

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 Zarzamora 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:

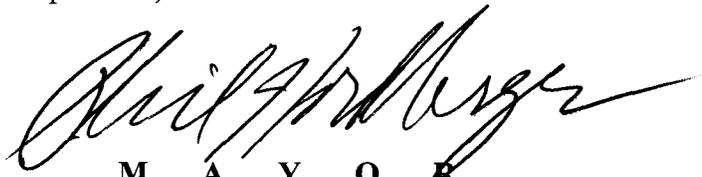
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

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.

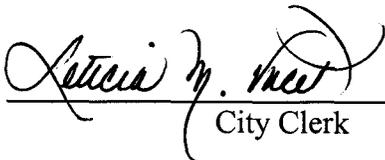
PASSED AND APPROVED this 6th day of September, 2007.



M A Y O R

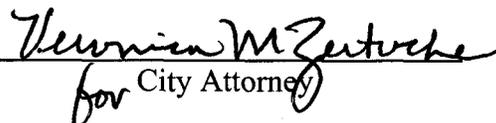
PHIL HARDBERGER

ATTEST:



City Clerk

APPROVED AS TO FORM:



for City Attorney

**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*]