terminate this AGREEMENT, in accordance with Article V. The CITY shall have the right to terminate this AGREEMENT in whole or in part, should CONTRACTOR's and/or DESIGN ENGINEER's work not be satisfactory to Director; however, City shall have no obligation to terminate and may require reimbursement of up to one hundred percent (100%) of reimbursed funds for any unsatisfactory work, as stated herein, notwithstanding CITY's election to terminate or not to terminate.

3.8 Acceptance of any work performed under this AGREEMENT by CITY shall not constitute nor be deemed a release of the responsibility and liability of CONTRACTOR and/or DESIGN ENGINEER, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, working drawings, specifications or other documents and work prepared by CONTRACTOR and/or DESIGN ENGINEER, their employees, subcontractors, and agents.

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of CONTRACTOR's and/or DESIGN ENGINEER's performance in a satisfactory and efficient manner, as determined solely by Director, of all engineering and design

services and activities set forth in this AGREEMENT, under this AGREEMENT City agrees to reimburse CONTRACTOR an amount not to exceed FIVE HUNDRED THOUSAND DOLLARS AND 0/100 CENTS (\$500,000.00) as total compensation for engineering and design work performed in association with the completion of the Project, excluding interest, fees or other amounts not directly attributable to engineering or design costs.

4.2 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR and/or DESIGN ENGINEER nor be payable by City under this AGREEMENT. The parties hereby agree that all compensable expenses of CONTRACTOR under this AGREEMENT have been provided for in the total payment to CONTRACTOR as specified in section 4.1 above and CONTRACTOR shall be responsible for any overages or amounts necessary to fully complete the Project to the satisfaction of CITY. Total payments to CONTRACTOR cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance.

4.3 Final acceptance of work products and services require written approval by CITY. The approval official shall be the Director. Payment will be made to CONTRACTOR following written approval of submitted invoices for the work, products, and services by Director. City shall not be obligated or liable under this AGREEMENT to any party, other than CONTRACTOR, for the payment of any monies or the provision of any goods or services.

4.4 The CITY agrees to provide CONTRACTOR FIVE HUNDRED THOUSAND DOLLARS AND 0/100 CENTS (\$500,000.00) towards the completion of the Project in accordance with the terms and conditions of this AGREEMENT. Notwithstanding the above, it is contemplated that the CITY will fund in the future the construction of the Thoroughfare streets in an amount not to exceed \$14,500,00.00. To the extent that the compensable expenses of the CONTRACTOR to complete this Project exceed \$500,000.00 and the cost of constructing the thoroughfare streets is less than \$14,500,000.00, the CITY agrees to use any remaining funds, if any, that were to be used to pay for construction of the Thoroughfare streets to reimburse CONTRACTOR for the compensable expenses of the CONTRACTOR to complete this Project that exceeded \$500,000.00.

4.5 Internet-based Project Management Systems. CITY will administer its design and construction management through an Internet-Based Management System. In such case, the CONTRACTOR shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, amendment, change orders and other administrative activities. CITY shall administer the software, shall provide training to applicable Project team members, and shall make the software accessible via internet to all applicable Project team members.

4.5.1 The DESIGN ENGINEER shall submit a cost loaded project schedule in Primavera Project Manager 5.x or Primavera Contractor 4.1 or above. This schedule will include the activities, both internal and external to the DESIGN ENGINEER that must be completed to accomplish the Project. The initial schedule ("baseline") will be submitted at the beginning of the Project with schedule updates submitted on the 10th day of every month until completion. The baseline schedule and changes to the schedule will be

approved by the CITY. The DESIGN ENGINEER must furnish scheduling software for DESIGN ENGINEER use.

4.6 Invoices for payment shall be accompanied by a written report stating what has been accomplished to date and the most current percentage of completion of the total Project that has been performed.

4.7 CONTRACTOR understands that the funds provided it pursuant to this AGREEMENT are funds which have been made available by Certificates of Obligation and CONTRACTOR will, therefore, comply with all laws, regulations, policies and procedures applicable to these funds by CITY and State.

4.8 CONTRACTOR expressly agrees and understands that this is a cost reimbursement AGREEMENT and that CITY's liability hereunder is limited to making reimbursements for allowable expenditures made by CONTRACTOR.

4.9 In no event shall CITY be liable for any expense of CONTRACTOR not eligible or allowable for reimbursement under the terms or conditions of this AGREEMENT.

4.10 Reimbursement of eligible expenses, as determined solely by CITY, shall be made monthly or bi-weekly, as determined by CITY and/or according to standard procedures of CITY, as requested upon receipt of billing from CONTRACTOR.

4.11 Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, CONTRACTOR will immediately refund or repay such amount to CITY.

4.12 CONTRACTOR has indicated that the expected cost of the design work contemplated under this AGREEMENT is one million dollars (\$1,000,000.00). In addition, the east/west Thoroughfare street is not anticipated to begin construction until the year 2011. As a result of the anticipated unfunded costs and delays in the design of the east/west Thoroughfare street and the anticipated fourteen million five hundred thousand dollar (\$14,500,000.00) contract to construct the Thoroughfare streets, CITY agrees that the north/south Thoroughfare street shall be designed first and that the compensation provisions below will be applied to the north/south Thoroughfare streets only.

4.13 METHOD OF PAYMENT. CONTRACTOR may submit invoices for partial payment prior to submittal of review documents as outlined below. CONTRACTOR must submit a written progress report detailing work performed for the billing period reflected in the invoice. A partial payment made must be in proportion to the work performed as reflected in the report and approved by Director. Partial payments shall be payable no later than thirty (30) days following acceptance by Director. Partial payments shall not exceed 70% of each phase prior to acceptance of that phase by CITY. CITY shall have no more than forty-five (45) days from the date of submittal within which to review and approve or reject said phase. If no action has been taken by Director at the expiration of the forty-five (45) day review period, said phase shall be deemed approved. If any phases are authorized to be omitted then the percentage allocated will

be applied to the next appropriate phase. Payments shall be made to the CONTRACTOR in accordance with the following:

- 4.13.1 Schematic Design Phase – 33.3% of the total amount due the DESIGN CONSULTANT for the north/south Thoroughfare street under the Schematic Design Phase shall be payable after approval and acceptance of this Phase by the CITY.
- 4.13.2 Design Development Phase – 33.3% of the total amount due the DESIGN CONSULTANT for the north/south Thoroughfare street under the Design Development Phase shall be payable after approval and acceptance of this Phase by the CITY.
- 4.13.3 Construction and Bid Documents Phase – 33.3% and any remaining amounts of the total amount due the DESIGN CONSULTANT for the north/south Thoroughfare street under the Construction and Documents Bid Phase shall be payable after the bid opening provided the low qualified bid is in conformance with Section II of the Agreement.

V. TERMINATION

5.1 Right of Either Party to Terminate for Default

5.1.1 The Party not in breach of this AGREEMENT must issue a written notice of breach (citing this paragraph) to the other Party declaring the other Party to be in breach and stating the reason(s) they are in breach. Upon receipt of such written notice of breach the Party in receipt of the notice shall have twenty (20) days to cure the breach.

5.1.2 This AGREEMENT may be terminated for default by either Party for substantial failure by the other Party to perform (through no fault of the terminating Party) in accordance with the terms of this AGREEMENT for a failure to cure after notice of breach.

5.1.3 The Party not in default must issue a signed, written notice of termination (citing this paragraph) to the other Party declaring the other party to be in default and stating the reason(s) why they are in default. Upon receipt of such written notice of default, the Party in receipt shall have a period of ten (10) days to cure a default for any failure to perform under this AGREEMENT. Upon the completion of such ten (10)-day period commencing upon receipt of notice of termination for default, if such party has not cured any default for failure to perform, such termination shall become effective without further written notice.

