

BOARD OF REGENTS

EASTERN MICHIGAN UNIVERSITY

SECTION: 20
DATE:
February 24, 2008

RECOMMENDATION

LEASE AGREEMENT BETWEEN EASTERN MICHIGAN UNIVERSITY, ON BEHALF OF WEMU-FM AND THE WASHTENAW 800MHz PROJECT OVERSIGHT COMMITTEE, ON BEHALF OF WASHTENAW COUNTY

ACTION REQUESTED

It is recommended that the Board of Regents approve the lease agreement between Eastern Michigan University, on behalf of WEMU-FM and the Washtenaw 800MHz Project Oversight Committee, on behalf of Washtenaw County.

STAFF SUMMARY

The University allows Washtenaw County the right to install and operate two or fewer microwave transmissions, receive antennae and their transmissions, and receive cables on the WEMU tower, located at 890 West Clark Road, Ypsilanti Michigan. In addition, Washtenaw County received the right to install an equipment shelter with electrical generator, operate necessary microwave transmission and UHF transmission and receive electronics located on the north side and in close proximity of the base of the WEMU tower.

The proposed recommendation is a ten year lease agreement with two renewal terms of ten years each.

Washtenaw County is to provide the University with 41 new system radios to be used by the Department of Public Safety at an approximate value of \$135,000.

FISCAL IMPLICATIONS

The University will receive a one time payment of \$123,000. In years nine and ten of the lease agreement, the University will receive \$6,300/per year. There are provisions in the contract that increase yearly rent by 5% in five year intervals and provisions to increase the rent if the voters of Washtenaw County approve an operating or construction assessment.

ADMINISTRATIVE RECOMMENDATION

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

University Executive Officer

Date

Lease Agreement

This Lease Agreement made as of the _____ day of _____, 2009, between Eastern Michigan University on behalf of WEMU-FM having an office at 426 King Hall, Ypsilanti, Michigan 48197 (hereinafter called "Lessor") and the Washtenaw 800 MHz Project Oversight Committee on behalf of Washtenaw County having an office at 1200 State Circle, Ann Arbor, Michigan 48108 (hereinafter call "Lessee").

1. Definitions

- 1.1 "Equipment Shelter": shall mean the building enclosure prefabricated or constructed by Lessee to contain its antenna facilities and emergency electrical generator.
- 1.2 "Antenna Facilities": include all improvements, personal property and related facilities for Lessee's Permitted Use.
- 1.3 "Permitted Use": the transmission and reception communication signals in any and all frequencies licensed to Lessee by the Federal Communications Commission, the construction, alteration, maintenance, repair, replacement and relocation, of related facilities, antennae, or buildings and for related activities.
- 1.4 "Premises": shall mean the designated area within the Property for the location of Lessee's antenna site and its equipment shelter.

2. Premises

- 2.0 Lessor hereby leases to Lessee, for the term, at the rent and subject to the provisions hereinafter set forth, the following:
 - 2.1 The right to install and operate two or fewer microwave transmission and receive antennae and their transmission and receive cables on the WEMU tower, located at 890 West Clark Road, Ypsilanti, Michigan; and
 - 2.2 The right to install an equipment shelter with electrical generator, and operate necessary microwave transmission and UHF transmission and receive electronics located on the north side and in close proximity to the base of the WEMU tower.

3. Term

- 3.0 To have and to hold the leased premises for a term of ten (10) years commencing on the date this lease document is signed.
- 3.1 The parties may agree to two (2) Renewal Terms. Each Renewal Term shall consist of ten (10) years each. A Renewal Term shall occur upon the following conditions: within twelve (12) months prior to the expiration of the original or renewal term, Lessee shall serve written notice upon Lessor that it requests a Renewal Term of ten (10) years. If the Lessor gives written consent to such additional Renewal Term within thirty (30) days of Lessee's Notice to Renew, then the Lease will be renewed for an additional ten (10) year term.

3.2 If Lessee shall remain in possession of the Premises at the expiration of this Lease, without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

4. Rent

4.0 The Lessee shall pay rent annually to the Lessor beginning within 30 days of the beginning of the period, unless otherwise stated based on the following schedule:

4.0.1 A one time payment of \$123,000 within forty-five (45) days of the signing of the Lease documents;

4.0.2 Years one through eight: zero (\$0) rent

4.0.3 Years nine and ten: \$6,300 per year;

4.0.4 First Renewal Period: Years eleven through fifteen: \$6,615 per year

4.0.5 Years sixteen through twenty: \$6,946 per year

4.0.6 Second Renewal Period: Years twenty-one through twenty-five: \$7,293 per year;

4.0.7 Years twenty-six through thirty: \$7,658 per year

4.0.8 If a new voted operating or construction assessment is requested and approved by voters during the original or renewal terms of this Lease, providing additional funds for the Lessee, the lease terms will be revised as follows beginning with the year in which the assessment is approved: The lease rates will change to a formula based on a five (5) percent increase, rounded to the nearest dollar, per five year period. Specifically,

