

BOARD OF REGENTS
EASTERN MICHIGAN UNIVERSITY

SECTION: G
DATE: June 16, 2022

RECOMMENDATION

**LEASE AND SERVICES AGREEMENT BETWEEN EASTERN MICHIGAN
UNIVERSITY AND WASHTENAW INTERMEDIATE SCHOOL DISTRICT
– EARLY COLLEGE ALLIANCE**

ACTION REQUESTED

It is recommended that the Board of Regents authorize the President or his designee to complete negotiations and execute a Lease and Services Agreement with the Washtenaw Intermediate School District (WISD) for the Early College Alliance (ECA).

STAFF SUMMARY

The ECA is part of the Washtenaw Educational Options Consortium (Consortium) which includes ten (10) public school districts in Washtenaw County. The WISD is the fiscal agent for the Consortium.

ECA students are dually enrolled at their high school and at Eastern Michigan University, earning college credit while completing their high school education. WISD contracts with the University to pay for tuition, facilities, and access to other University services (e.g. Library).

The Agreement is for six (6) years, and has a maximum of 10,000 SCH included annually. Under the terms of the Agreement, the Consortium will pay the University \$1.4 million for years one and two, \$1.6 million for years three and four, and \$1.8 million for years five and six.

FISCAL IMPLICATIONS

The terms of the Agreement extension are incorporated in the University's FY2023 Operating Budgets

ADMINISTRATIVE RECOMMENDATION

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



University Executive Officer

June 16, 2022

Date

LEASE AND SERVICES AGREEMENT
BETWEEN
EASTERN MICHIGAN UNIVERSITY
AND
WASHTENAW INTERMEDIATE SCHOOL
DISTRICT, ACTING AS FISCAL AGENT
FOR THE WASHTENAW EDUCATIONAL
OPTIONS CONSORTIUM, FOR THE
BENEFIT OF THE CONSORTIUM'S
EARLY COLLEGE ALLIANCE AT EMU

LEASE AND SERVICES AGREEMENT

This Lease and Services Agreement ("Agreement") is made by and between Eastern Michigan University (the "University" or "EMU") and Washtenaw Intermediate School District ("WISD") acting as the fiscal agent for the Washtenaw Educational Options Consortium (the "Consortium"), for the benefit of the Consortium's Early College Alliance ("ECA"), each a "Party" and collectively the "Parties".

PREMISES

- A. The Consortium was created through an intergovernmental contract, executed pursuant to Public Act 35 of 1951, as amended, by Ann Arbor Public Schools, Chelsea School District, Dexter Community Schools, Manchester Community Schools, Milan Area Schools, Lincoln Consolidated Schools, Saline Public Schools, Whitmore Lake Public Schools, and Ypsilanti Community Schools, each a general powers school district under section 11a of the Michigan Revised School Code (Code), MCL 380.11a; the Washtenaw Intermediate School District, an intermediate school district under Part 7 of the Code; and the University, for the provision of an early college high school on the University campus, ECA at EMU.
- B. ECA students are, as part of the early college high school curriculum, jointly/dually enrolled at the University for courses that are offered by the University;
- C. The University, in order to accommodate the ECA students and to promote the successful operation of the ECA at EMU, desires to grant to the Consortium, through a lease with the Consortium's fiscal agent, the right to use Campus Facilities, (as defined in Section 3 and Appendix A) and to provide administrative and educational support services (as defined in Section 8) to the Consortium.
- D. The Consortium, as part of its educational mission to provide a quality early college high school, desires, through its fiscal agent, to lease the University Campus Facilities, and to contract with the University, through its fiscal agent, in order for ECA students and staff to have access to certain resources of the University.