5.2 Right of CITY to Terminate

5.2.1 The CITY reserves the right to terminate this AGREEMENT for reasons other than substantial failure by CONTRACTOR to perform by issuing a signed, written notice of termination (citing this paragraph) which shall take effect on the twentieth (20th) day following receipt of said notice or upon the scheduled completion date of the performance phase in which CONTRACTOR is then currently working, whichever effective termination date occurs first.

5.3 Procedures following Receipt of Notice of Termination

5.3.1 Upon receipt of a notice of termination and prior to the effective date of termination, unless the notice otherwise directs or CONTRACTOR immediately takes action to cure a failure to perform under the cure period set out hereinabove, CONTRACTOR shall immediately begin the phase-out and the discontinuance of all services in connection with the performance of this AGREEMENT and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this AGREEMENT. Within thirty (30) days after receipt of such notice of termination (unless CONTRACTOR has successfully cured a failure to perform) CONTRACTOR shall submit a statement showing in detail the services performed under this AGREEMENT prior to the effective date of termination. The CITY shall have the option to grant an extension to the time period for submittal of such statement.

5.3.2 Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs and plans prepared under this AGREEMENT prior to the effective date of termination shall be delivered to the CITY, in the form requested by the CITY, as a pre-condition to final payment. These documents shall be subject to the restrictions and conditions set forth in Article IX.

5.3.3 Upon the above conditions being met, the CONTRACTOR shall promptly reimburse CITY that proportion of the prescribed fee which the services were not actually performed under this AGREEMENT bear to the total services called for under this AGREEMENT.

5.3.4 The CITY, as a public entity, has a duty to document the expenditure of public funds. CONTRACTOR acknowledges this duty on the part of the CITY. To this end, CONTRACTOR understands that failure of the CONTRACTOR to comply with the submittal of the statement and documents as required above shall constitute a waiver by CONTRACTOR of any and all rights or claims to payment for services performed under this AGREEMENT by the CONTRACTOR.

5.3.5 Failure of CONTRACTOR to comply with the submittal of the statement and documents as required above shall constitute a waiver by CONTRACTOR of any and all

rights or claims to collect monies that CONTRACTOR may otherwise be entitled to for services performed under this AGREEMENT.

VI. FISCAL MANAGEMENT

6.1 In consideration of services provided, CITY will reimburse CONTRACTOR for expenses incurred pursuant hereto. It is specifically agreed that the reimbursement hereunder shall not exceed the amount of FIVE HUNDRED THOUSAND DOLLARS and no cents (\$500,000.00).

6.2 CONTRACTOR shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds which may be otherwise due as damages.

6.3 Audit Conditions and Requirements:

6.3.1 Following 30 days after a written request by City, CONTRACTOR shall submit a written report stating what has been accomplished to date and the most current percentage of completion of the total contract that has been performed.

6.3.2 It is imperative any auditor performing an audit of CONTRACTOR read the entire contract, including all attachments, between the CITY and CONTRACTOR, since the budget and financial compliance of the contract is only a portion of the total contractual obligation.

6.3.3 All CITY-funded projects and programs, including this PROJECT, are subject to periodic audits at any reasonable hour of the day by CITY Internal Auditors or other City Staff as designated by the Director. This includes the auditing of both the CONTRACTOR, DESIGN ENGINEER and subCONTRACTORS related to this project.

6.3.4 CONTRACTOR shall furnish CITY with audited financial statements prepared by an independent auditor (CPA), within one hundred and twenty (120) days of the close of the CONTRACTOR's fiscal year or within thirty days of the completion of any audit performed. In addition to the audited financial statements, a copy of any internal controls review, audit exceptions, and management letter should be submitted. The audited financial statements must include a schedule of receipts and disbursements by budgeting cost category and a certification from the CONTRACTOR stating whether or not the terms and conditions of the contract were met. If the CITY determines, in its sole discretion, that CONTRACTOR is in violation of the above requirements, the CITY shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the CONTRACTOR pay for such audit. In addition, when the CONTRACTOR has expended federal or state funds that exceed the single audit threshold amount in effect during the period of this contract, the audit shall be conducted in accordance with the Single Audit Act Amendments of 1996 and the U.S. Office of Management and Budget Circular A-133 (June 1997 revision), and/or the State of Texas Single Audit Circular.

6.4 CONTRACTOR understands and agrees to abide by and adhere to applicable federal, state and CITY laws.

6.5 CONTRACTOR shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action and to prevent frauds and program abuse.

6.6 CITY's Capital Improvement Management Services Department ("CIMS") is assigned monitoring responsibility to evaluate the accountability of the PROJECT and to insure project objectives are met. CONTRACTOR will provide CITY's staff, including internal and external auditors and other persons as designated by CITY, such as independent public accountants and representatives of the federal or state government, access during regular business hours, as deemed necessary by CITY for the purposes of auditing, monitoring, evaluating, coordinating, investigating and making excerpts and/or copies of any and all of CONTRACTOR's books, records and files on the PROJECT.

6.6.1 All such records shall continue to be available for inspection and audit for a period of three (3) years after the termination date hereof. However, if during the course of this three-year period, an audit or investigation of the CONTRACTOR commences, then CONTRACTOR is required to maintain said records until such time as the audit or investigation is concluded.

6.6.2. CONTRACTOR agrees that during the term of this AGREEMENT, any duly authorized representative of CITY shall have the right to conduct on-site inspections at reasonable times and to interview personnel and clients for the purposes of evaluating and monitoring the PROJECT for compliance with this AGREEMENT.

6.6.3 The submission of falsified information or the failure to timely submit all information by CONTRACTOR as requested by CITY is grounds for termination of this AGREEMENT.

6.6.4 CONTRACTOR agrees to provide CITY with the names and license registration of any and all contracting agency employees regulated by State law whose activities contribute towards, facilitate or coordinate the performance of this AGREEMENT.

6.7 CONTRACTOR further represents and warrants that:

6.7.1 All information, data or reports heretofore or hereafter provided to CITY is, shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY;

6.7.2 Any supporting financial statements heretofore or hereafter provided to CITY are, shall be and shall remain complete, accurate and fairly reflective of the financial condition of CONTRACTOR on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there

has been no material change, adverse or otherwise, in the financial condition of CONTRACTOR;

6.7.3 No litigation or proceedings are presently pending or threatened against CONTRACTOR or if pending have been disclosed by CONTRACTOR in writing to CITY;

6.7.4 None of the provisions contained herein contravene or in any way conflict with the authority under which CONTRACTOR is doing business or with the provisions of any existing indenture or AGREEMENT of CONTRACTOR;

6.7.5 None of the assets of CONTRACTOR are subject to any lien or encumbrance of any character, except as shown in the financial statements provided by CONTRACTOR to CITY.

VII. INSURANCE

7.1 CONTRACTOR agrees that all contracts between CONTRACTOR and DESIGN ENGINEER(S) to carry out the intent and purpose of this AGREEMENT shall include the provisions of Articles VII, IX and X AND PARAGRAPHS 8.3, 8.4, 8.5, AND 8.6 of Article VIII.

7.2 Prior to the commencement of any work under this AGREEMENT, DESIGN ENGINEER(s) shall furnish an original completed Certificate(s) of Insurance and all required endorsements to the City's CIMS Department and City Clerk's Office, and which shall be clearly labeled "VERANO Project" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to City's CIMS Department and the Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

7.3 The City reserves the right to review the insurance requirements of this Article during the effective period of this AGREEMENT and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this AGREEMENT, but in no instance will City allow modification whereupon City may incur increased risk.

