**Submitted by: John L. Davis, Senior Vice President for Finance and Administration**

# AUTHORITY TO ISSUE BONDS
# SCOTT HALL/SHIFFMAN LIBRARY ENERGY CONSERVATION PROJECT

## Recommendation:

The Administration recommends that the Board of Governors adopt the attached resolution authorizing the issuance of up to $7,400,000, including any interest capitalization cost, of callable Wayne State University general revenue bonds for terms up to 25 years or 30 years. The bonds would be issued to finance the construction cost, including contingency of a number of energy conservation measures in Scott Hall and Shiffman Medical Library plus the replacement of two chillers for Scott Hall.

The maximum annual debt service on the new bonds is not to exceed $600,000 with the funding source thereof to be the guaranteed utility cost reduction as detailed and specified in the University's agreement with Honeywell, Inc. to construct the utility conversion measures and installation of the chiller.

## Background:

At the November Board meeting, the Administration was authorized to award a contact to Honeywell, Inc. that would provide for the construction and installation of the energy conservation measures, plus the replacement of two chillers, and provide for guaranteed annual energy savings of $633,000 for a period of 15 years. However, the actual savings are expected to be somewhat greater than the guaranteed amount.

The recommendation and resolution adopted by the Board indicated that the funding for the construction cost would be provided by proceeds from either the sale of general revenue bonds or the issuance of tax exempt notes to a bank. After further review with bond counsel and financial underwriters, the Administration is recommending the sale of general revenue bonds as the preferred option.

Attached is a copy of the November 14, 2001 recommendation and background document.

# RESOLUTION OF THE BOARD OF GOVERNORS OF WAYNE STATE UNIVERSITY AUTHORIZING THE ISSUANCE AND DELIVERY OF GENERAL REVENUE BONDS, SERIES 2001 AND PROVIDING FOR OTHER MATTERS RELATING THERETO

WHEREAS, the Board of Governors of Wayne State University (the "Board") is a constitutional body corporate established pursuant to Article VIII, Section 5 of the Michigan Constitution of 1963, as amended, with general supervision of Wayne State University (the "University") and the control and direction of all expenditures from the University's funds; and

WHEREAS, the Board proposes to undertake the project, as described on Exhibit A attached hereto (the "Project"); and

WHEREAS, the Board has previously issued its General Revenue Bonds in several outstanding series (collectively, the "Prior Obligations"), including its $82,000,000 General Revenue Bonds, Series, 1993, its $132,000,000 General Revenue Bonds, Series 1999 and the first tranche of its General Revenue Bonds, Series 2001 in the principal amount of $19,000,000 (the "Series 2001 Bonds"); and

WHEREAS, in the exercise of its constitutional duties, and in order to prudently control and direct expenditures from the University's funds, the Board determines it is necessary and desirable to authorize the issuance and delivery of a series or tranche of the Board's General Revenue Bonds (the "Bonds") in order to provide funds which, together with other available funds, will be used to pay all or a portion of the costs of the Project, to fund capitalized interest, if applicable, and to pay costs related to the issuance of the Bonds; and

WHEREAS, a trust indenture or supplemental trust indenture (the "Trust Indenture") must be entered into by and between the Board and trustee (the "Trustee"), to be designated by an Authorized Officer, pursuant to which the Bonds will be issued and secured; and

WHEREAS, Lehman Brothers Inc. (the "Underwriter") has been selected as underwriter for the Bonds, and it is necessary to authorize the Authorized Officers to negotiate the sale of the Bonds with the Underwriter and enter into a bond purchase agreement or agreements (the "Bond Purchase Agreement") setting forth the terms and conditions upon which the Underwriter will agree to purchase the Bonds and the interest rates thereof and the purchase price therefor; and

WHEREAS, in order to be able to market the Bonds at the most opportune time, it is necessary for the Board to authorize the President and the Treasurer (each an "Authorized Officer"), or either of them, to designate the Trustee to negotiate, execute and deliver on behalf of the Board the Trust Indenture, to establish the specific terms of the Bonds, to accept the offer of the Underwriter to purchase the Bonds and to obtain a policy of bond insurance or a credit or liquidity facility for the Bonds, and to enter into interest rate swap arrangements with respect to the Bonds, all as may be deemed necessary and desirable by an Authorized Officer and within the limitations set forth herein; and

WHEREAS, the financing of the Project will serve proper and appropriate public purposes; and

WHEREAS, the Board has full power under its constitutional authority and supervision of the University, and control and direction of expenditures from the University funds, to acquire and construct the Project, and to pay all or part of the cost of the acquisition, construction and installation of the Project issuance of the Bonds, and to pledge General Revenues for payment of the Bonds:

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF GOVERNORS OF WAYNE STATE UNIVERSITY, AS FOLLOWS:

1. The Board hereby authorizes the issuance, execution and delivery of the Bonds of the Board in one or more series to be designated GENERAL REVENUE BONDS with appropriate series designations, if any, in the aggregate original principal amount to be established by an Authorized Officer, but not to exceed the principal amount necessary to produce proceeds of Seven Million Four Hundred Thousand Dollars ($7,400,000), to be dated as of the date or dates established by an Authorized Officer, for the purpose of providing funds which, together with other available funds, will be used to pay all or a portion of the costs of the Project, capitalized interest for such period, if any, as an Authorized Officer may deem appropriate, and costs incidental to the issuance of the Bonds, including insurance premiums or fees and expenses associated with credit or liquidity facilities, if appropriate. The Bonds may be issued as an independent series or as a second tranche of the Board's Series 2001 Bonds. Either Authorized Officer is authorized to determine the proportion of the Project to be funded from the proceeds of the Bonds. The Bonds shall be serial Bonds or term Bonds, which may be subject to redemption requirements, or both, as shall be established by an Authorized Officer, but the first maturity shall be not earlier than November 1, 2002 and the last maturity shall be no later than December 31, 2032. The Bonds may bear no interest or may bear interest at stated fixed rates for the respective maturities thereof as shall be established by an Authorized Officer, but the highest yield (computed using the stated coupon and the stated original offering price) for any maturity shall not exceed 6.25% per annum, and the Bonds may be issued in whole or in part as capital appreciation bonds, which for their term or any part thereof bear no interest but appreciate in principal amount over time at compounded rate (not in excess of 6.25% per annum) to be

determined by an Authorized Officer. Alternatively, all or part of the Bonds may bear interest at a variable rate of interest for all or a portion of their term, and the variable rate of interest shall not exceed the lesser of 18% per annum, the maximum rate permitted by law or the maximum rate to be specified in the Trust Indenture. In addition, all or part of the Bonds may be issued in related series, one of which bears interest at a variable rate and one of which bears interest at a residual rate determined by subtracting the variable rate from the fixed rate paid by the Board, but the combined rate on such Bonds, taking the two related series together, which shall be determined by an Authorized Officer, shall not exceed 6.25% per annum. The Bonds may be subject to redemption or call for purchase prior to maturity at the times and prices and in the manner as shall be established by an Authorized Officer, but no redemption premium shall exceed 3% of the principal amount being redeemed. The average annual scheduled principal and interest requirements on the Bonds, taking into account any swap or other arrangements described below, and assuming the variable rate on any Bonds not also subject to a swap or other arrangement, and not issued as part of related series as described above, is equal to 3.5% per annum, shall not exceed $600,000. Interest on the Bonds shall be payable at the times as shall be specified by an Authorized Officer. The Bonds shall be issued in fully registered form in denominations, shall be payable as to principal and interest in the manner, shall be subject to transfer and exchange, and shall be executed and authenticated, all as shall be provided in the Trust Indenture. The Bonds shall be sold to the Underwriter pursuant to the Bond Purchase Agreement for a price to be established by an Authorized Officer (but the Underwriter's discount, exclusive of original issue discount, shall not exceed 0.7% of the principal amount thereof) plus accrued interest, if any, from the dated date of the Bonds to the date of delivery thereof. In connection with the Bonds, either of the Authorized Officers may, on behalf of and as the act of the Board, enter into an interest rate swap, cap or similar agreement or agreements (collectively, the "Swap Agreement") with a counter-party or counter-parties to be selected by the Authorized Officer. Such Swap Agreement shall provide for payments between the Board and the counter-party related to interest on all or a portion of the Bonds or indexed or market established rates. The expected effective interest rates on the Bonds, taking into account the effect of the Swap Agreement, shall be within the limitations set forth herein.

Any or all of the Bonds may be made subject to tender for purchase at the option of the holder thereof. The obligation of the Board to purchase any such Bonds made subject to tender options may be made payable from available cash reserves of the University, subject to such limitations as may be specified in the Trust Indenture, or may be made payable from a letter of credit, line of credit or other liquidity device ("the Liquidity Device"), all as shall be determined by an Authorized Officer and provided for in the Trust Indenture. Any reimbursement obligation for draws under the Liquidity Device shall be a limited and not general obligation of the Board, payable from and secured by a pledge of General Revenues (hereinafter defined). Either Authorized Officer is authorized to execute and deliver, for and on behalf of the Board, any agreements or instruments necessary to obtain, and provide for repayments under, any Liquidity Device deemed by such officer to be required for the purposes of this Resolution. Purchase obligations with respect to tendered Bonds shall not be considered as "principal and interest requirements" hereunder.