NOW, THEREFORE, in consideration of their mutual promises and obligations under this Agreement, the parties agree to the following:

1. Agreement and Lease Duration. The Agreement shall commence on ~~July 1, 2022~~, ~~20219~~, and shall terminate on June 30, 202~~82~~, subject to earlier termination or extension as provided in this Agreement (the "Lease Term"). Beginning July 1, 202~~82~~, the Lease Term shall be automatically extended for a period of one (1) year effective on each successive July 1st, unless either the fiscal agent, on behalf of the Consortium, or the University, no later than April 30th of the previous year, gives written notice to the other party of its determination not to extend the Lease Term. If either party provides timely notice of determination not to extend the Lease Term, then this Agreement will terminate effective June 30th of the following calendar year to allow for an orderly transition. Hence, written notice by either party must be delivered to the other by April 30th of 202~~71~~ to prevent the Agreement from being extended for a period of one year beginning on July 1, 202~~82~~; if written notice of determination not to extend the Lease Term is delivered by either party on or before April 30 of 202~~71~~, the ECA at EMU will remain in operation through June 30, 202~~82~~.
2. Lease of Campus Facilities. The University hereby grants the Consortium, through a lease with its fiscal agent, the right to use the Campus Facilities, in accordance with the terms and conditions of this Agreement.
3. Description of Campus Facilities. The Campus Facilities shall include the administrative offices,

instructional space and storage space as described in Appendix A, subject to mutually-agreeable location changes (that is, mutual agreement as to any location change, when it will occur, relocation or replacement of equipment, furniture and amenities), as necessary to the University in consultation with the Consortium. The Parties understand and agree that any proposed change in location of the Campus Facilities shall be of the same type and character and amenities as set forth in Appendix A, and shall occur between academic semesters or school years and not less than thirty (30) days following mutual agreement. Campus Facilities shall include furniture, fixtures and other items as the Consortium may reasonably require and request for the operation of the ECA. EMU shall provide EMU-purchased (a) computers and printers for ECA staff, (b) copiers and scanners for ECA offices, (c) network and WiFi access for ECA staff, (d) ECA staff accounts including appropriate access to student information; and (e) ECA student accounts that include email and WiFi. ECA is permitted to use at Campus Facilities any ECA-owned equipment or personal property directly related to ECA at EMU provided ECA affixes a tag or label on any such property identifying it as ECA-owned.

4. Utilities and Maintenance. The University shall provide all utility services reasonably and necessarily required for the operation of the ECA at EMU and the Consortium in alignment with EMU utility services (including WiFi and network access) for EMU-provided programs. The University shall not be liable to the Consortium for any interruption or stoppage of utility service, unless and to the extent caused by the University's gross negligence or wrongful conduct. The University shall also provide cleaning, janitorial and facilities maintenance services (collectively, "Maintenance Services") in alignment with EMU Maintenance Services for EMU-provided programs, as are reasonably necessary in connection with operation of the ECA at EMU and the Consortium and/or reasonably requested by the Consortium.
5. Campus Facilities Condition. The University warrants that there are no known and undisclosed defects or problems concerning the Campus Facilities ~~(other than electrical issues in King Hall that EMU warrants to repair)~~ and the Consortium acknowledges that it has been given an opportunity to inspect the Campus Facilities and that the Campus Facilities appear to be in good, acceptable condition. The Consortium will receive comparable warranties and be given a comparable opportunity to inspect any proposed changed location for Campus Facilities. Unless the University is notified prior to occupancy of a specific problem, Consortium occupancy of Campus Facilities (as initially designated or later changed) shall be evidence of the Consortium's waiver of any objections to the conditions of the Campus Facilities, subject to the discovery of a latent defect that impedes operation of the ECA at EMU. The University shall promptly undertake to remedy any latent defect and/or relocate the ECA at EMU to a mutually-agreeable alternative location as discussed in Section 3 of this Agreement.
6. Use of Campus Facilities.
 - a. The Consortium shall comply, and shall notify its students and staff of the need to comply, with all University rules and regulations concerning Campus Facilities. The University shall provide a copy of applicable rules and regulations to the Consortium and shall promptly notify the Consortium of any changes to applicable rules and regulations. The Consortium shall not waste or intentionally damage Campus Facilities. The Consortium shall not use the Campus Facilities in such a way as to increase fire hazard or to constitute a nuisance. The Consortium shall cooperate with the University to keep the Campus Facilities in a neat, clean, sanitary and orderly condition and shall return the Campus Facilities to the University, at the end of the term, in pre-occupancy condition (subject to normal wear and tear). The Consortium shall reimburse the University for reasonable expenses the University incurs in repairing damages to Campus Facilities during the Lease Term caused by to the Consortium's failure to comply with the terms of