7.4 DESIGN ENGINEER's financial integrity is of interest to the City; therefore, subject to DESIGN ENGINEER's right to maintain reasonable deductibles in such amounts as are approved by the City, DESIGN ENGINEER shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at DESIGN ENGINEER's sole expense, insurance coverage written on an occurrence basis, by companies authorized and

admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

INSURANCE REQUIREMENTS:	
1. Workers' Compensation ** Employers' Liability **	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises operations b. Independent contractors* c. Products/completed operations d. Personal Injury e. Contractual Liability f. Explosion, collapse, underground* g. Broad form property damage, to include fire legal liability*	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$50,000
3. Business Automobile Liability* a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
4. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums, which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
* If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

7.5 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). DESIGN ENGINEER'(s) shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Section 10.6 herein within 10 days of the requested change. DESIGN ENGINEER shall pay any costs incurred resulting from said changes.

7.6 DESIGN ENGINEER agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

7.7 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, DESIGN ENGINEER shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if DESIGN ENGINEER knows of said change in advance, or ten (10) days notice after the change, if the DESIGN ENGINEER did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

City of San Antonio
CIMS Department
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

7.8 If DESIGN ENGINEER fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of DESIGN ENGINEER to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon DESIGN ENGINEER's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order DESIGN ENGINEER to stop work hereunder, and/or withhold any payment(s) which become due to DESIGN ENGINEER hereunder until DESIGN ENGINEER demonstrates compliance with the requirements hereof.

7.9 Nothing herein contained shall be construed as limiting in any way the extent to which DESIGN ENGINEER may be held responsible for payments of damages to persons or property resulting from DESIGN ENGINEER's or its subDESIGN ENGINEERS' performance of the work covered under this AGREEMENT.

7.10 It is agreed that DESIGN ENGINEER's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this AGREEMENT.

VIII. INDEMNIFICATION

8.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this AGREEMENT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, or employee of CONTRACTOR or SUBCONTRACTOR of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

8.3 The DESIGN ENGINEER, whose work product is the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY DESIGN CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF DESIGN CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT DESIGN ENGINEER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE

LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

8.4 The DESIGN ENGINEER shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or the DESIGN ENGINEER, known to the Engineer, related to or arising out of the DESIGN ENGINEER's activities under this Agreement.

8.5 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

8.6 Acceptance of the final plans by the CITY shall not constitute nor be deemed a release of the responsibility and liability of the DESIGN ENGINEER, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by the CITY for any defect in the designs, working drawings, specifications or other documents and work prepared by said DESIGN ENGINEER, its employees, subcontractors, and agents.

8.7 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONTRACTOR or DESIGN ENGINEER, as applicable, in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONTRACTOR or DESIGN ENGINEER, as applicable, shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this AGREEMENT. If CONTRACTOR or DESIGN ENGINEER, as applicable, fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR or DESIGN ENGINEER, as applicable, shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

8.8 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subCONTRACTOR under worker's compensation or other employee benefit acts.

IX. OWNERSHIP OF DOCUMENTS

9.1 All documents, including the original drawings, estimates, specifications, and all other documents and data previously owned by CONTRACTOR and/or DESIGN ENGINEER, will remain the property of CONTRACTOR and/or DESIGN ENGINEER as instruments of service. However, it is to be understood that the CITY shall have free access to all such information relating to the Project with the right to make and retain copies of drawings, estimates, specifications and all other documents and data. Any reuse without specific written verification

or adaptation by CONTRACTOR and/or DESIGN ENGINEER will be at CITY's sole risk and without liability or legal exposure to CONTRACTOR and/or DESIGN ENGINEER.

9.2 All completed documents submitted for final approval or issuance of a permit shall bear the seal with signature and date adjacent thereto of a registered professional Architect/Engineer.

9.3 CONTRACTOR acknowledges and agrees that the CITY shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this AGREEMENT and shall be used as the CITY desires and documents, including the original drawings, estimates, specifications and all other documents and data shall be delivered to the CITY at no additional cost to the CITY upon request or termination or completion of this AGREEMENT without restriction on future use.

9.4 CONTRACTOR agrees and covenants to protect any and all proprietary rights of the CITY in any materials provided to CONTRACTOR. Such protection of proprietary rights by CONTRACTOR shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to the CITY. Additionally, any materials provided to CONTRACTOR by the CITY shall not be released to any third party without the consent of the CITY and shall be returned intact to the CITY upon termination or completion of this AGREEMENT or if instructed to do so by the Director.

9.5 CONTRACTOR hereby assigns all statutory and common law copyrights to any copyrightable work that in part or in whole was produced from this AGREEMENT to the CITY, including all equitable rights. No reports, maps, documents or other copyrightable works produced in whole or in part by this AGREEMENT shall be subject of an application for copyright by CONTRACTOR. All reports, maps, project logos, drawings or other copyrightable work produced under this AGREEMENT shall become the property of the CITY (excluding any instrument of services, unless otherwise specified herein). CONTRACTOR shall, at its expense, defend all suits or proceedings instituted against the CITY and pay any award of damages or loss resulting from an injunction, against the CITY, insofar as the same are based on any claim that materials or work provided under this AGREEMENT constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.

9.6 CONTRACTOR may make copies of any and all documents and items for its files. CONTRACTOR shall have no liability for changes made to or use of the drawings, specifications and other documents by other architects/engineers, or other persons, subsequent to the completion of the Project. The CITY shall require that any such change or other use shall be appropriately marked to reflect what was changed or modified.

9.7 Copies of documents that may be relied upon by the CITY are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by DESIGN ENGINEER. Files in editable electronic media format of text, data, graphics, or other types, (such as DWG) that are furnished by CONTRACTOR and/or DESIGN ENGINEER to the CITY are only for convenience of the CITY. Any conclusion or information obtained or derived from such editable electronic files will be at the user's sole risk.

X. RECORDS RETENTION

10.1 CONTRACTOR and/or DESIGN ENGINEER and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the AGREEMENT period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

10.2 CONTRACTOR and/or DESIGN ENGINEER shall retain any and all documents produced as a result of services provided hereunder for a period of three (3) years (hereafter referred to as "retention period") from the date of termination of the AGREEMENT. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONTRACTOR and/or DESIGN ENGINEER shall retain the records until the resolution of such litigation or other such questions. CONTRACTOR and/or DESIGN ENGINEER acknowledge and agree that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require CONTRACTOR and/or DESIGN ENGINEER to return said documents to City prior to or at the conclusion of said retention.

10.3 CONTRACTOR and/or DESIGN ENGINEER shall notify City, immediately, in the event CONTRACTOR and/or DESIGN ENGINEER receives any request for information from a third party which pertain to the documentation and records referenced herein. CONTRACTOR and/or DESIGN ENGINEER understand and agree that City will process and handle all such requests.

XI. NOTICE

Except where the terms of this AGREEMENT expressly provide otherwise, any election, notice or communication required or permitted to be given under this AGREEMENT shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Attn: Mike Frisbie
CIMS Department
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for CONTRACTOR, to:

VTLM TEXAS, L.P.
Attn: *Ralph J. Lampman*
3157 N. Rainbow Blvd.
STE. 305
Las Vegas, NV 89108

XII. SUBCONTRACTING AND ASSIGNMENT

12.1 CONTRACTOR shall contract with qualified personnel as may be necessary to complete the work to be performed under this AGREEMENT. Persons retained to perform work pursuant to this AGREEMENT shall be the employees or subcontractors of CONTRACTOR, not CITY.

12.2 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by subcontractors with this AGREEMENT shall be the responsibility of CONTRACTOR. City shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, for performance of services or payment of fees. Any references in this AGREEMENT to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

12.3 Except as otherwise stated herein, CONTRACTOR may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor CONTRACTOR, assignee, transferee or subcontractor.

