

BOARD OF REGENTS
EASTERN MICHIGAN UNIVERSITY

RECOMMENDATION

SECTION: 17
DATE: April 14, 2011

RESOLUTION OF THE BOARD OF REGENTS OF EASTERN MICHIGAN UNIVERSITY APPROVING A CONSTRUCTION AND COMPLETION ASSURANCE AGREEMENT, A CONVEYANCE OF PROPERTY, A LEASE AND AN EASEMENT AGREEMENT, IF NECESSARY, FOR THE EASTERN MICHIGAN UNIVERSITY PRAY-HARROLD RENOVATIONS

ACTION REQUESTED

It is recommended that the Board of Regents approve the attached resolution approving a construction and completion assurance agreement, a conveyance of property, a lease and an easement agreement for the Pray-Harold renovation project.

STAFF SUMMARY

In accordance with the Construction Agreement, the State of Michigan and Eastern Michigan University request that the State Building Authority acquire the Pray-Harold site on or prior to the date of its completion, and the Authority is willing to lease the same back to the State of Michigan and Eastern Michigan University.

The Pray-Harold site is currently owned by Eastern Michigan University. The project will be constructed by Eastern Michigan on behalf of the Authority and it is intended that the site and the facility be conveyed to the Authority by Eastern.

The acquisition of the facility by the Authority for use by and lease to Eastern and the State is necessary in order for the State and Eastern to carry out necessary governmental functions and to provide necessary services to the people of the State as mandated or permitted by constitution and law.

FISCAL IMPLICATIONS

None.

ADMINISTRATIVE RECOMMENDATION

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

University Executive Officer _____

4/14/11

Date

RESOLUTION OF THE BOARD OF REGENTS OF
EASTERN MICHIGAN UNIVERSITY
APPROVING A CONSTRUCTION AND COMPLETION
ASSURANCE AGREEMENT, A CONVEYANCE OF
PROPERTY, A LEASE AND AN EASEMENT AGREEMENT,
IF NECESSARY, FOR THE EASTERN MICHIGAN UNIVERSITY
PRAY-HARROLD HALL RENOVATIONS

A RESOLUTION of the Board of Regents of Eastern Michigan University (i) approving (a) a form of construction and completion assurance agreement (the "Construction Agreement"), by and among the State Building Authority (the "Authority"), the State of Michigan (the "State") and Eastern Michigan University, a Michigan constitutional body corporate (the "Educational Institution"), providing for the rights, duties and obligations of the Authority, the State and the Educational Institution with respect to the Educational Institution's Pray-Harrold Hall Renovations and the site therefor (the "Facility") during the construction, renovation and/or equipping of the Facility and prior to the conveyance of the Facility to the Authority, (b) the conveyance of the Facility to the Authority, (c) a lease (the "Lease"), by and among the Authority, the Educational Institution and the State, for the purpose of leasing the Facility to the State and the Educational Institution and (d) an easement agreement (the "Easement Agreement") between the Authority and the Educational Institution, if necessary in connection with the entering into of the Lease, and (ii) providing for other matters related thereto.

WHEREAS, the Authority has been incorporated under and pursuant to the provisions of Act No. 183, Public Acts of Michigan, 1964, as amended ("Act 183"), for the purpose of acquiring, constructing, furnishing, equipping, owning, improving, enlarging, operating, mortgaging and maintaining buildings, necessary parking structures or lots and facilities, and sites therefor, for the use of the State, including institutions of higher education created pursuant to Section 4, 5, 6 or 7 of Article 8 of the Michigan Constitution of 1963 (the "State Constitution"), or any of its agencies; and

WHEREAS, the Educational Institution has been maintained and created pursuant to Section 4 of Article 8 of the State Constitution; and

WHEREAS, the State and the Educational Institution desire that the Authority finance the acquisition, construction, renovation and/or equipping of the Facility in consideration of

(i) the Educational Institution granting a license to the Authority to enter upon the site of the Facility (the "Site") in order to undertake such construction, renovation and/or equipping, (ii) the Educational Institution undertaking on behalf of the Authority the oversight of such construction, renovation and/or equipping and (iii) the Educational Institution conveying the Facility to the Authority on or prior to the date of its completion, and the Authority is willing to provide such financing in consideration of the items described above; and

WHEREAS, in accordance with the Construction Agreement, the State and the Educational Institution desire that the Authority acquire the Facility on or prior to the date of its completion, and lease the same to the State and the Educational Institution, and the Authority is willing to acquire the Facility and lease the same to the State and the Educational Institution; and

WHEREAS, the Site is presently owned by the Educational Institution, the Facility will be constructed by the Educational Institution on behalf of the Authority, and it is intended that the Site and the Facility be conveyed to the Authority by the Educational Institution; and

WHEREAS, the acquisition of the Facility by the Authority for use by and lease to the Educational Institution and the State is necessary in order for the State and the Educational Institution to carry out necessary governmental functions and to provide necessary services to the people of the State as mandated or permitted by constitution and law, and the use of Act 183 to accomplish such acquisition represents the most practical means to that end at the lowest cost to the State and the Educational Institution; and