Original Term:

Years one through five \$7,166

Years six through ten \$7,525

Renewal Term #1:

Years eleven through fifteen \$7,901

Years sixteen through twenty \$8,296

Renewal Term #2:

Years twenty-one through twenty-five \$8,711

Years twenty-six through thirty \$9,147

4.1 The Lessee will provide \$3,500 for the purchase and installation of a safety climb cable system for the tower.

4.2 The Lessee shall be responsible for providing and maintaining fuel for the Lessee and the Lessor generators at a level adequate for emergency operation.

- 4.3 The Lessee shall pay for the modification and installation of security fencing enclosing the Lessee's new equipment structure and joining existing fencing to ensure the security of the site.
- 4.4 The Lessee will provide the Lessor with 41 new system radios at an approximate cost of \$135,000.
- 4.5 The Lessee will purchase and install security cameras at the tower site and front gate to record activity that can be played back, also providing a feed to the Eastern Michigan University Public Safety Department and WEMU if these locations wish to monitor the site in real time.
- 4.6 The Lessor will provide non-potable well-water at the site for maintenance purposes.
- 4.7 The referenced installation shall be considered: 1) one receive antenna; 2) two transmitting antennae, utilizing a system frequency range of 700-850 MHz, and 3) one VHF antenna and fed with transmission lines having a diameter of not more than one and five-eighths inches (1 5/8") installed at an antenna top height of 276 feet; 4) one microwave dish mounted at an approximate height of 175 feet; and 5) one VHF antenna operating in the 154 MHz range for Fire Service Paging, if necessary. Deviation from the referenced installation may result in a modification of the rental cost.
- 4.8 The Lessee will provide funding for the re-lamping of the tower as necessary to comply with FCC and FAA requirements.

5. Installation

- 5.0 Lessee shall install only the equipment that has been approved in writing by the Lessor.
- 5.1 Lessee shall be responsible for taking such steps as may be necessary to prevent any interference or spurious radiation with the broadcasting facilities of Lessor or the tenants of the Lessor on the leased premises. If such interference or spurious radiation cannot be reduced to levels reasonable and acceptable to the Lessor or its tenants within fourteen (14) days, Lessor may elect to terminate this Lease by giving Lessee written notice.
- 5.2 The Lessee shall be responsible for taking such steps as may be necessary to confirm in writing from a structural or tower engineer certified in the state of Michigan the acceptability of the total weight load on the WEMU tower represented by the placement of the Lessee's equipment. The cost for reinforcement of the tower, if necessary, shall be the responsibility of the Lessee.
- 5.3 The Lessee's installation of an equipment shelter or its equivalent shall be upon a cement foundation to complement the structural soundness and security of other buildings at this site.
- 5.4 Lessee shall be responsible for taking such steps as may be necessary to prevent interference or spurious radiation with the broadcasting facilities

of WSDS-AM and WDEO-AM in accordance with the Federal Communications Commission rules and regulations.

- 5.5 Lessee shall provide Lessor with a copy of the engineering section of its technical plan, prior to the beginning of construction.
- 5.6 Installation and/or removal of the Lessee's equipment on the tower will be paid by Lessee and performed by Lessor's contractor. Lessee's contractor will be responsible for the establishment of a microwave path and the sighting of the appropriate antennae structures to ensure proper two way communication between the WEMU tower and the Lessee's main location.
- 5.7 Lessee, at its own expense, shall maintain the Lessor's property in good condition during and at the conclusion of the installation.
- 5.8 Lessee's obligation hereunder shall be limited to exercising due care and causing the installation of the antennae and related equipment and facilities to be performed in a good and workmanlike manner according to the standards of the trade. Lessee shall not be obligated to further maintenance of Lessor's property except: (a) to correct any damage caused by Lessee's use of the premises, and (b) to restore the premises to their original condition (normal wear and tear excepted) as far as reasonably possible upon removal of the equipment at termination (or for any other reason) of the Lease. Should the equipment shelter be removed under the terms of this Lease, Lessee shall not be required to excavate the concrete foundation/pad.

6. Access to the Tower & Transmitter Building for Maintenance

- 6.0 The Lessee shall have access to the tower location upon prior notification of WEMU. Standard maintenance shall be performed during normal business hours Monday through Friday with emergency access available twenty-four (24) hours per day.