12.4 Any attempt to transfer, pledge or otherwise assign this AGREEMENT without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONTRACTOR assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this AGREEMENT, City may, at its option, cancel this AGREEMENT and all rights, titles and interest of CONTRACTOR shall thereupon cease and terminate, in accordance with Article V. Termination, notwithstanding any other remedy available to City under this AGREEMENT. The violation of this provision by CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this AGREEMENT, nor shall it relieve or release CONTRACTOR from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

CONTRACTOR covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that CONTRACTOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents,

employees, CONTRACTORS, subcontractors and contractors; that the doctrine of respondent superior shall not apply as between City and CONTRACTOR, its officers, agents, employees, CONTRACTORS, subcontractors and CONTRACTORS, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and CONTRACTOR. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CONTRACTOR under this AGREEMENT and that the CONTRACTOR has no authority to bind the City.

XIV. SBEDA

14.1 CONTRACTOR hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African American ("AABE"), and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. This policy and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

14.2 CONTRACTOR shall submit and implement a plan (hereafter "SBEDA plan") prior to any construction activities associated with this Project. The SBEDA plan shall meet the percentages for participation of Small, African-American, Minority and Women-owned Business participation in accordance with CITY's SBEDA ordinance.

14.3 Notwithstanding the foregoing paragraph, CONTRACTOR agrees to make every effort to utilize businesses for subcontracting and supplying during the duration of this AGREEMENT, as may be approved pursuant to this AGREEMENT, which will meet the percentages listed in CITY's SBEDA ordinance.

XV. CONFLICT OF INTEREST

15.1 CONTRACTOR acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, CONTRACTOR warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. CONTRACTOR further warrants and certifies that it has

tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. CHANGES AND AMENDMENTS

16.1 Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONTRACTOR.

16.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

16.3 CONTRACTOR further agrees to notify CITY of any changes in personnel or governing board composition, such notice to be provided within five (5) working days of the change.

XVII. SEVERABILITY

If any clause or provision of this AGREEMENT is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this AGREEMENT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this AGREEMENT that is invalid, illegal, or unenforceable, there be added as a part of the AGREEMENT a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS/WARRANTY

18.1 CONTRACTOR warrants and certifies that CONTRACTOR, its DESIGN ENGINEER or any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

18.2 CONTRACTOR WARRANTS THAT THE SERVICES REQUIRED UNDER THIS AGREEMENT WILL BE PERFORMED WITH THE SAME DEGREE OF PROFESSIONAL SKILL AND CARE THAT ARE TYPICALLY EXERCISED BY SIMILAR CONSULTING PROFESSIONALS PERFORMING SIMILAR SERVICES IN BEXAR COUNTY, TEXAS. CONTRACTOR FURTHER WARRANTS THAT IT HAS NOT EMPLOYED OR RETAINED ANY COMPANY OR PERSON OTHER THAN A BONA FIDE EMPLOYEE WORKING SOLELY FOR CONTRACTOR TO SOLICIT OR SECURE THIS AGREEMENT, AND THAT IT HAS NOT, FOR THE PURPOSE OF SOLICITING OR SECURING THIS AGREEMENT,

PAID OR AGREED TO PAY ANY COMPANY OR PERSON, COMMISSION, PERCENTAGE, BROKERAGE FEE, GIFT, OR ANY OTHER CONSIDERATION, CONTINGENT UPON OR RESULTING FROM THE AWARD OR MAKING OF THIS AGREEMENT. FOR BREACH OF THIS WARRANTY, THE CITY SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT UNDER THE PROVISIONS OF ARTICLE V ABOVE.

XIX. COMPLIANCE

CONTRACTOR shall provide and perform all services required under this AGREEMENT in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this AGREEMENT, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI, Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this AGREEMENT shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXII. LEGAL AUTHORITY

22.1 CONTRACTOR represents, warrants, assures and guarantees that it possesses the legal authority to enter into this AGREEMENT and to perform the responsibilities herein required.

22.2 The executor of this AGREEMENT for CONTRACTOR represents, warrants, assures and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of

CONTRACTOR and to bind CONTRACTOR to all terms, performances and provisions herein contained.

22.3 CONTRACTOR represents that it has the legal authority to accept payments hereunder, and has taken all necessary measures to authorize such execution of contract and acceptance of payments pursuant to the terms and conditions hereof; and

XXIII. PARTIES BOUND

This AGREEMENT shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

The captions contained in this AGREEMENT are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this AGREEMENT.

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the AGREEMENT, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

EXHIBIT A: MEMORANDUM OF UNDERSTANDING

EXHIBIT B: THOROUGHFARE STREET DESCRIPTION

EXHIBIT C: CITY ORDINANCE

XXVI. ENTIRE AGREEMENT

This AGREEMENT, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI, Amendments.

Signatures appear on next page.

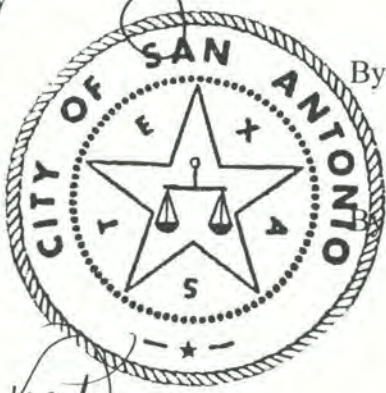
EXECUTED in multiple counterparts, each of which shall be deemed an original as of the 28th day of _____, 2007.

CITY OF SAN ANTONIO

VTLM TEXAS, L.P., a Texas limited partnership

By: [Signature]
Sheryl S. Sculley
City Manager

By: TEXAS MANAGER, LLC.
a Nevada limited liability company, its
General Partner



By: TRIPLE L MANAGEMENT, LLC,
a Nevada limited liability company,
Manager

Attest:

By: THE FIDELITY TRUST, DATED 6/26/1992,
Manager

[Signature]
Lucia M. Vacet
City Clerk

[Signature]
Name: Ralph J. Lampman
Title: Trustee

APPROVED AS TO FORM:

[Signature]
City Attorney

EXHIBIT A: MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "**Memorandum**") is entered into as of the ___ day of September, 2007 (the "**Effective Date**") by and among THE TEXAS A&M UNIVERSITY SYSTEM, an agency of the State of Texas ("**TAMUS**"), the CITY OF SAN ANTONIO, TEXAS, a Texas political subdivision and home rule municipality (the "**City**"), CPS ENERGY, a public natural gas and electric utility owned by the City ("**CPS**"), and VERANO LAND GROUP, LP, a Texas limited partnership, or its assigns ("**Verano**"). TAMUS, the City, CPS and Verano are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, Verano has acquired over 2,600 acres of real property located in the City of San Antonio, Bexar County, Texas, as depicted on Exhibit A (the "**Land**");

WHEREAS, Verano and TAMUS have entered into that certain Donation Agreement dated July 13, 2007 (the "**Donation Agreement**") wherein Verano agreed to donate approximately 694 acres of the Land to TAMUS (the "**TAMUS Site**"), for the establishment and development of a campus for Texas A&M University-San Antonio ("**TAMU-SA**") and the establishment and development of a technology center for irrigation (the "**Irrigation Technology Center**");

WHEREAS, the remainder of the Land will be used by Verano for the development of a mixed-use integrated university community urban village (the "**Verano Site**");

WHEREAS, the TAMUS Site shall consist of three (3) parcels: (i) an entrance way of approximately 10 acres immediately adjacent to the access road on south Interstate Highway 410 (the "**Gateway Property**"), (ii) a main campus of approximately 580 acres (the "**Main Campus**"), and (iii) approximately 104 acres intended to be used for the Irrigation Technology Center (the "**Irrigation Center Property**"), as depicted along with the Verano Site on Exhibit B;

WHEREAS, pursuant to the Donation Agreement (with conveyance dates as defined therein and referred to herein), Verano has agreed to donate a portion of the Main Campus consisting of approximately fifty (50) acres as depicted on Exhibit C (the "**Initial Site**") on the Initial Conveyance Date and the remainder of the Main Campus, the Gateway Property and the Irrigation Center Property (collectively, the "**Final Site**") on the Final Conveyance Date;

WHEREAS, TAMU-SA and the Irrigation Technology Center will provide a four-year degree granting university and center for irrigation research (the "**Project**") on the south side of the City, presenting educational and research opportunities for citizens of the City, Bexar County and south-central Texas; and

WHEREAS, pursuant to Section 55.1751 of the Texas Education Code, Forty Million Dollars (\$40,000,000) of bonds pledged on tuition revenue ("**Tuition Revenue Bonds**") may be

issued for construction of educational facilities on TAMU-SA, provided that the Texas Higher Education Coordinating Board certifies that TAMU-SA has reached an enrollment equivalent of 1,500 full-time students for one semester by January 1, 2010 (the "**Financing Event**").