2. The Bonds and the obligations of the Board under the Swap Agreement or any Liquidity Device, if either or both is entered into, shall be limited and not general obligations of the Board payable from and secured by a first lien on the General Revenues (as shall be defined in the Trust Indenture to include generally student tuition and other fees, housing and auxiliary

revenues, unrestricted gifts and grants, unrestricted investment income and other miscellaneous revenues, subject to certain reductions, limitations and exceptions), and funds from time to time on deposit in certain funds created pursuant to the Trust Indenture, the Swap Agreement or agreements entered into in connection with any Liquidity Device. The lien on General Revenues created pursuant to this paragraph shall be on a parity basis with the lien thereon securing any of the Prior Obligations; provided, however, that if determined appropriate by an Authorized Officer, the lien securing the Board's obligations under a Swap Agreement or Liquidity Facility may be subordinated to the lien securing the Bonds and the Prior Obligations.

No recourse shall be had for the payment of the principal amount of or interest or premium on the Bonds, the Swap Agreement or any Liquidity Device, or any claim based thereof against the State of Michigan, or any member, officer or agent of the Board or the State, as individuals, either directly or indirectly, nor, except as provided in the Trust Indenture, against the Board, nor shall the Bonds and interest with respect thereto or the Swap Agreement or any Liquidity Device become a lien on or be secured by any property, real, personal or mixed of the State of Michigan or the Board, other than the General Revenues and the moneys from time to time on deposit in certain funds established by the Trust Indenture, the Swap Agreement or agreements entered into in connection with any Liquidity Device .

3. The right is reserved to issue additional bonds, notes or other obligations payable from and secured on a parity basis with the Bonds from the General Revenues, upon compliance with the terms and conditions as shall be set forth in the Trust Indenture.

4. Either Authorized Officer is hereby authorized and directed, in the name and on behalf of the Board, and as its corporate act and deed, to select the Trustee, and to negotiate, execute and deliver the Trust Indenture in the form as an Authorized Officer may approve upon

recommendation of legal counsel, which approval shall be conclusively evidenced by the execution of the Trust Indenture, all within the limitations set forth herein.

5. Either Authorized Officer is hereby authorized and directed, in the name and on behalf of the Board, and its corporate act and deed, to negotiate, execute and deliver the Bond Purchase Agreement with the Underwriter, setting forth the terms of the Bonds and the sale thereof, all within the limitations set forth herein.

6. Either Authorized Officer is hereby authorized, empowered and directed, in the name and on behalf of the Board, and as its corporate act and deed, to execute the Bonds by placing his or their manual or facsimile signature or signatures thereon, and to deliver the Bonds to the Underwriter in exchange for the purchase price thereof, as provided in the Bond Purchase Agreement.

7. Either Authorized Officer is hereby authorized to cause the preparation of a Preliminary Official Statement and an Official Statement with respect to the Bonds, to deem such statements "final" in accordance with applicable law, and to execute and deliver the Official Statement. The Underwriter is authorized to circulate and use, in accordance with applicable law, the Preliminary Official Statement and Official Statement in connection with the offering, marketing and sale of the Bonds.

8. The President, the Treasurer, the Assistant Treasurer and any other appropriate officer of the Board or the University are hereby authorized to perform, execute and/or deliver, for and on behalf of the Board, all acts, deeds, instruments and documents as may be required by this resolution, the Trust Indenture, or the Bond Purchase Agreement, or necessary, expedient and proper in connection with the issuance, sale and delivery, and ongoing administration, of the Bonds or the Trust Indenture, as contemplated hereby.

9. Either Authorized Officer is authorized to acquire a commitment or commitments for bond insurance for the Bonds, and if such insurance is deemed cost effective, to accept a commitment on behalf of the Board and to cause the premium with respect thereto to be paid from Bond proceeds as part of the costs of issuance.

10. The Treasurer is hereby authorized and delegated the power to issue a declaration of intent to reimburse the University from Bond proceeds for any expenditures with respect to the Project incurred prior to the issuance of the Bonds, all in accordance with I.R.S. Regulation 1.103-18.

11. Either Authorized Officer is authorized to negotiate, executive and deliver, for and on behalf of the Board, any amendment to the trust indentures securing the Prior Obligations necessary for the issuance of Bonds or the execution and delivery of any Swap Agreement or Liquidity Device, and the securing thereof by a pledge of General Revenues, all as provided herein.

12. In accordance with the requirements of Rule 15c2-12 of the United States Securities and Exchange Commission, the Board may be required in connection with the issuance of the Bonds to enter into a Disclosure Undertaking for the benefit of the holders and beneficial owners of the Bonds. Either Authorized Officer is authorized to cause to be prepared and to execute and deliver the Undertaking on behalf of the Board.