- this Agreement, and acknowledging the University's general obligation to clean, maintain, and repair the Campus Facilities. Nothing in this section is intended to render the Consortium responsible for the acts of students or third parties.
- b. The Consortium shall obtain approval from the University before making any improvements to the Campus Facilities and any such approval shall address the impact of a change in Campus Facilities on any such improvements.
 - c. Under no circumstances shall the Consortium be responsible for property taxes (if applicable) to Campus Facilities occupied or used by the Consortium under this Agreement.
 - d. The University understands that the Consortium must comply with federal and state law concerning ECA operations that include, without limitation, the Revised School Code, MCL 380.1 et seq; the Michigan State School Aid Act, MCL 388.1601 et seq; the Elliott_Larsen Civil Rights Act, MCL 37.2101, et seq; and the Family Educational Rights and Privacy Act (FERPA), 20 USC §1232g; 34 CFR Part 99. The University agrees that it will not act in a manner that conflicts with the Consortium's obligations under federal and state law.
 - e. For purposes of this Agreement, the Consortium's intended use of the Campus Facilities includes use for educational and related purposes as permitted by law and the Consortium Agreement.
7. No Assignment. The Consortium shall not assign, pledge, encumber, transfer or convey its lessee interest in the Campus Facilities in whole or in part without the prior written consent of the University. Any such attempted, unauthorized action by the Consortium shall be void and unenforceable.
8. Description of Support Services. The University shall provide through its divisions of Academic Affairs, Business and Finance, Student Affairs and Enrollment Management, as appropriate, the following Support Services to the Consortium, provided that the Consortium shall have no right to exercise management, direction or control over University employees used to provide the Support Services, and provided, further, that ECA students and staff who utilize such Support Services shall be required to comply with all applicable University rules and regulations concerning the use of such Support Services:
- a) University Library and Other Educational Resources. The University shall make available to ECA students and staff the use of the University library and related educational resources (including, by way of example only, Library E-Search, the Michigan eLibrary Catalog (MeLCat), interlibrary loans, reciprocal borrowing). ECA students and staff who utilize the University library and other educational resources of the University shall be required to comply with all applicable University rules and regulations concerning their use. Educational resources to be provided by the University shall include, but are not limited to: (1) use of library collections (print, media and electronic resources and services) and loans according to current Board of Regents policy on loans; (2) use of extensive electronic resources including full text journal databases, indices and other reference resources; (3) use of public services area equipment including the use of the open access computer lab; (4) reference/information assistance provided by professional librarians; (5) library orientation for all Program students; (6) instruction on Internet access; (7) library public study areas; (8) interlibrary loan services; and copying for the customary charge where copyright permits. Additional educational resources for Consortium staff shall include, but are not limited to, in accordance with the ways these services are provided to EMU faculty/staff: (1) use of fixed and portable media equipment in the classroom; (2) technical assistance for presentations and group assemblies; (3) access to professional development offerings for faculty through

the Faculty Development Center; (4) in-service training on equipment operation; (5) assistance with media production; and (6) satellite and cable services.