NOW, THEREFORE, for the purpose of expressing and memorializing certain terms and the mutual intent of the Parties relating to the development of TAMU-SA and the Irrigation Technology Center in San Antonio, TAMUS, the City, CPS, and Verano desire to set forth certain understandings as follows:

1. **Definitive Agreements.** The Parties intend to pursue the negotiation of possible definitive agreements for the Project and the development of the Verano Site (collectively, the "**Definitive Agreements**"). It is the intent of the Parties to execute any Definitive Agreements that may be ultimately agreed upon on or prior to the Final Conveyance Date. Acknowledging the non-binding nature of this Memorandum, as further provided in Paragraph 4, the following are general parameters and provisions which Verano, TAMUS, CPS and the City have previously discussed and which form the basis for further negotiation:

- (a) TAMUS will plan for development of the Main Campus, Gateway Property and Irrigation Center Property in phases and will take into consideration Verano's desire to integrate the northerly portion of the Main Campus with Verano's plan for the adjacent property; provided, however, TAMUS' final master plan for the Main Campus, Gateway Property, and Irrigation Center Property shall not require approval by any other party but shall be prepared in the sole discretion of TAMUS. TAMUS intends to complete a master plan not later than January 1, 2010;
- (b) In order for the Project to commence as soon as possible, to proceed in an orderly and expeditious manner and to meet applicable timetables, the City would designate a License and Permit Coordinator to act on a part-time basis for a period of five (5) years from and after the Effective Date to coordinate with and advise Verano and TAMUS with respect to the preparation and obtaining of all City permits and licenses that may from time to time be required by either of them in connection with any facet of the Project;
- (c) The Main Campus and Irrigation Center Property will be provided with access to and from Interstate Highway 410 and Zarzamora Road by the design and construction of: (i) a multi-way boulevard (including all ancillary utilities) of at least four (4) lanes from Interstate Highway 410 to and through the Main Campus to Mauermann Road ("**University Boulevard**"); and (ii) a multi-way arterial road (including all ancillary utilities) of at least four (4) lanes ("**East/West Arterial**") along the northern boundary of the Main Campus, providing access to Zarzamora Road (collectively, the "**Major Roadways**"), the Major Roadways to be constructed in accordance with a design acceptable to Verano, TAMUS and the City on right-of-way dedicated by Verano;

- (d) The City would make up to Fifteen Million Dollars (\$15,000,000) (the "City Contribution") available to support the cost of public infrastructure projects which would benefit TAMUS and which are necessary for the development of the TAMUS Site. Projects for which such funds could be applied and/or used would include, but not be limited to, (i) the design and construction of the Major Roadways, and (ii) utilities, including but not limited to, CPS transmission substations, wastewater outfall and lift stations and off-site storm water projects (but excluding projects related to water services from any unrelated water purveyor). As provided in Subparagraphs (e), (f) and (g) below, the City will condition availability of the City Contribution in portions;
- (e) In order to facilitate the timeline for construction of the Major Roadways, the City would make available up to Five Hundred Thousand Dollars (\$500,000) of the City Contribution starting in October 2007 to be applied towards the actual costs incurred in designing the Major Roadways;
- (f) Provided that a TIRZ (as defined herein) or similar economic incentive as discussed in Subparagraph (p) below has been established for Verano's proposed development, on or after the Final Conveyance Date and upon receipt of a written statement from TAMUS' Chancellor that TAMUS (i) anticipates the Financing Event to occur within one year, and (ii) approves of the location of that portion of University Boulevard from Interstate Highway 410 to the Main Campus (the "**Initial Boulevard**"), the City would make available up to Five Million Dollars (\$5,000,000) of the City Contribution to be applied towards the actual costs incurred in designing and constructing the Initial Boulevard so that it is complete and open to public travel no later than the anticipated construction start date for the TAMU-SA Main Campus;
- (g) Upon occurrence of the Financing Event, the City would make available the remainder of the City Contribution to be applied towards the actual costs incurred in designing and constructing the Major Roadways;
- (h) CPS will work with TAMUS and Verano to design utility infrastructure, including access easements, facilities and equipment, for the provision of natural gas and electric utility service to the three (3) parcels comprising the TAMUS Site by January 1, 2009, which utility services will be sufficient to support the needs of TAMU-SA and the Irrigation Technology Center;
- (i) Subject to a recommendation by the City Council, approval by the CPS Board of Trustees, and a commitment by TAMUS to execute a CIED Fund Grant Agreement stating the terms and conditions of the TAMUS use of the approved funds prior to their disbursement, including the commitment by TAMUS to become a long-term, full service customer of CPS Energy,

CPS Energy will make available Community Infrastructure and Economic Development funds (“CIED funds”) in an amount of up to Eight Million Dollars (\$8,000,000), the exact amount of which will be determined by the results of a cost-benefit analysis (pursuant to the CPS CIED Fund Policy) calculated from detailed electrical ramp up and final usage schedules from TAMUS regarding the cost of service to the site. The CIED Fund grant allocation will be used to assist in defraying the electric service infrastructure costs to TAMUS referred to in Subparagraph (h) above.

- (j) The rates for natural gas and electricity to TAMUS will be comparable to the best rates offered to other similar users.
- (k) Verano and TAMUS will negotiate and enter into agreements, as necessary, with the San Antonio Water System and/or BexarMet Water District to provide water and wastewater utility service to the property line of the Main Campus, Irrigation Center Property, and Gateway Property at locations acceptable to TAMUS and Verano;
- (l) The Major Roadways, water and wastewater utilities will be constructed or installed at no cost to TAMUS. Gas and electric utility extensions to the TAMUS Site will be constructed and installed in accordance with (h) and (i) above.
- (m) TAMUS will pursue funding for the Project, which will include issuance of the Tuition Revenue Bonds not later than January 1, 2010;
- (n) TAMUS will work toward a goal of achieving the following enrollment:

Date	Full-time Student Enrollment at TAMUS-SA
September 1, 2012	2,500
September 1, 2017	5,000
September 1, 2022	7,500
September 1, 2027	10,000

- (o) Verano will plan for the construction of a mixed-use development on the Verano Site in substantial accordance with a conceptual plan to be agreed upon by Verano and the City and attached to the appropriate Definitive Agreement. Verano will design its proposed development of the Verano Site in accordance with “SmartCode” based planning, or any derivative or variant thereof, as adopted into the City’s Unified Development Code and agreed to by the City; and

- (p) The City and Verano would work to identify and evaluate economic development incentives for which Verano's proposed development of the Verano Site may be eligible, including, but not limited to, the creation of a tax increment reinvestment zone ("TIRZ"), an agreement pursuant to Chapter 380 of the Texas Local Government Code, or similar incentive vehicle. Any incentive arrangement between the City and Verano would provide that no incentive funds will be released to Verano until the balance of incentive funds are greater than \$5,500,000. The first \$5,500,000 of incentive funds would be held in escrow to reimburse the City for the portions of the City Contribution advanced prior to the occurrence of the Financing Event in the event that (i) prior to the occurrence of the Financing Event, TAMUS announces it will no longer pursue TAMU-SA or (ii) the TAMUS Site reverts to Verano pursuant to the Donation Agreement. Should the Financing Event occur prior to the occurrence of either (i) or (ii) above, then all incentive funds would be available to Verano pursuant to the terms of the applicable incentive agreement and the City would not be reimbursed from incentive funds for the City Contribution. Prior to the City entering into any Definitive Agreements concerning incentives, Verano would be obligated to provide evidence to the City that Verano has the financial wherewithal to perform its obligations under such Definitive Agreements.