13. Following delivery of the Bonds, the Authorized Officers are, or either of them singly is, authorized to take any action or to evidence any action required or permitted to be taken by the Board under the Trust Indenture.

14. This resolution shall be effective immediately upon adoption. All resolutions or parts of resolutions or other proceedings of the Board in conflict herewith are hereby repealed insofar as such conflict exists.

EXHIBIT A

PROPOSED PROJECT

| Project | Currently Estimated Costs* |
|---|---|
| 1. The bonds will be issued to fund the replacement of chillers in Scott Hall and a number of energy conservation projects in Scott Hall and Shiffman Medical Library. Excess funds, if any, will be used to fund other miscellaneous building renovation and deferred maintenance projects. | $7,250,000 |

*Exclusive of bond issuance expense and capitalized interest

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Submitted by: John L. Davis, Senior Vice President for Finance and Administration

## ENERGY CONSERVATION MEASURES FOR SCOTT HALL VIA A GUARANTEED PERFORMANCE CONTRACT

RECOMMENDATION:

It is recommended that the Board of Governors authorize the President or his designee to design, and award contracts to implement energy conservation measures that produce guaranteed utility cost reductions within the School of Medicine's Scott Hall and Shiffman Medical Library for a cost not to exceed $7,400,000, including the replacement of two chillers. Funding will be provided by proceeds from either the sale of general revenue bonds or the issue of tax exempt notes to a bank. Payment of the associated debt service will be provided from guaranteed University utility budget savings totaling a minimum of $633,000 annually, which will exceed the annual amount of debt service.

BACKGROUND:

A number of institutions such as the University have used Performance Contracting as a vehicle to secure alternative third party financing to implement energy conservation measures where the resulting energy consumption reductions and corresponding utility budget savings are used to repay the third party debt. At the outset of this project it was the University's intention to use Performance Contracting as a means to finance and implement various energy conservation measures in Scott Hall and Shiffman Library, and to expand the use of this process to include the provision of new emergency back-up power generation as well.

Early this year, proposals were solicited for this purpose. The partnership of DTE Energy and Honeywell (DTE) proposed the most attractive package of energy conservation opportunities, emergency generation and financing. Not surprisingly, however, the cost of capital available through DTE (along with all other proposing candidates) was more expensive than traditional University financing and the financing offered would have, in effect, been the debt of the University. As a result, the University began negotiating with DTE toward the development of a specific project scope to address energy conservation measures and emergency back-up power generation, but funded via debt issued directly by the University.

The Administration has decided to defer the emergency back-up generation component of this project as well as the major back-up generation project previously discussed, so that it can re-evaluate other options related to power generation, including other utilities. However, because of the positive project economics, the Administration does recommend the immediate implementation of defined energy conservation measures. Once implemented, they will produce a quantified, DTE guaranteed minimum ($633,000) annual utility budget cost savings that more than pays for the corresponding debt service.

Throughout the ensuing negotiation with DTE, it was the University's intention to repay the associated debt related to energy conservation project from the DTE guaranteed University utility budget savings resulting from the energy conservation measures.

With the requested approval, the Administration will authorize DTE to start the final design of the conservation measures in preparation for the actual construction phase. In January, the Administration will ask for approval to issue the supporting debt. Since the amount of debt is only $7,400,000, there needs to be an evaluation of whether it's best to issue bonds or borrow the funds directly from a bank via the issuance of a tax-exempt note. This evaluation would be completed before the January Board meeting.

PROJECT DESCRIPTION

The project will result in the implementation of four energy conservation measures as listed below.

1. Lighting retrofits that guarantee an annual savings of $216,900 based on a budget of $1,961,000 for a simple payback of 9.0 years;

2. HVAC control upgrades that guarantee an annual savings of $364,000 based on a budget of $3,517,000 for a simple payback of 9.7 years;

3. Steam trap reconditioning that guarantees an annual savings of $31,000 based on a budget of $200,000, for a simply payback of 6.5 years;

4. Motor replacements that guarantee an annual savings of $21,000 based on a cost of $239,000 for a simple payback of 11.4 years.

The overall average simple payback period for the project is 9.4 years.

Also included in the project is a major deferred maintenance requirement to replace two of Scott Hall's chillers at a cost of $1,483,000. While the inclusion of this item in the project scope reduces the overall simple payback period from 9.4 to 11.7 years, it does preserve the University's usual deferred maintenance budget for other critical needs by using guaranteed utility budget savings to service indebtedness as a financing method.

The entire project is compatible with any future Scott Hall renovation as included in the University's current five-year capital outlay request, and it can readily accept emergency back-up power generation at the appropriate time.

The contracts for this project will be awarded in compliance with all University policies and procedures, including affirmative action.