- b) Logistical Services. The University shall provide logistical support and Assistance to ECA students and staff, including, but are not limited to, course scheduling, student registration, student transcripts, and student identification cards. FERPA waiver statements must be provided to the Office of Records and Registration by the Consortium to be included in the student's educational record. Official University ID Cards (known as EagleOne cards) may be issued to ECA students and ECA students will be provided an ECA ID card that will allow each student to access the services to which they are entitled.
- c) ~~Medical Services. The University shall provide to ECA students and staff the same type and scope of medical services as those currently provided by the University to other members of the University community on an emergency basis. If the ECA student is a minor (under the age of 18) it is mandatory that a parent or legal guardian complete the Authorization for Consent to Treatment of a Minor section on the University Health Services' Health History and Insurance Form prior to any treatment being provided. The respective ECA student or staff member is responsible for all charges associated with medical treatment at the time of service.~~
- d) Counseling and Psychological Services. The University shall provide limited Counseling and Psychological Services (CAPS) to ECA students; specifically, emergency-only short-term psychotherapy. In all cases, ECA students needing longer-term care or treatment outside the scope of practice of the clinic shall be referred to community mental health services. Emergency mental health treatment of a minor (under age 18) ECA student shall be provided in accordance with the limits established under the Michigan Mental Health Code and the Michigan Revised School Code (e.g., prohibiting certain family planning counseling and distribution of family planning drugs and devices).
- e) Accommodations for Disabilities. The Consortium is responsible for the provision of a free appropriate public education (FAPE), including special education programs and related services, to eligible ECA students with disabilities under the Individuals with Disabilities Education Act (IDEA), 20 USC §§1400 *et seq* and its implementing regulation, 34 CFR Part 300, and the Michigan Mandatory Special Education Act, MCL 380.1701 – 1766. The Consortium and the University are each responsible: (1) to enforce Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 USC §791, and its implementing regulation, 34 CFR Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving Federal financial assistance; and (2) to enforce Title II of the Americans with Disabilities Act as amended, and its implementing regulations (ADA II), 42 USC 12101 *et seq*; 28 CFR Part 35, which prohibit discrimination on the basis of disability by entities of State and local government. ECA students enrolled in an EMU course shall have the same access to the University's Disability Resources Center (DRC) and to resources, services, and accommodations recommended by the DRC, as any other student enrolled by the University for that course. The ECA will provide required accommodations for students with disabilities within the high school portion (ECA transition courses) of the ECA program and other activities, and for additional accommodations or services as necessary for the provision of a FAPE in compliance with an eligible ECA student's Individualized Education Program (IEP) that are beyond the scope of services normally provided by the University to its students.
- f) University Housing. ECA students who meet the following requirements may apply for housing in EMU's residence halls:
- Must be 18 years of age by the first day of the semester for which they would be living

on campus.

- Must be enrolled in at least nine EMU credits for the semester during which they would be living on campus.
- ECA student housing applications will be considered on a space-available basis.

ECA students are not eligible for financial aid. If offered student housing, ECA students will be responsible for fulfilling all terms and conditions of the contract, as well as expectations outlined in the Student Conduct Code and the Residence Hall Bill of Rights and Responsibilities. Should any student leave the ECA program for any reason, that student will be required to move out of EMU housing by a specified date determined by Housing and will be granted a pro-rated refund of room and board charges. Eastern Michigan University, in its sole discretion, shall have the right to terminate the arrangement to offer University housing to ECA students by delivering written notice to ECA no later than 30-days prior to the start of the next semester in which the housing option ends. The University shall comply with federal and state law prohibiting discrimination on the basis of disability in University housing, including but not limited to, Title III of the ADA and its implementing regulation (ADA III), the federal Fair Housing Act, and the Michigan Persons with Disabilities Civil Rights Act.

- g) Student Access and Involvement on Campus. The University shall provide ECA students and staff access to all campus venues, services, events and programs (both athletic and non-athletic) that are open to the general public. ECA students also may use the Recreation and Intramural (Rec/IM) Building during the semesters in which they are enrolled in the ECA Program and are subject to the same per-semester usage fee as charged to other University students. ECA students can choose to opt out of Rec/IM access by coordinating with the ECA to complete the Rec/IM Opt-Out Form each semester.

ECA students may participate in EMU student organizations and Greek service organizations, provided that they meet the requirements of the ECA, the organization, and the University. Students may not participate in Greek social organizations unless they are 18 years of age.

- h) Computer/Network/Other Services. The University shall ~~purchase and~~ provide set-up and routine maintenance for computers or other equipment assigned to the Consortium staff, faculty and administration. The University shall provide installation, setup, technical support and software administration services for the software utilized by the Consortium that is generally supported on the EMU campus. The University shall provide network access to the Consortium, including Internet access, e-mail, printing access, and other services commonly provided to other EMU units.
- i) Mail, Receiving, Storage _____ and Purchasing Services. The University shall provide the Consortium with mail service, including receiving, sorting, distribution and pick-up. The University shall provide receiving services for packages shipped to the Consortium, including validation of shipments and distribution of packages through University warehouse operations. The University shall provide the Consortium access to University purchasing services.
9. ECA Access to Up to 810,000 EMU Credit Hours. The "Lease, Support Services and Enrollment Fee" described in Para. No. 10 of this Agreement covers not only the Consortium's use of Campus Facilities and University Support Services for its ECA program (staff and students) as elsewhere described in this Agreement, but also the purchase by the Consortium of an aggregate of 810,000 credit hours of EMU courses (at any course levels) for use by pupils enrolled in the ECA at EMU.