2. **Responsibilities of Parties.** Each Party would be responsible for conducting, at such Party's own expense, all inspections, reports, analyses, interviews and studies that such Party, or its accountants, advisors or counsel deems advisable or necessary in connection with the Project. Each Party would pay all of its own expenses incurred in connection with the transactions contemplated herein.

3. **Exchange of Information.** The Parties acknowledge that in the course of discussions concerning Definitive Agreements, they each may acquire information that is proprietary to or confidential to another Party. Any information delivered by one Party to any of the other Parties in connection with the Project and deemed to be confidential by the delivering Party shall be clearly noted on the page(s) where such confidential information is contained; however, the City, CPS and TAMUS cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, or other open records laws. Subject to, and except for, (i) disclosure under the Texas Public Information Act or other open records laws, and/or (ii) use in pursuing, providing and/or approving, any Definitive Agreement pertaining to the Project, each Party will hold any information delivered to it by another and deemed confidential by the other in confidence and not copy, reproduce, sell, assign, license, market, transfer or otherwise disclose such information to third parties or use such information for any purposes whatsoever, without the express written permission of the delivering Party. The Parties will use reasonable efforts to assist each other in identifying and preventing any unauthorized use or disclosure of any such confidential information; provided neither City, CPS nor TAMUS shall be obligated to initiate any legal proceeding to protect same.

4. *Non-Binding Effect.* This Memorandum is entered into solely for the purpose of providing a non-binding framework for negotiation of potential Definitive Agreements. This Memorandum is not, nor is it intended to be, an exhaustive or complete discussion of either the terms and conditions set forth herein or of any prospective agreements pertaining to the Project. The execution and delivery hereof by Verano, TAMUS, CPS, or the City, or any negotiations concerning this Memorandum or any possible agreements, shall not, and does not, create any contractual rights or obligations in favor of any Party vis-à-vis the others, nor shall the submission or acceptance of this Memorandum constitute any offer by any Party to enter into any transaction with the others, or any of them, or bind any Party to pursue a transaction with the others concerning the Project. No Party hereto shall have any obligations to the other Parties concerning the Project or any other matter until such time the Definitive Agreements are fully negotiated, drafted, executed and delivered by and among them.

5. *Termination of Discussions.* Any Party may, at any time prior to the execution and delivery of the Definitive Agreements, abandon discussions concerning the Project or any part thereof, without liability. If the City and/or CPS opts to terminate such discussions prior to the Initial Conveyance Date, Verano and/or TAMUS shall have the option to rescind the Donation Agreement. If the City and/or CPS opts to terminate such discussion after the Initial Conveyance Date or not enter into the Definitive Agreements by the Final Conveyance Date, then Verano and/or TAMUS shall have the option to rescind the unexecuted portion of the Donation Agreement. Notwithstanding the non-binding effect of the rest of this Memorandum, the provisions of this Paragraph 5 shall be binding upon TAMUS and Verano, their successors and assigns.

6. *Notice.* For purposes of this Memorandum, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed registered or certified mail, postage prepaid, to the addresses set forth below:

To City at: City of San Antonio
 P.O. Box 839966
 San Antonio, Texas 78283-3966
 Attn: Leticia Vacek, City Clerk

with a copy to: City of San Antonio
 P. O. Box 839966
 San Antonio, Texas 78283-3966
 Attn: JeLynne Lablanc Burley, Deputy City Manager

 City of San Antonio
 P. O. Box 839966
 San Antonio, Texas 78283-3966
 Attn: Michael D. Bernard, City Attorney

To CPS at: CPS Energy
145 Navarro
San Antonio, Texas 78205
P.O. Box 1771
San Antonio, Texas 78296-1771
Attn: General Counsel

To TAMUS at: Michael D. McKinney, MD
Chancellor
A&M System Building, Suite 2043
200 Technology Way
College Station, Texas 77845

with a copy to: Jay Kimbrough
Deputy Chancellor
A&M System Building, Suite 2079
200 Technology Way
College Station, Texas 77845

To Verano at: Ralph Lampman
Triple L Management
3157 N. Rainbow, Suite 305
Las Vegas, Nevada 89108

with a copy to: Jane H. Macon
Fulbright & Jaworski L.L.P.
300 Convent Street, Suite 2200
San Antonio, Texas 78205

7. *Counterparts.* This Memorandum may be executed in several counterparts, each of which shall be deemed an original, all of which taken together shall constitute one single Memorandum among the Parties.

8. *No Waiver.* Nothing in this Memorandum shall be construed as a waiver by any Party of any right, privilege or immunity available to it under the laws of the State of Texas.

[*Signatures of Parties on next page*]

This Memorandum is executed to effective as of the Effective Date.

