

BOARD OF REGENTS
EASTERN MICHIGAN UNIVERSITY

SECTION: 23
DATE: November 14, 2006

RECOMMENDATION

**EXTENSION OF AGREEMENT BETWEEN EASTERN MICHIGAN
UNIVERSITY (EMU) AND THE EMU FOUNDATION**

ACTION REQUESTED

It is recommended that the Board of Regents approve a four year seven month extension of the Agreement between Eastern Michigan University (EMU) and The Eastern Michigan University Foundation (Foundation).

STAFF SUMMARY

The Agreement was initially entered into on July 1, 2001. It replaced the Joint Operating Agreement between EMU, the Foundation and Eagle Crest Management Corporation. The Agreement recognizes the Foundation as the exclusive entity authorized to accept gifts on behalf of EMU and provides for EMU's financial support of the Foundation to support fundraising activities on behalf of the EMU. The July 1, 2001 Agreement expired on June 30, 2006. On July 21, 2006 the Board of Regents approved the extension of the Agreement through November 30, 2006. The proposed Agreement would extend the term of the Agreement by four years seven months, from December 1, 2006 to June 30, 2011. All other terms and conditions of the Agreement would remain unchanged, including the provision that provides EMU with the right to terminate the Agreement without cause on 180 days prior written notice and with cause on 30 days prior written notice. The Board of Directors of The EMU Foundation has approved the extension of the Agreement.

FISCAL IMPLICATIONS

The University's investment in the Foundation for Fiscal Year 2007 is \$1,837,425.

ADMINISTRATION RECOMMENDATION

The proposed Board action has been reviewed and is recommended for Board approval.

University Executive Officer

Date

AN AGREEMENT BETWEEN
EASTERN MICHIGAN UNIVERSITY AND
THE EASTERN MICHIGAN UNIVERSITY FOUNDATION

This Agreement is made this ____ day of _____, 2006, by and between the Board of Regents of Eastern Michigan University, a Michigan public university (the "University"), and the Board of Trustees of the Eastern Michigan University Foundation, a Michigan nonprofit corporation (the "Foundation").

WHEREAS, the University and the Foundation, including its wholly owned subsidiary, Planned Real Estate Corporation, understand that a mutually supportive relationship can advance the best interests of the University and the Foundation;

NOW THEREFORE, in consideration of the terms, conditions, and covenants contained herein, the sufficiency of which consideration is hereby acknowledged, and the performance thereof, the parties agree as follows:

A. The relationship will be guided by these principles:

1. Philanthropy is a vital element of the University's strategic planning. No public university has achieved greatness without significant private support.
2. The Foundation will play an important role in association with the University and its President in pursuing the University's vision. The best such relationships are based on trust developed by shared values and frequent communications.
3. The University and the Foundation each have a public trust and will carry out their responsibilities consistent with the highest ethical standards including the avoidance of conflicts of interest or the appearance of them.
4. A key to success is attracting the ablest alumni and friends of the University as Foundation Trustees and engaging them meaningfully in discussions with the University and its President about the role of philanthropy in the University's strategic plan.
5. Exemplary stewardship of gift funds is a core value of both the University and the Foundation. Donors must have confidence that their gifts are being used for the purposes they intended to enhance the University.
6. As the beneficiary of philanthropy, the University has the primary responsibility for providing the investment capital required to support fundraising. The Foundation has the primary responsibility for supporting its administrative

costs. A shared goal will be achieving a fundraising return on this investment capital, an endowment investment return (consistent with prudent risk), and administrative cost ratios among the best in the nation for comparable universities and foundations.

B. The University:

1. recognizes the Foundation as the exclusive entity authorized to accept gifts on behalf of the University.

2. authorizes the Foundation to use the University's name, symbols, and trade marks in seeking support for the University. Such use must adhere to the University's style and standards guide and be consistent with University image initiatives.

3. will provide the Foundation access to various administrative support such as telecommunications, mail, and information technology services.

4. will consult closely with the Foundation in the appointment and evaluation of the University's Vice President for Advancement who will also serve as the Foundation's Executive Director.

5. authorizes its President to enter into separate agreements with the Foundation as necessary to address such issues as "leased" employees, management information systems, University endowment funds entrusted to the Foundation, and other matters important to support the Foundation in its work on behalf of the University.

6. owns the donor and alumni records which are maintained on the computer software that is used by the Foundation and the University's Office of Alumni Relations for advancement initiatives.

7. will provide the investment capital required to support fundraising activities on behalf of the University. The amount of capital committed will be negotiated on an annual basis and paid to the Foundation during the first week of July for each year of this agreement. Based upon the plan and budget discussed in provision D, the negotiated level of commitment shall be communicated to the Foundation by April 15 of the preceding fiscal year. This commitment of capital is subject to the approval of the University's budget by the EMU Board of Regents.