7. Insurance

- 7.0 The Lessee or any of the Lessee's sub-contractors shall not commence installation, removal, and/or maintenance until required insurance has been obtained. Insurance policies must be issued by companies licensed to do business in Michigan, approved to do business in Michigan and such companies must be well rated. The Lessee shall purchase and maintain at its own expense the following insurance during the term of this Lease:
 - 7.0.1 Workers' Compensation Insurance in accordance with Michigan statutory limits and Employer's Liability Insurance with a minimum limit of five hundred thousand dollars (\$500,000) and said insurance shall provide for the payment of compensation in accordance with the laws of the State of Michigan for all workers employed, and employees of the Lessee. The Lessee shall provide the Lessor with a Certificate of Insurance that

evidences coverage for itself, and copies of certificates evidencing coverage by subcontractor for each subcontractor's employees prior to the commencement of any installation, removal, and/or maintenance provided by this Lease.

- 7.0.2 Comprehensive General Liability Insurance, on an occurrence basis, with contractual liability and property damage endorsements, covering the entire Lessee's operations and activities on or in connection with the leased premises, in which the combined single limits of liability are no less than one million dollars (\$1,000,000) per occurrence. The insurance policies shall be primary. Lessor shall be named as an additional insured with respect to this Lease under all such insurance policies, and a current certificate evidencing such coverage and any renewals thereof will be furnished Lessor at all times. The Lessee shall not revise such policies or change the insurance, or any part thereof, without first giving the Lessor thirty (30) days prior written notice.
- 7.0.3 Automobile Liability Insurance covering all owned, hired and non-owned vehicles, with Personal Protection Insurance and Property Protection Insurance to comply with the provisions of the Michigan Non Fault Insurance Law, including Residual Liability Insurance with a minimum combined single limit of one million dollars (\$1,000,000) each accident for bodily injury and property damage.
- 7.1 All of the Lessee's property, presently or hereinafter acquired, kept, sorted or maintained by Lessee in or about the Lessor's premises will be kept, stored or maintained at the sole risk of Lessee, and Lessor will not be responsible for any property entrusted to employees of Lessor.

8. Maintenance by Lessee

- 8.0 Lessee, at its own expense, shall maintain Lessee's property in accordance with reasonable engineering standards to assure that at all times Lessee's property and its operation is in conformance with the requirements of the FCC and all other public authorities with a jurisdiction over Lessee.

9. Utilities

- 9.0 Lessee shall be responsible for securing any utility service it requires.

10. Assignment

- 10.0 Lessee shall not assign or transfer this Lease without prior written consent of Lessor, which consent shall not be unreasonably withheld.
- 10.1 Any sub-lease or assignments shall be subject to the terms and conditions of this Lease.
- 10.2 Lessee shall not sub-lease any portion of the system's technical capacity to any commercial entity without consideration and prior written consent of Lessor.

11. Removal of Lessee's Equipment upon Termination

- 11.0 Lessee agrees to remove its antennae and equipment at its expense, within sixty (60) days after termination of this Lease Agreement.

12. Business Interruption

- 12.0 Lessor shall not be liable to the Lessee for loss or damage sustained by reason of any business interruption suffered by reason of Lessor's acts or omissions or its violation of any of the terms, covenants or conditions of this Lease.
- 12.1 Lessee and Lessor cooperatively agree to recognize the fact that tower maintenance shall cause disruption to the use of the tower from time to time. Such regular maintenance shall be coordinated to allow for minimal disruption. Each party recognizes that emergency maintenance will disrupt tower operation and agrees that in such event each party will be responsible for costs incurred due to such disruption.

13. Cancellation

- 13.0 Notwithstanding anything expressed herein to the contrary: Should the radio transmission tower or a subsequent replacement in close proximity to the original tower's location cease to be used for radio transmission at any time during the primary term or renewal terms thereof, the Lessee will be granted the right of first refusal to continue the use of the tower consistent with this Lease Agreement for a period of twelve (12) months at which time the Lessee shall vacate the tower. This paragraph shall not apply to the temporary interruption in use for the purposes of maintenance, repairs, upgrading, or for causes beyond the reasonable control of the Lessor.
- 13.1 If at any time during the term of this Lease all or "substantially all" of the tower and/or the premises shall be damaged and/or destroyed by fire or other casualty, then Lessee may terminate this Lease by providing written notice to Lessor, which termination shall be effective as of the date of such damage and/or destruction, and whereupon Lessee shall be entitled to collect all insurance proceeds payable (by Lessee's insurance company only) on account thereof and to the reimbursement of any prepaid rent, to be apportioned as of the termination date. Until the earlier of (i) such time as Lessee elects to terminate this Lease as aforesaid or (ii) Lessor repairs and restores any damage caused by any such fire or casualty so that Lessee may use the premises for Lessee's permitted use in a commercially reasonable manner, any rent and other amounts due and payable by Lessee to Lessor hereunder shall abate. If at any time during the term of this Lease all or "substantially all" (meaning the remaining portion thereof shall not be of sufficient size or condition to permit the continuation of Lessee's permitted use in a commercially reasonable manner) of the tower and/or premises shall be damaged and/or destroyed by fire or other casualty, then Lessor may terminate this Lease by providing written notice to Lessee. In such event, all rights and