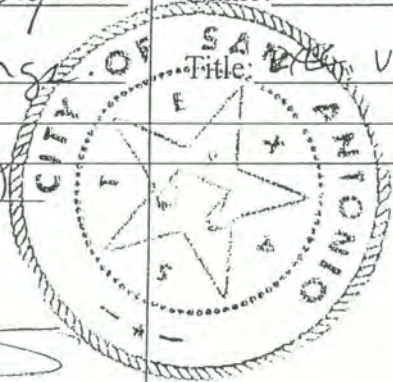
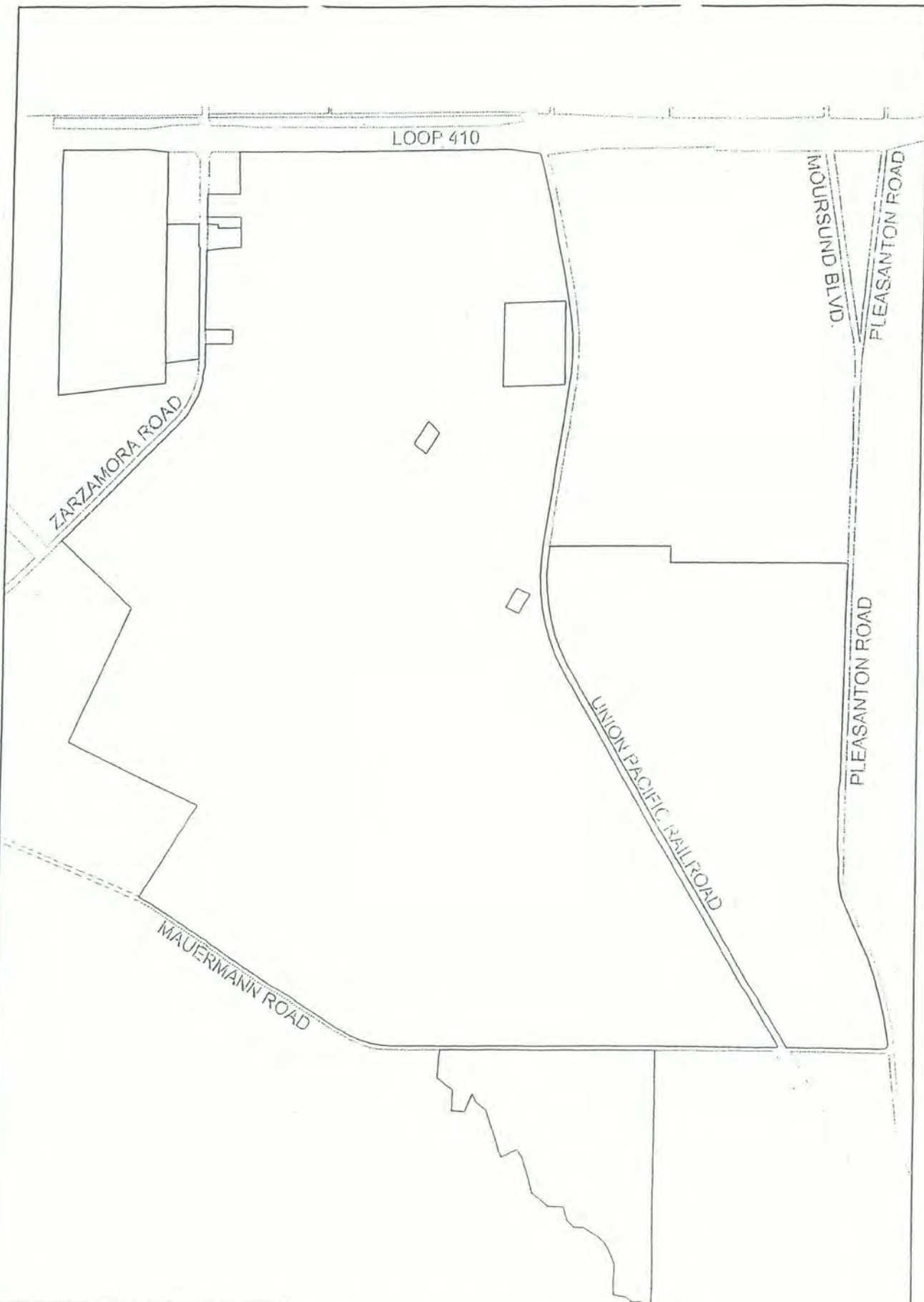
<p><u>TAMUS</u></p> <p>The Texas A&M University System, an agency of the State of Texas</p> <p>By: <u>Michael D. McKinney</u> Michael D. McKinney, M.D. Chancellor</p>	<p><u>VERANO</u></p> <p>Verano Land Group, LP a Texas limited partnership</p> <p>By: San Antonio Management, LLC, a Nevada limited liability company, its General Partner</p> <p>By: Triple L Management, LLC, a Nevada limited liability company, its Manager</p> <p>By: The Fidelity Trust, dated 6/26/1992, its Manager</p> <p>By: <u>Ralph Lampman</u> Ralph Lampman Trustee</p>
<p><u>CITY</u></p> <p>City of San Antonio</p> <p>By: <u>Brylone Murley</u> Brylone Murley Deputy City Manager</p>	<p><u>CPS</u></p> <p>CPS Energy</p> <p>By: <u>Steve Barclay</u> STEVE BARCLAY VICE PRES. STRATEGY & EXTERNAL RELATIONS</p>
<p>Attested By: <u>[Signature]</u> City Clerk</p> <p>APPROVED AS TO FORM:</p> <p>By: <u>[Signature]</u> Name: <u>MICHAEL BERNARD</u> City Attorney</p> 	

EXHIBIT A

Depiction of the Land

[*See attached*]



LOOP 410

ZARZAMORA ROAD

MOURSUND BLVD.
PLEASANTON ROAD

PLEASANTON ROAD

UNION PACIFIC RAILROAD

MAUEWMANN ROAD



Exhibit A

EXHIBIT B

Depiction of the Verano Site and TAMUS Site

[*See attached*]

Z:\162000100\dwg\1620001A&M_Campus_FINAL.dwg Mar 30, 2007 - 8:29am Defreitas, Robert

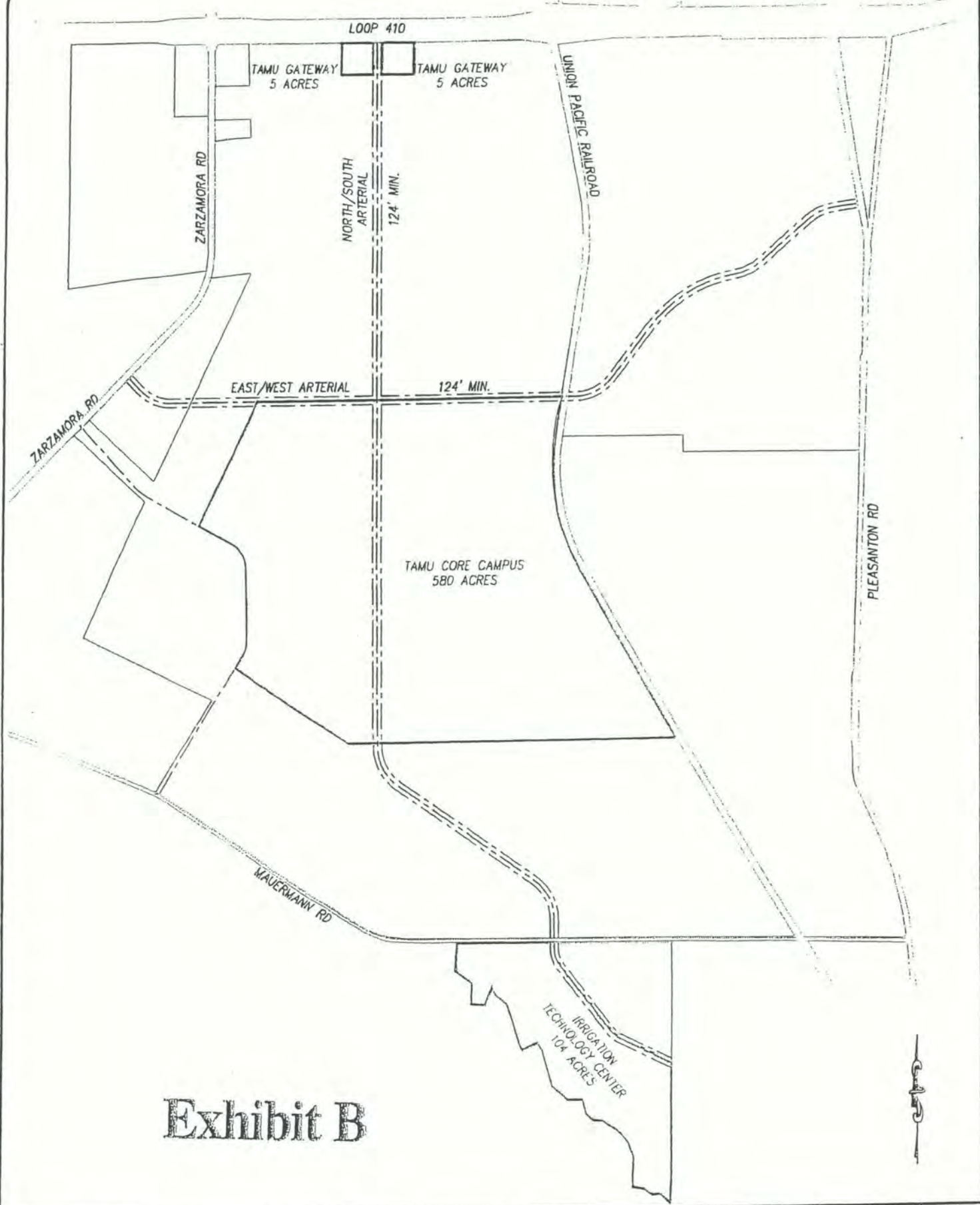


Exhibit B

FINAL BOUNDARY FOR TEXAS A&M
 UNIVERSITY - SAN ANTONIO
 VERANO

PATE ENGINEERS
 8200 IH-10 West - Suite 440
 San Antonio, Texas 78230
 OFFICE: (210) 340-8481 FAX: (210) 340-3964

JOB No.
162000100

DATE: 03-30-07	DRAWN BY: AAD
DESIGNED BY: AAD	CHECKED BY: CRU

EXHIBIT C

Depiction of the Initial Site

[*See attached*]

