

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION

Approved by the Regents

February 19, 2009

REQUEST FOR ACTION

Subject: State Building Authority Financing of Phoenix Laboratory in Ann Arbor Campus

Action Requested: Approval of Resolution Approving Construction and Completion Assurance Agreement, Conveyance of Property, Lease, and Easement Agreements, if Necessary, for the Named Project and Authorizations for the Appropriate Officers to Execute and Deliver the Required Documents

Background and Summary:

The State Building Authority (SBA) plans to issue commercial paper to finance new projects including the Phoenix Laboratory in the Ann Arbor Campus. The SBA commercial paper program proceeds will be used to fund the construction cash flow requirements of the project. Subsequently, at or near completion of the project the SBA plans to issue long-term bonds to retire its commercial paper debt.

The SBA's initial financing will require the University to execute a Construction and Completion Assurance Agreement. This agreement details the rights, duties and obligations of the State of Michigan, the SBA, and the University for the project during the construction period and prior to conveyance of the property with improvements to the SBA. The Construction and Completion Assurance Agreement also provides assurance to the SBA that the University will complete the facility in a timely manner. At the same time, the University is required to execute a Bill of Sale to convey title for personal property to the SBA for the project.

At or near completion of the project when the SBA is ready to issue long term bonds, the SBA financing will also require execution of a Warranty Deed to convey the property to the SBA and the execution of a Lease between the SBA, the State of Michigan and the University. The University will lease the property from the SBA and the annual lease-rental payments will be paid by the State on behalf of the University. In addition, it may be necessary to execute Easement Agreements between the University and the SBA to facilitate the transaction. All of the required documents are substantially similar to those authorized by the Regents for previous SBA projects.

We recommend the Regents approve for the Phoenix Laboratory to be financed by the State Building Authority the attached Resolution and authorize the appropriate officers to:

- On or prior to the SBA's issuance of commercial paper notes, execute the Construction and Completion Assurance Agreement and Bill of Sale.
- At or near completion of the project and prior to the issuance of the SBA's bonds, execute the respective Lease, convey title to the property, and execute any necessary easement agreements required for the financing of the project.
- Execute any other documentation required for the financing of the project by the SBA.

Copies of the Construction and Completion Assurance Agreement, Bill of Sale, Lease, Warranty Deed, and any necessary Easement Agreements will be available for review in the Treasurer's Office.

Respectfully submitted,



Timothy P. Slottow
Executive Vice President and
Chief Financial Officer

February 2009

Attachment

RESOLUTION OF THE REGENTS OF
THE UNIVERSITY OF MICHIGAN
APPROVING A CONSTRUCTION AND COMPLETION
ASSURANCE AGREEMENT, A CONVEYANCE OF
PROPERTY, A LEASE AND AN EASEMENT AGREEMENT,
IF NECESSARY, FOR THE UNIVERSITY OF MICHIGAN
PHOENIX LABORATORY

A RESOLUTION of the Regents of the University of Michigan (i) approving (a) a form of construction and completion assurance agreement (the "Construction and Completion Assurance Agreement"), by and among the State Building Authority (the "Authority"), the State of Michigan (the "State") and the Regents of the University of Michigan, 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 Phoenix Laboratory 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 and/or other agreement (the "Easement Agreement") between the Authority and the Educational Institution, if necessary and/or desirable in connection with access, parking, utilities, pedestrians, encroachments, and/or other matters pertaining to the interactions between the Facility and real property owned by the Educational Institution, 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 Sections 4 and 5 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 and Completion Assurance 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 officer and, accordingly, it is necessary that the Educational Institution authorize and approve the Lease; and

WHEREAS, if it is determined that (i) the Educational Institution will require for future use certain easements through the Facility, (ii) the Authority and the Educational Institution will require an agreement to share a common structural wall, (iii) 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, and/or (iv) the Authority and/or the Educational Institution will require other easements and/or agreements pertaining to the Facility and/or real property owned by the Educational Institution (such as, but without limitation, easements and/or agreements pertaining to pedestrian traffic, utility lines, and/or encroachments), then in order to meet any such requirement, it may be necessary for an authorized officer of the Educational Institution to approve an Easement Agreement or Easement Agreements to provide for such easements and/or agreements;

NOW, THEREFORE, BE IT RESOLVED BY THE REGENTS OF THE UNIVERSITY OF MICHIGAN 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 and Completion Assurance Agreement in substantially the form attached as Exhibit A, and the Executive Vice President and Chief Financial Officer of the Educational Institution is hereby authorized and directed to execute and deliver, at the appropriate time, the Construction and Completion Assurance Agreement in substantially the form attached as Exhibit A for and on behalf of the Educational Institution. Such officer is hereby authorized to approve such changes in and modifications to the Construction and Completion Assurance 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 and Completion Assurance Agreement is hereby approved, and the then seated President and the Executive Vice President and Chief Financial Officer of the Educational Institution 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 the Executive Vice President and Chief Financial Officer of the Educational Institution is hereby authorized and directed to execute and deliver the Lease in accordance with the Construction and Completion Assurance Agreement and in substantially the form attached as Exhibit C for and on behalf of the Educational Institution and such officer is hereby designated as an authorized officer of the Educational Institution for purposes of Section 7 of Act 183. Such officer is 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 Regents in connection therewith; provided such officer is 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 officer is hereby authorized to approve in the Lease, as executed, rental in annual amounts determined by the final appraisal of "True Rental," but not exceeding \$576,000 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 if the Executive Vice President and Chief Financial Officer of the Educational Institution determines that (i) the Educational Institution will require for future use certain easements through the Facility, (ii) the Authority and the Educational Institution will require an agreement to share a common structural wall, (iii) 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, and/or (iv) the Authority and/or the Educational Institution will require other easements and/or agreements pertaining to the Facility and/or real property owned by the Educational Institution (such as, but without limitation, easements and/or agreements pertaining to pedestrian traffic, utility lines, and/or encroachments), then such officer is hereby authorized and directed to execute and deliver an Easement Agreement or Easement Agreements if necessary in order to meet any such requirement.

6. The Executive Vice President and Chief Financial Officer of the Educational Institution is hereby 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, on behalf of the Educational Institution, as he deems 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 and Completion Assurance Agreement (only upon its execution by the authorized officer of the Educational Institution) and the Lease (only upon its execution by the authorized officer 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 \$6,428,200.

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.