

BOARD OF REGENTS
EASTERN MICHIGAN UNIVERSITY

SECTION: 29
DATE: June 21, 2016

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 five-year extension of the Agreement between Eastern Michigan University (EMU) and The Eastern Michigan University Foundation (Foundation).

STAFF SUMMARY

The Agreement recognizes the Foundation as the exclusive entity authorized to accept gifts on behalf of EMU and provides for EMU financial support of the Foundation to support fundraising activities on behalf of EMU. The July 1, 2011 Agreement expires on June 30, 2016. The proposed Agreement would extend the term of the Agreement by five years, from July 1, 2016 to June 30, 2021. The Agreement maintains the provision that provides EMU with the right to terminate the Agreement with or without cause on 180 days prior written notice. The EMU Foundation has approved the extension of the Agreement.

FISCAL IMPLICATIONS

The University's proposed investment in the Foundation for Fiscal Year 2017 is \$1,533,000.

ADMINISTRATIVE RECOMMENDATION

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

University Executive Officer

Date

SUMMARY OF SIGNIFICANT CHANGES IN THE AGREEMENT BETWEEN EMU AND EMUF

- **B.5.** Clarifies that the University will consult with the Executive Committee of the Foundation Board (as opposed to “the Foundation”) in the appointment and evaluation of the University’s Vice President for Advancement.
- **B.8.** Clarifies that the investment capital provided to the Foundation will be negotiated on an annual basis by the Vice President for Advancement with the University’s President. Previous agreement did not define parties responsible for negotiating.
- **B.9.** Clarifies that the University will establish a series of accountability measures for deans and non-academic leaders. The Vice President for Advancement will work with the President and Provost to establish individual goals and measures. Eliminated section indicating that the measurement of donor cultivation and solicitation activities would be incorporated into dean and department head performance reviews and that they would be responsible for recruiting additional faculty to develop grant proposals.
- **C.12.** Clarifies that in consultation with the Foundation Trustees, the Vice President for Advancement will meet annually with the University President to discuss a comprehensive plan for development including goals, fundraising performance, and endowment investment and draw policies. Previous agreement indicated “the Foundation” would meet with “Representatives of the Board of Regents”.
- We have removed any reference to the 5-Year Plan that had been requested by the Regents, the details of which were referenced in various sections of the previous agreement. We have also removed any reference to the recommendation for performance outlined in the reports prepared by Marts & Lundy, our previous fundraising consultant. Both of these documents were prepared at the request of the Regents specifically for the EMU/EMUF Agreement that expires 6/30/16.

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

This Agreement is made this 30th day of June 2016, 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. The highest priority for the Foundation is the raising and stewardship of private donations.
2. 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.
3. 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.
4. 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.

B. The University:

1. recognizes the Foundation as the exclusive entity authorized to accept gifts on behalf of the University.
2. commits to being an active participant in philanthropy and agrees to promote and foster a culture of philanthropy on its campus.
3. 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.
4. will provide the Foundation access to office space and various administrative support such as telecommunications, mail, information technology services and other support as mutually agreed upon.

5. will consult with the Executive Committee of the Foundation Board in the appointment and evaluation of the University's Vice President for Advancement who will also serve as the Foundation's Executive Director.
6. authorizes its President to enter into separate agreements with the Foundation as necessary to support the Foundation in its work on behalf of the University.
7. owns the donor and alumni records which are maintained on the system that is used by the Foundation and the University's Office of Alumni Relations for advancement initiatives.
8. will provide the investment capital required to support fundraising on an annual basis. The annual amount of capital committed will be negotiated by the Vice President for Advancement with the University's President on an annual basis. The investment capital will be paid to the Foundation during the first week of July for each year of this agreement. This commitment of capital is subject to the approval of the University's budget by the EMU Board of Regents.
9. will establish a series of accountability measures for deans and non-academic leaders including: establishing specific goals for fundraising and donor cultivation and solicitation activities. The Vice President for Advancement will work with the President and Provost to establish individual goals and measures.
10. shall provide regular employees of the Foundation who have at least a 50% appointment with a Tuition Waiver Program that is identical to the Tuition Waiver Program the University provides to its Administrative Professional (AP) staff.

C. The Foundation:

1. was organized and incorporated in 1990 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations and others for the benefit of the University.
2. 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.
3. exists to raise and manage private resources supporting the mission and priorities of the University, provide opportunities for students, and contribute to institutional excellence.
4. will strive to achieve a fundraising return on 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.
5. will strive to attract the ablest alumni and friends of the University as Foundation Trustees and engage them meaningfully in discussions with the University and its President about the role of philanthropy in the University's strategic plan.
6. will not modify Article IX – Dissolution of its Articles of Incorporation.
7. 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.

8. 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.

9. 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.

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

11. 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.

12. in consultation with the Foundation Trustees, the Vice President for Advancement will meet annually with the University President to discuss a comprehensive plan for development including goals, fundraising performance and endowment investment and draw policies.

13. will require that all employees and trustees execute conflict of interest forms.

14. will require that all employees and trustees execute a Code of Ethics statement.

D. 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 June 30, 2011 Agreement 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
344 McKenny Hall
850 W. Cross 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.

E. Term/Termination

1. The term of this agreement shall be five years, beginning July 1, 2016, and ending June 30, 2021.
2. Annually, by May 1, the Vice President for Advancement will review this Agreement with the University's President and the Chair of the Foundation Board of Trustees to determine if changes are needed.
3. Notwithstanding any other provision of this agreement, either the University or the Foundation may terminate this Agreement at any time, with or without cause, by providing 180 days prior written notice to the other party. Notwithstanding the foregoing, either party may terminate this Agreement immediately in the event the other party defaults on its obligations and fails to cure the default within a reasonable time after receiving written notice by the terminating party.

4. 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 caused this Memorandum of Understanding to be executed by their duly authorized officers as of the day and date first written above written.

Executed with approval of EASTERN MICHIGAN UNIVERSITY

Chair
Board of Regents

Date: _____

President

Date: _____

Executed with the approval of the EASTERN MICHIGAN UNIVERSITY FOUNDATION

Chair
Board of Trustees

Date: _____

Executive Director

Date: _____