10. Lease, Support Services, and Enrollment Fee. In consideration for the lease of Campus Facilities (set forth in Section 3 and Appendix A), use of the University Support Services (set forth in Section 8), and use of up to 810,000 EMU credit hours per fiscal year (at any combination of levels) for ECA students, the Consortium shall annually pay to the University a "Lease, Support Services and Enrollment Fee" in the amount of ~~One Million twoFour hHundred Tthousand dDollars~~ (\$1,2400,000) for the first and second year of this Agreement's six-year term, One Million Six Hundred Thousand Dollars (\$1,600,000) for the third and fourth year of this Agreement's six-year term, and One Million Eight Hundred Thousand Dollars (\$1,800,000) for the fifth and sixth ~~each~~-year of this Agreement's ~~initial sixfour~~-year term. The Consortium will be invoiced annually by the University in two equal installments ~~of six hundred thousand dollars (\$600,000) each~~, the first installment to be invoiced in November (covering July 1 through December 31) and the second in April (covering January 1 through June 30) of each fiscal year. Payment is due within 30 days after receipt of the invoice by the Consortium, unless and to the extent disputed in good faith.
11. Default.
- A. Consortium Default. If the Consortium defaults under this Agreement by failure to pay the Rental, Support Services and Enrollment Fee, or by failure to materially comply with any of its other obligations under this Agreement, the University may terminate this Agreement by giving the Consortium thirty (30) days written notice setting forth the specific reason(s) for such termination and providing the Consortium an opportunity to cure or object to the default. If the Consortium fails to object or to cure the default within such thirty (30) day period, or if the default is substantiated and cannot be reasonably cured within such thirty (30) day period, then the Consortium shall vacate the Campus Facilities by December 31 or June 30, whichever is sooner. The Consortium shall remain obligated to the University for the Rental and Support Service Fees on a pro rata basis up to the date on which the Consortium vacates the Campus Facilities.
- B. University Default. If the University defaults under this Agreement by failure to provide Campus Facilities and Support Services as elsewhere detailed in this Agreement, by failure to allow ECA pupils to enroll in up to 810,000 credit hours of EMU courses hours per year, or by failure to materially comply with any of its other obligations under this Agreement, the Consortium may terminate this Agreement by giving the University thirty (30) days written notice setting forth the specific reason(s) for such termination and providing the University an opportunity to cure or object to the default. If the University fails to cure the default within such thirty (30) day period, or if the default is substantiated and cannot be reasonably cured within such thirty (30) day period, ~~then the University shall immediately disgorge and refund to the Consortium the Rental, Support Services and Enrollment Fee paid by the Consortium for the period covered by the default.~~
12. Notices. All notices, bills, or other communications to a Party required or permitted under this Agreement, shall be in writing and shall be deemed to be duly given (a) on the day of service if served personally upon the Party to whom notice is given or (b) on the day after delivery to the United States Postal Service for regular mail service, or to a courier service, to the attention of the Consortium Director, in the case of the Consortium, and to the University designee, in the case of the University, at the address as listed alongside the signatory lines of the Party at the end of this Agreement. A Party may change its address by notice in this same manner.
13. Insurance. The University shall insure the Campus Facilities (including furniture, equipment, amenities, computers, printers, copiers, WiFi, and so forth) against loss or damage under a policy

of fire or extended coverage in scope and amounts deemed appropriate by the University. The University at its expense shall maintain public liability insurance applicable to the Campus Facilities, in amounts deemed appropriate by M.U.S.I.C., considering customary insurance coverage with respect to the operation and use of similar buildings and properties in Washtenaw County, Michigan. The University, to the extent permitted by law, shall indemnify and hold the Consortium harmless from any liability or claim for damages that may be asserted against the Consortium because of any accident or casualty occurring on or about the Campus Facilities. The University's indemnification obligations shall not extend to liabilities or claims for damages that arise from the gross negligence or willful misconduct of the Consortium. The Consortium, through its fiscal agent, shall maintain Commercial General Liability Insurance with a minimum of \$1,000,000 per occurrence limit and \$2,000,000 aggregate. Further, Eastern Michigan University shall be named as an additional insured. Any personal property belonging to ECA students or staff that is brought onto or into the Campus Facilities by such students or staff shall be the responsibility of that ECA student or staff member. In the event that the Consortium shall maintain personal property purchased with Consortium funds in or on Campus Facilities, the Consortium (through its fiscal agent) shall acquire and maintain insurance coverages to guard against loss. .