WHEREAS, Section 7 of Act 183 provides that the Lease shall be approved by the Authority, by the State Administrative Board of the State and by concurrent resolution of the Legislature of the State concurred in by a majority of the members elected to and serving in each house and if the Lease is for an institution of higher education existing or created pursuant to Section 4, 5, 6 or 7 of Article 8 of the State Constitution, then in addition, the Lease shall be authorized by the institution of higher education and signed by its authorized officers and, accordingly, it is necessary that the Educational Institution authorize and approve the Lease; and

WHEREAS, if it is determined that (i) the Authority will require an easement from a public road to the Facility over real property owned by the Educational Institution so that the Authority has access to the Facility, (ii) the Educational Institution will require for future use certain easements through the Facility, (iii) the Authority and the Educational Institution will require an agreement to share a common structural wall or (iv) the Authority will require an

easement over real property owned by the Educational Institution so that the Authority has sufficient parking available in connection with the reasonable use of the Facility, then in order to meet any such requirement, it may be necessary for authorized officers of the Educational Institution to approve an Basement Agreement to provide for such easements or the sharing of a common structural wall, as the case may be;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF REGENTS OF THE EDUCATIONAL INSTITUTION THAT:

1. The plans for the Facility, as filed with the Educational Institution, are hereby approved.
2. The Educational Institution hereby authorizes and approves the Construction Agreement in substantially the form attached as Exhibit A, and any two of the following then seated officers of the Educational Institution: the President, the Provost and the Chief Financial Officer are hereby authorized and directed to execute and deliver, at the appropriate time, the Construction Agreement in substantially the form attached as Exhibit A for and on behalf of the Educational Institution. Such officers are hereby authorized to approve such changes in and modifications to the Construction Agreement as do not materially adversely affect the Educational Institution.
3. The conveyance of the Site and the Facility to the Authority in accordance with the Construction Agreement is hereby approved, and any two of the following then seated officers of the Educational Institution: the President, the Provost and the Chief Financial Officer are hereby authorized and directed to execute and deliver a warranty deed in substantially the form attached as Exhibit B and bills of sale to accomplish such conveyance in such form as may be from time to time approved by such officers.
4. The Educational Institution hereby authorizes and approves the Lease in substantially the form attached as Exhibit C, and any two of the following then seated officers of the Educational Institution: the President, the Provost and the Chief Financial Officer are hereby authorized and directed to execute and deliver the Lease in accordance with the Construction Agreement and in substantially the form attached as Exhibit C for and on behalf of the Educational Institution and such officers are hereby designated as authorized officers of the Educational Institution for purposes of Section 7 of Act 183. Such officers are hereby authorized to approve such changes in and modifications to the Lease as do not materially alter the

substance and intent thereof as expressed in the Lease and the request for action submitted to the Board of Regents in connection therewith; provided such officers are not hereby authorized to approve a change in the Lease with respect to the range of rental, the description of the Facility or the material financial obligations of the Educational Institution contained in the Lease approved herein. The Educational Institution hereby determines that the maximum rental in the amount described below is reasonable and the authorized officers are hereby authorized to approve in the Lease, as executed, rental in annual amounts determined by the final appraisal of "True Rental," but not exceeding \$2,825,000 in any 12-month period and a lease term of not exceeding 40 years.

5. If in connection with the entering into of the Lease, and any two of the following then seated officers of the Educational Institution: the President, the Provost and the Chief Financial Officer determine that (i) the Authority will require an easement from a public road to the Facility over real property owned by the Educational Institution so that the Authority has access to the Facility, (ii) the Educational Institution will require for future use certain easements through the Facility, (iii) the Authority and the Educational Institution will require an agreement to share a common structural wall or (iv) the Authority will require an easement over real property owned by the Educational Institution so that the Authority has sufficient parking available in connection with the reasonable use of the Facility, then such officers are hereby authorized and directed to execute and deliver an Easement Agreement if necessary in order to meet any such requirement.

6. Any of the following then seated officers of the Educational Institution: the President, the Provost and the Chief Financial Officer are hereby severally authorized and directed to take or cause to be taken all other actions, including, without limitation, making requests of and approving requests from the Authority and the State and signing certificates, documents or other instruments, each on behalf of the Educational Institution, as they deem necessary or desirable under the circumstances to accomplish the purposes of the transactions authorized in this Resolution.

7. The Educational Institution further confirms its obligations to perform the duties and obligations specified in the Construction Agreement (only upon its execution by authorized officers of the Educational Institution) and the Lease (only upon its execution by authorized officers of the Educational Institution) and acknowledges that such obligations do not depend

upon passage of title to the Facility to the Educational Institution without consideration upon termination of the Lease. The Educational Institution hereby recognizes that it would execute and deliver the Lease even if title to the Facility would not pass upon termination of the Lease.

8. The Educational Institution recognizes that the Authority shall pay for costs of the Facility in an amount not in excess of \$31,499,800.

9. All ordinances, resolutions and orders or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

10. This Resolution shall be effective immediately upon its adoption.