DEVELOPERS: PATE SURVEYORS, INC. 18505 W. LANTANA DR., SUITE 100, DALLAS, TEXAS 75244
 PREPARED FOR: [Name of Client]
 PREPARED BY: [Name of Surveyor]
 DATE: [Date]

DEVELOPERS:
 PATE SURVEYORS, INC.
 A DIVISION OF PATE ENGINEERS, INC.
 18505 W. LANTANA DR., SUITE 100
 DALLAS, TEXAS 75244
 PHONE: (214) 242-1234
 FAX: (214) 242-1235
 EMAIL: info@patesurveyors.com



Donald E. Vester
 State Surveyor
 18505 W. LANTANA DR., SUITE 100
 DALLAS, TEXAS 75244
 DEC. 20060018005
 P.E.C. 40767

Survey Family Properties, LP
 18505 W. LANTANA DR., SUITE 100
 DALLAS, TEXAS 75244
 DEC. 20060018005
 P.E.C. 40767

Survey Family Properties, LP
 18505 W. LANTANA DR., SUITE 100
 DALLAS, TEXAS 75244
 DEC. 20060018005
 P.E.C. 40767

Survey Family Properties, LP
 18505 W. LANTANA DR., SUITE 100
 DALLAS, TEXAS 75244
 DEC. 20060018005
 P.E.C. 40767

Survey Family Properties, LP
 18505 W. LANTANA DR., SUITE 100
 DALLAS, TEXAS 75244
 DEC. 20060018005
 P.E.C. 40767

NEIGHBORHOOD MAP
(NOT TO SCALE)

Exhibit C

BOVLETS: [Text] REVISIONS: [Text]	PATE SURVEYORS A DIVISION OF PATE ENGINEERS, INC. 18505 W. LANTANA DR., SUITE 100 DALLAS, TEXAS 75244 PHONE: (214) 242-1234 FAX: (214) 242-1235 EMAIL: info@patesurveyors.com
LAND TITLE SURVEY 50.0000 ACRES IN THE PERMANSO BOONSHADE SURVEY, N.8.S.6 COUNTY BLOCK BOOK BEXAR COUNTY, TEXAS	STATE OF TEXAS COUNTY OF BEXAR PREPARED FOR: [Name] PREPARED BY: [Name] DATE: [Date]



P.O.C.
 [Name]
 [Address]
 [Phone]

P.O.B.
 [Name]
 [Address]

EXHIBIT B: THOROUGHFARE STREET DESCRIPTION

EXHIBIT C: CITY ORDINANCE

AN ORDINANCE 2007-12-06-1258

AUTHORIZING THE EXECUTION OF AN AGREEMENT TO USE FUNDS WITH VTLM TEXAS, L.P. IN AN AMOUNT NOT TO EXCEED \$500,000.00 FOR ENGINEERING AND DESIGN SERVICES ASSOCIATED WITH ROAD CONSTRUCTION AT THE PROPOSED TEXAS A&M CAMPUS SITE IN COMPLIANCE WITH THE EXECUTED MEMORANDUM OF UNDERSTANDING BETWEEN CITY, VERANO LAND GROUP, CPS ENERGY AND TEXAS A&M UNIVERSITY SYSTEM; AND DECLARING THE CITY'S INTENT TO REIMBURSE ITSELF FROM PROCEEDS DERIVED FROM THE SALE OF CITY OF SAN ANTONIO, CERTIFICATES OF OBLIGATION, SERIES 2007 FOR ANY AUTHORIZED EXPENDITURES FROM ANY LAWFULLY AVAILABLE FUNDS OF THE CITY.

* * * * *

WHEREAS, in 2005, City Council approved a Resolution of Support for Texas A&M University System ("TAMUS") to establish a San Antonio campus (the "Project") and subsequently committed \$15 million in Certificates of Obligation to acquire land to support the Project; and

WHEREAS, the Texas A&M Board of Regents selected a location for the proposed campus along Loop 410 South and S. Zarzamora which was owned by Verano Land Group, L.P. ("Verano") who has offered the property at no cost to TAMUS on the condition that an agreement be entered into by the City, Verano, TAMUS, and CPS Energy (the "Parties") for the development of a San Antonio campus and mixed-use integrated university community urban village; and

WHEREAS, City Council approved the terms of a Memorandum of Understanding ("MOU") that was entered into by the Parties on September 6, 2007 and whose terms included the City making available the \$15 million in Certificates of Obligation initially reserved for the acquisition of land for road improvements and infrastructure with \$500,000.00 of this sum for the engineering and design of two roadways on the proposed location site; and

WHEREAS, the City has agreed to make funds available through an Agreement to Use Funds whereby VTLM Texas, L.P. will contract for the services of engineers, architects and planners to perform the preliminary engineering and design for road construction; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of an Agreement to Use Funds to provide engineering and design services are hereby approved. A copy of the Agreement in substantially final form is attached to this Ordinance as Exhibit A. A copy of the fully executed agreement will be substituted for Exhibit A upon receipt of all signatures.

SECTION 2. The City Manager or her designee is hereby authorized to execute this Agreement to Use Funds in accordance with Section 1 above.

SECTION 3. The City hereby expresses its official intent to reimburse itself from the proceeds derived from the sale of the City of San Antonio, Combination Tax and Revenue Certificates of Obligation, Series 2007 for any authorized expenditures from any lawfully available funds of the City.

SECTION 4. The following appropriations are made in conjunction with the sale of the City of San Antonio, Combination Tax and Revenue Certificates of Obligation, Series 2007 for SAP Project Definition 40-00164, Texas A&M Campus Infrastructure.

SECTION 5. The amount of \$500,000.00 is appropriated in SAP Fund No. 11001000, General Fund, Internal Order No. 390000000554, GL account 6102100 – Interfund Transfer out entitled “Transfer to 40-00164-90-01.” The amount of \$500,000.00 is authorized to be transferred to SAP Fund No. 43099000.

SECTION 6. The budget in SAP Fund No. 43099000, SAP Project Definition 40-00164, Texas A&M Campus Infrastructure, shall be revised by increasing WBS element 40-00164-90-01 entitled “Trf Fr I/O# 390000000554,” GL account No. 6101100 – Interfund Transfer In, by the amount \$500,000.00.

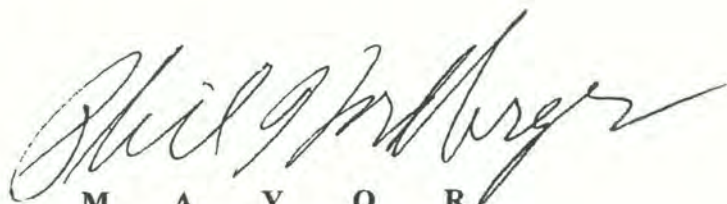
SECTION 7. The amount of \$500,000.00 is appropriated in SAP Fund No. 43099000, Certificates Of Obligation Capital Projects, SAP Project Definition 40-00164, Texas A&M Campus Infrastructure, WBS element 40-00164-05-01-02 entitled “Design Cost,” GL account No. 5201040, and is authorized to be encumbered and made payable to VTLM Texas, L.P., for professional services.

SECTION 8. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager’s designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

RR
12/06/07
Item #16

SECTION 10. This Ordinance shall become effective immediately upon its passage by eight (8) affirmative votes and after the tenth (10th) day after passage if upon less than eight (8) affirmative votes.

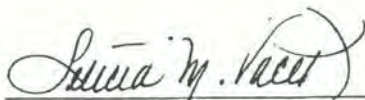
PASSED AND APPROVED this 6th day of DECEMBER 2007.



M A Y O R

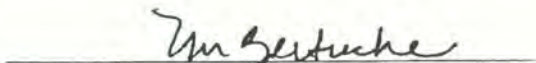
PHIL HARDBERGER

ATTEST:



City Clerk

APPROVED AS TO FORM:



for City Attorney