14. **Mutual Indemnification.** EMU and the Consortium shall be solely and entirely responsible for acts or omissions attributable to it or its respective officers, employees, agents or subcontractors during the performance of this Agreement. To the extent permitted by law, EMU and the Consortium (through insurance provided through its fiscal agent) shall hold harmless and indemnify each other for any claim, suit, damage, or cause of action, including the defense thereof, resulting from or attributable to any action or inaction by the indemnifying entity or its officers, employees, agents or subcontractors, in respect to this Agreement. This indemnification shall not be deemed a relinquishment or waiver by WISD or the Consortium of any immunity under of Section 7 of the Governmental Liability for Negligence Act, being Act No. 170, Public Acts of Michigan, 1964.
15. **Severability.** If any part of a provision in this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such part of a provision shall be ineffective only to the extent of invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision or the remaining provisions of this Agreement.
16. **Entire Agreement.** Except as specifically provided in this agreement (and the Consortium Agreement establishing the Consortium, as amended to include the ECA), this Agreement sets forth the entire Agreement between the Consortium and the University with respect to their mutual participation in the Early College Alliance. All prior contracts, representations, statements, negotiations, understandings and undertakings are superseded by this Agreement.
17. **Non-Waiver.** Except as provided herein, no term or provision of this Agreement shall be deemed waived and no breach or default shall be deemed excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No consent by any Party to, or waiver of, a breach or default by the other, whether expressed or implied, shall constitute a consent to, waiver of, or excuses for any different or subsequent breach or default.
18. **Counterparts.** This Agreement may be executed in any number of counterparts. Each counterpart so executed shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.
19. **Access to Copies of Agreement.** The Consortium and the University agree to make copies of this Agreement available, for public inspection, at their administrative offices during normal business hours.

20. Construction. This Agreement shall be construed fairly as to both Parties and not in favor of or against either Party, regardless of which Party prepared the Agreement.
21. Force Majeure. If any circumstances occur which are beyond the control of the Parties, which delay or render impossible the performance of the obligations of one or both of the Parties, the Parties' obligations to perform such services shall be postponed for an equivalent period of time or shall be canceled, if such performance has been rendered impossible by such circumstances.
22. Consortium Rights and Limited Liability. This Agreement is made for the sole benefit of the Consortium and the University. WISD is entering into this Agreement for the benefit of the Consortium, which shall be entitled to enforce against the University all Consortium rights under this Agreement in its own name or by its fiscal agent. The University acknowledges that under the terms of the Early College Alliance Consortium Agreement direct recourse for Consortium liabilities or obligations may be taken only against the Consortium fiscal agent, and that the University shall have no direct recourse against other Consortium participants. Accordingly, the University agrees that it shall not enforce this Agreement against other Consortium participants, except WISD or any successor Consortium fiscal agent which accepts in writing Consortium liabilities or obligations under this Agreement. There shall be no other third party beneficiaries of this Agreement.
23. Signer's Representation. Each signer of this Agreement personally represents and warrants that this Agreement has been authorized by direct approval or by express delegation of authority by the governing body of the Party on whose behalf this Agreement is signed, and that s/he has been expressly authorized to sign this Agreement.

FOR THE BENEFIT OF
WASHTENAW EDUCATIONAL OPTIONS CONSORTIUM - EARLY COLLEGE ALLIANCE

By: WASHTENAW INTERMEDIATE
SCHOOL DISTRICT

President

Dated:

Secretary

Dated:

Superintendent

Dated:

Meeting Date of Board Action:

Address:

Fax: _____

EASTERN MICHIGAN UNIVERSITY

(Authorized Officer)

Its:

Dated:

And

(Authorized Officer)

Its:

Dated:

Address:

Fax:

SECRET