obligations of the parties shall cease as of the date of the damage or destruction and Lessee shall be entitled to the reimbursement of any rent prepaid by Lessee.

- 13.2 If at any time during the term of the Lease all or “substantially all” (as described in the preceding section, 13.1) of the tower, the premises and/or the antenna facilities shall be taken in the exercise of the power of eminent domain by any governmental or other authority, or by deed in lieu of condemnation, then either party may terminate this Lease by providing written notice, which termination shall be effective as of the date of the vesting of title in such taking and any prepaid rent shall be apportioned as of the said date and reimbursed to Lessee. Lessor and Lessee shall each be entitled to pursue their own separate awards with respect to such taking. In the event of any taking of less than all or substantially all of the premises, this Lease shall continue and each of Lessor and Lessee shall be entitled to pursue their own separate awards with respect to such taking.
- 13.3 Upon termination under this paragraph (or for any other termination) Lessee shall have sixty (60) days to remove all of its equipment as provided in paragraph 11.0 of this agreement and shall restore the tower as far as reasonably possible to the original condition, ordinary wear and tear excepted. The equipment shelter shall be removed from the premises or become the property of Lessor Eastern Michigan University at the choice of the Lessee, who shall notify Lessor in writing of such decision within 15 days of said termination.

14 Default by Lessee

- 14.0 If Lessee defaults in payment of rent or under any other provision of this Lease Agreement and such default is not cured within thirty (30) days after receipt of written notice of such default from Lessor, Lessor may immediately terminate this Lease Agreement. In such event Lessor shall have the right (except as noted in Section 14.1) to remove Lessee or any person occupying the leased premises and the antennae and other equipment belonging to the same without prejudice to any other remedies which might be otherwise available to Lessor.
- 14.1 In the event of termination under this paragraph, Lessee shall have 45 days to remove any equipment placed therein by Lessee and shall restore the tower as far as reasonably possible to the original condition, ordinary wear and tear excepted. The equipment placed in or on the premises by Lessee shall in no event be considered as leasehold improvements or fixtures, but shall be considered personal property of Lessee, and the equipment shelter shall be removed from the premises or become the property of Lessor Eastern Michigan University.

15. Indemnification

- 15.0 The Lessee agrees to defend, indemnify and hold harmless the Lessor, its regents, officers and employees from and against any and all claims demands, suits, actions, losses, costs and expenses, which they may

incur which arises from or is any way connected with this Lease, including but not limited to Lessee's installation, maintenance and use of the equipment and structures placed on the leased premises. The Lessee's defense and indemnification obligations as set forth above, shall not extend to claims, demands, suits, actions, losses, costs and expenses which arise from the negligence or willful misconduct of Lessor, its regents, officers and employees.

- 15.1 The Lessor agrees to indemnify, defend and hold Lessee harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising from any act, omission or negligence of Lessor or its employees or agents, or the breach of this lease, except to the extent attributable to the negligent or intentional act or omission of Lessee, its employees, agents or independent contractors.

16. Procedure for Energizing Newly Installed System

- 16.0 After Installation has been completed, the WEMU Engineer shall be notified. The installation test and inspection operations shall be carried out by the licensed engineers as outlined in the technical plan. The WEMU Engineer will inspect the installation and, if satisfactory, will permit the Lessee's initial operations to begin. The Lessee's installation person must be present for such inspections which will take place only during normal working hours, Monday through Friday.

IN WITNESS THEREOF, the parties hereto set their hands this

_____ day of _____, 2008.

EASTERN MICHIGAN UNIVERSITY:

WASHTENAW 800 MHz PUBLIC SAFETY
RADIO PROJECT:

By: _____

By: _____

Title: _____

Title: _____

By: _____

Title: _____

Dated: _____

Dated: _____

Approved as to legal form:

Approved as to legal form:

By: _____

By: _____