C. The Foundation:

1. will maintain its status under Michigan law as a nonprofit corporation and its eligibility to receive tax deductible gifts as a charitable organization under section 501(c)(3) of the Internal Revenue Code.

2. will not modify Article IX – Dissolution of its Articles of Incorporation.

3. will maintain provision in its bylaws that the University's Vice President for Advancement will serve as the Foundation's Executive Director and Chief Executive Officer.

4. will engage an independent accounting firm annually to conduct an audit of the financial and operational records of the Foundation and its subsidiaries, and will provide the University with a copy of the audited financial statements, including any management letter, by no later than December 1.

5. will provide immediate access to the financial and operational records of the Foundation and its subsidiaries for any special audit or evaluation deemed necessary by the University.

6. will not accept any gift that may impose a liability on the University without the prior written approval of the University's President.

7. will take no action to amend its Articles of Incorporation or Bylaws, where the effect of such amendment would be to alter those provisions of the Articles of Incorporation and Bylaws that require the Foundation to be operated for the support of the University.

D. Annually, by April 15, the Vice President for Advancement/ Executive Director of the Foundation will provide for the approval of the University's President and the Foundation, a comprehensive plan for development activities consistent with the strategic plans of the University and Foundation. The plan shall include specific plans for all phases of fundraising, friend-raising, stewardship, management information systems, Foundation operations, and a revenue and expense budget for the Foundation.

E. Miscellaneous Provisions:

1. In performing their respective responsibilities under this Agreement, the parties shall at all times be deemed and regarded as independent contractors. The employees of one party to this Agreement shall not be deemed the employees of

the other party. Such other party shall neither exercise nor have any control over the mode and manner in which such employees perform services.

2. The Foundation agrees to indemnify, save, and hold harmless the University, its Regents, officers, employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Foundation, or its employees, agents, subcontractors, or assignees, relating to the provisions of this Agreement.

3. The University agrees to indemnify, save, and hold harmless the Foundation, its Board members, officers, employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the University, or its employees, agents, subcontractors, or assignees, relating to the provisions of the Agreement.

4. Each party agrees to maintain comprehensive general liability insurance, directors and officers insurance and such other insurance coverage as may be necessary or appropriate for liabilities which may arise in connection with their operations, in amounts acceptable to the other party, either through commercial insurance or a reasonable self-insurance mechanism. Evidence of the insurance required by this Section will be reasonably provided to the other party upon request. Each party agrees to name the other party as an additional insured party in its commercial or self-insurance.

5. The parties acknowledge and agree that this Agreement is entered into as a successor Agreement to the July 1, 2001 and July 1, 2006 Agreements between Eastern Michigan University and the Eastern Michigan University Foundation.

6. This Agreement constitutes the entire agreement between the parties with respect to this subject matter, and supersedes any and all other written or oral agreements relating to this subject matter.

7. This Agreement may be modified or amended upon the prior written consent of both parties.

8. The parties hereto understand and agree that this Agreement in no manner alters or modifies the limitations on liability extended to the State of Michigan, the University, and its officials and employees, by state and federal statute or regulations.

9. The parties agree that, in the performance of this Agreement, they shall not discriminate on the basis of gender, race, color, religion, marital status, creed, sexual orientation, age, national or ethnic origin, political belief or handicapping condition.

10. Any notice which is required or desired to be given hereunder shall be deemed to be sufficiently given if personally delivered or sent by certified or registered mail, postage prepaid, return receipt requested and addressed as follows:

If to the University, to:

President
Eastern Michigan University
202 Welch Hall
Ypsilanti, Michigan 48197

If to the Foundation, to:

Chair of the Board of Trustees
The EMU Foundation
1349 South Huron Street
Ypsilanti, Michigan 48197

Each party may modify their designated addressee on prior written notice to the other party.

11. This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

12. This Agreement shall not be assigned or assignable by either party without the prior written consent of the other party.

13. This Agreement shall be governed by the laws of the State of Michigan as to interpretation, construction and performance.

F. The term of this agreement shall be four years and seven months, beginning December 1, 2006, and ending June 30, 2011. Annually by May 1 the Vice President for Advancement/Executive Director of the Foundation will review this Agreement with the University's President and the Chair of the Board of the Foundation to determine if changes are needed. Either the University or the Foundation may terminate this Agreement at any time, without cause, by providing 180 days prior written notice to the other party. The University may terminate this Agreement for cause on 30 days prior written notice to the Foundation. Upon termination of this Agreement, with or without cause, all monies and other things of value received by or being held by the Foundation for the benefit of the University or any of its constituent parts, including Foundation funds, shall immediately be transferred to the University or its designee in an

orderly manner as directed by the University and in accordance with Article IX of the Foundation's Articles of Incorporation.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of the date first set forth above.

EASTERN MICHIGAN UNIVERSITY

Witness

By: _____

Title: _____

Date: _____

Witness

EASTERN MICHIGAN UNIVERSITY
FOUNDATION

Witness

By: _____

Title: _____

Date: _____

Witness